



# Annual Public Hearing

---

MEETING MINUTES

June 18, 2019  
INDIANA DEPARTMENT OF REVENUE

## **Table of Contents**

Minutes Summary

- Attachment A: Emily Landis Opening Statement
- Attachment B: Commissioner Adam Krupp Opening Statement
- Attachment C: Phillip Jackson, Indiana CPA Society, Statement
- Attachment D: Patrick Thomas, Notre Dame Tax Clinic, Statement

# **Indiana Department of Revenue**

## **2019 Annual Public Hearing**

### **Minutes Summary**

In accordance with the Indiana Taxpayer Bill of Rights, the Indiana Department of Revenue held its Annual Public Hearing in Conference Room C of the Conference Center, Indiana Government Center South, 402 W. Washington St., Indianapolis, Indiana, on June 18, 2019.

Required by Indiana law, the purpose of this annual public hearing is to provide taxpayers an opportunity to recommend changes in statutes, departmental policies, processes, and procedures to help the department better administer tax laws.

Individuals in attendance representing the Indiana Department of Revenue were:

- Commissioner Adam Krupp
- Chief Communications Officer Emily Landis
- Chief Operating Officer Bob Grennes
- Chief Financial Officer Edward Vance
- Chief Information Officer Kevin Gulley
- Executive Director of Customer Service Monique Young-Walsh
- Director of Taxpayer Advocate Office Tammy Jones

Attendees:

- Darian Benson, WFYI
- Frank DiPetro, Indiana Legal Services
- Jack Griffith, Indiana Legal Services
- Phillip Jackson, Indiana CPA Society
- Sherrill Rude, Indiana CPA Society
- Patrick Thomas, Notre Dame Tax Clinic
- Max Upton, Indiana Legal Services
- Karen Ward, Indiana Legal Services

10:02 a.m. Call to order by Emily Landis

10:02 a.m. Opening remarks by Emily Landis (See Attachment A)

10:03 a.m. Introduction of Commissioner Adam Krupp

10:20 a.m. Opening remarks by Commissioner (See Attachment B)  
Includes introduction of those in attendance representing DOR

10:43 a.m. Call for public comments by Emily Landis

10:43 a.m. Comments from Phillip Jackson (See Attachment C)

- Congratulated DOR on 2019 IndyStar.com Top Workplace recognition.
- Expressed that the CPA Society's primary area of concern is that the collections process functions as designed for taxpayers who work with tax practitioners.
- Proposed that Schedule C be required when filing a tax return.
- Proposed that an IRS transcript be required with filing an amended return.
- Emphasized user engagement in planning and development of modernization efforts.

10:47 a.m. Emily Landis expressed appreciation for comments.

10:47 a.m. Comments from Patrick Thomas (See Attachment D)

- Commended DOR on working with tax practitioners and low-income taxpayers.
- Expressed thanks to DOR for working on a legislation allowing DOR to provide tax withholding information to taxpayers.
- Described issues with the national FreeFile program and provided recommendations at the state level.
- Proposed changes to "Math Error" notices.
- Proposed changes for Taxpayer Advocate Office policy regarding offers-in-compliance and hardship applications.
- Proposed changes to innocent/injured spouse protection processes.

11:27 a.m. Commissioner expressed appreciation for comments

11:27 a.m. Comments from Frank DiPetro

- Made additional comments on and recommendations for injured spouse policy.
- Proposed changes for tax liens on un-drivable vehicles.

11:32 a.m. Emily Landis noted that there were no additional speakers and no emails from customers sent to DOR.

11:32 a.m. Final call for speakers by Emily Landis; additional comments from the public; adjourned the annual public hearing.

**Attachment A: Opening Statement – Emily Landis**

Thank you for attending the Indiana Department of Revenue's annual public hearing. This hearing, as required under Indiana code, is for the purpose of providing taxpayers opportunity to make recommendations to the department that administer the tax laws in our state.

This hearing is not a news conference or media opportunity. Nor is it a forum to debate Indiana tax laws—those are established by the Indiana General Assembly.

This is an opportunity for the public to suggest improvements in tax services and processing. We are always looking to improve our services to the taxpayer and we are very interested in hearing your ideas and suggestions.

If you wish to make a statement, please provide me with your name if you have not already done so. You will be called up to address the commissioner.

At this time, it is my pleasure to introduce the Commissioner of the Indiana Department Revenue, Adam Krupp.

## **Attachment B: Opening Remarks – Commissioner Krupp**

### **Introduction**

Good morning, everyone. Thank you for attending the 2019 Department of Revenue Public Hearing. My name is Adam Krupp, and this is my third year serving as the Department's Commissioner. I am joined today by our Chief Communications Officer, *Emily Landis*, who we have heard from this morning; our Chief Information Officer, *Kevin Gulley*, who oversees all IT operations and our current modernization project; Chief Operating Officer, *Bob Grennes*, who is responsible for returns processing, customer service, audit operations, and our motor carrier services division, among others; Chief Financial Officer, *Ed Vance*, who has contracts, procurement services, and the agency budget; the director of our Taxpayer Advocate Office, which is a product of Indiana statute, *Tammy Jones*; and our Executive Director of Customer Service, *Monique Young-Wash*.

Also joining us today are several members of our team, including those you see on the screen. It is such an honor to lead the Department alongside this group of individuals, almost all of whom have also been part of our leadership team since at least 2017. The past year has been an historic year for the Department, and we are 76 days away from the initial roll-out of the “once in a generation” IT system modernization that we have talked about for the past two years.

The array of pictures you see on the screen is taken from our website ([in.gov/dor](http://in.gov/dor)), which was completely updated in May in partnership with Indiana’s Office of Technology. Our new website is, in part, why this year’s hearing is being conducted in more of a presentation style format than years past – there are many changes to both style and content that we wanted to highlight today.

One last item of note as part of our introduction today – and speaking of our website – is the online Customer Feedback option, which was made available in October 2018. This allows anyone to reach out to us electronically, either anonymously or by leaving their contact

information to share observations, or to provide feedback, including constructive criticism and positive reinforcement. It allows individuals to request a personal follow-up from the Department, and as of yesterday 300 submissions have come through – every single one of which has been reviewed by our team. Notably, the Federation of Tax Administrators (“FTA”) will be recognizing Indiana at their annual, national conference of all state revenue agencies here in Indianapolis next week with an award for this online Customer Feedback option. FTA’s judges observed, “They were brave to take this on. They aren’t afraid to get the feedback. Most agencies should do it, but there is always a fear of irrational public backlash.” On this, we welcome all feedback – good and bad, as we use it to better the agency, which only benefits those we serve – the taxpayers of Indiana.

## **Workplace Culture**

A couple of years ago, we committed to embarking on a journey of transformational change. Not only were we going to prepare an organization of nearly 700 public servants to modernize in ways they haven’t seen before – primarily through modern technology – but we set out to cultivate and build a healthy organization by changing what most had experienced up to that point as part of their day-to-day cultural experience within the organization.

In the past we have talked about changing the mission and vision statements for the Department, but this past year we took things a step further and introduced our core values. Importantly, these core values: *fun, leadership, integrity, respect, teamwork, service, and continuous improvement* – are a product of the people that make up the Department’s culture ... not just the leadership team. Folks from every business unit within the organization played a role in developing our values – and we expanded upon the core values themselves by adding behavior statements. What does *teamwork* at DOR mean, for example? It means “focus on we, not me.” Similarly, *integrity* as a core value for DOR has its listed behavior statement: “always do what is right. Take action when it is not.” We believe we are changing what it means to be a

public employee in the State of Indiana through our actions – not our words or what you can put on a poster around the hallways – but our actions. These 7 core values are embedded within all of our decisions, strategies, and actions taken. Employee performance is evaluated in the context of these 7 core values. It's a lot easier to have a coaching moment or teaching opportunity with an individual when you tie actions to the behavior statements underlying each value.

I mentioned it has been an historic year for the Department. A couple of weeks ago, in what we view as an acknowledgment and validation of the intense focus that has been placed on building a positive culture over the past couple of years, the Department became the first Indiana state agency to appear in the Indy Star's Top Workplaces list. The list is comprised of organizations that allow their entire employee base to be surveyed anonymously about culture, communication, leadership, direction, job satisfaction and meaningfulness. As you can see from the cover of this year's version, "A positive workplace culture is key," and we could not agree more.

As we stated in this forum back in 2017, culture and customer service are intimately connected. You cannot deliver great customer service if you don't have a healthy organizational culture. Last year, after believing we were comfortable enough with our progress towards a culture we could be proud of, we officially re-branded as a customer service agency during this same event. There will always be opportunities for improvement, and we will never – I repeat, never – be perfect; but we believe strongly that it is not mere coincidence that our service levels have improved across the board since we placed an emphasis on culture.

Having said all that, and while those in leadership roles for the Department continue to study key leadership principles, build necessary skill sets to lead people, and challenge themselves to grow as people ... we always prioritize our statutory charge as an organization, which is to collect the great majority of Indiana's revenue, and to process millions of tax returns

– the majority of which generate a refund for Hoosiers each year. So, let's take a look at our operations over the course of the past year up to this point.

## **Operations**

### *A. Revenue Collections*

I want to initially point out that the data you will see on the next slide is for the current fiscal year – which ends on June 30 – through June 7. Stated differently, these numbers are not complete for the year, but we wanted to provide a preview of what fiscal year 2019's tax receipts look like with one month to go. Last fiscal year's tax receipts totaled \$19.87 billion – and for the Department's reporting purposes, that includes just over \$2.6 billion collected and distributed through *local income tax*; an important distinction from numbers you might see from the State Budget Agency. The overall number also includes *food & beverage*, and *county innkeeper's receipts*, as well, which are distributed to those corresponding counties and municipalities.

As you can see, through June 7, fiscal year 2019's tax receipts have totaled just over \$19 billion. Based on projections, we expect that number to rise above last year's total of \$19.87 billion. Within that number, per usual, the biggest portion of that total comes from *Sales & Use Tax* (currently 39% or \$7.4 billion), with *Individual Adjusted Gross Income Tax* making up the second largest portion at \$5.5 billion or 29% of the total. We typically feature these 8 categories of tax receipts in our annual report, which is due to the Governor by October 1 each year. One additional item of note on this chart is the increase in *Corporate Income Tax* receipts, up from \$698 million in fiscal year 2018 to over \$800 million this year with the month of June still to go.

Before we move on to filing season statistics, I want to mention one item that was billed as the biggest development in sales tax administration in a generation, and that is the United States Supreme Court's landmark decision almost one year ago today in *South Dakota v. Wayfair*. This is the remote seller matter concerning out of state businesses without a physical presence here in Indiana, who are selling goods into our state. The case overturned precedent

set over 25 years ago, which – until *Wayfair* – did not obligate those out of state businesses to collect and remit sales tax back to Indiana. That changed last fall, and now out of state businesses meeting a certain threshold for sales into Indiana as set forth in the Indiana Code are obligated to collect Indiana's 7% sales tax and remit that money to the Department.

Indiana was part of the initial grouping of states that implemented this groundbreaking change for tax administration in October of 2018. Based on registrations, the state was due an estimated, additional \$25 million or so for the October through December 2018 period in out of state sales tax as a direct result of the *Wayfair* decision. Through the first quarter of 2019, our data reflects another \$25-26 million in estimated tax due from out of state sellers. As you can see, we have a page on our website dedicated to the *Wayfair* decision that contains a short video for registration basics, and various information about the case including frequently asked questions.

#### *B. Tax Filing Season*

Regarding filing season – and it's worth noting that returns are filed throughout the year, but for this presentation we are primarily talking about returns filed from January through April, including those filed late – the Department has processed 3,247,824 individual income tax returns this year, plus an additional 164,654 corporate returns. Of those, just over 2 million have generated a refund, with the average State of Indiana refund totaling \$329 (just \$4 less than the same period last year).

How we measure ourselves and hold ourselves accountable on the returns processing side is critical to service delivery. For electronically filed returns generating a refund, we expect to have those processed within 14 days – assuming there are no errors, missing documents, or other exceptions that would cause delay – and 94.9% of those electronically filed returns generating a refund are processed within 14 days. The average is just under 10 calendar days. If we were to include all returns, which means those suspended for additional, manual review or because

additional documentation is necessary, that 94.9% drops a little but still hovers above 90%.

Notably, in 2019, over 89% of Hoosiers are utilizing electronic filing methods.

For those filing on paper in 2019 and expecting a refund, the Department is currently processing those within 26 days on average, with more than 99% processed within 60 days, the traditional goal for refunds via paper filing. When we include all paper returns, even those with delays, that number is still north of 98% (in 2018, that number was closer to 83%).

On the topic of filing, we want to mention – and continue to promote – the Indiana Free File program that is available to Hoosiers below a certain adjusted gross income threshold. As our website indicates, the Free File program was developed back in 2003 through a collaboration between the IRS and various tax preparation software vendors. Indiana is one of many states that participate in this program by allowing certified software vendors to promote their products on a dedicated page on our website. The adjusted gross income thresholds vary from vendor to vendor, and the Department is not directly involved in the policies surrounding the program, but for those who qualify, the filing of both federal and state returns are free. Here in Indiana, our data shows that over 2 million Hoosiers qualify for the Indiana Free File program, and this year, just 87,826 elected to participate as of June 10. That's admittedly a small utilization rate, but it is up 6% from last year. The Department will continue to promote the free file option before and during filing season through various channels, including social media, posters in our satellite offices, as well as other agency offices and libraries throughout Indiana, and on-air reminders during tax season radio appearances.

One more thing to touch upon, operationally, as a part of filing season, is our fraud prevention program, which continues to be among the best in the nation. Through May 2019, the stats are as follows:

- \$5,523,117 fraudulent credits and deductions (prevented);
- \$713,518 attempted stolen identity refund fraud (prevented) (down from \$88 million in 2014, the first year for this program);
- 158 total returns with confirmed fraud (down from 678 same period 2018);
- 174 confirmed stolen identities (down from 833 same period 2018);
- 63,357 ID quiz letters mailed (down from 120,787 same period 2018);
- Total of \$6,236,635 attempted fraud via refunds (prevented).

On the more commonly thought of customer service side of our operation, referring specifically to our call center and walk-in facilities, our numbers are as follows:

- 336,609 calls answered;
- Average speed to answer of 14 minutes, 54 seconds;
- Average call length of 5 minutes, 19 seconds.
- 19,637 customers served via walk-in facilities throughout Indiana;
- 34,405 pieces of correspondence processed.

Again, those stats are from January 1 through June 13 of this year, so they will only continue to rise as each week passes. It's an enormous volume for our staff, relative to head-count, and we continue to be proud of the great strides they have made to pursue best-in-class customer service here at the Department.

## **Project NextDOR**

That brings us to Project NextDOR. Our modernization journey is all about the next generation Department of Revenue. There will come a time when people will look back on the days prior to September 2019 when you interacted with the Department in a different way, and the same will hold true for our staff, who are in the process of learning a new system of record for the first time in over 25 years.

## **Conclusion**

To conclude my prepared remarks, I will simply add that I am incredibly proud of our team at the Department, and the collective effort to make improvements, to streamline processes, revise policies to be more taxpayer friendly, and to focus on serving Indiana. We have nearly 700 Hoosiers doing their best to deliver great government service in ways they have not been asked to do so before – for some, for an entire career – in terms of how we are challenging them to approach their day to day assignments, serve customers, and take on additional responsibilities as we roll out a new, modernized environment that is long overdue. As others have heard me say, in the 2019 version of the Indiana Department of Revenue, the old expression “good enough for government” is not good enough for us.

At this time, I will turn things back over to Emily Landis for the next portion of today’s proceedings. Thank you.

## Attachment C: Statement – Phillip Jackson, Indiana CPA Society



Tax Resource Advisory Council

Indiana CPA Society

Comments: IN DOR Annual Public Hearing  
Comments

June 18, 2019

Good Morning Commissioner Krupp and DOR Team Members.

My name is Philip Jackson, CPA and chair of the Indiana CPA Society's Tax Resource Advisory Council. Thank you for this forum to provide these comments today.

Let me first say, "Congratulations" on the Department recently being named one of *Indy Star's Top Workplaces for 2019*. Your vision to being recognized as the premier tax administrator in the nation and a great place to work seems to be coming to fruition.

Additionally, under your leadership, it is evident that DOR staff strives to deliver best-in-class customer service. Thank you to you, and your staff team, who took on this lofty charge at the beginning of your term as Commissioner.

The Indiana CPA Society and its members work closely with the Department to identify and resolve systemic issues and potential areas for administrative improvements for Indiana taxpayers and our members who represent them.

We believe there are always areas to improve upon, and we'll continue to work with the DOR team to address member's issues of concern. A primary area of concern is ensuring the collections process for taxpayers working with a CPA to resolve a tax liability functions as designed.

A second area of concern relates to communications to taxpayers and their representatives regarding requests for additional information for Schedule C items and providing an IRS transcript for amended returns. Taxpayers are notified shortly after filing returns with Schedule C and amended returns that additional documentation is required within extremely short time periods. Since it will be requested, this documentation should be required to be submitted as part of the return filing. If this information is needed, DOR should have the capabilities of accepting the requested documentation with the return.

Both examples create angst on the part of taxpayers who often assume their preparer did something wrong. This process then requires time and work for practitioners who are likely not going to be compensated for the additional service.

In preparing our comments for today, I realized supporting the development and transition to a modernized ITS system has been at the top of the Society's advocacy list for more than a decade! We applaud the efforts in bringing Project NextDOR along as quickly as possible and support transparency and communication to taxpayers and the practitioner community. We emphasize the need to engage end-users in planning and development and not just in testing stages of the program.

As we've state before, but it bears repeating, the project's success depends on "early and often" end-user engagement and enhancing functions such as:

- Enhanced online payment history information to include payment date and tax period
- Enhanced functionality of the MeF submission to accept all PDF attachments, which would eliminate problematic issues with forms not supported by the current system
- Expedite the processing of Power of Attorney forms from practitioners and providing practitioners with PoA with all notices and communications to taxpayer clients simultaneous to taxpayer notification

As a member of the Commissioner's Tax Advisory Council formed in 2017 and chair of the Society's Tax Resource Advisory Council, I have a front row seat to witness the innovative ways DOR is improving service and providing transparency, fairness and simplification to Indiana's taxpayers. Please continue aggressively upon this path.

In closing I would like to say "Thank you on behalf of our nearly 8,000 member CPAs and accounting professionals who are transforming business in Indiana."

Respectfully submitted:

Philip Jackson, CPA  
Chair, Indiana CPA Society Tax Resource Advisory Council

**Attachment D: Statement – Patrick Thomas, Notre Dame Tax Clinic**

**2019 Report on the State of Indiana Tax Administration  
for Low-Income Hoosiers**

**Prepared\* & Submitted by:**

**Patrick W. Thomas**  
**Professor of the Practice**  
**Notre Dame Law School**

**Frank DiPietro**  
**Director – Low Income Taxpayer Clinic**  
**Indiana Legal Services, Inc.**

---

\* The authors acknowledge significant editorial assistance from Karen Ward, Staff Attorney at the Indiana Legal Services LITC and Zakariah Kulam, Professor Thomas's research assistant.

## EXECUTIVE SUMMARY

These Comments provide the third annual report on the state of Indiana tax administration affecting low-income Hoosier taxpayers. Through these Comments, we summarize the Department's meaningful improvements in tax administration since 2017 and recommend further improvements for 2019.

Last year, we highlighted the necessity of crafting tax compliance solutions with low-income taxpayers in mind. Given that there have been no seismic shifts in Hoosiers' income during the past year, we again recommend that the Department, consistent with the data provided last year, continues to recognize the necessity of tailoring their customer service to the needs of low-income and ESL taxpayers.

### **Developments Since 2017**

In last year's report, we highlighted our recommendations during the 2017 Annual Public Hearing, along with the Department's progress during 2017. These included the elimination of the 20% down payment requirement in payment plans, altered language in the Proposed Assessment (Form AR-80), and overall increased collaboration and communication between practitioners and the Department.

This increased collaboration now exists between many divisions with the Department, including the Taxpayer Advocate Office, our local district offices, the legal division, and the Department's executive leadership. We noted last year that the Taxpayer Advocate Office has become an effective tool through which to resolve complicated tax compliance issues.

The Department deserves recognition for its drive towards a customer service focus over the past two years. Specifically, the Department's increased flexibility in payment plan structures, better communication with practitioners, and increased options for case resolution at the Taxpayer Advocate Office have provided meaningful changes for Hoosier taxpayers. The practitioner hotlines for the Department and its third-party debt collector, Premiere Credit, have also increased their effectiveness for practitioners attempting to bring their clients into tax compliance.

Additionally, leading up to and during this year's legislative session, the Department worked constructively with practitioners and the General Assembly to enact changes to Indiana's tax confidentiality statute, Indiana Code § 6-8.1-7-1. Under prior law, the Department could not reveal tax withholding information to nonfilers, because that information came from the confidential tax return of the taxpayer's employer. For many nonfilers, this represented a significant hardship; even if they wanted to come into filing compliance, they often did not have copies of prior year Form W-2s. Often, their former employers also did not retain these copies, or taxpayers were otherwise unable to obtain this necessary tax forms.

Under new Indiana Code § 6-8.1-7-1(t), effective July 1, 2019, the Department may lawfully provide this information to individual taxpayers. This new law represents a sea change for Hoosier taxpayers seeking to achieve filing and collections compliance, as they may now file accurate past year tax returns. We look forward to working with the Department as it develops administrative processes for distributing this information to taxpayers and practitioners and trains its employees on implementing this new legislation.

## **Recommendations for 2019**

As in years past, many challenges remain for low-income and ESL taxpayers in Indiana. These challenges involve themes of complexity for taxpayers, effective communications between the Department and taxpayers, and efficient internal processes for the Department. They strongly affect low-income and ESL taxpayers, but likewise impact all Hoosier taxpayers. In summary, we recommend that the Department:

- Reduce taxpayer complexity in filing individual income tax returns;
- Communicate more effectively in Departmental notices, including copying authorized representatives on all taxpayer correspondence;
- Transparently communicate with taxpayers and practitioners regarding expectations for the Offer in Compromise and Financial Hardship processes in the Taxpayer Advocate Office;
- Develop an interim solution prior to Project NextDOR to communicate a taxpayer's payment history while in collections; and
- Streamline and better publicize its procedures for "Innocent Spouse", "Injured Spouse", and for removing vehicle liens.

# Most Serious Issues in Indiana Tax Administration

## Issue #1: Return Filing Complexity

During the 2017 filing season, 3,266,813 individual taxpayers submitted an income tax return to the Department.<sup>1</sup> 86.38% of Hoosiers submitted their tax returns electronically.<sup>2</sup> To e-file, Hoosiers must find a private return filing provider, as the Internal Revenue Service and the Department have no mechanism for individuals to directly submit these tax returns electronically.

Many Hoosiers' tax compliance situations are simple: add up wage or salary income on a W-2, calculate tax due, and compare with tax withheld. But in our experience, many taxpayers misunderstand and are intimidated by the perceived (and sometimes real) complexity of the tax compliance system. And given the lack of any public return filing system, the vast majority of Hoosiers outsource the return filing process to private companies, including return preparation services and do-it-yourself online tax providers.

The cost of these services varies widely. But both the Internal Revenue Service and the Department have concluded that lower income taxpayers shouldn't have to pay a dime for tax return preparation. Thus, free services exist like the Volunteer Income Tax Assistance (VITA) grant program<sup>3</sup> and the Free File Program.<sup>4</sup> In VITA programs, IRS-certified volunteers prepare and file federal and state tax returns for qualifying taxpayers. Free File provides do-it-yourself software for federal and state tax returns to taxpayers for free. VITA programs serve taxpayers earning at or below \$55,000 annually, while taxpayers earning below \$66,000 annually qualify for Free File. For taxpayers earning more than \$66,000, the IRS also makes available a "Free Fillable Forms" utility that performs simple math calculations.<sup>5</sup>

---

<sup>1</sup> Indiana Dept. of Revenue, *Individual Income Tax Returns Posted by Filing Method* (Nov. 1, 2017), <https://www.in.gov/dor/3648.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> Internal Revenue Service, *Free Tax Return Preparation for Qualifying Taxpayers* (last updated May 1, 2019), <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers>.

<sup>4</sup> Internal Revenue Service, *Free File: Do Your Federal Taxes for Free* (last updated May 7, 2019), <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free>; Indiana Dept. of Revenue, *INfreefile* (last visited June 17, 2019), <https://www.in.gov/dor/4578.htm>.

<sup>5</sup> See Internal Revenue Service, *Free File Fillable Forms* (last visited June 17, 2019), <https://www.freefilefillableforms.com/#/fd>.

Free File has existed since 2002 and operates through a Memorandum of Understanding<sup>6</sup> between the IRS and “Free File, Incorporated”.<sup>7</sup> Free File, Incorporated, also known as the “Free File Alliance”, is self-described as “a nonprofit coalition of industry-leading tax software companies partnered with the IRS to provide free electronic tax services.”<sup>8</sup> These companies include Intuit TurboTax, H&R Block, Tax Slayer, 1040.com, 1040Now, OnLine Taxes, ezTaxReturn.com, FileYourTaxes.com, Free1040TaxReturn.com, eSmart Tax by Liberty Tax, and FreeTaxUSA.

While the IRS, the Department, and Free File all market Free File as being accessible to 70% of taxpayers, the reality is otherwise under the Free File MOU. In exchange for the IRS promising not to develop its own public filing software,<sup>9</sup> Free File agrees to “make its [s]ervices available to not less than 10 percent and not more than 50 percent of the individual taxpayer population, or approximately [70 million] taxpayers, within the Coverage . . .”<sup>10</sup> Under the MOU, the Coverage is defined as “the lowest 70 percent of taxpayer population calculated using AGI.”<sup>11</sup> In reality, this means that each Free File company has discretion under the MOU to provide free services for only 10% of the lower 70% of all U.S. taxpayers by income. And under the MOU, companies **cannot** provide coverage for more than 50% of eligible taxpayers.

So, Free File companies need not actually provide free filing software to the lower 70% of all U.S. taxpayers by income. There are a panoply of qualification options available among the Free File companies. Income cutoffs range from \$66,000 to \$34,000 in adjusted gross income. Other companies have age, geographic, and other restrictions. Others provide free filing to active duty military or those who qualify for the EIC—regardless of income.<sup>12</sup>

Qualifications for a free state return add another layer of complexity. While as a contracting party the IRS retains bargaining power to change the terms of the MOU, state departments of revenue must generally adopt the terms of the MOU on a “take-it-or-leave it” basis. Under the MOU, Free File must “offer free state tax preparation and e-filing in all states that participate in a State Free File Program.”<sup>13</sup> A “State Free File Program” includes “programs in states that offer free preparation and e-filing of individual tax returns based on criteria that are materially consistent with the federal Free File program, and which do not provide taxpayer funded online software for tax preparation and e-filing.”<sup>14</sup>

---

<sup>6</sup> EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED [hereinafter “Free File MOU”] (Oct. 31, 2018), available at <https://www.irs.gov/pub/irs-utl/Eight%20Free%20File%20MOU.pdf>. This MOU was recently renewed through 2021.

<sup>7</sup> See Free File Alliance, *Free File Alliance Flyer* (last visited June 17, 2019), [https://freefilealliance.org/wp-content/uploads/sites/15/2019/01/Free\\_File\\_Alliance\\_Flyer.pdf](https://freefilealliance.org/wp-content/uploads/sites/15/2019/01/Free_File_Alliance_Flyer.pdf). Previously, Free File Incorporated was the “Free File Alliance LLC”, until it received 501(c)(3) status from the IRS in 2012. *See id.*

<sup>8</sup> Free File Alliance, *About* (last visited June 17, 2019), <https://freefilealliance.org/about/>.

<sup>9</sup> Free File MOU, Article 2.

<sup>10</sup> Free File MOU, Article 4, ¶ 4.1.3(i).

<sup>11</sup> Free File MOU, Article 1, ¶ 1.5.

<sup>12</sup> See generally Internal Revenue Service, *Free File Software Offers* (last visited June 17, 2019), <https://apps.irs.gov/app/freeFile/>.

<sup>13</sup> Free File MOU, Article 4, ¶ 4.21.

<sup>14</sup> Free File MOU, Article 1, ¶ 1.20.

According to the Department, there is no separate Memorandum of Understanding between it and Free File. Rather, it chooses to abide by the terms of the IRS-Free File MOU.

In 2019, 87,137 Indiana returns were filed through Free File—a 6% increase from 2018, when 82,134 returns were filed. The Department deserves commendation for its marketing efforts for Free File. In part due to these efforts, many Hoosiers were able to have their tax returns prepared through for free.

As of this writing, aggregate filing data for the 2019 and 2018 filing seasons are not available. But extrapolating the 2017 aggregate filing season figure (3.2 million returns filed) to 2019 reveals an uptake rate of 2.7%—far less than the 70% of taxpayers that are supposed to be eligible. This uptake rate is similar the federal uptake rate of 2.5% in FY 2016.<sup>15</sup>

Why does the uptake rate remain stubbornly low for these programs? The National Taxpayer Advocate’s 2018 Annual Report to Congress provides some reasons, namely the IRS’s failure to market the program, including especially to underserved demographic groups. She also highlights failures in individual companies’ products, along with confusing cross marketing practices of fee-based products.<sup>16</sup>

Recent investigative reporting from ProPublica sheds some further light on this question. Certain Free File companies engaged in deceptive marketing and internal practices to steer qualifying taxpayers away from Free File—and towards their paid tax return preparation services. For example, these companies:

- Hid the landing pages for their Free File product from Google searches;<sup>17</sup>
- Linked all “sponsored ads” in Google searches to their paid product<sup>18</sup> (i.e., those that typically appear at the top of any Google search result for “file taxes for free” or similar search results);
- Marketed its paid products to military filers who qualified to file for free;<sup>19</sup> and
- Provided internal guidance to its employees to steer qualifying taxpayers away from Free File.<sup>20</sup>

---

<sup>15</sup> Taxpayer Advocate Service, *Free File: The IRS’s Free File Offerings are Underutilized, and the IRS Has Failed to Set Standards for Improvement* at 66, IN 2018 ANNUAL REPORT TO CONGRESS, available at [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18\\_Volume1\\_MSP\\_04\\_FREEFILE.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_MSP_04_FREEFILE.pdf).

<sup>16</sup> See *id.*

<sup>17</sup> Justin Elliott, *TurboTax Deliberately Hid Its Free File Page From Search Engines*, PROPUBLICA (Apr. 26, 2019), <https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines>.

<sup>18</sup> Justin Elliott, *Here’s How TurboTax Just Tricked You Into Paying to File Your Taxes*, PROPUBLICA (Apr. 22, 2019), <https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes>.

<sup>19</sup> Justin Elliott & Kengo Tsutsumi, *TurboTax Uses A “Military Discount” to Trick Troops Into Paying to File Their Taxes*, PROPUBLICA (May 23, 2019), <https://www.propublica.org/article/turbotax-military-discount-trick-troops-paying-to-file-taxes>.

<sup>20</sup> Justin Elliott & Paul Kiel, *TurboTax and H&R Block Saw Free Tax Filing as a Threat – and Gutted It*, PROPUBLICA (MAY 2, 2019), <https://www.propublica.org/article/intuit-turbotax-h-r-block-gutted-free-tax-filing-internal-memo>.

The CEO of one prominent Free File provider stated that the company has no plan to change its practices in light of this reporting.<sup>21</sup> Largely due to this reporting and its resulting backlash, an IRS reform bill that would have codified the Free File MOU was altered to exclude that language.<sup>22</sup> Further, the IRS Commissioner promised to reexamine the Free File program and has hired an outside consultant to do so.<sup>23</sup>

Our own clients regularly complain about their complex and confusing journeys in attempting to file a tax return for free. The vast majority of our clients qualify for Free File. Yet many end up paying a tax return preparer (if they do not know of or cannot effectively utilize Free File) or getting caught in one of the traps mentioned above that lead them to pay a Free File company for tax return preparation. No matter the Department's excellence in marketing this product, the uptake rate is unlikely to change without systemic changes to how Free File companies themselves market and operate their Free File products. The companies' profit motives provide a disincentive to do so.

This background provides strong reasons for the Department to reconsider its own relationship with Free File. The Department cannot directly address the individual actions in the Free File program, because it must accept the Free File agreement wholesale to participate. Therefore, the Department should examine that wholesale relationship with Free File, and should specifically examine whether it is in the long-term best interest of Hoosiers to continue participation in the program.

**Recommendations:**

- (1) Similar to the review ordered by the IRS Commissioner, the Commissioner should conduct a review of the Department's relationship with Free File;
- (2) As part of Project NextDOR, the Department should consider implementing an optional, return-free tax compliance system for individual taxpayers who are full-year residents of Indiana;
- (3) If the Department chooses to continue collaborating with Free File, it should market Free File in a clear manner so that taxpayers understand potential pitfalls in accessing and using a truly free filing product; and
- (4) If the Department chooses to continue collaborating with Free File, it should place a disclaimer on the Department's FreeFile page notifying taxpayers that filing a free federal tax return does not guarantee a free Indiana tax return from the same company.

---

<sup>21</sup> Justin Elliott & Lucas Waldron, *Intuit CEO in Internal Video: Hiding Free TurboTax Was In ‘Best Interest of Taxpayers’*, PROPUBLICA (May 15, 2019), <https://www.propublica.org/article/intuit-ceo-in-internal-video-hiding-free-turbotax-was-in-best-interest-of-taxpayers>.

<sup>22</sup> See TAX NOTES, *Revised IRS Reform Bill Omits Free File Language* (June 10, 2019), <https://www.taxnotes.com/tax-notes-federal/legislation-and-lawmaking/revised-irs-reform-bill-omits-free-file-language/2019/06/10/29193>.

<sup>23</sup> See Jonathan Curry, *IRS Brining in Fresh Eyes to Review Free File Program*, TAX NOTES (May 27, 2019), <https://www.taxnotes.com/tax-notes-federal/tax-system-administration/irs-bringing-fresh-eyes-review-free-file-program/2019/05/27/29jr6>.

## **Issue #2: “Math Error” Adjustment Notices**

If the Department audits a taxpayer’s return, the Department must conclude the audit with (1) a Proposed Adjustment, which proposes additional tax,<sup>24</sup> or (2) a letter proposing no additional tax. If the Department has frozen a taxpayer’s refund during the audit, and the Department concludes that the taxpayer does not qualify for the refund, or qualifies for a reduced refund, the Department must also issue a formal refund denial.<sup>25</sup> Both notices must apprise the taxpayer of their right to an administrative hearing with the Department and the time frame for requesting such a hearing.<sup>26</sup>

The Department uses Form AR-80, Proposed Assessment to propose additional tax under Indiana Code § 6-8.1-5-1(b). We discussed the need for the Department to modify this form in our 2018 Report as Issue #6. To deny a refund, the Department does not use a “form”, but from our experience, does regularly issue a “Refund Denial” letter that specifies the taxpayer’s statutory timeframe to file a request for an administrative hearing or seek relief from the Indiana Tax Court.

During filing season, many taxpayers receive a notice that proposes additional tax or denies a refund, but is neither a Proposed Assessment nor a formal refund claim denial. We term this letter as a “Math Error” adjustment notice, because it is analogous to a similar IRS process. This process may occur during return processing or following an audit. The Department properly uses this notice for situations where a taxpayer makes a mathematical error on a tax return. For example, if a taxpayer enters “2 + 2 = 5” on their return, the Department may change 5 to 4. Taxpayers can reasonably expect this sort of response; indeed, it represents quality customer service.

This Notice, a redacted copy of which is attached at Exhibit A, consists of two pages. The first page is the same for all taxpayers; it advises the taxpayer that their return was received and that the Department discovered “inconsistencies” in the return, which are identified on page two. It asks the taxpayer to review page two and if the taxpayer disagrees with the result, to submit an explanation and documentation within 20 days. The letter further advises that if the taxpayer agrees with the result, they will receive either a reduced refund or a notice of tax due. The letter concludes with logistics for making a payment, which taxpayers may do with the payment coupon attached on page two. It also provides contact information for the Department’s local offices.

Page two is entitled “Payment Filing Coupon” and has a subtitle of “[Tax Year] [Tax Form] Return Line-by-line Change or Changes”. It then provides a line-by-line breakdown of the taxpayer’s return and proposed changes, including columns for “Reported”, “Corrected”, and “Reason”. The “Reason” is, in our experience, always “adjusted to agree with our records” or “error in calculating tax”, which essentially provides no useful information to a taxpayer. The true reason for the change—decipherable only by a trained tax practitioner—never appears to be the math error for which the notice is designed. Rather, it makes **substantive** changes to the tax return. Because a Payment Filing Coupon is attached to page two (and is, indeed, the title on the page), many taxpayers believe that they now owe a debt to the Department and pay the amount sought without complaint.

---

<sup>24</sup> Ind. Code § 6-8.1-5-1(b).

<sup>25</sup> Ind. Code § 6-8.1.9-1(b).

<sup>26</sup> Ind. Code §§ 6-8.1-5-1(d), 6-8.1-9-1(d).

The Notice is problematic in three ways. First, it fails to effectively apprise taxpayers of the substantive changes to their tax returns. Redacted notices are attached as Exhibits A, B-1, B-2, and B-3. Each shows the line-by-line changes that the Department made for clients of the Notre Dame Tax Clinic. In Exhibit A, the Department used this notice to conclude an audit, which resulted in a complete disallowance of the refund the taxpayer claimed on their tax return. In Exhibit B-1, the Department disallowed a deduction for unemployment compensation. In Exhibit B-2, the Department disallowed a credit for tax withheld. In Exhibit B-3, the Department increased the taxpayers' standard deduction and disallowed a credit for tax withheld. However, none of the affected taxpayers understood what changes were made or why the changes were made. A seasoned tax practitioner needed to interpret the notices for the taxpayers.

Second, the Notice signals taxpayers that they now owe the Department additional tax, when in fact, the taxpayer possesses various administrative appeal rights and the right to litigate the change in court. The Notice reads like a bill, given the prominence of the Payment Filing Coupon on page two. Many taxpayers, including at least one of the taxpayers whose notices are included in the Exhibits, presume that the Department's calculations are correct. While page one of the Notice does provide an avenue to challenge its conclusions, it does not provide instructions on where to send information. And, when the Notice does not effectively apprise the taxpayer of the substantive changes to the return, it becomes difficult for a taxpayer to know exactly what they should challenge or what documents they should submit.

Finally, the Department uses the Notice in place of a formal refund denial and—in at least certain cases in our Clinics—in place of a Proposed Assessment. This process violates the Indiana Code. The notice cannot function as a Proposed Assessment or formal refund denial, because it fails to include information regarding the taxpayer's administrative appeal rights, as required under Indiana Code §§ 6-8.1-5-1(d) and 6-8.1.-9-1(d).

### **Recommendations:**

- (1)** If the Department continues to use the Math Error notice for substantive changes to a tax return, it should change the notice so that it includes information on those changes, in plain language so that taxpayers may understand the proposed change;
- (2)** The Department should reformat the Math Error notice so that taxpayers do not confuse it with a bill (i.e., a Demand Notice); and
- (3)** The Department must follow the Indiana Code and issue a Proposed Assessment or a formal refund denial that advises the taxpayer of their rights to an administrative hearing.

**Issue #3: Taxpayer Payment History:** As we highlighted in 2017 and 2018, there remains no comprehensive way to determine what payments have been received or for what tax years payments have been made on a taxpayer’s account. Without this system, taxpayer and practitioner efforts at collections compliance are often frustrated. The Internal Revenue Service provides Account Transcripts, upon request via mail or through its e-services portal, that easily allows practitioners to review any payments made, how those payments were made, and the date those payments were applied on each tax year.

Taxpayers, representatives, and the Department’s employees need to easily understand a client’s tax payment history—including both withholding information and payments made on open liabilities. Yet currently, the only mechanism is to orally obtain this information from the Department, or in a local office (if an employee has time and is gracious enough to create a bespoke payment spreadsheet).

Project NextDOR is a welcome development, but remains on the long-term horizon.

**Recommendation:** Devise and advertise to taxpayers and practitioners an interim solution to easily apprise taxpayers, practitioners, and Department employees, in a standardized written manner, of a taxpayer’s payment history on open liabilities—including voluntary payments, state and federal refund offsets, and enforced collection activity by county sheriffs and Premiere Credit.

#### **Issue #4: Offer in Compromise & Hardship Procedures**

As we highlighted in 2018, the Department, through its Taxpayer Advocate Office, does not publish guidelines for evaluating hardship payment plans or offer in compromise applications. This includes how a taxpayer's assets, income, and expenses should be reported to the Department, how such information will be evaluated in adjudicating the application, and the extent to which such information should be substantiated through documentation. This not only makes the application process itself difficult, but also dissuades use of these programs where the likelihood of achieving a particular result is unclear.

Over the past 24 months, the Taxpayer Advocate Office has reviewed its guidelines regarding the acceptance of a taxpayer's offer in compromise request and evaluation of its hardship plan. Through conversations with the Office, we have learned that some changes are being instituted when reviewing these requests. However, there is still very limited published guidance or evaluation criteria. We continue to experience ad-hoc and unpredictable decisions on our requests for relief.

The benefits of publishing the Office's evaluation criteria and guidance is two-fold. First, tax professionals and Hoosiers can make a preliminary determination as to whether the Department would accept their compromise requests or hardship applications based upon the actual criteria the Department uses. This would eliminate needless applications to the Taxpayer Advocate Office when a payment plan would be more appropriate.

Second, publication of the evaluation criteria and guidance promotes overall greater transparency for the Department. When a compromise or hardship plan request is denied by Taxpayer Advocate Office, the taxpayer and/or tax professional often does not know the basis of the declination. Denials are typically one or two sentences containing a broad statement of denial. The publication of the evaluation criteria can allow a review of the basis of a denial and determination of whether that denial was in error.

Furthermore, the Internal Revenue Service fully publishes all of its evaluation criteria on its website in the Internal Revenue Manual.<sup>27</sup> This publication allows taxpayers and tax professionals to evaluate a compromise request before it is submitted to the IRS. Also, tax professionals and IRS employees can discuss evaluation criteria in an informed manner and intelligently discuss whether a taxpayer meets these criteria. This publication promotes fairness, transparency, and overall confidence in the evaluation process of an offer in compromise or financial hardship request.

**Recommendation:** Publication of all materials related to the evaluation of offer in compromise requests and financial hardship plan requests on the Department website.

---

<sup>27</sup> Internal Revenue Manual 5.8.5, Financial Analysis, [https://www.irs.gov/irm/part5/irm\\_05-008-005r](https://www.irs.gov/irm/part5/irm_05-008-005r).

### **Issue #5: Notices for Authorized Representatives**

As we highlighted in 2018, authorized representatives are not generally copied on Department correspondence. This leads to miscommunications and a lack of practitioner awareness of burgeoning problems, which the practitioner could likely more efficiently address at the outset. Often, practitioners call the Department to learn the status of a hardship request or protest letter, only to learn communication was sent to the client and not the practitioner. This delays the practitioner from complying with requests (such as the need for further documentation) and resolving the case. In some instances, the delay causes a resubmission because the Department closed the case due to non-responsiveness.

During 2018, the Taxpayer Advocate Office implemented a policy of systemically copying practitioners on correspondence. This is a welcome development, but remains sporadic in execution. Practitioners are not always copied on correspondence; therefore, Department and TAO leadership should ensure that TAO employees are appropriately trained on copying practitioners on any correspondence to taxpayers.

Finally, during 2018 and 2019 the authors of this report discussed with the Department's legal division and customer service division the practicalities of copying all practitioners on all of the Department's correspondence. We understand that the Department continues to work on addressing open issues with an eye towards copying practitioners on correspondence in the future. We also understand that with the implementation of Project NextDOR, this may involve electronic access by practitioners to taxpayer notices and correspondence. Nevertheless, because practitioners are not currently and systemically copied on correspondence, we highlight this as one of the most serious issues facing Hoosier taxpayers for 2019.

**Recommendation:** Copy representatives on all Department correspondence.

## **Issue #6: Vehicle Lien Release Procedures**

The Department has broad powers and discretion in the collection of delinquent taxes from Indiana Hoosiers. Indiana Code § 6-8.1-8-2(b) authorizes the issuance of a tax warrant against any person who owes the Department and fails to pay a Demand Notice within 20 days. This warrant, once filed with a county recorder, operates as a judgment lien against a taxpayer's property. Departmental policy requires the filing of a tax warrant when a taxpayer owes in excess of \$ 50.00 to the Department. Indiana Code § 6-8.1-3-16(d) further instructs the Department to provide a monthly list of all tax warrants to the Bureau of Motor Vehicles. The Bureau of Motor Vehicles must then enter on any vehicle title, with the delinquent taxpayer listed as an owner, the State of Indiana as a lienholder. This becomes an issue when the vehicle is undrivable due to accident or mechanical problems.

Taxpayers must be able to dispose of a vehicle that has no tangible value. However, these vehicles cannot be sold or even given away, with the State of Indiana listed as a lienholder on the vehicle's title due to nonpayment of income taxes. Potential buyers will not accept vehicles without clean title or without an established procedure on obtaining a lien release from the Department. This can result in abandoned vehicles left on residential property resulting in town fines as well as environmental problems or storage fees at vehicle repair locations because they cannot be sold or removed. Taxpayers do not intend to receive any benefit from the sale or salvage of these vehicles, but only to prevent additional fines or other costs related to these unusable vehicles.

**Recommendation:** Provide published guidance and procedures on how vehicles may receive clear title and allow title transfer when all proceeds, if any, are provided to the State of Indiana.

## **Issue #7: Innocent Spouse Procedures**

The Internal Revenue Code establishes joint and several liability for spouses filing a joint return.<sup>28</sup> When married taxpayers file a joint federal income tax return, they hold joint and several liability for income tax owed to the government, even if one spouse earned most or all of the income. A taxpayer may seek relief from this joint liability under IRC § 6015, commonly known as “Innocent Spouse” relief. In general, taxpayers qualify for relief under IRC § 6015 when the reason for any understatement or underpayment was attributable to the other spouse; the requesting spouse did not know or have reason to know of any understatement or underpayment of tax; and taking into account all facts and circumstances, it would be inequitable to hold the requesting spouse liable for the tax.

In contrast, the Indiana Code does not establish joint and several liability for joint returns. Ind. Code § 6-3-4-2. “Where a joint return is filed by a husband and wife hereunder, **one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.**” Instead of establishing joint and several liability, and providing a discretionary relief mechanism, Indiana Code § 6-3-4-2 protects spouses in the first instance from incurring income tax accrued by the other. Therefore, the State may not lawfully pursue one spouse for payment of the other’s income tax. Nevertheless, the Department commonly does so.

Currently, the Department creates a joint tax assessment for joint taxpayers who report a balance due or have a balance due resulting from an audit. To separate the liability under Indiana Code § 6-3-4-2, Hoosiers must file form IN-40SP to apply for so-called “Innocent Spouse” relief. This document calls for the taxpayer to provide W-2 and 1099 forms from both spouses; a copy of the federal income tax return; a copy of the Indiana tax return; and copies of a federal innocent spouse approval. Additionally, it requires the applicant to provide a detailed letter describing why he or she feels entitled to innocent spouse protection.

There are four main issues with existing procedure. First, the Department already possesses much of the requested information. In particular, requesting the taxpayers’ joint Indiana tax return is redundant. Taxpayers requesting relief from debts their deceased or divorced spouses may no longer have access to relevant W-2 or 1099 information—yet the Department likely already possesses this information.

Second, the Department has no basis for requiring a letter (or even an application) from the taxpayer. “Innocent Spouse” relief is a misnomer, particularly given the discretionary nature of the federal innocent spouse process. So long as a taxpayer can demonstrate that their income generated a lower liability than that which the Department has jointly assessed and (in many cases) collected, relief should be granted without requiring any explanation from the taxpayer.

Third, the preliminary instructions on Form IN-40SP are confusing and may mislead taxpayers into believing that they do not qualify for relief. Whether the IRS determines to grant relief under IRC § 6015 is irrelevant to relief under Indiana Code § 6-3-4-2. A spouse’s knowledge (“the innocent spouse was unaware or had no access or use of that income”) is likewise irrelevant. The rest of the instructions are underinclusive of taxpayer eligible for relief (“all of the income reported was the spouse’s income”;

---

<sup>28</sup> I.R.C. § 6013(d)(3).

“you filed and paid your Indiana income tax that was due”; “the innocent spouse had no compensation from this income”).

Finally, turnaround time for innocent spouse relief is, in our experience, 120 days or more. This wait can be too long for low-income taxpayers in need of immediate relief from unlawful collection activity.

**Recommendations:**

- (1) Create a new Schedule for the IT-40 that allocates items of income, deductions, and credits among spouses filing a joint return. Consistent with the Indiana Code, process any resulting liability as two separate assessments. This would obviate the need for the current post-filing relief process and could be accomplished using information that taxpayers already provide to tax return preparers or input into commercial tax preparation software.
- (2) Alternatively, develop a simpler form to request Innocent Spouse relief with clearer instructions. This will allow for quicker turnaround, will not dissuade eligible taxpayers from pursuing relief, and will reduce discretion in granting the mandatory relief that the Indiana Code requires.

## **Issue #8: Injured Spouse Procedures**

The Department currently has no procedures in place when an Indiana taxpayer is an injured spouse prior to the offset of their tax refund. An injured spouse is someone whose tax refund is used to cover the past-due debts of a spouse or ex-spouse. These debts, while usually income tax debts, can also be obligations from past due child support, past-due tuition owed to state educational institutions, or defaulted Department of Education loans. When one spouse owes a debt obligation that will offset their federal tax refund, the “injured spouse” may file IRS Form 8379<sup>29</sup> with their joint federal tax return to ensure his/her portion of the joint federal tax return refund will be refunded to the injured spouse. The Department has no mechanism in place for the injured spouse’s portion of joint tax return refund to be issued to them prior to a refund offset.

Indiana law requires a taxpayer to file a joint state tax return with their spouse if they file a joint federal tax return.<sup>30</sup> Indiana Code § 6-8.1-9.5-11 requires the Department to “set off” debts against the combined refund of taxpayers who have previously filed a combined return unless there is a timely defense raised by a co-refundee who is not a debtor to a claimant agency. Indiana Administrative Code 15-10-1 states a defense “shall constitute any reasonable evidence which establishes that the co-refundee is not a debtor to the claimant agency.” The Administrative Code further states any defense by the co-refundee must be provided to the Department in written form within 30 days of notification of the offset.

The Department likewise participates in the federal Treasury Offset Program (“TOP”), as outlined in Indiana Code § 6-8.1-9.7. Through this program, the Department can offset Indiana tax refunds for debts that Hoosiers owe to the federal government and other states. Like the offset provision for debts to Indiana state agencies, the TOP allows for relief for joint tax refunds that will be offset through the program. If a joint refund is at issue, “[Indiana] **may not** withhold or pay to the federal official the part of the income tax refund attributable to the individual not owing the debt.”<sup>31</sup> The Department must notify the taxpayers of a proposed TOP offset and allow them 60 days to notify the Department in writing that some part of the refund is attributable to a non-liable individual. Otherwise, the Department may consider the entire refund to be attributable to the debtor.

The Department, in neither its written materials nor its website, provides guidance to Hoosiers on injured spouse relief for the state agency offset program under Indiana Code § 6-8.1-9.5 or the TOP under § 6-8.1-9.7. In fact, experienced tax practitioners are unaware of its existence or how to request relief for their clients.

Moreover, some taxpayers understand, prior to filing a joint tax return, that their refund may be subject to a third-party offset. Currently, the Department does not provide an opportunity for the taxpayers to highlight this issue on the tax return; instead, they must address it through post-filing correspondence with the Department (if at all).

---

<sup>29</sup> IRS Form 8379, Injured Spouse Allocation, <https://www.irs.gov/pub/irs-pdf/f8379.pdf>

<sup>30</sup> Ind. Code § 6-3-4-2(d).

<sup>31</sup> Ind. Code § 6-8.1-9.7-9(2).

### **Recommendations:**

- (1) Develop injured spouse guidance and forms that will allow injured spouses to not be affected by current and former spouse's liabilities.
- (2) Provide for injured spouses to have an opportunity to request relief prior to the offset of their tax refunds.
- (3) Publicize the availability of injured spouse relief, including relevant procedures for taxpayers to avail themselves of this relief.

### **Conclusion**

In the past two years, the Department—from its leadership on down—has demonstrated a commitment to work more closely with practitioners in addressing the needs of Hoosier taxpayers. As described above, it has made notable strides in developing a customer service focus, effectively collaborating with external stakeholders, and strategizing a long-term vision of high-quality tax administration in Indiana.

While the Department deserves recognition for its attitudinal shift over the past two years, maintaining a healthy tax administration system requires continuous improvement, driven by feedback from Hoosier taxpayers, practitioners, and other stakeholders. To that end, we have identified the above eight issues as the Most Serious Issues affecting Hoosier taxpayers in 2019. Most issues affect a large number of Hoosier taxpayers; all are serious issues for the individual taxpayers affected. We hope to work with the Department on addressing the issues identified in this report and look forward to another year of improving tax administration in the State of Indiana.



## INDIANA DEPARTMENT OF REVENUE

Eric J. Holcomb, Governor  
Adam J. Krupp, Commissioner

Indiana Government Center  
100 N. Senate Ave  
Indianapolis, IN 46204-2253

### Important Taxpayer Notification

Dear Customer:

The Indiana Department of Revenue (DOR) received your tax return and discovered inconsistencies during processing.

Located on the back of this letter is a line-by-line breakdown of your return. The left column shows the figures as reported on the return. The right column reflects the figures as we have calculated or adjusted them. The changes may alter your refund amount or result in an additional amount owed.

Please review your return and calculations to ensure we have not made any errors. If you do not agree with this notification, please submit an explanation along with any supporting documentation to DOR within 20 days. Once your documentation is received, please allow 8 to 12 weeks for DOR research and review.

If you agree with the proposed changes, you either will receive a refund in the adjusted amount or a Notice of Tax Due that will reflect the additional tax. This notice may include a penalty of 10 percent and interest that accumulates daily. Payments received prior to April 15 of the tax year will not be assessed penalty or interest. If you protest this notification and submit documentation of your disagreement but later receive a Notice of Tax Due, you should notify DOR to ensure your documentation was received.

If you agree with this notification and wish to make payment at this time, you should use the coupon on the back of this notification to guarantee your account is credited properly. If after 20 days, you do not submit the full amount due, a Notice of Tax Due will be issued.

If a refund was calculated, you will receive the amount in the next few days. If DOR's review of any additional information you provide results in further adjustments, you will be issued a second refund amount for the difference. As stated above, any adjustments resulting in an additional amount due will generate a Notice of Tax Due.

Thank you in advance for your cooperation. If you have any questions, you may contact DOR Customer Service at 317-232-2240 Monday through Friday 8 a.m. - 4:30 p.m. EST, or visit a District Office nearest you (locations listed below).

All addresses are subject to change. (Check your local listings)

Indianapolis Main Office Indiana Government Center North 100 N. Senate Ave., Rm N105 Indianapolis, IN 46204	Columbus District Office 3520 Two Mile House Rd. Columbus, IN 47201	Kokomo District Office 124 W. Superior St. Kokomo, IN 46901	Muncie District Office 3640 N. Briarwood Ln., Ste. 5 Muncie, IN 47304
Bloomington District Office 1531 South Curry Pike, Suite 400 Bloomington, IN 47403	Evansville District Office 500 S. Green River Rd. Goodwill Building, Ste. 202 Evansville, IN 47715	Lafayette District Office 100 Executive Dr., Ste. B Lafayette, IN 47905	South Bend District Office 105 E. Jefferson Blvd., Ste. 350 South Bend, IN 46601
Clarksville District Office 1200 Madison St., Ste. E Clarksville, IN 47131 Mailing Address: P.O. Box 3249 Clarksville, IN 47131	Fort Wayne District Office 1415 Magnavox Way, Ste. 100 Ft. Wayne, IN 46804	Merrillville District Office 1411 E. 85th Ave. Merrillville, IN 46410	Terre Haute District Office 30 N. 8th St., 3rd Floor Terre Haute, IN 47807

# Exhibit A

Sequence Nbr: 394

**Payment Filing Coupon**  
Indiana Department of Revenue  
2018 IT-40 Tax Return Line-by-line Change or Changes

TID:0  
Corresp ID: [REDACTED]  
Print Date: 04/02/2019

Line #	Line Description	Reported	Corrected	Reason
1	Federal AGI	\$ 14,325.00	\$ .00	
2	Tot Add-Back (Sch1)	\$ .00	\$ .00	
3	Total Indiana Income	\$ 14,325.00	\$ .00	
4	Tot Deductions (Sch2)	\$ 3,150.00	\$ .00	
5	Indiana A.G.I.	\$ 11,175.00	\$ .00	
6	Tot Exemptions (Sch3)	\$ 5,500.00	\$ 5,500.00	Adjusted to agree with our records
7	State Tax Income	\$ 5,675.00	\$ -8,650.00	Adjusted to agree with our records
8	State AGI Tax	\$ 183.00	\$ .00	Adjusted tax
9	County Income Tax	\$ 98.00	\$ .00	Error in calculating county tax
10	Tot Other Tax (Sch4)	\$ .00	\$ .00	
11	Total Tax	\$ 282.00	\$ .00	Error in calculating total tax
12	Tot Credits (Sch5)	\$ 512.00	\$ .00	Adjusted to agree with our records
13	Offset Credits (Sch6)	\$ .00	\$ .00	
14	Total IN Credits	\$ 512.00	\$ .00	Error in addition of credits
—	Total Remit Amt	\$ .00	\$ .00	
17	Donations	\$ .00	\$ .00	
19d	1st Qtr Est Nkt Tax Yr	\$ .00	\$ .00	
20	Est Tax Undp Pen	\$ .00	\$ .00	
21	Total Refund Due	\$ 230.00	\$ .00	
24	Penalty	\$ .00	\$ .00	
25	Interest	\$ .00	\$ .00	
26	Tot Amt You Owe	\$ .00	\$ .00	

TID:  
Acct ID:  
Period End:  
Tax Type:  
DLN:

000394

## Exhibit B-1

## Payment Filing Coupon

## Indiana Department of Revenue

## 2013 IT-40 Tax Return Line-by-line Change or Changes

TID:  
Corresp ID:  
Print Date:

Line #	Line Description	Reported	Corrected	Reason
1	Federal AGI	\$ 19,270.00	\$ 19,270.00	
2	Tot Add-Back (Sch1)	\$ .00	\$ .00	
3	Total Indiana Income	\$ 19,270.00	\$ 19,270.00	
4	Tot Deductions (Sch2)	\$ 10,351.00	\$ 3,000.00	Adjusted to agree with our records
5	Indiana A.G.I.	\$ 8,919.00	\$ 16,270.00	Adjusted to agree with our records
6	Tot Exemptions (Sch3)	\$ 1,000.00	\$ 1,000.00	
7	State Tax Income	\$ 7,919.00	\$ 15,270.00	Adjusted to agree with our records
8	State AGI Tax	\$ 269.00	\$ 519.00	Adjusted tax
9	County Income Tax	\$ 119.00	\$ 229.00	Error in calculating county tax
10	Tot Other Tax (Sch4)	\$ .00	\$ .00	
11	Total Tax	\$ 388.00	\$ 748.00	Error in calculating total tax
12	Tot Credits (Sch5)	\$ 284.00	\$ 284.00	
13	Offset Credits (Sch6)	\$ .00	\$ .00	
14	Total IN Credits	\$ 284.00	\$ 284.00	
—	Total Remit Amt	\$ .00	\$ .00	
17	Wildlife Fund	\$ .00	\$ .00	
19d	1st Qtr Est Nxt Tax Yr	\$ .00	\$ .00	
20	Est Tax Undp Pen	\$ .00	\$ .00	
21	Total Refund Due	\$ .00	\$ .00	
24	Penalty	\$ .00	\$ 46.40	
25	Interest	\$ .00	\$ 44.52	
26	Tot Amt You Owe	\$ 104.00	\$ 554.92	



(Detach Here)

PFC

TIDE:

Acct ID:

Period En

Date Due:

000364

Your daily interest rate will be calculated at .04 per day.

Mail completed Coupon and Payment to:

Cpn Interest:	\$ 44.52
Cpn Penalty:	\$ 46.40
DLN:	[REDACTED]

**Indiana Department of Revenue  
P.O. Box 1674  
Indianapolis, IN 46206-1674**

Amount Due:

554.92

**Exhibit B-2**

Sequence Nbr: 527

TID:  
Corresp ID:  
Print Date:
**Payment Filing Coupon**  
**Indiana Department of Revenue**  
**2017 IT-40 Tax Return Line-by-line Change or Changes**

Line #	Line Description	Reported	Corrected	Reason
1	Federal AGI	\$ 20,343.00	\$ 20,343.00	
2	Tot Add-Back (Sch1)	\$ .00	\$ .00	
3	Total Indiana Income	\$ 20,343.00	\$ 20,343.00	
4	Tot Deductions (Sch2)	\$ .00	\$ .00	
5	Indiana A.G.I.	\$ 20,343.00	\$ 20,343.00	
6	Tot Exemptions (Sch3)	\$ 1,000.00	\$ 1,000.00	
7	State Tax Income	\$ 19,343.00	\$ 19,343.00	
8	State AGI Tax	\$ 625.00	\$ 625.00	
9	County Income Tax	\$ 339.00	\$ 339.00	
10	Tot Other Tax (Sch4)	\$ .00	\$ .00	
11	Total Tax	\$ 964.00	\$ 964.00	
12	Tot Credits (Sch5)	\$ 808.00	\$ 593.00	Adjusted to agree with our records
13	Offset Credits (Sch6)	\$ .00	\$ .00	
14	Total IN Credits	\$ 808.00	\$ 593.00	Error in addition of credits
—	Total Remit Amt	\$ .00	\$ .00	
17	Donations	\$ .00	\$ .00	
19d	1st Qtr Est Nxt Tax Yr	\$ .00	\$ .00	
20	Est Tax Undp Pen	\$ .00	\$ .00	
21	Total Refund Due	\$ .00	\$ .00	
24	Penalty	\$ .00	\$ 37.10	
25	Interest	\$ .00	\$ .64	
26	Tot Amt You Owe	\$ 156.00	\$ 408.74	

(Detach Here)

PFC

TID:

Acct ID:

Period End:

Date Due:

Tax Type:

000527

Your daily interest rate will be calculated at .03 per day.

Mail completed Coupon and Payment to:  
[REDACTED]

Cpn Interest:	\$ .64
Cpn Penalty:	\$ 37.10
DLN:	[REDACTED]

**Indiana Department of Revenue**  
**P.O. Box 1674**  
**Indianapolis, IN 46206-1674**

Amount Due:

408.74

# Exhibit B-3

00003/0027

Sequence Nbr: 3782

## Payment Filing Coupon

Indiana Department of Revenue

TID:  
Corresp ID:  
Print Date:

### 2013 IT-40 Tax Return Line-by-line Change or Changes

Line #	Line Description	Reported	Corrected	Reason
1	Federal AGI	\$ 29,067.00	\$ 29,067.00	
2	Tot Add-Back (Sch1)	\$ .00	\$ .00	
3	Total Indiana Income	\$ 29,067.00	\$ 29,067.00	
4	Tot Deductions (Sch2)	\$ .00	\$ .00	
5	Indiana A.G.I.	\$ 29,067.00	\$ 29,067.00	
6	Tot Exemptions (Sch3)	\$ 1,000.00	\$ 2,000.00	
7	State Tax Income	\$ 28,067.00	\$ 27,067.00	Adjusted to agree with our records
8	State AGI Tax	\$ 954.00	\$ 920.00	Adjusted Tax
9	County Income Tax	\$ 421.00	\$ 406.00	
10	Tot Other Tax (Sch4)	\$ .00	\$ .00	
11	Total Tax	\$ 1,375.00	\$ 1,326.00	Adjusted to agree with our records
12	Tot Credits (Sch5)	\$ 1,424.00	\$ 1,324.00	Adjusted to agree with our records
13	Offset Credits (Sch6)	\$ .00	\$ .00	
14	Total IN Credits	\$ 1,424.00	\$ .00	
—	Total Remit Amt	\$ .00	\$ 1,324.00	
17	Wildlife Fund	\$ .00	\$ .00	
19d	1st Otr Est Nxt Tax Yr	\$ .00	\$ .00	
20	Est Tax Undp Pen	\$ .00	\$ .00	
21	Total Refund Due	\$ 49.00	\$ .00	
24	Penalty	\$ .00	\$ .00	
25	Interest	\$ .00	\$ 5.00	
26	Tot Amt You Owe	\$ .00	\$ .17	
			\$ 7.17	



(Detach Here)

PFC

TID:

TID:

Acct ID:

Period End:

Date Due:

Tax Type:



000183

Your daily interest rate will be calculated at .01 per day.

Mail completed Coupon and Payment to:  
Indiana Department of Revenue  
P.O. Box 1674  
Indianapolis, IN 46206-1674

Cpn interest:	\$ .17
Cpn Penalty:	\$ 5.00
DIN:	

Amount Due:

7.17