

# Daily Journal

Established 1888

www.dailyjournal.com

Before cyber crime devastates your law practice... be ready!

FREE \$100,000 in Cyber Coverage - See Latest Benefits - When you Buy a Malpractice Policy\* with LAWYER'S MUTUAL INSURANCE COMPANY

...be safe ...be secure

**LMIC**

Lawyers' Mutual Insurance Company, The Premier Legal Malpractice Carrier

www.LMIC.com (800) 252-2045

Jobs/Office Space/Services Experts/Legal Resource Center MCLE Search Logout

THURSDAY

FRIDAY

MONDAY

TUESDAY

TODAY

Questions and Comments

Previous

Next

Bookmark Reprints

NEWS

RULINGS

VERDICTS

Wednesday, May 10, 2017

## The problem with an underfunded IRS

**Bruce Givner** is a partner at Givner & Kaye in Los Angeles. He can be reached at [bruce@givnerkaye.com](mailto:bruce@givnerkaye.com).



**Owen Kaye** is a partner at Givner & Kaye in Los Angeles. He can be reached at [owen@givnerkaye.com](mailto:owen@givnerkaye.com).



The Americans for Tax Reform has complained that the Internal Revenue Service failed "to prevent a data breach that left taxpayer information belonging to more than 600,000 taxpayers stolen." It reported that "Physical security controls designed to protect sensitive IT housed in restricted areas were not being properly implemented, the agency continued to use unsupported software to manage taxpayer data, and personal data was not properly encrypted."

Lots of people, in and out of government, complain about the IRS. However, there is an objective reason why the IRS has

trouble fulfilling its obligations. Following is the IRS budget, in billions of 2016 dollars, for the decade so far: 2010 - \$13.6; 2011 - \$13.3; 2012 - \$12.7; 2013 - \$11.7; 2014 - \$11.7; 2015 - \$11.2; 2016 - \$11.2.

The budget included in the deal announced in Congress last week was \$11.1 billion. That means the IRS will, in 2017, be about 20 percent underfunded compared to 2010, in constant dollars. Going back further, adjusted for inflation, IRS 2016 funding was the same as in 1998. As a result, IRS employment has fallen 27 percent (30,000 employees) since 1998. Yes, the IRS has the benefit of the electronic filing of returns. But the number of individual returns has increased by a third (123 million in 1998 to 163 million in 2015). The number has grown by 9 million just since 2010. This is a significant concern for an agency that generates 92 percent of all federal revenue.

This underfunding has many negative results. One is that the IRS has difficulty obtaining and retaining high-quality people. Happily, there are public servants who remain with the IRS even though they could make much more, given their experience, in the private sector. But too many leave, and the brain drain does not help taxpayers trying to get information from, or reach agreements with, the IRS.

This has seriously, negatively impacted taxpayer services. In 2010, about 75 percent of calls to the IRS were answered, with an 11-minute average wait time. During the 2015 filing season, only 37 percent of calls were answered, with a 23-minute average wait time. That means 63 percent of the calls were unanswered. Evidence suggests the figures have deteriorated in 2016 and 2017. Eight million eight hundred thousand taxpayer calls were simply dropped because the IRS's switchboard was overloaded in 2015. It is easy to imagine the taxpayers' frustration and anger.

Another result of underfunding is the decline in enforcement. In 2010 the IRS audited 1.1 percent of all individual returns. By 2015 that figure had dropped to 0.8 percent. The audit rate for households with income over \$1 million has fallen by 40 percent since 2010. Our system is based on voluntary reporting. If some people believe that others are getting away with tax fraud, they may be less inclined to properly report their taxable income. If our system of voluntary reporting disintegrates from the current estimated 85 percent level, we could become Greece, which is estimated to have an 85 percent noncompliance level. Unpaid federal taxes are almost as large as the entire federal budget deficit. Some of the effects of a decline in enforcement can be directly measured: audits recovered about \$30 billion less in the past five years than in the prior five years. This is despite the fact that studies show that the IRS collects anywhere from four to six dollars for every dollar spent on it.

This is particularly a problem since the IRS has a heavy burden of helping the public with identity theft, a serious and rapidly growing problem. In the 2015 filing season the Taxpayer Protection Program line that taxpayers are to call when their identity is compromised answered only 17 percent of all calls. That means over 80 percent of all calls from compromised taxpayers went unanswered.

An obvious impact of the funding shortfall is that the IRS is working with outmoded technology. Some IRS computers run on an operating system Microsoft no longer supports. As a result, the IRS has had to spend precious resources to set up its own in-house support team. The IRS commissioner noted that the IRS uses "applications that were running when John F. Kennedy was President." This leaves the IRS open not just to system failures, but potentially to security breaches by hackers. Imagine the damage if IRS computers are compromised as just happened to Netflix.

Another problem the IRS faces is its increasing responsibilities. It has been charged with implementing the Patient Protection and Affordable Care Act's penalties. The House of Representatives recently passed a bill to "repeal and replace" the ACA. However, it is far from clear that what will emerge from the Senate will lessen the IRS's burden. The IRS is also in charge of enforcing the Foreign Account Tax Compliance Act. Enacted in 2010, FATCA seeks to reduce illegal tax evasion by requiring filers and financial institutions to report more information about assets held in offshore accounts. More than 150,000 financial institutions in 112 countries have already registered. It is also in charge of the Earned Income Tax Credit, the largest government cash transfer program for low-income families with children. Approximately 50 million people now receive benefits through it or through the Child Tax Credit. IRS administration of tax credits is efficient and low cost. But it does not have the headcount or expertise to help when problems arise, e.g., recipients who are entitled to benefits do not get them.

Steve Mnuchin, President Donald Trump's Treasury secretary, called for an increase in IRS funding, describing the IRS as "understaffed" and "under-resourced," arguing that it should be exempt from the president's hiring freeze. Let's hope his wisdom ultimately prevails. A well-staffed and well-funded IRS will lead to better taxpayer services, better enforcement and improved collections.