

**WRITTEN STATEMENT OF**

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**MONTANA**

**HEARING ON**

**FILING SEASON 2012**

**BEFORE THE**

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

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## TABLE OF CONTENTS

I. Budget and staff reductions at IRS toll-free sites and walk-in offices are making voluntary compliance by Montana taxpayers more difficult. ....	5
II. The introduction of Virtual Service Delivery (VSD) with two-way video conferencing between TAS and Montana citizens could make it easier for taxpayers in states like Montana to voluntarily comply with the tax law. ....	7
III. The dramatic increase in tax-related identity theft cases in the last few years is harming Montana taxpayers, whether or not they are victims of tax-related identity theft themselves.....	8
IV. IRS correspondence audits are frustrating, time-consuming, and ineffective for many Montana taxpayers. ....	9
V. Congress should always consider the unique status of Indian Tribal Governments when drafting new federal tax legislation .....	10
VI. The Low Income Taxpayer Clinic in Montana helps disadvantaged taxpayers meet their federal tax obligations and protect their rights. ....	11
VII. Conclusion .....	12

Chairman Baucus, Ranking Member Hatch, and distinguished Members of the Finance Committee:

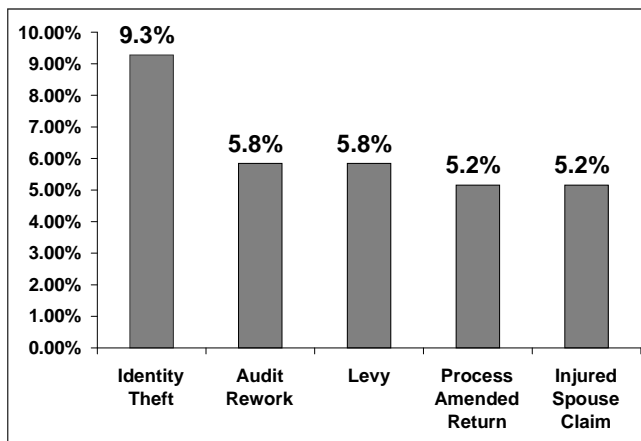
Thank you for inviting me to testify about the issues my office faced during the 2012 tax filing season and the assistance we provide to taxpayers located in Montana. I am the Local Taxpayer Advocate (LTA) for the state of Montana. My office is in Helena, the state capital, where I have a staff of four extremely dedicated advocates to help me serve the taxpayers in Montana.

There are over 70 Local Taxpayer Advocates like myself around the nation, with at least one in every state, the District of Columbia, and Puerto Rico. We are all part of the Taxpayer Advocate Service (TAS), which is an independent organization within the IRS. We report to the National Taxpayer Advocate (NTA), who in turn is charged with submitting independent reports directly to the Senate Finance and House Ways and Means Committees.

TAS acts as a safety net for taxpayers. Our goal is to help taxpayers resolve problems with the IRS that they cannot resolve by themselves. Sometimes taxpayers need our help because the IRS is administering the tax law in a way that creates or aggravates a financial difficulty, emergency, or hardship. In those cases, we compel the IRS to move faster than it normally does. Sometimes taxpayers need our help because their cases involve unique facts and the IRS is taking a "one-size-fits-all" approach that does not resolve their problems. In other situations, the taxpayer has tried to resolve the problem through normal channels with the IRS, but the process has simply broken down, making resolution impossible without our help.

The chart below shows the top five issues we have received in the Montana TAS office through the first half of fiscal year (FY) 2012.

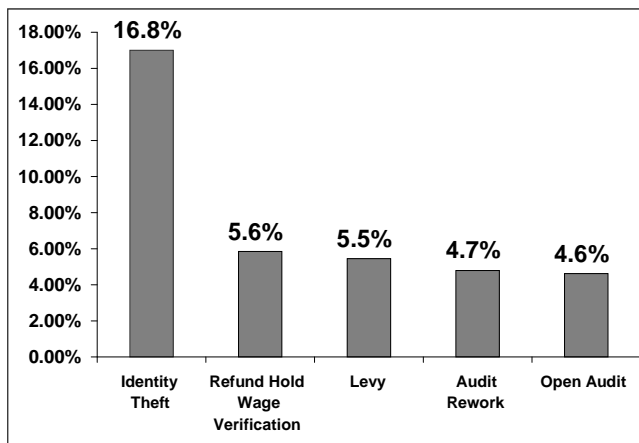
**Chart 1: Top five TAS issues in Montana, based on percentage of new case receipts from Oct. 1, 2011 thru Mar. 31, 2012\***



\*Source: Taxpayer Advocate Management Information System (TAMIS) database.

The following chart shows the top five issues in TAS nationwide through the first half of FY 2012. As you can see, although my office is relatively small, the cases we receive from Montana taxpayers mirror the problems of other taxpayers across the country, particularly in identity theft, levy issues, and reworking closed audits.

**Chart 2: Top Five TAS Issues nationwide, based on percentage of new case receipts from Oct. 1, 2011 thru Mar. 31, 2012\***



\*Source: TAMIS database

Local Taxpayer Advocates, like myself, serve as a bridge between the bureaucratic and legal complexity of the IRS and the individual, business, and nonprofit taxpayers who sometimes become entangled in that complexity. We advocate within the IRS for the taxpayers who need our services. In fact, at TAS we call ourselves "Your Voice at the IRS."

In my testimony today, I will make the following points:

1. Budget and staff reductions at IRS toll-free sites and walk-in offices are making voluntary compliance by Montana taxpayers more difficult.
2. The introduction of Virtual Service Delivery (VSD) with two-way video conferencing between TAS and Montana citizens could make it easier for taxpayers in states like Montana to voluntarily comply with the tax law.
3. The dramatic increase in tax-related identity theft cases in the last few years is harming Montana taxpayers, whether or not they are victims of tax-related identity theft themselves.
4. IRS correspondence audits are frustrating, time-consuming, and ineffective for many Montana taxpayers.

5. Congress should always consider the unique status of Indian Tribal Governments when drafting new federal tax legislation.
6. The Low Income Taxpayer Clinic in Montana helps disadvantaged taxpayers meet their federal tax obligations and protect their rights

**I. Budget and staff reductions at IRS toll-free sites and walk-in offices are making voluntary compliance by Montana taxpayers more difficult.**

The TAS office in Montana has experienced staffing cutbacks in FY 2012, as have other TAS offices, and the IRS as a whole. For example, my office has not had a secretary to answer the phone during the entire filing season.

- a. *The IRS does not do a good job of answering its phones.*

As I mentioned previously, mine is the only TAS office for the entire state of Montana. As you can imagine, we hear from a wide variety of taxpayers. For instance, taxpayers and their representatives call us if they cannot reach an IRS toll-free site because the lines are too busy. We also hear from taxpayers who live too far away from an IRS Taxpayer Assistance Center (TAC), *i.e.*, a walk-in office, to visit personally. Sometimes, we hear from taxpayers who just want a "live person" to help them because they cannot navigate through the IRS phone system.

In January, February and March, the phone logs in my office show that we answered 717 calls that were not related to cases we were currently working for taxpayers in TAS. We provided direction to these taxpayers or answered their questions whenever possible. I personally answered about 80 percent of the 717 calls that were not related to cases. I patiently listened to the callers' frustration about the complexity of the tax code and their inability to reach IRS personnel to answer their questions.

- b. *TAS taxpayers suffer when taxpayers cannot reach the IRS.*

The time my staff and I spend on the phone with these taxpayers takes us away from the taxpayers who really need our help. These are the taxpayers whose cases we have accepted into TAS because their problems have reached the point where they need our advocates to resolve them.

We assign an employee, called a Case Advocate, who takes personal responsibility for the taxpayer's problem until it is fixed. I am privileged to have three such employees working for me in Helena, plus an employee called an Intake Advocate who screens taxpayers for entry into TAS. My staff consists of the most efficient, hard-working group of people I have ever had the pleasure to

work with in my 38 years with the IRS. I am proud to say that they are a microcosm of TAS employees throughout the country.

However, when the IRS cannot answer its phones or staff its walk-in offices, my staff and I are frequently pulled away from the very people who have been assigned to us because their problems are so serious. The majority of taxpayers assigned to my office are Montana residents, so when the IRS cannot answer its phones or staff its walk-in offices, Montana residents with the most serious problems pay the price.

As a remedy, I would suggest the following:

- The IRS needs to answer its toll-free phone numbers so confused and frustrated taxpayers get the help they need; and
- The tax code should be simplified so any taxpayer can understand his or her tax obligation and not wonder how it came to be.

c. *There is no IRS Appeals Officer in Montana.*

The IRS has no Appeals Officers in Montana and nine other states, plus Puerto Rico, and has no Settlement Officers in Montana and fourteen other states.<sup>1</sup> This means that when taxpayers or their representatives need a face-to-face meeting with an Appeals Officer, an Appeals "circuit rider" must arrange to travel to Montana to meet with them. It would seem appropriate to have an Appeals presence in Montana to afford taxpayers the right to an Appeals hearing with someone familiar with local tax issues. As noted in the National Taxpayer Advocate's 2009 Annual Report to Congress, the Office of Appeals should provide a convenient conference opportunity for taxpayers upon their request.<sup>2</sup>

d. *The IRS walk-in site in Helena operates part-time and has no permanent staff.*

My TAS office is located in the federal building in Helena, which also houses the IRS TAC office. What I want to share with you is this rather amazing fact: The TAC office in Helena, the capital of Montana, has no permanent staff. IRS employees from other offices in Montana rotate into and out of the Helena office. Further, during this filing season, the TAC office in Helena has been closed on Mondays and Fridays and is open for about five hours per day on Tuesdays and

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<sup>1</sup> According to recent data, ten states do not have Appeals Officers. They are Alaska, Arkansas, Idaho, Kansas, Montana, New Mexico, North Dakota, Rhode Island, Vermont, and Wyoming. In addition, 15 states do not have Settlement Officers. They are Alaska, Arkansas, Delaware, Hawaii, Idaho, Iowa, Kansas, Maine, Montana, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. Appeals Officers handle appeals involving assessment issues, such as audit assessments and refund claims. Settlement Officers handle appeals involving tax collection issues. See IRS, Human Resources Reporting Center, *Organizational Location Reports* (Apr. 7, 2012).

<sup>2</sup> National Taxpayer Advocate 2009 Annual Report to Congress 346-350.

Thursdays. Wednesday is the only day of the week that the TAC office in the state capital is open all day.

In addition, the TAC office in Helena does not prepare tax returns for taxpayers, unless they meet certain income and complexity criteria. The office used to prepare returns with less stringent restrictions, but no longer does so. Many of the taxpayers who call my office have been affected by the reduction in hours and service at the TAC, especially by the lack of help preparing returns during filing season.

**II. The introduction of Virtual Service Delivery (VSD) with two-way video conferencing between TAS and Montana citizens could make it easier for taxpayers in states like Montana to voluntarily comply with the tax law.**

a. *VSD makes sense for Montana taxpayers.*

Virtual Service Delivery provides a two-way videoconferencing environment in which taxpayers and the IRS can interact face-to-face. Having a VSD site, or sites, available for taxpayers to request TAS assistance and provide documentation to help us work their cases would be a big asset for a geographically vast state like Montana. This system would give TAS and the IRS a cost-effective method of resolving the time-sensitive taxpayer issues that come in daily to the Helena TAS office from all over the state. Taxpayers in remote areas such as the towns of Havre, Miles City, Glendive, and the Fort Peck Indian Reservation would benefit from the use of two-way videoconferencing technology. The IRS and TAS are piloting virtual services in a limited number of offices nationwide and hope to expand the program soon. My employees and I look forward to being able to offer these services to taxpayers throughout Montana.

b. *VSD makes sense for the IRS, especially when it conducts correspondence audits.*

The virtual service concept could be especially valuable in helping resolve problems with the IRS's correspondence audits. The IRS conducts these audits by mail, fax, and telephone, with the taxpayer and auditor never meeting in person. Using two-way videoconferencing, a taxpayer could easily supply documentation for items questioned on a tax return and the auditor could complete the audit quickly. This would reduce the expensive downstream costs associated with unsuccessful repeat contacts, audit reconsideration, and appeal requests. It would also reduce the need for taxpayers to contact my office for help because they were unable to communicate directly with IRS auditors.

In a recent blog post, National Taxpayer Advocate Nina Olson sums this up by saying

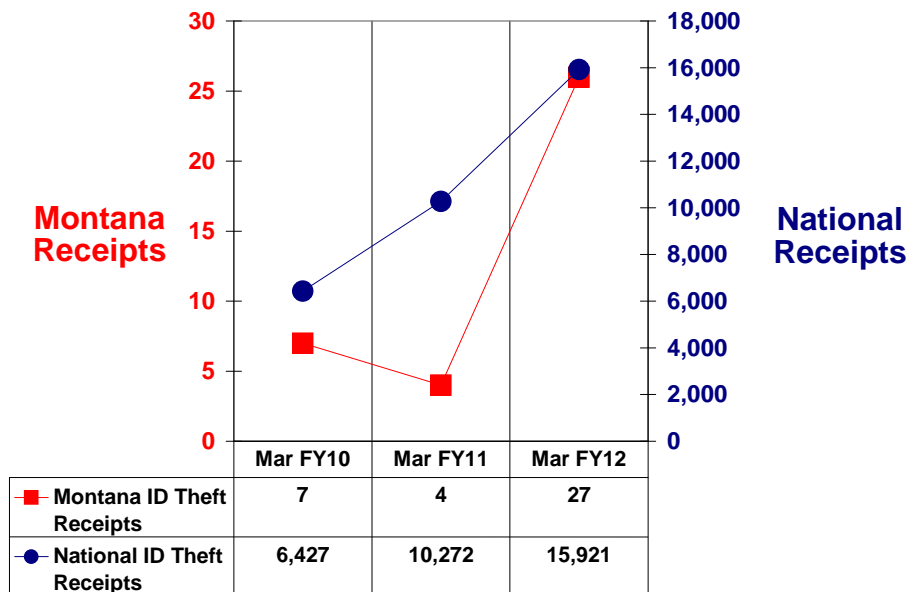
And wouldn't we want to be sure that our exam processes are designed to elicit the correct result, and are at least flexible enough to consider different ways of proving a taxpayer's tax return position? After all, taxpayers are a very diverse group. Shouldn't a tax agency be able to accommodate its taxpayers' diverse abilities to read, communicate orally, obtain documentation, and explain themselves?<sup>3</sup>

How better to do that than by using technology to communicate in person with taxpayers who don't happen to live near an IRS office?

**III. The dramatic increase in tax-related identity theft cases in the last few years is harming Montana taxpayers, whether or not they are victims of tax-related identity theft themselves.**

During the 2012 filing season, Montana TAS cases have reflected trends that exist in TAS nationwide, as well as in the IRS as a whole. In particular, Montana has experienced an increase in refund-related identity theft cases. As the chart below illustrates, the upward trend in identity theft receipts in Montana is following the national trend upwards, simply on a smaller scale.

**Chart 3: Identity Theft Cases Received in the First Six Months of FY10, FY11, and FY12 (October 1 through March 31 for each fiscal year)\***



Source: Business Performance Management System.

<sup>3</sup> *Virtual Face-to-Face Audits: A Prescription for Curing the IRS's Ailing Correspondence Examination Process*, NTA Blog, April 4, 2012, available at [www.TaxpayerAdvocate.irs.gov/blog](http://www.TaxpayerAdvocate.irs.gov/blog).



In my office alone, we have six Montana taxpayers whose identities we believe were involved in a single scheme that resulted in returns being filed in the eastern part of the country under their stolen Social Security numbers. These taxpayers experienced financial hardships as a result. We have been working with the IRS to issue their legitimate refunds to them and correct the damage from the scheme.

Some taxpayers filing legitimate returns are also caught up in the IRS's system of detecting identity theft. The IRS uses electronic filters that are intended to screen out fraudulent refund returns, but also sometimes stop legitimate refunds from being issued. When that happens, these taxpayers often come to my office with financial emergencies because they were depending on the refund to make ends meet. We act immediately in such cases to help them prove their returns are legitimate, so the IRS can issue their refund.

From my viewpoint, I would suggest the following:

- The IRS needs to put more resources into assisting taxpayers experiencing significant tax problems caused by identity theft; and
- At the same time, the IRS needs to continue improving its fraud detection filters for identity theft, to avoid harming innocent taxpayers. This is a tall order for an agency experiencing staffing cutbacks.

#### **IV. IRS correspondence audits are frustrating, time-consuming, and ineffective for many Montana taxpayers.**

- a. *The outcome of correspondence audits is biased in favor of the IRS because the IRS communicates with taxpayers impersonally.*

In recent years, the IRS has expanded the use of correspondence audits. In these audits, the IRS communicates with the taxpayer by mail. The taxpayer never sees the auditor in person. The taxpayer can attempt to call the audit unit assigned his case, but will often reach different people every time he calls and frequently receive a different answer with each call.

The Montana TAS office continues to receive correspondence audit cases that exhibit taxpayer frustration and lack of communication by the IRS throughout the audit process. When a taxpayer or taxpayer representative tries to contact the IRS during a correspondence audit, they are unlikely to reach a "live" body and often must leave a message that may not be returned. If taxpayers do reach an IRS employee on a call and can discuss their case, they will probably not reach the same person the next time they call.

The case advocates in my office regularly hear from taxpayers who want "one IRS auditor" to work with on their case, which is how we handle casework in TAS. The IRS should begin assigning cases to audit employees who will work

the case from beginning to end, contact the taxpayer by telephone if necessary, and receive any mailed documentation needed to resolve the case.

- b. *The IRS misplaces or loses taxpayer correspondence during correspondence audits.*

Taxpayers undergoing a correspondence audit have come to the Montana TAS office advising us they have sent information to the IRS multiple times and have never received any acknowledgment. What happens to this mail? Taxpayers and their representatives are frustrated by having to send large amounts of records to IRS campuses, sometimes more than once and at significant cost, with no acknowledgement or acceptance by the IRS. If one person were assigned to a case, that person would be more likely to receive the mail and associate it with the case. Taxpayers subjected to other types of IRS audits, such as office or field audits, are each given one auditor who handles their case. I do not believe that this is too much to ask in a correspondence audit.

- c. *The IRS is expanding correspondence audits to inappropriate tax returns.*

The IRS is expanding its use of correspondence audits to returns that do not have specific, clear-cut issues. One such issue that the Montana TAS office has increasingly seen is correspondence audits of employee business expenses. The volume of documentation required to verify employee business expenses is often immense and can include mileage logs, motel receipts, automobile expenses, employer reimbursement statements, and much more. Further, the interpretation of the documentation in these audits frequently requires the auditor to make subtle distinctions between what is allowable and what is not. The type and volume of documentation, plus the nuanced interpretations required, do not lend themselves to a correspondence audit, in which the taxpayer never has an opportunity to clarify disputed items in person. These types of audits require trained auditors capable of discussing issues and the basis for determinations with taxpayers and representatives..

Based on the TAS cases in Montana, I would suggest the following remedies:

- The IRS should conduct additional training in areas such as employee business expenses; and
- The IRS should encourage its correspondence auditors to be reasonable and employ sound judgment.

**V. Congress should always consider the unique status of Indian Tribal Governments when drafting new federal tax legislation.**

Indian Tribal Governments have a unique status in federal tax law. They "are 'semi-sovereign' entities, or 'distinct, independent political communities' within the

borders of the state in which they reside."<sup>4</sup> This fact is sometimes overlooked when legislation for credits and deductions is written.

A recent case in the Montana TAS office provides an example of this situation. The adoption credit found in Internal Revenue Code (IRC) § 36C allows for an adoption of a "special needs" child as defined in IRC § 36C(d)(3). A "special needs child" is a child who is difficult to place for adoption because of a certain factor or condition, such as the child's ethnic background, age, membership in a minority or sibling group, or medical condition. Under the Code, only *States* are allowed to certify that the special needs requirements in the Code have been met for a specific child. Another part of the Code, Section 7871, explains when an Indian Tribal Government may be treated as a State for tax purposes. Unfortunately, Section 7871 of the Code does not provide that an Indian Tribal Government is a State for the purposes of certifying a special needs child.

This means that taxpayers adopting special needs children directly from tribal reservations, without any involvement by a State, can be denied the adoption credit because they do not have a certification from a State. In some instances, the adopting parents need the adoption credit urgently. Our office had just one of these cases this past filing season.

Native American family structure, which can consist of multiple generations living together in one household, affects eligibility for credits and deductions, such as the EITC, Child Tax Credit, and dependency exemptions. This is another issue we find in our casework in Montana. Tribal governments are unique, require guidance separate and apart from other entities, and should always be considered when federal tax legislation is written.

## **VI. The Low Income Taxpayer Clinic in Montana helps disadvantaged taxpayers meet their federal tax obligations and protect their rights.**

TAS provides an additional safety net for some taxpayers through its administration of the Low Income Taxpayer Clinic (LITC) matching grant program. LITCs provide representation on behalf of low-income taxpayers in disputes with the IRS and educate taxpayers for whom English is a second language about their rights and responsibilities as U.S. taxpayers. The IRS awards matching grants to these organizations on the condition that they provide services to taxpayers for free or for a nominal fee.

In Montana, the LITC at Montana Legal Services Association (MLS) uses *pro bono* attorneys located across the state to assist low-income taxpayers. MLS conducts outreach on tax issues to Native Americans, migrant farm workers, veterans, senior citizens, and other low-income individuals and families. The clinic conducts outreach on reservations and through churches, senior centers, community groups, government agencies, and other social service providers.

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<sup>4</sup> IRM 4.86.1.5(3), *Tribal Sovereignty Overview* (Jan. 1, 2003).

MLS and other LITCs located in rural areas face their own challenges in assisting taxpayers. First, it is difficult to reach and serve taxpayers across a wide geographic area. Many low income taxpayers in rural areas are isolated — geographically, culturally, and technologically. They may have limited education, literacy, or job skills. They may lack access to reliable transportation, telephone, or internet services. Yet, these taxpayers still need help with a variety of tax problems, such as proving eligibility for the Earned Income Tax Credit , obtaining Innocent Spouse relief, or successfully negotiating an offer in compromise. In addition, it is often difficult to find attorneys in remote areas who are willing and able to represent low income taxpayers on a *pro bono* basis. Consequently, LITC staff members provide mentorship, supervision, and training to participating attorneys about the unique tax issues that confront low income individuals.

## **VII. Conclusion**

My office faces many of the same challenges as other small offices in TAS nationwide. However, we also face the unique challenge of serving the public in a state the size of Montana.

We must have adequate staffing to deliver vital services to Montana taxpayers in TAS, but my staffing concerns extend beyond TAS, to the IRS personnel in TAC offices and the Appeals officers who are not located in Montana. The services these offices provide are essential in promoting voluntary compliance. TAS may not be the first call taxpayers make if there are appropriate alternatives.

Publicizing our services throughout the state can be difficult. Providing easy and fast access to TAS and the IRS by VSD two-way videoconferencing, especially in correspondence audits, would help us overcome this geographic barrier. The increasing use of correspondence audits by the IRS, especially in inappropriate situations such as employee business expense audits, will continue to generate TAS cases that reflect confusion and frustration by taxpayers and inaccurate decisions by the IRS. The IRS must take steps to improve its communication and assistance to taxpayers in the correspondence audit process.

With the continued rise in identity theft throughout our nation, I expect my office will continue to receive more identity theft cases. Finally, as an advocate for all of the taxpayers in Montana, I ask you to consider Indian Tribal Governments and Native Americans whenever new tax legislation is considered.

Thank you for giving me this opportunity to testify.