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The Tax Gap: Do Billions in Uncollected Income Taxes Speed Up Economic Downturn During a Global Pandemic?

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***The Tax Gap: Do Billions in Uncollected Income Taxes Speed Up Economic Downturn During a Global Pandemic*?**

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I. INTRODUCTION

The "tax gap" is a term used to describe the hundreds of billions of dollars the United States' economy forfeits in uncollected taxable income from the eligible taxpayers of America.[1] Despite Congress implementing tax reforms to close this gap, it continues to widen each decade. Notably, all vital public infrastructure that Americans rely on—from the U.S. Armed Forces' budget to unemployment benefits—requires funding garnered from revenue solely-based on income tax collected from American taxpayers.[2]

The Tax Foundation enumerates reasons as to why the tax gap exists—concluding that "[t]axpayers may report less than their full tax liability on their return (underreporting), pay less than owed (underpayment), or simply not file a tax return at all (non-filing)."[3] With the national unemployment rate on the rise—currently hovering around 6.7% with a spike in 2020 and 2021 due to COVID-19 related lay-offs and business closures—an ever-increasing number of Americans now seek public assistance to manage everyday life. The Internal Revenue Service

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[1] *The IRS Is Significantly Underfunded to Serve Taxpayers and Collect Tax*, INTERNAL REVENUE SERV., https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-IRS-Significantly-Underfunded.pdf (last visited Sept. 20, 2021); *see also* Scott Eastman, *The Tax Gap Tops $500 Billion a Year*, TAX FOUND. (May 15, 2019), https://taxfoundation.org/tax-gap-tops-500-billion-year/ (stating that "[t]he tax gap is the difference between taxes paid and taxes owed").

[2] Lindsay Koshgarian and Ashik Siddique, *See Where Your Tax Dollar Was Spent in 2018*, https://www.nationalpriorities.org/analysis/2019/tax-day-2019/where-your-tax-dollar-was-spent-2018 (last visited Oct. 11, 2021).

[3] Scott Eastman, *The Tax Gap Tops $500 Billion a Year* (last visited Oct. 11, 2021), https://taxfoundation.org/tax-gap-tops-500-billion-year. "In the analysis of tax evasion behavior, there are many approaches that attempt to explain behavior by incorporating various related notions of unjust treatment and disrespect for the law, most of which have their origins in the psychology of taxation." James Alm & Jay Soled, *"Wither the Tax Gap?"*, N.Y.U. COLLOQUIUM ON TAX POL'Y AND PUB. FINANCE (April 19, 2016), http://www.law.nyu.edu/sites/default/files/upload_documents/James%20Alm%20and%20Jay%20Soled.pdf. For example, some theorists suggest that taxpayer "trust" in government affects compliance behavior. James Alm & Benno Torgler, *Do Ethics Matter? Tax Compliance and Morality*, 101 J. BUS. ETHICS 635, 636 (2011).

(IRS) explains how having an accurate estimation as to the amount of the tax gap "enables policy makers and tax administrators to make better decisions regarding how to allocate resources and administer the tax code."[4] The IRS estimates that for the tax years of 2011, 2012, and 2013, "[t]he average gross tax gap was estimated at $441 billion per year based on data from those three years."[5] As recently as 2016, the Tax Foundation estimated the tax gap climbed to $447 billion.[6]

The IRS—one of America's essential federal agencies—does its best to keep up with demand for its services, which include stimulus check dispersals and income tax returns. The IRS relies on the very same publicly-generated tax funds—i.e., taxpayers filing their income taxes and paying their share of taxes owed when applicable—to allow the agency to function optimally. Currently, the IRS remains underfunded, and recent American tax legislation—including the CARES Act—has had some unexpected ramifications. The most severe of which imposed limits on the IRS's ability to carry out the very tasks it was designed to complete. This is because the Act was written into law while containing enumerated exclusions denying the IRS additional funding it may need to keep up with the demands of delivering publicly relied upon

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[4] John Yarmuth, *Funding the IRS Off: Preventing Tax Dodging by Wealthy Fillers Is the First Step to Fixing Our Tax Code*, https://budget.house.gov/publications/report/funding-irs (last visited Oct. 11, 2021). The IRS often focuses its efforts on higher-net income taxpayers to ensure compliance, and "[b]ecause the IRS is devoting more audit resources for these taxpayers, it is important to know at what level of income or wealth taxpayers tend to begin establishing complex financial holdings that are at greater risk for noncompliance with the tax laws." Press Release, Treasury Inspector General for Tax Administration, Improvements Are Needed in Resource Allocation and Management Controls for Audits of high-Income Taxpayers (Nov. 19. 2015), https://www.cpapracticeadvisor.com/tax-compliance/news/12141826/report-irs-needs-to-improve-controls-on-audits-of-high-income-taxpayers

[5] *See The Tax Gap*, *supra* note 3.

[6] Donald C. Alexander, Reuven S. Avi-Yonah, Sheldon S. Cohen, Joseph H. Guttenag, Wojciech Kopczuk, & Robert S. McIntyre, *Bridging the Tax Gap: Addressing the crisis in Federal Tax Administration*, ECON. POL'Y INST. (April 2006), https://www.epi.org/publication/book_tax_gap/.

tax services.[7] The IRS is only able to implement these tax services because of the income taxes that are collected annually. These funds are then used to maintain public-use infrastructures—such as public transportation and K-12 education.[8] These collected income taxes are also used to fund Social Security, Medicare, and Supplemental Nutrition Assistance Program (SNAP) benefits.[9] The IRS's ability to finance public services at a low financial cost is necessary because many Americans rely on these services, particularly when economic activity remains at a stand-still due to increasing job loss and food insecurity—with no end-date in sight. The very infrastructures designed to support citizens who rely on these services are not fully optimized due to the tax gap. During times of crisis—i.e., the current economic fallout stemming from COVID-19-related job losses and small business closures—the economic downturn's most recognizable features enter the forefront. These features include a general slowdown of economic activity, higher unemployment, low consumer confidence, and declining investments. This has all been evidenced as small businesses have been forced to close and thousands of Americans are now unemployed. Couple the current economic climate with what is estimated to be near half a trillion dollars in forgone income tax revenue, and it becomes clear how the tax

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[7] *See* INTERNAL REVENUE SERV., *supra* note 1.

[8] *See Where Your Tax Dollar Was Spent in 2018*, *supra* note 2.

[9] The Center on Budgets and Policy Priorities highlights the billions of dollars in collected income taxes that fund social services programs, stating that: "Safety net programs . . . in 2019 $361 billion, supported programs that provide aid . . . including Supplemental Security Income for the elderly or disable poor and unemployment insurance; various forms of in-kind assistance for low-income people, including SNAP (food stamps), school meals, low-income housing assistance…and help meeting energy bills; and various other programs such as those that aid abused or neglected children." *Policy Basics: Where do Federal Tax Dollars Go?*, CTR. ON BUDGET AND POL'Y PRIORITIES, https://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go (last updated April 9, 2020).

gap exacerbates an already volatile situation.[10] This article analyzes this so-called tax gap and argues—with opined assistance from tax experts and IRS administrators—that hundreds of billions of dollars in uncollected taxable income has led to severe economic losses. Taxpayer compliance can remedy the situation by closing the gap, which would allow the IRS to better conduct its duties. Stated simply, solutions for closing the tax gap will foster economic growth. The continual widening of the tax gap must be abolished—or strictly narrowed—if the American economy stands a fighting-chance of bouncing back from the greatest economic crisis since the Great Depression. This article will also explore how the tax gap could be hindering American economic growth and stability, particularly when the effects of COVID-19 on the American economy will not be fully realized for years to come.

Section I will explore how maximizing taxpayer compliance will be a crucial component of closing the tax gap, and what initiatives the IRS implements to garner compliance; Section I will also examine how past and current Tax Code affects levels of compliance—the goal always being compliance optimization. This section further seeks to highlight how mandatory corporate compliance is necessary in addition to the average taxpayer's compliance. Lastly, Section I will conclude with an examination of how there is possible economic insulation for individuals who do not comply with recommended income tax reporting laws, and how that additional wealth may have the ability to shield these individuals from economic hardships associated with unemployment—particularly during times of economic downturn.

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[10] "The number of persons not in the labor force who currently want a job, at 7.0 million edged down in January but is 1.9 million higher than in February," illustrating the dire jobless crisis in America. *Economic News Release*, U.S. BUREAU OF LAB. STAT., (Feb. 05, 2021), https://www.bls.gov/news.release/archives/empsit_02052021.htm. Also, highlighted is a positive outlook for certain job fields, stating "[i]n January [of 2021], notable job gains in professional and business services in both public and private educations were off by losses in leisure and hospitality . . . ."

Section II will explore the CARES Act of 2020, and how the Act fared as a response to the onset of COVID-19. This section will also discuss how the concerns of the IRS are especially accentuated by the tax gap, and how lack of governmental funding, particularly relating to detailed exclusions enumerated within the CARES Act itself, adds to the concern of IRS underfunding.

Section III will explore how an underfunded IRS tries to fulfill its administrative duties. This lack of governmental funding is accentuated further during times of national crisis and subsequent economic downturn. Section III will also dive into the future of the IRS, and how the agency can best equip itself to handle public demand for its services.

Finally, future implications of the tax gap will be explored—including what measures the government is currently taking to close the tax gap, and how to combat the negative effects the tax gap has on the current U.S. economic downturn. Here, this article will detail promising solutions.

It is important to clarify that although the tax gap is defined as all uncollected taxable income that may be collected annually from taxpayers, which includes illegal "tax evasion," it encompasses other forms of avoiding paying taxes as well. Tax avoidance, for example, includes such business-related activities such as "income splitting, postponement of taxes, and tax arbitrage across income that faces different tax treatment."[11] Tax Code loopholes unintentionally legalize these activities for U.S. citizens and provide tax incentives for those engaged in a trade or business. This article will discuss tax evasion, which is comprised of "illegal and intentional actions taken by taxpayers to circumvent their legally due tax

[11] Alm, *supra*, note 2.

obligations."[12] This illegal activity includes overstating deductions or credits, and "[i]t is the existence of tax evasion, not tax avoidance, that creates what commentators term the 'tax gap.'"[13]

II. THE INTERNAL REVENUE SERVICE

a. INDIVIDUAL TAXPAYER COMPLIANCE

The IRS stresses the importance of "[s]ustaining and improving taxpayer compliance" to maximize the amount of taxable income it collects from taxpayers.[14] When taxpayer compliance drops even slightly, it costs the U.S. billions of dollars, and "shift[s] the tax burden away from those who don't pay their taxes onto those who pay their fair share on time every year."[15] According to the Tax Foundation, taxpayer noncompliance "was highest under the individual income tax," but noncompliance was also found among employment taxes, which included "[s]elf-[e]mployment [t]axes, FICA taxes to fund Medicare and Social Security, and [u]nemployment taxes withheld by employers to pay for programs like [S]ocial [S]ecurity."[16]

When unemployment rises, and more Americans seek public assistance, the IRS faces a perpetual conundrum— "the tax system relies on voluntary compliance."[17] Meaning, the repercussions of underreporting taxable income may only arise if one is audited, some form of

[12] *Id.*

[13] *See id.*

[14] *See The Tax Gap, supra* note 3.

[15] *Id.*

[16] Eastman, *supra* note 1.

[17] Seth Hanlon, *Unrigging the Economy Will Require Enforcing the Tax Laws*, CTR. FOR AM. PROGRESS (Mar. 12, 2020, 5:00 AM), https://www.americanprogress.org/issues/economy/reports/2020/03/12/481539/unrigging-economy-will-require-enforcing-tax-laws/16.

tax evasion is discovered, and prosecuted.[18] Tax evasion is a public policy consideration because reporting all taxable gross income is the law and "[n]ot only is tax evasion often linked to corruption and other crimes, but [it] also erodes confidence in U.S. institutions in general."[19]

The fact that "[c]ompliance with the federal tax system is eroding"[20] means "that tax rates must be higher than necessary to collect the revenue that comes in, and moreover, that such rates penalize the honest taxpayer for the sake of the evader."[21] Because the nature of reporting laws are compulsory—but not immediately punishable—a citizen can avoid paying income taxes merely by underreporting or not filing at all. This behavior may not be immediately addressed for those who underreport, thus encouraging evasion which leads to a mounting tax enforcement burden and revenue loss.[22]

Noncompliance leads to some American taxpayers, and even corporations, to avoid paying taxes without fear of reprisal, leading to a further divide in how much taxpayers pay in federal income tax and how much they owe. New legislative measures will be crucial to ensure

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[18] Bishop L. Troups, *Fraud and Tax Crimes: Do You Really Have to Worry?*, DAILY, MONTFORT, & TOUPS, (May 5, 2019), https://taxattorneydaily.com/fraud-and-tax-crimes/. "It is a crime to cheat on your taxes. In a recent year, however, fewer than 2,000 people were convicted of tax crimes—0.0022% of all taxpayers." *Id.* This is quite a small percentage of overall taxpayers in the U.S., and "the number of convictions for tax crimes has increased less than 1% over the most recent five-year period." *Id.*

[19] Hanlon, *supra* note 17; *see also*, INTERNATIONAL INCOME TAXATION CODE & REGULATIONS SELECTED SECTIONS (defining what constitutes gross income in 26 U.S. Code § 61 as "gross income means all income from whatever source derived, including . . . the following items: (1) [c]ompensation for services, including fees, commissions, fringe benefits, and similar items, (2) [g]ross income derived from business; [and] (3) [g]ains derived from dealings in property").

[20] Alexander, *supra* note 6.

[21] *Id*.

[22] *See generally id.*

the IRS receives the necessary funding to function optimally.[23] However, the Center for American Progress highlights, "over the last past decade, Congress has made the problem much worse,"[24] and instead of Congress working alongside the IRS to implement legislation to bolster federal income tax revenue, it "has given the IRS new responsibilities while sharply cutting the agency's budget."[25]

Although the opinion above severely chastises the efforts legislators are making to close the tax gap, there *have* been legislative measures to curb underreporting and tax-avoidance, particularly for corporate taxpayers.[26] These measures seek to remedy natural loopholes corporations were allowed to exploit via pass-through taxation; they also address the ability U.S.-based companies have to set up subsidiaries in foreign countries with lower tax rates, or in foreign countries that are tax havens—meaning monies earned through these corporations will

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[23] *Id*.

[24] *See generally* Emily Moss, Ryan Nunn, & Jay Shambaugh, *Tackling the Tax Code: Efficient and Equitable Ways to Raise Revenue*, BROOKINGS INSTITUTION (Jan. 28, 2020), https://www.brookings.edu/multi-chapter-report/tackling-the-tax-code-efficient-and-equitable-ways-to-raise-revenue/. "Given that the United States needs more revenue, how should we raise it? The answers come from some of our nation's foremost scholars and experts . . . to address our government's pressing need for revenue under economic conditions that prevail today." *Id.*

[25] Hanlon, *supra* note 16; *see also* Press Release, Representative Peter DeFazio, Rep. Peter DeFazio to Reintroduce Legislation to Create Fairer US Tax Sys., Collect Trillions in Owed Taxes (Feb. 18, 2021), https://defazio.house.gov/media-center/press-releases/rep-peter-defazio-to-reintroduce-legislation-to-create-fairer-us-tax (detailing how legislators are presenting new legislation to close the tax gap). "It's not enough that our tax code gives billionaires and giant corporations huge tax handouts—the agency responsible for collecting the taxes from these top earners is woefully underfunded and ill equipped to do so . . . [m]y bill would make significant investments in the IRS to equip the agency to collect from top earners what the government is owed and set minimum audit levels to ensure the wealthiest are held accountable and pay what they legitimately owe," says U.S Congressman Peter DeFazio who represents the Fourth District of Oregon. *Id.*

[26] DeFazio, *supra* note 25. Oregon Congressman Peter DeFazio introduces The IRS Enhancement and Tax Gap Reduction Act, seeking to address the estimated current tax gap of "$600 billion, and, barring changes, the federal government will lose an estimated $7.5 trillion over the course of the coming decade." *Id.*

not be subject to U.S. taxation whatsoever.[27]

b. CORPORATE TAXPAYER COMPLIANCE

Corporations and other limited liability business entities utilize pass-through taxation to avoid paying massive amounts of taxes at the outset, and to avoid U.S. income taxes altogether through methods of income-shifting.[28] Income-shifting "consists of arranging for income to be taxed in a country different from the one where it arose as an economic matter."[29]

In 2017, Congress passed legislation that allowed U.S.-based corporations to shift income so that it could be deemed foreign-sourced through establishment of subsidiaries operating outside of the U.S. This legislation made it possible for "[one hundred] percent [of] foreign dividends [to] receive[] a deduction in effect establish[ing] an exemption system for foreign income earned by a *domestic corporation* from a dividend paid by a foreign corporation to which the domestic corporation is entitled to claim an offsetting deduction."[30] As a result, billions of dollars that could and should benefit the American economy are never collected and instead corporations keep larger percentages of profit.

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[27] *See* Nicolas Shaxon, Finance & Development, Sept. 2019, Vol. 56, No. 3, *Tackling Tax Havens.* "There's no generally accepted definition of a tax haven . . . [it] boils down to 'escape' and elsewhere,'" and this broad definition is preferred because "havens affect far more than tax: they provide and escape route from financial regulations, disclosure, criminal liability, and more." https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm (last visited Oct. 11, 2021).

[28] *See* Cornell Law School, *Pass-Through Taxation*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/pass-through_taxation, (last visited Feb. 19, 2021) (describing how "pass-through taxation refers to the fact that a pass-through business pays no taxes. Instead, some control person pays the business's taxes through that person's own personal tax return.").

[29] Joseph Isenbergh & Bret Wells, INTERNATIONAL TAXATION (4th ed. 2020).

[30] *See* Isenbergh, *supra* note 29.

One major way corporations keep these profits is through "interest-stripping transactions," where profits are foreign-sourced and cannot be taxed in the U.S. By allowing corporations to engage in such practices, these corporations may create business entities in foreign countries with much lower taxation rates or in countries that are tax shelters or tax havens.[31] Income-shifting creates massive tax avoidance problems as major corporations are allowed to structure their subsidiaries and business dealings with foreign-based corporations in ways that completely avoid U.S. taxation.[32]

With the aid of tax professionals and economists, American legislators have worked to devise strategies to limit income-shifting.[33] So-called "anti-deferral" legislation comes into effect by closing off loopholes that allow corporations to avoid paying U.S. taxes.[34] Internal Revenue Code 884(f)(1) mandates that for foreign corporations, "any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation."[35] This

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[31]*Id.* at 22. "In these interest stripping transactions, the high-tax affiliate is entitled to claim a tax deduction for its interest payments that are made to the low-tax affiliate while the low-tax affiliate is not subject to taxation in the high-tax country and lightly taxed in its own country." *Id.*

[32] *Cf.* Giedre Lideikyte Huber, *Conceptual Problems of the Corporate Tax*, INT'L BUREAU OF FISCAL DOCUMENTATION, https://www.ibfd.org/IBFD-Products/Conceptual-Problems-Corporate-Tax, (last visited Feb. 19, 2021) (outlining how incoming shifting leads to the phenomenon of 'homeless income,' when U.S.-based corporations are allowed to shield profits from U.S. taxation prompting their "hybrid entities that may lead to either double taxation or the creation or 'homeless income.'").

[33] Lou Vlahos, *The Federal Anti-Deferral Rules for Foreign Income—Just a Reminder, There's No Easy Way Out*, FARRELL FRITZ ATTORNEYS (July 20, 2020), https://www.taxlawforchb.com/2020/07/the-federal-anti-deferral-rules-for-foreign-income-just-a-reminder-theres-no-easy-way-out/ (proffering that "[th]e main U.S. anti-tax-deferral regime…addresses the taxation of income earned by controlled foreign corporation ("CFC"), may cause the 'U.S. Shareholders' of a CFC to be taxed currently on their pro rata share of certain categories of income earned by the CFC—'Subpart F income'—regardless of whether the income has been distributed to them as a dividend.").

[34] *Id.*

[35] *See* Isenbergh, *supra* note 29, at 50.

statute treats U.S.-based branches of foreign corporations as if the income derived from such businesses is U.S.-sourced. In effect, this "closes off an easy escape from U.S. taxation," because this "branch-interest rule" makes it impossible for the U.S. branch to try and source its income as if it came from its foreign affiliate.[36]

The 2017 Tax Cuts and Jobs Act also "introduced a number of significant tax changes as it relates to U.S. Shareholders of Controlled Foreign Corporations (CFCs)."[37] The Act focused on Global Intangible Low-Taxed Income (GILTI), which can often be routed as foreign-sourced, allowing corporations to evade U.S. taxation altogether. GILTI provisions were enacted within the ACT, and were implemented to "discourage U.S. companies from moving intangible assets and their income outside of the U.S. tax net and then . . . repatriate the income to the U.S. potentially tax free."[38] Taxation anti-deferral techniques, such as this, allow the federal government to ensure income garnered by foreign corporations does not evade proper U.S. taxation rates mandated by law when "[m]ore than [fifty percent] of the total combined voting power of all classes of stock entitled to vote, or total value of the stock of such corporation[s]," is owned by a foreign-based corporation or U.S. subsidiary.[38]

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[36] *Id.*

[37] Loma B. Ince, *The GILTI Tax: New Deferral Rules for Shareholders of Controlled Foreign Corporations*, LURIE (Aug. 14, 2018), https://www.luriellp.com/news/tax-and-accounting/2018/the-gilti-tax-new-anti-deferral-rules-for-shareholders-of-controlled-foreign-corporations.

[38] *See id.*

[38] *See id.*; *see also Introduction to US International Tax Anti-Deferral Regimes*, SHERAYZEN LAW OFFICE, LTD. (Mar. 18, 2015), https://sherayzenlaw.com/introduction-to-us-international-tax-anti-deferral-regimes/ (explaining how corporations may overlook anti-deferral regimes altogether in their already established business schemes. "Despite their enormous importance to tax compliance, there is a shocking level of ignorance of the international tax anti-deferral regimes is being displayed by US taxpayers, foreign bankers, foreign accountants, foreign attorneys, US accountants and even many US tax attorneys.").

Anti-deferral regimes will benefit the American people by helping foster a robust economy. As the federal government collects more corporate tax, they will have additional funds to handle related costs of managing the complex infrastructures Americans rely on, and the IRS—by proxy—will receive a bigger slice of the national funding pie.[39] This, in turn, will increase public confidence, as Americans will be reassured that the U.S. government is doing everything possible to stop U.S.-based corporations from exploiting loopholes that were, unfortunately, accessible as a means to avoid paying corporate taxes. With more government funding through tax collection, the IRS will be better equipped to handle its deficit, which has led to its current state of being underfunded.

c. CURRENT STAFFING LIMITATIONS

What benefit is it to the American people who rely on social services if the IRS does not have enough personnel to carry out its duties? After the problems of individual and corporate tax avoidance are remedied through stringent legislation measures, the IRS still needs a robust workforce to execute its duties. The IRS suffers from an ongoing lack of funding, and "[t]he data suggest that the IRS has received insufficient funding for its efforts to examine returns, conduct collections, and enforce noncompliance"[40]

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[39] Paul Kiel and Jesse Eisinger, *How the IRS Was Gutted*, PROPUBLICA (Dec. 11, 2018), https://www.propublica.org/article/how-the-irs-was-gutted (explaining "[h]ad the billions in budget reductions occurred all at once, with tens of thousands of auditors, collectors and customer service representatives streaming out of government buildings in a single day, the collapse of the IRS might have gotten more attention. But there have been no mass layoffs or dramatic announcements. Instead, it's taken eight years to bring the [IRS] this low. Over time, the IRS has slowly transformed, one employee departure at time"). *Id.*

[40] H. Wayne Cecil and Teresa A. King, *Understanding the Federal Tax Gap A Closer Look at Declining IRS Enforcement Activities*, https://www.cpajournal.com/2017/11/06/understanding-federal-tax-gap/ (last visited Mar. 28, 2021). "Major IRS enforcement expenditures, people, and activities were reported from 2010 to 2016, the last year for which information is available. The information was taken from publicly available reports, primarily the IRS Data Books for 2010-2016."

The tax gap is growing, with most recent estimates standing at $458 billion per year,[41]and the IRS further estimates "that its enforcement and collections activities take in approximately $52 billion in taxes, leaving a net gap of $406 billion per year."[42] Without adequate funding, the IRS may be left to its limited resources to carry out the very tasks it was designed to complete.

The gross tax gap "consists of individual income taxes ($319 billion), employment taxes ($91 billion), . . . corporate income taxes ($44 billion), and estate and excise taxes ($4 billion)."[43] Again, the issues exacerbating the tax gap mainly stem from individual and corporate taxpayers' noncompliance.[44] Thus, it is essential for the government to compel members of the general population to do the "right thing," particularly when the chances of being held accountable may not feel pressing. This creates a psychological component for filing honestly. The IRS is acutely aware that compliance is not necessarily compulsory, and that therefore [t]he gross tax gap [must] also be viewed in terms of behavior—filing and underreporting at $387 billion, filing and underpaying at $39 billion, and nonfiling at $32 billion."[45] This means the average taxpayer may

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[41] *Id.*

[42] *Id.*

[43] *Id.*; *see also* David Klasing, *Understanding the Net Tax Gap and Its Causes*, KLASING ASSOCIATES (Sept. 2, 2015), https://klasing-associates.com/understanding-the-net-tax-gap-and-its-causes/ (describing how the tax gap composition harms the individual taxpayer in totality, "Americans have been cheated out of a total of about $4.6 trillion in tax revenue that could have been used to provide social services, build infrastructure, or provide for the national defense.").

[44] *Tax Gap: Sources of Noncompliance and Strategies to Reduce It*, U.S. GOV'T ACCOUNTABILITY OFF. (Apr. 18, 2012), https://www.gao.gov/products/gao-12-651t (stating that "individual income tax accounts for[m] the largest portion of the tax gap, but corporate income tax and employment tax are also significant. Further, misreporting by individuals involves business income, non-business income, deductions, and credits." This dual force of individual and corporate compliance in tandem, leads to the tax gap widening, and "[b]ecause noncompliance has multiple causes and spans different types of taxes and taxpayers, multiple approaches are needed to reduce the tax gap.").

[45] *See* Wayne, *supra* note 41.

know what their gross income stipulates they pay in accordance with income tax reporting, but may choose not to pay it.

The IRS's ability to enforce the nation's tax law has suffered from significant cuts in "expenditures and personnel; specifically, there was a decrease in expenditures from $5.9 billion to $4.71 billion over the [past] seven years."[46] This reduction represents an over-fourteen percent drop, which correlates "with a drop in the number of examination and enforcement positions—on average, more than 11,000 positions, or more than 25%, from 2010 to 2016."[47] With inadequate funding, the amount of personnel the IRS is able to hire and train to carry out its functions remains limited, and the agency, in turn, is unable to keep up with the demands of adequately serving the American public. Treasury Secretary Steven Mnuchin expressed his concern, stating, "I am very concerned about the staffing of the IRS. It is an important part of fixing the tax gap."[48] After all, it is the mission of the IRS to "provid[e] America's taxpayers top-quality services by helping them understand and meet their tax responsibilities and enforcing the tax laws with integrity and fairness to all."[49]

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[46] Emily Horton, *Mnuchin: More IRS Resources and Staff Needed*, CTR. ON BUDGET AND POL'Y PRIORITIES (Jan. 19, 2017), https://www.cbpp.org/blog/mnuchin-more-irs-resources-and-staff-needed (stating that "[a]dequate IRS funding and staffing, especially for enforcement, are critical to ensuring the integrity of the tax system. They'll be particularly important if Republican lawmakers enact fundamental changes to the tax system, as they intend to do this year [as of 2017]. Some of these changes, such as a special reduced 'pass-through' business income, could create new opportunities for tax avoidance, placing a further strain on IRS enforcement.").

[47] *See* Wayne, *supra* note 41.

[48] *Id.*

[49] *Id.*

III. THE MAJOR TASK OF STIMULUS DISTRIBUTION

When the global pandemic was at its peak, many Americans patiently awaited financial relief in the form of stimulus payments, and any word from the government as whether unemployment benefits would continue in response to nationwide layoffs.[50] Those fortunate enough to not have to rely on government assistance are better equipped to adapt financially in a slowed-down economy. Many received $1,200 in spring 2020, and $600 in January 2021.[51] The IRS "already sent out most of the $292 billion in the program approved by Congress in late March [2020] to help Americans weather the coronavirus-induced economic decline."[52] Those who receive Social Security benefits—usually the elderly, and those who receive Supplemental Security Income—also waited patiently to receive relief.[53] Due to the rampant need for government assistance during the global pandemic, "the agency's call centers were flooded with inquires . . . now, they're closed because of the coronavirus outbreak. Mail to the IRS is piling up in trailers because its buildings are shut and post offices lack space."[54]

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[50] Laura Michelle Davis & Oscar Gonzalez, *Pandemic unemployment benefits expired on Labor Day. Could they be renewed?* (Sept. 18, 2021), https://www.cnet.com/personal-finance/300-bonus-unemployment-checks-when-do-extra-payments-go-out-what-you-should-know/ (stating that "After the pandemic-related expansion of unemployment insurance ended on Sept. 6, roughly 7.5 million people lost their benefits entirely, with millions more losing the $300 weekly bonus checks.").

[51] Richard Rubin, *Frustrations Build for Those Still Awaiting IRS Stimulus Checks*, THE WALL STREET J., https://www.wsj.com/articles/frustrations-build-for-those-still-awaiting-irs-stimulus-checks-11587660219 (last updated Apr. 23, 2020).

[52] *Id.*

[53] Leo Shane III, *For Veterans Who Missed Out On COVID Stimulus Cash Payouts, VA and IRS Have a Quick Fix*, MILITARY TIMES (Apr. 17, 2020), https://www.militarytimes.com/news/pentagon-congress/2020/04/17/for-veterans-who-missed-out-on-covid-stimulus-cash-payouts-va-and-irs-have-a-quick-fix/ (stating that"[m]any have expressed concern that veterans and their beneficiaries would be overlooked during the distribution.").

[54] *Id.*

Administratively, it's easy for the IRS to choose to distribute funds to routine filers who have current bank information already in the IRS system.[55] This past year, the IRS "launched two portals to collect information from individuals who have not filed a tax return in the last two years and for others who have filed but did not give the IRS direct deposit information."[56] The IRS implemented this compliance assurance method in order to make timely disbursements, but this method relies on taxpayers being compliant with filing their taxes to begin with. Another major hinderance in the disbursement of stimulus checks is that "agencies keep separate systems, [so] it [takes] some effort to figure out how to automatically send payment to people receiving certain federal benefits, such as Social Security."[57] People who receive Social Security benefits for retirement, or for disabilities, were advantaged because they already were receiving these payments automatically.[58] This system still did not guarantee that all disabled taxpayers received a speedy payment, however, as one taxpayer stated, "I'm a [one hundred] percent disabled veteran who served in combat in Iraq, I did everything they asked me, and I haven't gotten anything . . . and I'm sitting here wondering what's going on with the veterans?"[59]

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[55] Greg Iacurci, *First $1,400 Stimulus Checks Will Go to Those with Direct Deposit,* CNBC, https://www.cnbc.com/2021/03/10/first-1400-stimulus-checks-will-go-to-those-with-direct-deposit.html (last updated Mar.11, 2021 3:35 PM) (stating that "stimulus checks offered by the $1.9 trillion Covid relief bill likely will go to people who gave direct deposit information [to the IRS] when they filed their tax returns.").

[56] Michelle Singletary, *If You're Still Waiting on Your $1,200 Stimulus Check, Here Are Key Dates for the Next Set of Payments*, WASH. POST, (Apr. 27, 2020), https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-are-way-here-are-key-dates-next-set-payments/.

[57] *See* Singletary, *supra* note 56.

[58] *Id.*

[59] Press Release, U.S. Department of the Treasury, Social Security Recipients Will Automatically Receive Economic Impact Payments (Apr. 1, 2020), https://home.treasury.gov/news/press-releases/sm967 (quoting Secretary Steven T. Mnuchin saying, "Social Security recipients who are typically not required

To remedy these frustrations for American citizens who are eligible but not required to file tax returns, the IRS instructed these Americans to use the "non-filer" tool on its website.[60] This feature allows those not required to file a tax return to "provide direct deposit information, which will send an electronic payment to a bank account rather than having to wait for a mailed check."[61] There is another feature on the U.S. Department of Treasury's website called the "Get My Payment Tool,"[62] which is supposed to allow those still awaiting payment to check the status of their payment, but, unfortunately " a number of glitches have plagued the portal."[63] Americans are left to wait for relief, but the U.S Department of Treasury provided assurances stating that, "Social Security, survivor and disability non-filers will see economic impact payments in their bank accounts by April 29."[64]

Retired individuals and the disabled must log on to online portals to check the status of their economic relief disbursement, but this assumes that these individuals have ready access to computers or other electronic devises. Individuals facing economic crises, such as food insecurity and potential homelessness, may likely be unable to gain access to a computer to make the appropriate internet search to access the IRS's or the U.S Department of Treasury's

to file a tax return do not need to take extra action and will receive their payment directly to their bank account.").

[60] Kanyakrit Vongkiatkajorn & Shefali S. Kulkarni, *'I Don't Have Weeks to Wait': What Delays in Stimulus Payments Mean for Americans*, THE WASH. POST (Apr. 18, 2020), https://www.washingtonpost.com/business/2020/04/18/waiting-for-stimulus-payments/.

[61] *See* Singletary, *supra* note 56.

[62] *Id.*

[63] *Id.*

[64] *Id.*

websites.[65] This scenario inserts major hurdles for those already suffering from a lack of resources, and with governmental agencies "only providing an online option [this] may preclude some individuals from providing the needed information."[66] This presents an especially frustrating impediment for those who know they are entitled to stimulus relief. Often securing information regarding how to receive stimulus relief is nearly impossible because, "[t]he online non-filer may not be an accessible option for those who do not have internet access in their homes and are not currently able to use the computer at their local community center due to safety measures in place during the coronavirus pandemic."[67] This leaves many Americans—particularly those with little to no income, the retired, and the disabled—to wait for disbursement checks to arrive in the mail.

The initial impetus for implementing stimulus dispersals was to provide the necessary relief during economic crisis; in this spirit, the CARES Act of 2020 was born.

IV. THE CARES ACT

a. INCEPTION

On March 27, 2020, the forty-fifth President of the United States, Donald J. Trump, signed and enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act in response to job losses and economic hardships that Americans still grapple with because of

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[65] *See generally* Maria C. Raven, Lauren M. Kaplan, Marina Rosenberg, Lina Tieu, David Guzman, Margot Krushel, *Mobile Phone, Computer, and Internet Use Among Older Homeless Adults: Results from the HOPE HOME Cohort Study*, JMIR MHEALTH UHEALTH (Dec. 6, 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6305882/ (concluding that "[o]lder homeless adults could benefit from portable internet and phone access. However, participants had a lower prevalence of smartphone and internet access than adults over age 65 years in the general public or low-income adults . . . expanding access to these basic technologies could result in improved outcomes.").

[66] *See* Singletary, *supra* note 56.

[67] *Id.*

private businesses, corporations, and local establishments shutting their doors due to state legislatures' mandated "stay in place" orders. [68]

Congress passing the Act provided a beacon of hope—although potentially momentary—to everyday Americans struggling to pay their rents or mortgages while trying to provide sustenance for their families. The U.S. Department of Treasury states that, "[t]his over $2 trillion economic relief package delivers on the Trump Administration's commitment to protecting the American people from the public health and economic impacts of COVID-19."[69]

The CARES Act implemented a specific "Coronavirus Relief Fund (the 'Fund') and appropriated $150 billion to the Fund."[71] This allotment is designated to provide "economic support to those suffering from employment or business interruptions due to COVID-19-related business closures."[70] However, the U.S. Department of Treasury states that the statute does not fill gaps in government revenue to cover expenditures not otherwise qualifying under the statute, and that "[a]though a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments."[71] Meaning that, again, the IRS couldn't use funding from the Fund itself to carry out its essential duties like dispersing stimulus payments and overdue income tax

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[68] The directives to keep people at home, which began in California in mid-March, quickly swept the nation. Today, residents in a vast majority of states, the Navajo Nation and many cities and counties are under instructions to stay at home as much as possible, in an act of solidarity that public health experts say is crucial to controlling the virus.

Sarah Mervosh, Denise Lu, and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES (last modified Apr. 20, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html.

[69] City of Virginia Beach, *CARES Act*, https://www.vbgov.com/government/departments/finance/cares-act/Pages/default.aspx (last visited Oct. 11, 2021).

[70] Coronavirus Relief Fund, 86 Fed. Reg. 4182 (Jan. 15, 2021), https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf.

[71] Coronavirus Relief Fund, *supra* note 71.

refunds to the American taxpayers that would undoubtedly rely on the relief that these payment would provide.[72]

b. IMPLEMENTATION

A major issue with the CARES Act is that it's often at odds with the Federal Tax Code, which results in the Act's stunted implementation.[73] These discrepancies limit the relief many taxpayers may receive and even alters how the IRS may comply with providing its services; "[i]n addition, and very importantly, several CARES Act provisions—like the [Tax] Code, so states' rolling, static, and selective general conformity regimes are not squarely applicable."[74] Essentially, states have plenary authority as to whether or not to comply with the Act; "[n]ot surprisingly, therefore, whether a state will conform to any of the CARES Act economic relief provisions depends on each state's existing tax code and overarching federal conformity regimes, as well as targeted legislative and administrative guidance. [75]

The implications of individual states having the sovereign authority to conform to any, all, or none of the CARES Act's provisions could prevent citizens from receiving economic relief in a timely fashion.[76] As far as the growing tax gap is concerned, this means that although the economy has taken a downturn elicited by job loss and small business closures, the government is not allowed to use any portion of the Fund directly to cover the revenue delta the

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[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

IRS would normally generate if it were receiving maximized gross income reporting from American taxpayers.[77] This scenario provides an example of how the necessary apportionment of government funding is not always available to governmental agencies, and the IRS is uniquely positioned in its need of funding to efficiently administer aid through stimulus disbursements and income tax returns to Americans.

Although stimulus check dispersals remain top of mind for many Americans in need, the overarching concern of how America finds itself with the problem of the tax gap remains the paramount consideration. This global pandemic may not have had such a detrimental effect if the economy already had in its possession the billions of tax dollars that remain unaccounted for.[78] Social services programs may already have had sufficient funds to begin with, the IRS may have had enough funds to carry out disbursements, and other benefits such as SNAP might have had the power to provide greater relief.[79] Thus, closing the tax gap will ensure that the

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[77] "Not only have funding cuts led to deteriorating customer service for law-abiding taxpayers, they also weaken the IRS's ability to ensure that corporations and wealthy individuals pay their fair share of the revenues necessary to sustain vital benefits and services Americans need from their government." *Funding the IRS Pays Off: Preventing Tax Dodging by Wealthy Filers Is the First Step to Fixing Our Tax Code*, 117TH CONG. (Oct. 1, 2020), https://budget.house.gov/publications/report/funding-irs.

[78] Fred Goldberg and Charles Rossotti, *$574 Billion in Taxes Weren't Paid in 2019. Here's How to Shrink the Gap*, FORTUNE (Jan. 30, 2021), https://fortune.com/2021/01/30/income-unpaid-tax-gap-2021/, proffers that due to uncollected taxable income.

> A giant financial dilemma—the federal government's rising inability to pay for everything it does and wants to do—has largely skirted public scrutiny. Even when the economy recovers from the COVID-19 crisis, annual budget deficits will average about $2 trillion per year, equal to about 40% of all tax revenue.

Id.

[79] Grace Segers, *Food stamp funding extended amid shutdown, but only through February*, CBS NEWS (Jan. 9, 2019), https://www.cbsnews.com/news/government-shutdown-affect-snap-food-stamps-wic-millions-could-face-severe-cuts-in-2019-funding-usda-2018-01-09/. The Supplemental Nutrition Program (SNAP) is one governmental services program that is underfunded which is particularly alarming during a global pandemic when food insecurity may be at an all-time high due to increased job loss due to business closures, and "[s]taffing for . . . SNAP . . .has been cut by 95[%] since the shutdown began." *Id.*

American economy can better face future challenges if an economic hardship like the current one occurs.

V. FUTURE RECONCILIATION OF THE TAX GAP

a. THE PRESENT INFRASTRUCTURE

Some believe the tax gap is too big of a hole for the U.S. to dig itself out of. For example, there are some "politicians who contend that taxpayer noncompliance is so embedded in the nation's fabric that it is virtually impossible to reverse."[80] Not only does the current system reward noncompliant taxpayers with increased earnings in their pockets, the IRS also "lacks the resources not only to detect noncompliance in a comprehensive fashion but also to prosecute the agency's claims to the full extent of the law."[81] This often allows thousands of Americans to avoid reporting income taxes and even allows "[t]hose taxpayers who act unscrupulously and whose actions are met with impunity are likely to continue their behavior, and other taxpayers who learn of these derelictions may start to behave in a similarly noncompliant way."[82]

Underreporting provides a host of problems because if a noncompliant taxpayer can potentially evade detections for several years until the IRS eventually audits them, they may feel emboldened to carry on this evasive behavior. They may not feel pressure to comply and pay income tax on their gross earnings and subsequent income tax bracket mandates.[83] Many

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[80] James Alm & Jay A. Soled, *W(h)ither the Tax Gap?*, TULANE UNIV. 1, 9 (Dec. 2016), https://repec.tulane.edu/RePEc/pdf/tul1618.pdf.

[81] *Id.*

[82] *Id.*

[83] Alex Raskolnikov opines how outright tax evasion is carried out by noncompliant taxpayers and "[b]ecause the probability of detection varies dramatically among different tax items on a tax return while nominal penalties do not take the likelihood of detection into account, [and] expected penalties for

Americans may not fear an audit—particularly because the IRS currently has its hands full trying to keep up with stimulus and income tax return dispersal demands, and "given the economic incentives for cheating, those taxpayers who purposefully shortchange the government are not apt to undergo a metamorphosis anytime soon and start paying their legally due taxes."[84]

b. THE FUTURE INFRASTRUCTURE

Despite the negative reflections about the current state of taxpayer compliance, there are ways the tax gap can be lessened over time, including "the rise of electronic commerce, information availability via computerization, and a shifting labor force."[85] Now with hundreds of businesses closed, this may mean "the widespread use of cash to finance transactions may be coming to an end."[86] This will enable better tracking methods because digital payments leave a footprint, and make it less possible for those tempted to conceal larger expenditures by purchasing items with cash, will be less likely to avoid detection or an eventual audit by the IRS.[87] This is possible because "[t]he use of electronic means of payment will almost certainly reduce the extent of the underground economy because individuals who one routinely hid their transactions via cash will now be stripped of this luxury."[88] Because "[e]very electronic

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inconspicuous noncompliance are particularly low." Alex Raskolnikov, *Crime and Punishment in Taxation: Deceit, Deterrence, and the Self-Adjusting Penalty*, 106 COLUM. L. REV. 569 (2006), https://www.jstor.org/stable/4099446?seq=1.

[84] Alm & Soled, *supra* note 81.

[85] *Id.*

[86] *Id.*

[87] Richard Satran, *IRS High-Tech Tools Track Your Digital Footprints*, U.S. NEWS & WORLD REPORT (Apr. 4, 2013, 3:50 PM), https://money.usnews.com/money/personal-finance/mutual-funds/articles/2013/04/04/irs-high-tech-tools-track-your-digital-footprints.

[88] Alm & Soled, *supra* note 81 at 25.

payment leaves an indelible mark,"[89] this mark "enable[s] IRS auditors to accurately access income flows. To minimize their taxable income (e.g., the underreporting gap) taxpayers may continue to overstate their deductions and expenses (for which auditors can demand substantiation), but their income can no longer be readily hidden or camouflaged."[90] While undoing decades of noncompliance will be difficult, the IRS has implemented measures to handle this task.

The IRS rolled out a week-long campaign in 2019 "[which] encouraged taxpayers to do a [p]aycheck [c]heck up now to make sure they are having the right amount of tax taken out of their paychecks for 2019."[91] By providing these initiatives, the IRS intended to hold taxpayers accountable and empower employees to ensure the appropriate amount of tax is withheld from their paychecks based on their tax bracket. The IRS also provides nuts and bolts tax knowledge that a young employee—including teenagers with their first summer job—may not always be aware of.[92] Benefits of filing taxes on time include, "[a]void[ing] added interest and penalties[,] . . . losing future refunds[, and s]afeguard[ing] credit . . . [because i]f the IRS files a tax lien against a taxpayer, it could affect credit scores.[93]

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[89] *Id.*

[90] *Id.*

[91] "[For] new employees. When a person gets a job, they need to fill out a Form W-4, Employee's Withholding Allowance Certificate. Employers use this form to calculate how much federal income tax to withhold from the employee's pay." *IRS Offers Tips for Teenage Taxpayers with Summer Jobs*, IRS (June 15, 2020), https://www.irs.gov/newsroom/irs-offers-tips-for-teenage-taxpayers-with-summer-jobs.

[92] *What Are the Benefits of Filing and Paying My Taxes On Time? IRS Options Can Help*, IRS (Apr. 2019), https://www.irs.gov/newsroom/what-are-the-benefits-of-filing-and-paying-my-taxes-on-time-irs-options-can-help.

[93] *Id.*

c. CONTINUED HINDERANCES FROM IMPROPER TAX LEGISLATION

Unfortunately, the IRS needs to compete with tax legislation that continually contradicts proper execution of the agency's functions. The Tax Cuts and Jobs Act of 2017, which appeared to be promising from its title alone, has failed to provide any measure of relief in narrowing the tax gap. This Act promised "[l]owered income tax rates at all levels of taxable income except the lowest bracket and lowered the income range for upper brackets."[94] The Act on its face does absolutely nothing to lower the tax rates of the poorest Americans but gently assuages the affluent and uber-wealthy by lowering their tax rates. In effect, the very citizens who are most impacted during times of economic instability, the poor, do not have their tax rates reduced, while the wealthy do.[95] It's important for all socioeconomic classes to comply with tax laws, and closing the tax gap cannot fall solely on lower-income people while the wealthy continue to enjoy government mandated tax breaks. The portion of the Tax Cuts and Jobs Act which would have provided relief to lower-income people during this time of economic crisis was completely repealed, marking another major failure of the legislation.[96] This personal and dependent

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[94] Alm & Soled, *supra* note 81, at 25.

[95] *See generally* The Tax Cuts and Jobs Act (TJCA), H.R. 1, 115th Cong. (2017), Pub. L. No. 115-97, https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf (last visited Mar. 28, 2021). *Compare* Chye-Ching Huang, *Fundamentally Flawed 2017 Tax Law Largely Leaves Low- and Moderate-Income Americans Behind*, CENTER ON BUDGET & POLICY PRIORITIES, https://www.cbpp.org/research/federal-tax/fundamentally-flawed-2017-tax-law-largely-leaves-low-and-moderate-income. Ching is the Director of Federal Fiscal Policy testifying in front of the House Budget Committee detailing concerns with the Act. *Id.*

[96] *See supra* note 95. *See also* William G. Gale, *A Fixable Mistake: The Tax Cuts and Jobs Act* (detailing how measures within the Act itself have not promoted financial equity, but remedies are available).

> "As a large, deficit-financed tax cut, TCJA stimulated the economy in the short-run via standard aggregate demand effects . . . [w]orse still, TCJA will make fighting recessions harder in the future. Tax burdens naturally rise and fall with income, serving as an automatic stabilizer . . . [and] TCJA has reduced this stabilizing effect by lowering tax rate, limiting the deductibility of net operating losses, shifting expensing depreciation, and limiting deductible interest payments."

exemption, which "equaled $4,150 for each taxpayer, spouse, and eligible dependent in 2017,"[97] could have provided a major relief to low-income taxpayers. Although tax credits or exemptions do not always show up as checks in the mail, they do provide relief when a taxpayer must file their taxes with the IRS. This repeal does nothing to close the tax gap and may even exacerbate it since families who relied on this exemption no longer can. They may even be tempted with noncompliance with current tax laws if they were not already noncompliant beforehand.

On a bright note, the Bipartisan Budget Act of 2018 "[r]etroactively extended a variety of expired tax provisions through 2018, including tax credits for energy efficient and renewable energy investments, the deduction for qualified tuition and related higher education expenses, and empowerment zone tax incentives."[98] This legislation does its part to encourage income tax reporting compliance for those investing in renewable energy and for families with children in college.[99] After all, just because America is in the midst of a global pandemic does not mean that students are not still in school, and their parents may still be footing the bill for tuition cost that most likely remained the same or were only marginally reduced once the transition to online learning occurred for American universities and study-abroad programs.[100]

William G. Gale, *A fixable mistake: The Tax Cuts and Jobs Act*, BROOKINGS (Sept. 25, 2019), https://www.brookings.edu/blog/up-front/2019/09/25/a-fixable-mistake-the-tax-cuts-and-jobs-act/.

[97] *See supra* note 95.

[98] *Id.*

[99] *See generally* Bipartisan Budget Act of 2018, H.R. 1892, 115th Cong. (2018).

[100] Most—if not all—colleges and universities operated completely via online-learning portals for the entire 2020-2021 academic school year, including nationally recognized schools: "Stanford, Yale, Dartmouth, Brown and Harvard all raised undergraduate tuition for the 2020-2021 academic year, even though classes are being taught largely online. Students argue remote learning should cost less, not more, than an in-person education." Jessica Dickler, *These Colleges Went to Remote Learning But Hiked*

Keeping with public higher education, it's important to remember the economic recession of 2008 which the Emergency Economic Stabilization Act of 2008 sought to address.[101] At that time, unemployment rates soared just like in 2020 and 2021.[102] The Act provided stimulus provisions and

> Allowed financial institutions to treat gains or losses from the sale or exchange of Fannie Mae or Freddie Mac preferred stock as ordinary income or loss added new limitations on deductibility of executive compensation by employers participating in the troubled assets relief program; and extended the exclusion from taxable income of forgiven dept on principle residence through 2012.[103]

Legislation does its best to soften the blow of economic downturn on major business, institutions of higher learning, and loan companies, but providing legislation that effectively "bails out" educational or financial institutions does little to close the tax gap.[104]

Tuition Anyway, CNBC (Jan. 22, 2021, 12:26 PM), https://www.cnbc.com/2021/01/22/these-colleges-went-remote-but-raised-tuition-during-covid-pandemic.html.

[101] The Emergency Economic Stabilization Act was signed into law after the U.S. experienced a major recession, and then Treasury Secretary Henry Merritt Paulson Jr. proffered, "The American people will appreciate the leadership of their elected representatives and senators who took bold action to stem a severe credit crunch that threatens to cost many jobs and undermine access to credit for working Americans." Press Release, *U.S. Dep't of the Treasury, Emergency Economic Stabilization Act* (Oct. 4, 2008), https://www.treasury.gov/press-center/press-releases/pages/emergencyeconomicstabilizationact.aspx.

[102] "In December [2008], the number of unemployed persons increased by 632,000 to 11.1 million and the unemployment rate rose to 7.2 percent." *Unemployment in December 2008*, U.S. BUREAU OF LABOR STATISTICS: TED (Jan. 13, 2009), https://www.bls.gov/opub/ted/2009/jan/wk2/art02.htm?view_full.

[103] *Major Enacted Tax Legislation, 2000-2009*, TAX POLICY CENTER, https://www.taxpolicycenter.org/laws-proposals/major-enacted-tax-legislation-2000-2009 (last visited Jan. 25, 2022).

[104] *See generally* Kimberly Amadeo, *What Was the Bank Bailout Bill? Cost, Impact, How It Passed*, THE BALANCE (Oct. 26, 2020), https://www.thebalance.com/what-was-the-bank-bailout-bill-3305675, (which details how "President George W. Bush signed the $700 billion Emergency Economic Stabilization Act (EESA) of 2008 after Treasury Secretary Henry Paulson asked Congress to approve a bailout to buy mortgage-backed securities that were in danger of defaulting.").

VI. THE SOLUTION

Ultimately, closing the tax gap depends on taxpayer compliance in conjunction with major tax reform. To do this, the government should "[i]ncrease—[not] cut—the IRS enforcement budget."[105] With a new presidential administration now in place Congress may enact more helpful legislation.[106] In times of economic downturn, former Republican administrations sought to restrict IRS funding and "[t]he enforcement budget has been hit hard: IRS enforcement personnel have been cut by 23[%] since 2010."[107] This means "[n]early one in every four IRS staff charged with pursuing tax cheats is no longer on the job."[108] Again, short staffing the IRS creates major obstacles since they do not have the manpower to go after American taxpayers who avoid paying taxes.

After the first step of ascertaining when a taxpayer is noncompliant, the next step requires enforcing tax laws against these individuals, and sometimes corporations.[109] However, at this

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[105] Chuck Marr, *Three Steps to Help Close the Tax Gap*, CTR. ON BUDGET & POLICY PRIORITIES (May 3, 2016, 5:00 PM), https://www.cbpp.org/blog/three-steps-to-help-close-the-tax-gap.

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] Seth Hanlon, *Unrigging the Economy Will Require Enforcing the Tax Laws*, CTR. FOR AM. PROGRESS (Mar. 12, 2020), https://www.americanprogress.org/issues/economy/reports/2020/03/12/481539/unrigging-economy-will-require-enforcing-tax-laws/, which stipulates how enforcing tax law on noncompliant taxpayers is no easy feat particularly if the taxpayer charged with tax crimes has substantial wealth.

> [R]eports chronicled sophisticated techniques used by extraordinarily wealthy people to defeat the Internal Revenue Service (IRS), including the story of George Schaeffler, a billionaire who allegedly used a complex series of transactions to avoid taxes on billions of dollars of income from loan cancellations. When the IRS challenged him, he litigated the agency into submission.

Id.

time, "[a]udits, criminal investigations, and convictions are down."[110] Once again, noncompliant taxpayers may dodge detection which "sends a risky message to both honest and dishonest taxpayers."[111] When noncompliant taxpayers can avoid or completely evade income tax reporting, "[i]t also undermines a basic and necessary function of government." [112] The only way for noncompliance to pose a real threat is for legislators and law enforcement officers to crack down on tax evaders to help close the tax gap, and "[p]olicymakers should reverse this downward trend."[113] The more attention closing the tax gap receives, the more likely legislators will feel pressure to ensure their constituents are satisfied with tax laws currently in place that will directly impact all of the infrastructure that the most economically vulnerable Americans rely on, particularly during times of economic crisis.[114]

Another tool to help close the gap would be to "[f]ocus on the biggest source of the tax gap: the under-reporting of business income on individual tax returns."[115] This is where uncovering tax evaders who own and operate limited liability entities moves to the forefront, since uncollected tax from business entities may represent a much larger chunk of lost revenue when compared with individual taxpayer noncompliance in totality. "Pass-through business—S

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[110] Marr, *supra* note 106.

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *See generally* James McBride and Jessica Moss, *The State of U.S. Infrastructure*, Council on Foreign Relations (last updated Aug. 4, 2021), https://www.cfr.org/backgrounder/state-us-infrastructure (which opines that "[a]mid an economic crisis caused by the coronavirus pandemic, debate continues over to how to improve the nation's infrastructure, as analysts say U.S transportation, water, and other systems face major shortfalls.").

[115] Marr, *supra* note 106.

corporations, sole proprietors, and partnerships—underreported their business income enough that they failed to pay $125 billion in individual income taxes on average between 2008 and 2010, according to IRS data."[116] Because business entities are allowed to pay no income tax upfront via pass-through taxation and only report income and file income taxes individually, catching noncompliance is harder because it can only be done at the individual taxpayer level.[117] To highlight this phenomenon, "[s]ole proprietors, for example, underreported their income by 63[%],"[118] and, "[m]oreover, small businesses underpaid self-employment taxes by another $65 billion."[119] Taking these two groups into consideration, sole proprietors and small business owners "[c]ombined . . . account for 41 percent of the tax gap."[120]

Due to the lack of reporting, this small business income never redistributes itself back into the economy.[121] To solve this problem, business owners who employ individual taxpayers can promote tax compliance. "The best way to encourage people to comply with the nation's tax laws is to create a paper trail, such as W-2 forms that employers send the IRS regarding their workers."[122] Some may view this paper trail as incessant monitoring or as undercutting employer/employee trust building; however, this may be a necessary step to ensure that individual taxpayers will be further compelled to report income more accurately and then pay the

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[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] Marr, *supra* note 116.

[122] *Id.*

appropriate amount of tax on that income. Legislators have made attempts to promote income reporting maximization, but unfortunately did not hold up their end of the bargain by giving these policies adequate time to take effect.[123] "Policymakers took a step in 2009 to require more such reporting for small businesses but they repealed the requirement in 2011 before it even took effect."[124] This promoted lax governmental enforcement and further incentivized tax evaders who may not have feared prosecutorial reprisal for failing to accurately report gross taxable income. "We need to strike a balance between encouraging tax compliance and not requiring excessive paperwork . . . these figures show the need for action."[125]

Lastly, tax compliance has a better chance of being implemented if tax preparers stay fully up to date on the most current income tax reporting compliance mandates and tax law. Most Americans use a paid tax preparer to file their taxes, and "[t]hese preparers should know what they are doing."[126] In recent years, the Senate Finance Committee Democrats "advanced an amendment to require paid tax preparers to meet a basic level of competency."[127] Having competent tax preparers to oversee income tax filings will ensure that filings are completed as accurately as possible, which in turn will ensure the proper amount of income taxes are paid to the government by taxpayers when due.

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[123] *See generally Enforcement of Tax Laws*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE: A CENTURY OF NON-PARTISAN FACT-BASED WORK (last visited Mar. 28, 2021), https://www.gao.gov/highrisk/enforcement-tax-laws (detailing initiatives that the U.S. Government has undertaken to curb tax noncompliance including the Taxpayer First Act).

[124] Marr, *supra* note 116.

[125] *Id.*

[126] Marr, *supra* note 116.

[127] *Id.*

The IRS continues to slingshot its best enforcing stone at the Goliath known as the tax gap. The tax gap is an enormous beast to render immobile; however, "despite widespread noncompliance, the IRS collected . . . about $50 billion of the annual tax gap through its enforcement efforts."[128] The tax gap could be closed even further if government regulatory agencies could work in conjunction, and the IRS "might have more success cracking down on tax fraud and evasion if it could use a tool that is available to other parts of the federal government and to some state revenue authorities."[129]

The IRS, working in tandem with other agencies to create and implement tax reporting measures, will again require proper funding; however, former "President Trump's budget propose[d an] $11.1 billion baseline funding for the IRS in fiscal year 2019, significantly below the $13.4 billion in IRS expenditures in 2010."[130] The former administration promised additional funds for enforcement; however, "the Republican Congress has consistently cut funding for the IRS."[131] For the tax gap to continue to shrink, the newly elected Biden Administration has some work to do, and "[i]t will now have to administer major changes to the tax law under the Tax Cuts and Jobs Act with low baseline spending, hampering efforts to close the tax gap."[132] In the meantime, the IRS is still holding strong on its enforcement measures to curb noncompliance. Currently, "[t]he IRS does have some tools to encourage people to report fraud and evasion by

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[128] Devin Gould, *Using The False Claims Act To Close The Tax Gap*, TAX POLICY CTR. (Mar. 5, 2018), https://www.taxpolicycenter.org/taxvox/using-false-claims-act-close-tax-gap.

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.*

others. Since its Whistleblower Office was created in 2007, the agency has recouped $3 billion in back taxes based on tips from third parties."[133]

With anonymous reporting, tipsters do not have to fear retaliation because their identities are kept secret. Under the False Claims Act of 1986 (FCA), turning over tax noncompliance evidence "allows whistleblowers to file sealed complaints in court alleging fraud in activities such as procurement or government contracts. If the government declines to prosecute a case, whistleblowers and their attorneys can take the case to court themselves."[134] The consequences for noncompliant taxpayers can be severe: "[d]efendants are potentially liable for triple damages and under the FCA whistleblowers can receive 15[%] to 30[%] of what they recoup from fraudsters, a powerful incentive for whistleblowers to file cases."[135] This payout, for turning over noncompliant taxpayers and forcing them to face litigation, gives whistleblowers further incentives to reveal what they know. Moreover, "[a]lthough the IRS Whistleblower Law provides for similar monetary incentives, the FCA has a number of advantages.[136]
Firstly, "the FCA provides better protection for whistleblowers. The IRS acknowledges that its system can unnecessarily expose tipsters to retaliation by their employers because firms often can figure out who has provided information to the IRS on specific transactions or tax strategies."[137] To ensure employers do not inform the government about whistleblowers,

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[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

legislators "have introduced legislation to extend the non-retaliation protections of the FCA to tax whistleblowers."[138]

Secondly, the FCA mandates timelines and judicial oversight for the disposition of cases and "forces the government to make decisions in a timely fashion and inform whistleblowers of the outcomes of cases."[139] This is particularly important to whistleblowers currently employed by employers engaging in tax evasion. Government protection is necessary to promote public confidence; however, "[t]he IRS has come under criticism for not communicating well with tipsters about the status of cases and for not proceeding with a sense of urgency to pay awards to whistleblowers."[140] Again, this harkens back to the desperate need to ensure that the IRS remains well-funded and ready to undertake all its administrative duties. If the IRS is well-funded—thus able to handle its workload, including constant communication with whistleblowers—then the efforts to help close the tax gap will be promoted if whistleblowers had their pending investigations handled in a timely fashion. Once again, a lack of adequate funding hinders the very measures the IRS is trying to implement.[141]

Paying out monies owed to individuals, even to whistleblowers, requires agency funding and enough personnel to distribute these awards.

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[138] *Id.*

[139] Gould, *supra* note 131.

[140] *Id.*

[141] *See* Stephen M. Kohn, *IRS Whistleblower Program Recovers $472 Million From Tax Cheat*, 11 THE NATIONAL LAW REVIEW (2021), (promulgating that, "[a]n expanded and effective whistleblower program is urgently needed to fix the 'tax gap,'" and Congress could help to initiate bolstering the program by providing, "[a]dditional resources for the Office of the Whistleblower . . . [and] certain statutory and administrative deadlines that are used to justify the delay in paying awards must be shortened.") https://www.natlawreview.com/article/irs-whistleblower-program-recovers-472-million-tax-cheats (last visited Mar. 28, 2021).

Another powerful effect of the FCA is that it "allows the government to outsource anti-fraud cases to the private attorneys who represent whistleblowers."[142] This measure reduces the need for taxpayers to fund litigation, and "it protects, rewards, and empowers whistleblowers to litigate complex cases at little cost to taxpayers."[143] This is good news to other governmental agencies who may have some overlap with the IRS's duties. "In 2015, private lawyers brought in $1.2 billion in FCA cases that the Justice Department declined to pursue, effectively augmenting Department of Justice resources."[144] Ultimately, government agencies could more effectively close the tax gap if they worked together to assist in taxpayer compliance, rather than simply relying on the IRS.

Currently, a "large New York tax case is winding its way through the court system that Sprint Nextel evaded over $100 million of state sales taxes. Proponents say that New York's law protects, rewards, and empowers whistleblowers while preventing frivolous cases."[145] Perhaps more states will take New York's lead, and "[i]f Congress wants to fight tax fraud and close the tax gap without burdening honest taxpayers, it should expand the federal FCA to include violations of the Internal Revenue Code."[146]

Prosecuting noncompliant taxpayers may seem like a grand undertaking at the national level, but there are ways to close the tax gap on a local level. For example, with estate sales, if Congress required "third-party middlemen such as auctioneers to report gross sales by anyone

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[142] Gould, *supra* note 131.

[143] *Id*.

[144] *Id*.

[145] *Id*.

[146] *Id*.

selling more than $1,000 in total value and more than 100 items per year,"[147] then this form of self-reporting would add tremendous value in helping to abolish the tax gap. When third parties report income to the IRS, individual taxpayers tend to also report that income.[148] Also,"[t]here is no reason for online vendors to be 'tax exempt' while their brick-and-mortar counterparts pay taxes because they are easier to identify."[149] This discrepancy highlights how closing the tax gap between businesses could be done more ethically if there was a mandated, "[r]equire[ment for] wholesalers to report gross purchases by their business customers (including Corporations). This is an easy way to at least identify non-filers and underreporting by business, which is a major source of the tax gap."[150] Another method would be to "[r]equire reporting by businesses of the names and addresses of those who use cash to purchase items totaling $1,000 or more."[151] After all, "[w]ho uses that much cash to purchase items make purchases? Usually, people who have unreported income."[152]

With effective legislation and optimal funding geared towards the IRS, this will "[m]ake it much easier for those who haven't filed . . . to get up to date by reducing penalties and interest when appropriate . . . this would require both Congress and the IRS to make the offer in compromise program more efficient and fairer."[153]

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[147] Richard B. Malamud, *10 Suggestions for Closing the Tax Gap*, TAX NOTES (Jan. 28, 2008), http://www2.csudh.edu/rmalamud/tn012808.pdf.

[148] *Id.* at 532.

[149] *Id.*

[150] *Id.*

[151] *Id.* at 533.

[152] *Id.*

[153] *Id.*

Yet again, the IRS uses practically every measure at its discretion to ensure that taxpayers comply, report all income tax, and file their taxes in a timely manner. The agency has "dedicated a significant amount of resources to better understand taxpayer behavior and preferences."[154] The IRS has engaged in creating a consensus, utilizing "[t]he Comprehensive Taxpayer Attitude Survey (CTAS) . . . to evaluate taxpayer attitudes and inform IRS efforts to improve taxpayer services.[155] Refreshingly, the CTAS reported in 2017 that "the majority of taxpayers find cheating on their income taxes to be unacceptable and nearly all taxpayers responded that they believe it's their civic duty to pay their fair share of taxes.[156]

The sense among taxpayers that paying taxes is a civic duty bodes well for both closing the tax gap and doing so through the efforts of committed individuals. "Further, according to IRS [figures to] date, the number of individual and partnership audits has declined in recent years."[157] This demonstrates that the IRS's preventive measures towards tax avoidance produce results. These self-reporting methods lend more grace, as "[t]he IRS uses several mechanisms to combat the tax gap."[158] However, "the one most taxpayers fear is an IRS audit. Some are surprised to learn that the IRS only audits [one percent] of all returns filed each year."[159] Again, this is where the average individual taxpayer comes into the mix—complying and paying his fair share of income tax through prudent self-reporting standards.

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[154] Tara Fisher, *Closing the Tax Gap After Tax Reform*, BECKER (May 30, 2018), https://www.becker.com/blog/cpa/closing-the-tax-gap-after-tax-reform.

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] *Id.*

VII. CONCLUSION

The tax gap shall remain a pressing concern as long as the U.S. economy remains under fire. Particularly, with the onset of COVID-19 forcing businesses to close their doors, and with millions of Americans suffering from economic insufficiency—the economic downturn that America is under is only exacerbated by income tax reporting noncompliance by millions of Americans.

The IRS does its best to combat noncompliance by encouraging the public to file timely and to file accurately. However, without major legislative tax reform, the IRS is often left to handle more than its fair share with the limited funding available to it. If the IRS continues to make strides through mandatory reporting measures, and individual taxpayers and their employers comply, then the tax gap will be a relic of the past. Without a half a trillion-dollar deficit, the nation's economy and public infrastructure will be set up to thrive abundantly.