

What *Up in the Air* Can Teach the IRS

By Diana Leyden

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George Clooney and *Up in the Air* have a lot to tell the IRS about the downside of reducing face-to-face contact. Efficiency and savings are often illusory when it comes to computerizing and centralizing businesses like the IRS that perform services.

After the Internal Revenue Service Restructuring and Reform Act of 1998, the IRS began to reduce the face-to-face contact its employees had with taxpayers. Why it did this — whether because of the restructuring by IRS Commissioner Charles Rossotti, Congress's resistance to giving the IRS more money to do its expanded job, or the desire to get faster results — is a source of debate. Whatever the reason, the result was clearly a reduction in human contact with taxpayers.

The first area in which human contact was reduced was the audit of individual income tax returns, especially returns of low- and lower-middle-income taxpayers. The IRS decided to eliminate the office audit of "simple" individual returns and audit them by correspondence. Taxpayers, especially those who claimed the benefits Congress enacted to help working taxpayers (the earned income tax credit and the child tax credit), were contacted by a letter from a faceless and sometimes nameless IRS employee. To speed up the audit, the first letter (the so-called combo letter) might not only inform the taxpayer of what items were being audited, but also advise him of the proposed change in tax that would result from disallowance of the items.

The next area to undergo this dehumanization was the offer in compromise program. The IRS reasoned that centralization of the process in Brookhaven, N.Y., would mean more efficient and consistent results. So a small business that otherwise would have met with a revenue officer who lived in the same area and who may well have known about the company and the local business climate was forced to send its OIC to the Brookhaven campus. There, relatively novice IRS employees relied on Internet databases to value assets and on the black ink on a page to determine the taxpayer's ability to pay.

The third area, and perhaps the one that experienced the greatest reduction in face-to-face meetings, was the

IRS Appeals function. Based on the assumption that most hearings, especially collection due process hearings, could be effectively handled by telephone conferences, Appeals offices were established in some IRS campuses. Employees there would talk with taxpayers by telephone — never having a chance to assess body language, view tears, or see if the taxpayer understood — and make a determination that for most taxpayers meant the continuation of a proposed levy.

Of course, practitioners and the national taxpayer advocate have criticized all three of these moves. They are on the front lines, holding the hands of distraught taxpayers on the verge of financial disaster. In fact, in her most recent report, the national taxpayer advocate recommended that the IRS develop an in-house cognitive research lab to understand taxpayer behavior and develop more effective products and programs.¹ (While we may never know what triggered Joseph Stack to fly his plane into the Austin, Texas, IRS offices, determining if taxpayers turn to tax protestor groups because they feel isolated from the IRS may help defuse extreme actions.)

The IRS should take direction from the recent movie *Up in the Air* and rethink the reduction in human contact with its targets: taxpayers.

Up in the Air is a story about a company that euphemistically provides "career transition" counseling to employees who are fired. The company is hired by businesses that have decided to fire employees or reduce their workforce, but do not want the messiness or potential physical harm of doing it with their own human resources departments. George Clooney plays Ryan Bingham, a seasoned "counselor" who patiently listens to the anger and threats of the person across the table as he delivers the bad news and then, with grace and persuasiveness, convinces the employee that he should see this as an opportunity. In one scene, a middle manager, played by J.K. Simmons, is deftly guided by Bingham to remember that he had skills as a French cuisine chef and that he now has the time and reason to turn that skill into a new career. Although the prospect of racking up 10 million frequent-flier miles and being inducted into an elite club motivates Bingham to continue his job through face-to-face meetings with the unfortunate workers, he also sincerely (and I believe correctly) thinks that life-altering and emotionally devastating news should be delivered in person.

Along comes an HR expert fresh out of college, Natalie, played by Anna Kendrick. As one reviewer put it, "She's a monster for our times: a presumed human-resources expert who, having come of age in front of a

¹"National Taxpayer Advocate 2008 Annual Report to Congress," Executive Summary: Preface and Highlights, at 26, *Doc 2009-241*, 2009 TNT 4-21.

computer, has no grasp of the human. By contrast Bingham, who fires people face to face with a small smile and pat speech, comes across as the good guy, though only if you forget what he does for a living.² Natalie convinces the transition counseling company's boss, played by Jason Bateman, to cut expenses by instituting a videoconference method of firing the employees. She extols the savings and efficiency of having all the companies' counselors in the main office in Omaha, Neb., sitting in front of a monitor using a canned speech as a way to not only cut costs, but also disconnect from the messy emotional stuff of firing folks.

Bingham objects both out of self-interest (remember those frequent-flier miles and the freedom of being on the road) and from experience. As a result, the boss makes Bingham take Natalie on the road to observe the face-to-face interaction. Eventually, Natalie learns that the face-to-face interaction is an important component of delivering bad news and that it takes skill, not a script. [SPOILER ALERT] In fact, in one instance when she delivers a canned script, the employee says that she might just jump off a bridge. When the employee later does commit suicide, Natalie is devastated. She leaves the company, and the company returns to face-to-face firings.

How is this movie instructive to the IRS? Over the last five or six years, the IRS has engaged in a serious retreat from face-to-face interaction with taxpayers, favoring centralized call-in centers or form letters. Like Natalie, the IRS assumes that centralization and technology will bring efficiency to the process of delivering bad news to taxpayers, faster resolution of matters, and greater compliance.

Most practitioners, as well as the national taxpayer advocate, are like Bingham, warning that the coldness of the process and the lack of face-to-face interaction lengthen the time it takes to resolve issues and, more importantly, destroys the necessary connections that make taxpayers more responsive to voluntary compliance. In fact, in her 2008 annual report, the national taxpayer advocate cited as two of the top problems that the Appeals efficiency initiatives of centralizing case handling have not improved taxpayer satisfaction or confidence in Appeals, and that the IRS Correspondence Examination Program does not maximize voluntary compliance.³

While like Bingham, we practitioners may have self-interest partially in mind in recommending this, also like Bingham, we do it because it is the right thing to do. Thus, the IRS, like the boss in *Up in the Air*, should listen to the practitioners and return to using more face-to-face meetings with taxpayers. Although the news the IRS delivers will continue to be bad for most taxpayers, many may continue to be convinced that finding out you owe taxes can provide the opportunity to once again become voluntarily compliant, making lemonade out of lemons.

²Manohla Dargis, "Neither Here Nor There," *The New York Times*, Jan. 28, 2010, available at <http://movies.nytimes.com/2009/12/04/movies/04upinair.html>.

³See *supra* note 1, at 6-12.

Attributes of Good Tax Policy and The First-Time Home Buyer Credit

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In this article, the authors discuss the attributes of good tax policy and review the provisions of the first-time home buyer tax credit, as originally legislated and as amended. They find that although this credit may be meeting its objective of stimulating the housing market, it has done a poor job of supporting the ideals of a desirable tax system.

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A. Introduction

The complexity of the tax code grows every year as new laws are introduced and existing ones are amended, often with social or public policy objectives in mind. In considering the value of proposed legislation, lawmakers tend to focus on a bill's effectiveness for meeting policy objectives without considering the broader issue of whether the provision is moving our tax system toward or away from a better tax system. To prevent the tax system from becoming unmanageable, policymakers must consider the broad impact of each legislative change. This analysis requires policymakers to use some kind of framework for evaluating legislative proposals in terms of how well they support the desirable attributes of tax systems. We will describe the various frameworks that have been proposed and condense the similar criteria presented in each framework into six fundamental attributes of good tax policy.

The first-time home buyer credit is one example of recent tax legislation that is adversely transforming our current tax system. After explaining the provisions of the first-time home buyer credit, this article will analyze whether the credit meets six criteria of desirable tax policy.

B. Desirable Attributes for Tax Systems

In his 1776 book, Adam Smith was perhaps the first to describe the desirable attributes for a tax system.¹ The four attributes he outlined were equality, certainty, convenience of payment, and economy in collection. More recently, other lists of attributes have been developed. The annual report of the Council of

¹Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, Boulder, Colo.: NetLibrary, 1999.