AMERICANS DON’T HATE TAXES, THEY HATE PAYING TAXES

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This Article recommends reforming the way Americans pay taxes with a plan that eases the burden for taxpayers and tax professionals, and communicates with taxpayer-citizens in a more responsive, dialogic fashion. By leveraging technology and exploiting the government’s core competency for maximizing efficiencies in filing taxes, the plan slashes costs (monetary as well as psychological), and offers a consumer friendly, secure, and educational tax-filing portal.

The proposed “data retrieval” platform allows taxpayers and tax advisors to view, access, and download tax information from a secure database maintained by the government. Rather than having to gather this information from employers, financial institutions, and third parties, taxpayers and their advisors would rely on a centralized clearinghouse. Taxpayers with sophisticated returns may still need to input certain information, such as charitable contributions and some capital gains, but data retrieval can simplify filing for all 145 million individual taxpayers. It also offers opportunities to communicate with taxpayers and tax professionals, listen to concerns, meet needs, and improve the system through a dialogue that enhances fiscal literacy and tax consciousness.

Finally, the government—not the private sector—is uniquely positioned to lead this reform. Data retrieval leverages the government’s competitive advantage and core competency in the area of tax filing. Under current taxpayer confidentiality laws, the private sector is prohibited from providing a comparable service for maintaining and updating a centralized database containing sensitive tax account information. Only the government can bring these efficiencies to the filing process, and ease the filing burden for all taxpayers and their advisors.

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INTRODUCTION

Americans hate taxes. The burden of supporting wasteful government programs is too much to bear, far exceeding the burden in other countries, at least according to politicos, pundits, and pollsters, as well as Tea Party “patriots.” The same rhetoric animates the propaganda of anti-tax fomenters since the founding of the republic. After all, the birth pangs of our nation originated in the Boston harbor with a protest over heavy taxation on imported British tea.

It turns out that none of the foregoing is true. Total tax revenue as a percentage of gross domestic product (GDP) in the United States ranks near the bottom among industrialized countries (indeed, in 2008, it ranked thirty-first among the thirty-four countries comprising the Organization for Economic Cooperation and Development (OECD)). It boasted equally unimpressive remittances for taxes on goods and services (last among OECD countries in 2009).

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1 See e.g., Mark’s Murray, NBC/WSJ Poll: Nearly 60% Approve of Tax Deal (Dec. 15, 2010), available at http://www.nbcnews.com/politics/article/in-de-tax-party-leaders-put-focus-on-midterms/19441788 (quoting a tea party activist from Mississippi who marched on Washington, DC with fellow “patriots” on tax day 2010: “What brings us out here today is that we’re tired of being taxed out of our minds, and we’re tired of not being heard”); Brian Montopoli, Katie Couric Interviews Tea Party Leaders, CBS News (Jan. 25, 2010), available at http://www.cbsnews.com/8301-503544_162-12030-503544.html (quoting Tea Party leader Michael Johns as saying the American people are “over-taxed”).


4 See AMITY SHLAES, THE GREEDY HAND: HOW TAXES DRIVE AMERICANS CRAZY AND WHAT TO DO ABOUT IT 8 (1999) (“America was a nation born of a tax revolt.”); ADAMS, supra note 3, at 6 (stating that “threepence a pound tax on tea...started the revolution”).

as well as for taxes on employees (below average). Even with respect to taxes on income, profits, and capital gains, the United States falls below the OECD average.

In addition, the United States is distinctly ungenerous when it comes to supporting social programs. As a percentage of GDP, the country resides near the bottom quarter of OECD countries in total social expenditures. In 2010, the U.S. federal budget crested $3.6 trillion, with 20 percent of the pie going to defense and security, another 20 percent allocated to Social Security, and 21 percent funding Medicare, Medicaid, and CHIP (Children’s Health Insurance Program). Meanwhile, social safety net programs—which in 2009 kept more than 20 million Americans out of poverty and reduced its depth for another 30 million—comprised just 14 percent of national expenditures. Moreover, the “welfare waste” that anti-tax, anti-government ideologues argue threatens to bankrupt the nation barely registers as a line item. In 2010, the largest such program, Temporary Assistance for Needy Families (TANF), provided a grand total of $17.1 billion to states, territories, and eligible Native American tribes to support millions of low-income families. That figure represents just 0.004 percent of the federal budget, or forty-one times smaller than annual defense appropriations.

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6 Id.
7 Id.
10 Id. at 2. See also Arloc Sherman, Safety Net Effective at Fighting Poverty, But Has Weakened for the Very Poorest, CBPP (July 6, 2009); Arloc Sherman, Stimulus Keeping 6 Million Americans Out of Poverty in 2009, CBPP (Sept. 9, 2009).
11 These safety net programs include refundable portions of the Earned Income Tax Credit and Child Tax Credit, Supplemental Security Income for the elderly and disabled, unemployment insurance, Food Stamps, Head Start, school meals, foster care, adoption assistance, low-income housing assistance, subsidies for child care and home energy costs, and programs that help abused and neglected children. See CBPP, supra note 9, at 2.
13 The entire HHS budget dedicated to children and families, which includes TANF, amounts to $50 billion, or 0.0138 percent of the federal budget. See http://dhhs.gov/asfr/ob/docbudget/2010budgetinbrieff.html.
14 See CBPP, supra note 9.
And what of our tea-drinking ancestors? As much as Tea Party members want us to believe (and themselves believe) that the United States has been a nation of tax protestors from the very beginning, their understanding of history is as deficient as their math. Indeed, “the destruction of the tea,” as the event was known before 19th century propagandists dressed it up for posterity,15 was never a protest against excessive taxation per se.16 In fact the entire episode—donning Native American garb, smearing ash on colonial faces, and dumping British tea into Boston harbor—was precipitated by a tax cut, not a tax hike.17 The colonists were not protesting taxation, but rather taxation without representation, “an entirely different matter,” historian T.H. Breen reminds us.18 Another historian, Joe Thorndike, adds that the colonists “were making a point about political legitimacy. They were more than willing to pay taxes imposed by their own representatives. But they were utterly unwilling to pay taxes imposed by Parliament.”19 Even so, the colonists continued paying taxes the Crown’s levies. But rather than remit them to British tax officials, they paid non-loyalist tax collectors. “Anyone who misses this point,” Breen warns, “risks missing the fact that ordinary American patriots accepted the legitimate burdens of supporting a government in which they enjoyed genuine representation.”20

17 Properly set in historical context, the Boston Tea Party represents the climax of a protracted protest against British taxation in the North American colonies. The unrest originated in the mid-1750s with the French and Indian War (a.k.a. the Seven Years’ War or the War of Conquest), which saddled Britain with a mountain of debt. At war’s end, Parliament enacted a series of taxes, all of which the colonists opposed on grounds that the Crown could only impose levies to regulate trade. Parliament capitulated to each of these complaints, and repealed all the taxes except those on tea. The colonists took neither to the streets nor the harbor immediately. But in 1773, Parliament repealed one of the taxes on tea imported to England, which was immediately reshipped to the colonies, while preserving the tax on tea imported directly to North America, a decision that resulted in a tax cut on colonial tea. Nonetheless, colonists resented the special exemption for the British tea importer, East India Company, and thus dumped the more affordable imported tea into Boston Harbor. See YOUNG, supra note 3.
18 T.H. Breen, Whose Revolution Is This? WASHINGTON POST (Mar. 31, 2010), at A17.
19 Thorndike, supra note 16, at 142.
20 Breen, supra note 18.
Modern-day tea partiers demonstrate no better command of recent history than ancient history. Between 2009 and 2010, while the “patriots” railed against excessive taxation, the Obama administration cut taxes (25 different taxes, in fact) for 95 percent of Americans. Yet when queried whether the administration had in fact “increased taxes for most Americans, decreased taxes for most Americans, or…kept taxes the same,” a staggering 44 percent of respondents who identified themselves as supporters of the Tea Party Movement told pollsters that taxes had gone up, while another 46 percent said taxes had remained the same. Only two percent responded correctly that taxes had in fact gone down.

These folks are clearly confused. Or at least misinformed. They understand neither their own anti-tax creation myth nor the effect of national policies on their pocketbook. And they certainly lack almost any resemblance to the patriots they invoke. Nonetheless, modern-day tea partiers share one thing in common with their purported ancestors: they are angry and disaffected. They report animosity toward Washington, the President, Congress, and policies they perceive as directed more toward the poor and minorities than the middle class and rich. They are not anti-government, per se, as they support Social Security and Medicare among other entitlement programs. But they think they pay too much for what they receive.

Most importantly, modern-day tea partiers believe their opinions are neither heard nor represented in Washington. As part of feeling ignored and deprived of government’s spigot, they decry the special-interest, “loophole-ridden tax code,” and consider it “Exhibit No. 1 in their

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indictment of American government.”25 In this way, their protest resembles that of the original tea party. The 18th century civil disobedience in Boston was about lack of representation and tax dispensations for a select few. As historians have explained, the colonial ruffians who dumped tea into Boston Harbor “were objecting to a special tax exemption that Parliament had granted to the East India Company,” a government-backed importer of, among other things, tea.26 From the perspective of the colonists, the Crown was treating them as second-class citizens, yet still expected them to act as loyal subjects and to remit taxes obediently.

As in 1773, so in 2011. Whether identified as tea party patriots or generally disaffected citizens, Americans continue to protest tax burdens disproportionate to government benefits. The feeling is that taxes, whether rising or falling, buy too little in the way of public goods, and subsidize undeserving recipients. It is not as if Americans are unwilling to “pay for civilized society,” to borrow Justice Oliver Wendell Holmes’ aphorism,27 but they recoil when other citizens attempt to purchase civilization at a discount.28 Indeed, as Joe Thorndike recently opined, “We’ve long agreed to pay the price for civilization. We just can’t tolerate anyone looking for civilization on the cheap.”29

Thus, Americans do not necessarily hate taxes. They never have. Instead, they hate what they get in return—or at least what they think they get in return. That includes not only over-priced, low-quality benefits of civilization, but also the unduly burdensome process of paying for those benefits. The awful, complex, anxiety-ridden process of remitting payment to the

25 Joseph J. Thorndike, Americans Don’t Mind Taxes, They Hate Tax Loopholes, WASHINGTON POST (2010), at B03.
26 Id.
27 The full quote is, “Taxes are what we pay for civilized society.” Compania Gen. de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting). See also RANDOLPH E. PAUL, TAXATION FOR PROSPERITY 277 (1947) (quoting Holmes, “I like to pay taxes. With them I buy citizenship”).
28 See Joseph J. Thorndike, Civilization at a Discount: The Morality of Tax Avoidance 95 TAX NOTES 664 (2002) (quoting Treasury Secretary Henry Morgenthau in 1937 during President Franklin Roosevelt’s crusade against tax loopholes as observing that “too many citizens want the civilization at a discount”).
29 Thorndike, supra note 25.
government in exchange for public goods that taxpayers, alternatively, vilify or demand. Nor is it true that Americans necessarily hate government. Rather, they hate government that commands rather than enables. Indeed, with particular respect to their federal government, Americans prefer inconspicuous to conspicuous, invisible to visible, or as one historian of the American political tradition recently put it, Americans desire government that is “hidden in plain sight.”

Mindful of Americans’ preference for efficient and unobtrusive government, this Article makes several additional observations to assist in ameliorating the current perception that the burdens of citizenship outweigh the benefits.

First, the tax-filing interface that connects citizens with their government sets the tone for how citizens feel not only about the extraction of tax payments but also what those payments purchase. The current interface is grossly deficient. Preparing one’s taxes is unduly complex, intimidating, and scary. The process produces confusion, anger, and anxiety. It oozes inefficiency, neglect, and impersonal bureaucracy. If the government is going to require taxpayers to pay for public goods—failure to file an annual tax return can result in a strict liability penalty up to 25 percent of tax owed and 75 percent for fraudulently filed returns, while willful failure to file is punishable by up to one year in prison—it has a responsibility to facilitate that process with efficiency, open lines of communication, and helpful customer service. Imagine encountering the same difficulty when purchasing a pair of shoes or a refrigerator or a car. Paying one’s taxes might never be as easy (or as much fun) as buying a new handbag, but it should not be as painful as currently conceived.

Second, requiring citizens to pay for public goods creates what an older generation of public finance economists called “tax consciousness.” “This may be a mere feeling of irritation,” one prominent study of U.S. taxation noted in 1937, “or a genuine interest in improving the system.” And in fact, taxation can produce “good” and “bad” forms of consciousness. Bad tax consciousness breeds resentment, anger, and anti-tax, anti-government sentiments. Currently, tax filing and tax administration in the United States fosters bad tax consciousness, and threatens the revenue integrity and long-term viability of the federal income tax. Good tax consciousness, on the other hand, provides an opportunity to educate, to raise awareness of the relationship between benefits and burdens, and, ultimately, to “improv[e] the system.” It involves considerably more than reminding taxpayers of their financial obligations to the state, however. An overly tax-sensitive citizenry exhibits bad rather than good tax consciousness. Striking a balance requires employing a judicious mix of tax bases (i.e., income, property, consumption) as well as situation-specific collection methods (i.e., withholding, third-party reporting, direct payment). It means employing visible as well as invisible forms of taxation, connecting the burdens to the benefits, and assisting taxpayers in filing their annual returns with enhanced technology, security, and customer service.

Finally, improving tax filing can do even more than foster good tax consciousness. While the filing process may appear a mundane subject of inquiry, it directly affects taxing capacity and functionality. A clunky, hard to use, scary regime collects less revenue in a less efficient manner, undermines revenue capacity, angers and frustrates citizens, generates mistrust of government, and fosters noncompliance. On the other hand, an efficient, easy to use interface builds trust and appreciation, promotes compliance, and achieves lower costs for taxpayers and tax officials, to

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say nothing of fewer challenges to return positions, less litigation, and increased revenue. At the same time, it offers an opportunity to communicate with taxpayers and their advisors, listen to their concerns, meet their needs, provide information, and improve the system. In addition to offering basic and helpful information, an interactive, responsive tax-filing regime could communicate, for example, how much tax revenue the government collects each year and from what sources; how the government spends the money it collects; how the U.S. tax and revenue system compares with other countries; what taxpayers across income groups paid in federal, state, and local taxes and how that burden has changed over time. In these and other ways, a reformed tax-filing regime could serve a communicative and educative function. It could turn the annual rite of taxpaying into a dialogue between citizens and their government, a civics lesson for taxpayers as well as tax officials, and an opportunity to improve the system year after year.

The balance of this Article proceeds in three parts. Part I explores the concept of tax consciousness more fully, both from the perspective of its early proponents and how tax-filing reforms based on communication and information exchange between individual taxpayers and their government could invigorate a modern tax consciousness responsive to the needs of taxpayers, tax advisors, and tax regulators. Part II examines failed attempts to reform tax filing, and offers an entirely new recommendation that overcomes the shortcomings of earlier reform proposals by leveraging technology and the government’s core competency for maximizing efficiencies in tax filing, and making it less costly, more consumer friendly, secure, and even gratifying. Finally, Part III illustrates how this new model of tax filing reflects the tenets of “responsive regulation.” By emphasizing communication between regulator (the IRS) and regulatee (taxpayers and their advisors), the recommendations contained in this Article aim to establish an ongoing and beneficial dialogue between taxpayer-citizens and their government.
I. PROMOTING TAX CONSCIOUSNESS WITH A GOVERNMENT “HIDDEN IN PLAIN SIGHT”34

Paying taxes is a kind of social theater, a civic ritual. The annual, shared rite of filing one’s taxes binds people, community, and society, much like voting, and it reflects and reinforces one’s citizenship responsibilities. Indeed, a former Commissioner of Internal Revenue recently drew explicit comparisons between paying taxes and voting, calling them each “a unifying experience fundamental to our democracy and respect for the rule of law.”35

Currently, the civic value of taxpaying in the United States does not live up to its lofty potential. The process of paying one’s taxes serves to make citizens angry, frustrated, and anxious. It also generates feelings of animosity toward the government that are readily transformed into anti-tax, anti-statist sentiment under the right conditions (such as, for instance, a severe economic downturn accompanied by high rates of unemployment, tight credit, bankrupt public services, declining infrastructure, and a shrinking safety net).

But the “filing ceremony,” as tax scholar Larry Zelenak has called it, can also increase civic mindedness, nurture positive feelings about the state, reinforce financial and fiscal citizenship, and educate taxpayers not just about the cost of government but also what all those tax payments purchase.36 In this way, tax filing can promote tax consciousness, which its early proponents considered “a force for good government.”37

Citizens can gain consciousness about taxation in a variety of ways. The “most important” source of tax consciousness, according to an earlier generation of tax scholars, involved “the number of people who pay taxes and the amount that they pay directly to the

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34 Supra note 30.
36 Zelenak, supra note 35, at 60.
37 SHOUP, et al., supra note 33, at 421.
The second category—preserving the link between taxpayer and government—will be discussed below. But the first category—number of citizens paying taxes—includes taxpayers at the national as well as sub-national levels remitting payment for federal income taxes, state and local property taxes, automobile and gasoline taxes, “sin” taxes on cigarettes and liquor, and retail sales taxes. Awareness of multiple taxes and taxing jurisdictions heightens tax consciousness, which earlier commentators viewed as a good thing. But it can also turn citizens against the taxing power of the state.

Indeed, government officials must be careful not to make citizens too aware of tax burdens, particularly when those burdens are not sufficiently linked to benefits. Unpopular taxes or layered taxes on multiple bases can raise tax consciousness to such a pitch that taxpayers feel besieged on all sides, a debtor to government at every level. At that point, consciousness morphs into resentment, anti-tax resistance, and rebellion. A tax may achieve “such a stage of unpopularity that a large proportion of the taxpayers evade it successfully.” Tax consciousness of this sort “is scarcely considered desirable” both for its adverse affects on revenue and because “the evasion becomes so habitual and so complete that practically all consciousness of the tax is lost.” To the extent other taxpayers are aware of the evasion but unable to shift or avoid their own burdens, resentment grows still further. Ineffective or heavy-handed tax administration or

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38 Id. at 352.
39 See infra notes 50-55 and accompanying text.
40 SHOUP, et al., supra note 33, at 354 (noting that multiple levels of tax “intensified…the tax consciousness of a considerable number” of taxpayers).
41 Such “anti-tax consciousness” generated several tax revolts in the twentieth century, including the resistance of the 1930s (see BEITO, supra note 3) and the 1970s and 1980s (see MARTIN, supra note 3 and O’SULLIVAN, ET AL., supra note 3). Earlier tax consciousness scholars noted the debilitating effects of too much tax consciousness. See SHOUP, et al., supra note 33, at 364 (discussing tax revolts of the 1930s: “Well-organized publicity by private groups has at times created passing waves of tax consciousness. In some states…the organized movement has aroused the taxpayer to such a pitch that drastic tax limits have been put in the constitution.”).
42 Id. at 362.
43 Id. at 362-63.
inexpert officials can also transform consciousness into resentment and rebellion. So, too, with compliance costs. While early tax consciousness scholars rightly noted that compliance requirements could foster “an important stimulant of tax consciousness,” overly burdensome requirements could also breed resentment and reduce compliance rather than raise it.

More than anything, to be effective as a force for maximizing civic value, tax consciousness must link the burdens and benefits of taxpaying. It must “show the taxpayer a connection between amount of expenditures and amount of tax,” between the price of civilization and the goods it provides. For this reason, early commentary on the virtues of tax consciousness strongly criticized retail sales taxes in states that amalgamated distinct tax prices into final purchase prices. Failure to disaggregate the costs not only prevented the consumer-taxpayer from realizing that some percentage of the purchase price was remitted to the government but also that the tax raised the item’s overall price. Linking the burdens and benefits of taxes also involves making the taxpayer “aware of the different levels of government,” so that the taxpayer, for example, neither attributes the burden of the property tax to the federal government nor fails to attribute the benefits of improved schooling to the state or

44 Id. at 362 (“Administration of a tax in an officious and generally tactless manner is another way to heighten consciousness into resentment.”). For a modern discussion of the relationship between taxpayers and tax regulators, see Dennis J. Ventry, Jr., Cooperative Tax Regulation, 41 CONN. L. REV. 431 (2008).
45 SHOUP, et al., supra note 33, at 364. See also id. (noting that “the more complex the tax, the greater the consciousness of it will be”).
46 Id. at 421.
47 Id. at 360. “In many states the gasoline tax and the retail sales tax create a large number of conscious indirect taxpayers. Because the amount of the tax is usually made known to all purchasers, they realize that some definite part of the purchase price is destined eventually to reach the government. They may also believe, if they stop to think of it, that the indirect burden is a real one—that if the tax were removed the price that they would have to pay would be correspondingly lower.” In the same way, these commentators criticized the federal government for failing to use a “separate charging plan” on commodities taxed at the time by the national government, including cigarettes and liquor. “The federal government could promote intelligent tax consciousness by stating the amount of the tax on the cigarette tax stamps and perhaps on liquor tax stamps, provided due caution was taken to indicate that the tax may or may not have been fully passed on in the price.” Id. at 422.
municipality.\textsuperscript{48} Similarly, it was critical to make the connection between fluctuating tax liability to “variations in the volume of governmental expenditures.”\textsuperscript{49}

Perhaps the most important burden/benefit relationship according to tax consciousness proponents involved the payment of taxes. “When a person pays a tax as a separate transaction between himself and the government, he is far more aware of it than when he pays it as a hidden charge.”\textsuperscript{50} Indeed, this concern about the effects of remittance on tax consciousness informed these scholars’ views of the retail sales tax and their opposition to burying its value in the full retail price. It also informed their wariness of “old-age pensions”\textsuperscript{51} under the nascent Social Security program, which instituted withholding at the source on a mass scale for the first time in the United States: “It will be of interest,” they wrote, “to discover whether a long-continued payroll deduction results in employees finally forgetting that the cause of the deduction is a tax. Perhaps the form in which they are notified of the deduction,” these scholars hoped, “will prevent a loss of tax consciousness.”\textsuperscript{52} Automatic third-party collection and remittance broke the link between burden and benefit, weakened tax consciousness, and created inert, apathetic taxpayers.\textsuperscript{53} “Moving to a wholly depersonalized system,” warned economist Richard Musgrave, himself a longtime proponent of vibrant tax consciousness, “would reduce taxpayer awareness

\textsuperscript{48} Id. at 421.
\textsuperscript{49} Id. at 363.
\textsuperscript{50} Id. at 352.
\textsuperscript{51} Id. at 359.
\textsuperscript{52} Id. at 361-62. Despite the withholding regime for payroll taxes, Americans remain acutely aware of their burden. See infra note 109. More generally, however, cognitive theorists have found that indirect versus direct tax remittance results in a loss of tax consciousness, and helps explain the relative enthusiasm among policymakers to rely on tax collection that escapes notice, such as withholding on wages and income. See Edward J. McCaffery, Cognitive Theory and Tax, 41 UCLA L. REV. 1861, 1874-86 (1994). In fact, some tax experts have argued for indirect taxes precisely because they obscure the burden. See Thomas F. Field, The Emperor Has No Clothes, 101 TAX NOTES 1125 (2003) (arguing to replace visible taxes such as the income tax with less visible taxes such as sales and consumption taxes as a way to overcome knee-jerk reactions to taxes in the modern political context).
\textsuperscript{53} Recently, conservatives have identified withholding as public enemy number one in their anti-tax, limited-government campaign. See e.g., SHLAES, supra note 4, at 8 (“Pay as you go,”” as withholding was called in the 1940s, “was the fiscal equivalent of the war’s wonder weapons. It was a wonder weapon that would be deployed in peacetime” to lull Americans to sleep about the government’s taxing power, and surreptitiously increase the crushing burden of taxes.). See also infra notes 112-14 and accompanying text.
of the fiscal process and thereby dilute responsible fiscal citizenship.” Musgrave’s point more sharply: “Taxes should be uncomfortable,” he says. “Not especially painful, mind you—just a bit irritating. Enough to make you pay attention. Modest discomfort is an element of citizenship, reminding voters of the price they pay (thank you, Justice Holmes) for civilized society.”

Striking a balance between making taxpaying too easy and too hard—both of which undermine tax consciousness—is no easy task. It is made harder still by priorities other than concerns over fiscal citizenship. Hidden versus obvious taxes, painful versus pain-free filing, and direct versus indirect tax payments influence not just levels of tax consciousness but also compliance, administration, and cost. Sources of income subject both to withholding—which policymakers adopted for the federal income tax in the 1940s—and third-party reporting boast compliance rates close to 100 percent, while less than half of all sole proprietor income, which is not subject to withholding or third-party reporting, gets reported accurately. Moreover, innovative tax-filing regimes (including pre-filled tax returns, such as California’s ReadyReturn, and data retrieval systems that allow taxpayers and their preparers to access an inventory of tax account information) can ease the filing burden, reduce costs for taxpayers and tax administrators, and result in more timely and accurate tax payments.

58 For a fuller discussion of these alternatives, particularly data retrieval, see Part II of this Article.
efficiencies no doubt reduce tax consciousness to some extent. But as discussed in Parts II and III, they offer considerably more in the way of reinforcing the integrity of the revenue system, reducing undue burdens and anxieties for taxpayers, and opening lines of communication between taxpayers, tax preparers, and tax regulators.

Efficiencies in the tax system also complement Americans’ preference for a government out of sight. Contrary to conservative mythology, Americans expect quite a bit from their government. In fact, according to historian Brian Balogh, from the very beginning of the republic, Americans asked their government to do a lot for them. As Balogh explains, a strong national government “touched virtually every American life,” and belies conservative claims that anti-statism animates the American character. While it is true that Americans generally resisted a national bureaucratic state, they responded favorably to an activist government that was “inconspicuous, or at least hidden in plain sight.”

The paradox finds no greater expression than in U.S. tax policy. The federal tax expenditure budget contains more than $1 trillion worth of government spending. Individual tax expenditure items operate like entitlement programs on the spending side of the budget. They are subject to neither annual appropriations nor congressional vote. And they grow more expensive with each passing year as the economy expands and as Congress shifts policymaking

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60 BALOGH, supra note 30, at 3 (“Where no immediate institutions stood between citizen and national government, Americans consistently advocated energetic governance when it came to trade, security, and economic development.”).
61 Id. at 11.
62 Id. at 380.
63 OFFICE OF MANAGEMENT AND BUDGET, ANALYTICAL PERSPECTIVES, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2011 207-43 (2010). See also Donald B. Marron, *How Large Are Tax Expenditures?* 130 TAX NOTES 1597 (2011) (reporting that tax expenditures will reduce individual and corporate income taxes in 2011 by $1.1 trillion, while also costing $108 billion in direct subsidies for refundable tax credits, and decreasing payroll and excise tax receipts by $111 billion).
responsibility from the direct expenditure budget to the tax expenditure budget.\textsuperscript{64} Indeed, this “hidden welfare state”\textsuperscript{65} includes some of the most cherished and sacred government programs (including deductions for mortgage interest and charitable contributions), and it has assumed primary responsibility for many core government functions, such as promoting homeownership, providing healthcare, enabling retirement security, and funding education.

Hidden tax subsidies can be as detrimental to tax consciousness as hidden taxes. Both victimize and reinforce an unwary, passive citizenry. And both reflect opaque rather than transparent government. Moreover, with respect to hidden tax subsidies, even popular items such as the mortgage interest deduction may dull consciousness as citizens come to assume that they distribute benefits equitably, efficiently, and effectively, that they accomplish what they set out to achieve, and that they continue to reflect national priorities.\textsuperscript{66} It may not be a good idea, particularly during fiscal crises, to rely on mandatory spending programs that grow exponentially in size and cost, and that avoid meaningful reexamination after enactment.

As we consider improvements or replacements to the tax-filing regime, we should be mindful of the tradeoffs between hidden versus obvious taxes and painful versus painless filing, particularly in light of the expressed preference of Americans for a government that governs actively but unobtrusively.

II. IMPROVING TAX FILING WITH A DATA RETRIEVAL SYSTEM

The fundamental premise of this Article understands that Americans do not hate taxes but rather paying taxes. And for good reason. Taxpaying in the United States is as uncomfortable,

\textsuperscript{64} See infra notes 88-90 and accompanying text.
\textsuperscript{65} CHRISTOPHER HOWARD, THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES (1999).
\textsuperscript{66} For a discussion of these issues in the context of the mortgage interest deduction, see Dennis J. Ventry, Jr., The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest, 73 LAW & CONTEMP. PROBS. 233 (2010). For the inequitable distribution of tax expenditures, see infra note 197 and accompanying text.
difficult, and expensive as possible, particularly with respect to remitting federal income taxes. The IRS estimates that individual income tax filers spend nearly 20 hours each year maintaining tax records, planning return positions, and preparing and filing returns. Nearly 145 million individual tax filers log more than 3.5 billion hours each year to fulfill their taxpaying obligations. At a conservative wage rate of $25 per hour, that adds up to $87.5 billion, and it still excludes the psychic costs of frustration, anxiety, and worry experienced by every taxpayer. When added to the $32 billion expended for accountants, lawyers, paid preparers, and tax preparation software, the final bill tallies an astounding $120 billion. All told, compliance costs under the U.S. individual income tax exceed 10 percent of revenue collected, considerably more than the cost of administration in European countries, including Sweden and Denmark which spend only one percent of taxes collected to administer their tax systems.

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68 Id.
70 The $32 billion figure is from PERAB, supra note 67. Notably, it excludes the additional cost of administering the individual income tax for the government (both for the IRS and the Social Security Administration, the latter of which receives and processes wage and income data for taxpayers before forwarding the information to the IRS) as well as for employers and third-party payers that collect, remit, and report the vast majority of all federal income tax liabilities. See infra notes 142-58 and accompanying text. It also excludes post-filing costs for taxpayers associated with responding to IRS inquiries and deficiency notices, complying with investigations, taking advantage of dispute resolution procedures, and, when all else fails, litigating return positions.
71 The calculation involves dividing total compliance costs for individual taxpayers ($120 billion) by total gross collections ($1.175 trillion). For gross collections see Internal Revenue Service, 2010 Tax Stats at a Glance, available at http://www.irs.gov/taxstats/article/0,,id=102886,00.html. See also Joel B. Slemrod, Testimony Submitted to the Committee on Ways and Means, Subcommittee on Oversight, Hearing on Tax Simplification (June 15, 2004) (estimating collection costs of total individual income tax receipts at more than 10 percent of revenue).
A. Earlier Efforts to Reform Tax Filing: Exact Withholding and Tax Agency Reconciliation

For the last twenty-five years, tax policymakers and officials have sought ways to reduce filing costs and “to make income tax compliance less burdensome.”73 In 1986, as part of that year’s seminal Tax Reform Act,74 Congress instructed the Treasury Department to report on the feasibility of moving to a “no-return” system for the federal income tax.75 Treasury complied by releasing a detailed report the following year.76 Other government agencies undertook their own studies,77 while tax researchers made mitigating the filing burden an area of scholarly and expert inquiry.78 In 1998, Congress reaffirmed its commitment to lessening the filing burden by ordering the Treasury Department to develop procedures for implementing a return-free regime by 2007 for “appropriate” persons, and to report periodically on its progress.79 Individual state governments followed the lead of the federal government, and began experimenting with return-


74 The Tax Reform Act of 1986 reflected the efforts of several generations of tax reformers to reduce tax rates in conjunction with broadening the base by plugging loopholes, an achievement that reformers long regarded as an “impossible dream.” See GEORGE F. BREAK & JOSEPH A. PECHMAN, FEDERAL TAX REFORM: THE IMPOSSIBLE DREAM? (1975).


76 See I NTERNAL REVENUE SERVICE, CURRENT FEASIBILITY OF A RETURN-FREE TAX SYSTEM (1987).


free systems in the 1990s and 2000s. To date, however, only California offers state income taxpayers such a service through its free, online program, ReadyReturn.

Two primary means of reducing compliance burdens for individual taxpayers have dominated the discussion: exact withholding and tax agency reconciliation. Exact withholding variants come in two forms. Under a “cumulative” withholding system (used in Britain and Russia), taxpayers provide information to employers or tax officials (name, address, filing status, Social Security number, names of any children or spouses and their Social Security numbers) that allow the employer or tax agency to calculate and withhold the correct amount of tax from each paycheck throughout the year. Taxpayers verify and update this information on a regular basis, and alert employers or tax officials in the event of changed circumstances, such as filing status or number of children. Under a “final” withholding system (used in Germany and Japan), taxpayers provide basic information at the beginning of the tax year to assist in calibrating withholding but do not typically update the information throughout the year. Instead, employers

80 In 2004, California launched “ReadyReturn,” a program offering low- and middle-income taxpayers a pre-filled tax return using wage and income data already in the state’s possession supplied by taxpayers and their employers. The pre-filled return offered taxpayers a service similar to the tax-agency reconciliation systems discussed at infra notes 82-85 and accompanying text. User satisfaction was overwhelming with 98-99 percent of users reporting that they were either “Very Satisfied” or “Satisfied” with ReadyReturn. FRANCHISE TAX BOARD, READYRETURN PILOT: TAX YEAR 2004 STUDY RESULTS 1 (2006). In the late 1990s, Colorado, Michigan, and Louisiana attempted to implement a no-return option for resident taxpayers. For various reasons, the experiments were short-lived. See Holtzblatt, infra note 78, at 8-10; DEPARTMENT OF THE TREASURY, supra note 72, at 10-11.

81 California’s ReadyReturn offers free service to 2 million resident taxpayers with relatively simple returns. For a full description of the ReadyReturn program, see http://www.ftb.ca.gov/readyReturn/index.asp. The program has its detractors, chief among them Intuit Corporation, which views ReadyReturn as competition to its industry-leading tax preparation software, TurboTax. For Intuit’s long-running effort to stymie ReadyReturn, see Dennis J. Ventry, Jr., Intuit’s Nine Lies Kill State E-Filing Programs and Keep “Free” File Alive, 57 STATE TAX NOTES 555 (2010); Dennis J. Ventry, Jr., Intuit Just Won’t Quit, L.A. TIMES (July 21, 2010), at A17; David Brunori, Don’t Let Intuit Kill ReadyReturn, 54 STATE TAX NOTES 429 (2009); Dennis J. Ventry Jr., Intuit Uses Clout to Stymie State Innovation, SAC. BEE (Oct. 6, 2009), at 11A; Anthony York, Turbo Tax Maker Intuit, Again, Is Mired in Political Turmoil, 2009 CAPITAL WEEKLY (Sept. 24, 2009), at A1; Shane Goldmacher and Patrick McGreevy, California GOP Legislators Blocked 20 Bills After Demands Were Unmet, L.A. TIMES (Sept. 15, 2009), at A6; George Skelton, GOP’s “Leverage” Is Tantamount to Extortion, L.A. TIMES (Sept. 17, 2009), at A2; Evan Halper and Shane Goldmacher, State Budget Negotiations Were Anything but Smooth, L.A. TIMES (July 26, 2009); and Evan Halper, Defying Legislators, Officials Revive Tax Return Program, L.A. TIMES (Dec. 5, 2006), at B1.

82 For a thorough discussion of the British filing system, see William J. Turnier, PAYE as an Alternative to an Alternative Tax System, 23 VA. TAX REV. 205 (2003).
or tax officials adjust the employee’s final paycheck of the year to reconcile outstanding tax liability (or to issue a refund). Tax agency reconciliation systems (used in Denmark, Sweden, Spain, and California) also rely on basic information provided by the taxpayer in addition to information returns by employers, financial institutions, and other third parties. The key difference is that the tax authority itself uses the withholding and reporting information to calculate a taxpayer’s liability and to subsequently send the taxpayer a pre-filled tax return to review (and perhaps dispute), which reflects tax owed or amount to be returned. Thereafter, the tax agency either forwards a bill or issues a refund. According to estimates, adopting either exact withholding or tax agency reconciliation (or some combination of the two) could liberate as many as fifty-four percent of current U.S. taxpayers from the annual burden of filing a tax return. The reforms could also cut administrative costs in terms of fewer returns to process and reduced expenditures for compliance efforts, enforcement, and litigation.

Yet simplified filing remains elusive in the United States, notwithstanding its potential benefits for taxpayers and tax administrators. Hindsight helps explain the failure of the reform efforts over the last twenty-five years, particularly at the federal level: exact withholding and tax agency reconciliation proposals were (i) the wrong plans, (ii) at the wrong time, (iii) for the wrong tax system. We will examine each obstacle in turn, working backwards.

83 For a good discussion of these “no-return” filing systems, see The Tax Policy Center’s “Ways to Improve the Tax System: Return-Free Filing” primer, available at http://www.taxpolicycenter.org/briefing-book/improve/return-free/index.cfm. See also Holtzblatt, supra note 78, at 3-12; DEPARTMENT OF THE TREASURY, supra note 72, at 7-13; (GAO), ALTERNATIVE FILING SYSTEMS, supra note 77, at 8-11.

84 See Goolsbee, supra note 78, at 5 (60 million taxpayers or 40 percent of filers under tax agency reconciliation); Holtzblatt, supra note 78, at 17 (50 million taxpayers or 36 percent of filers under tax agency reconciliation); Burman, supra note 73, at 6 (57 million taxpayers or 44 percent of filers under hybrid plan); Gale and Holtzblatt, supra note 78, at 483 (63 million taxpayers or 54 percent of filers under hybrid); GAO, ALTERNATIVE FILING SYSTEMS, supra note 77, at 2 (51 million taxpayers or 45 percent of filers under tax agency reconciliation); DEPARTMENT OF THE TREASURY, supra note 72 (55 million taxpayers or 54 percent of filers under hybrid).

85 See e.g., Holtzblatt, supra note 78, at 2; DEPARTMENT OF THE TREASURY, supra note 72, at 35.
First, the wrong tax system. Exact withholding and tax agency reconciliation only work, if they work at all, in countries with considerably simpler tax systems than the United States.\textsuperscript{86} In particular, the ideal setting includes, among other things: a unit of taxation based on the individual rather than the family; few and flat statutory rates; withholding or exempting of income from capital; withholding interest and dividend income at a flat, low rate; restricting deductions and limiting their value to a low, flat rate; restricting or eliminating credits; and generally channeling transfers through direct subsidies rather than tax subsidies. Currently, the U.S. tax system meets none of these conditions: the fundamental unit of taxation in the United States is the family; there are six statutory rates with relatively narrow brackets ranging from 10 percent to 35 percent; there is no withholding on capital gain income and the only exemption for such income applies to gains on the sale of a primary residence; withholding on interest and dividend income is severely limited and, in any event, subject to the full range of statutory rates; and taxpayers enjoy full deductibility of myriad deductions, a proliferation of haphazardly designed tax credits (which phase out at varying income levels), and a tax expenditure budget with over 175 individual items costing more than $1 trillion.\textsuperscript{87}

Second, the wrong time. Attempting to simplify the U.S. tax system at any point over the last twenty-five years for any reason, including facilitating adoption of a no-return filing regime, would have run counter to policymakers’ and politicians’ insatiable appetite for transferring more rather than less fiscal and social responsibilities to the tax system. Over the last twenty years, legislators across the political spectrum fell in love with spending through the tax code such that between 1990 and 2007 tax expenditures (i.e., exclusions, deductions, exemptions, and

\textsuperscript{86} See \textit{Department of the Treasury}, \textit{supra} note 72, at 2 (concluding “a return-free system is easier to operate the simpler the tax system”).
\textsuperscript{87} See \textit{supra} note 63.
credits) as a percentage of GDP jumped from 5.3 percent to 7.5 percent, while tax expenditures as a percentage of total government expenditures rose from 21.5 percent to 26.9 percent over a similar period. In other words, no meaningful opportunity for fundamental tax reform existed that might have led to substantive reforms to tax filing. While fundamental tax reform has historically meant closing loopholes to pay for rate reduction, Congress uncorked dozens of new loopholes in the 1990s and 2000s, and, on balance, raised statutory tax rates.

In addition to the unreceptive policymaking climate, significant uncertainty existed as to the cost of transitioning to an entirely new tax-filing regime. Though taxpayers would experience some savings with respect to compliance (including cost reduction for documenting, preparing, and submitting returns), they could face new costs such as preparing and submitting onerous new forms designed to make withholding more precise or to assist tax officials in reconciling tax liability, updating those forms throughout the year to reflect changes in personal or financial circumstances, and, under a tax agency reconciliation system, waiting longer to receive refunds while tax officials processed wage and income data trickling in from employers and third parties in order to populate and then send out completed returns. In addition, commentators pointed

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89 Id. at 1413. For more on the growth of tax expenditure items during the 1990s and 2000s, see Martin A. Sullivan, Tax Incentives and Economists, 111 TAX NOTES 20 (2006); Martin A. Sullivan, Hundreds of Tax Credits Sought by the 106th Congress, 89 TAX NOTES 1536 (2000); Martin A. Sullivan, Tax Expenditure Budget, Now More Than Ever, 86 TAX NOTES 1187 (2000).
92 Id.
out that the group of taxpayers that might be exempted under a no-return system already filed simple returns. In fact, according to one estimate, of the 50 million filers with relatively unsophisticated returns who might be served under a simplified system, 85 percent already used the stripped-down tax forms, 1040A and 1040EZ. For the remaining 100 million taxpayers with more complicated returns, only 9 percent would be exempted from a filing requirement. And, finally, no-return systems as conceived in the 1990s and 2000s failed to eliminate the most burdensome tasks for taxpayers: recordkeeping, gathering materials, and tax planning.

Employers, financial institutions, and other third parties also faced uncertain compliance costs under a reformed filing regime. These entities already shouldered significant tax-collecting responsibilities by withholding taxes on various forms of income, compiling information reports (primarily on Forms W-2, 1099, 1098, and 5498), and forwarding the reports to individual taxpayers and the government. This tax-collecting responsibility would grow under either exact withholding or tax agency reconciliation. In particular, third parties would be required to accelerate the reporting of wage and income data, perhaps as early as January 31, two months earlier than under the existing regime. In addition, shifting to an e-filing system would entail additional costs for some third-party payers who still submit information reports by paper rather than electronically. Also, third parties would likely be required to collect new kinds of information from taxpayers, such as changes in family status, dependents, charitable contributions, and unreimbursed medical expenses. This task would raise costs still

94 Holtzblatt, supra note 78, at 19. See also Boisture et al., supra note 91, at 22 (citing similar data).
95 Id.
96 Eric J. Toder, Return-Free Tax Systems and Taxpayer Compliance Costs, Presentation to the President’s Advisory Panel on Federal Tax Reform (May 2005), at Slide 7.
97 See generally, Holtzblatt, supra note 78, at 22-23; Boisture et al., supra note 91, at 20-21; DEPARTMENT OF THE TREASURY, supra note 72, at 35, 38-39.
98 For the sources of income reflected on these forms, see infra notes 142-58 and accompanying text.
further, and might be met with resistance from taxpayers reluctant to share such information with employers. Finally, all of the reformed tax-filing proposals would expand withholding to more sources of income, not just wage income. Such efforts in the recent past, however, indicate that renewed attempts to expand withholding would be met with substantial resistance from taxpayers and the business community.99

The potential costs associated with administering a no-return filing system raised the biggest uncertainties.100 Estimates varied wildly. The IRS predicted that a no-return system would cost $175 million annually ($345 million in 2011 dollars), while the Government Accountability Office estimated annual savings of $37 million ($53 million in 2011 dollars).101

There was less debate that administrative responsibilities would increase under a no-return system. Tax officials would have to perform two unrelated administrative tasks at the same time: process traditional returns for taxpayers ineligible for a no-return system, and process and match information returns for eligible participants. This division of labor would require the IRS to hire and train new employees, reallocate resources, purchase equipment, and lease or build facilities to house the new personnel and infrastructure. In addition, the IRS would have to process, edit, and match more than one billion information returns during the normal filing season (i.e., before April 15), nearly six months faster than its usual processes.102 And in fact,

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99 In 1982, Congress extended withholding requirements to additional sources of income through a 10-percent withholding tax on interest and dividends. Pub. L. No. 97-248, §§ 201-208, 96 Stat. 32 (1982). Opposition to the new requirement from banks, financial institutions, and other third parties was so fierce that Congress repealed it almost immediately. Pub. L. No. 98-67, § 102, 97 Stat. 369 (1983). Similarly, in 1987, and as mandated by the Tax Reform Act of 1986, the IRS introduced a new and considerably longer Form W-4 for taxpayers to fill out to achieve more accurate withholding. Due to widespread criticism that the form was “complicated and burdensome,” the agency withdrew it within a year. Burman, supra note 73, at 6.

100 See generally Holtzblatt, supra note 78, at 24-25; Boisture et al., supra note 91, at 15-20; DEPARTMENT OF THE TREASURY, supra note 78, at 35-36, 39. GAO, supra note 77, at 15.

101 IRS, supra note 76, at 3; GAO, supra note 77, at 14.

102 It takes the IRS until the beginning of October to receive, validate, edit, and process all wage and income data received by employers and other third parties for the current filing season. In 2006, less than one percent of Forms W-2 were posted to the IRS masterfile by April (this figure accelerated to 88 percent by the end of July and 99
under a no-return system, it would probably have to compress nine months of work into something more like two months to provide enough time for computing tax liabilities, generating pre-filled tax returns, and forwarding returns to eligible taxpayers early enough to review, verify, and perhaps dispute before the April 15 deadline. The government-generated returns would also have to arrive early enough for those taxpayers residing in the 35 states that require their residents to rely on federally adjusted gross income, taxable income, or tax liability when calculating state income taxes. And although electronic filing and communication promised to alleviate some of the obstacles to a no-return system, the technological revolution was just underway at the IRS.

Finally, no-return tax filing proposals were the wrong plans for easing the filing burden. Not only did they offer the wrong solution by conflicting with structural aspects of the federal income tax (family tax unit, multiple and progressive tax rates, proliferating deductions and credits, political preference for tax subsidies over direct subsidies), and by creating new compliance burdens for taxpayers, employers, businesses, and tax administrators. They also covered only a fraction of all taxpayers. While upper-bound estimates indicated that close to 65 million taxpayers might qualify for a no-return system, lower-bound estimates pegged the number of eligible participants under 10 million. In addition, as noted above, the vast majority of eligible participants already filed simple returns such that moving to a no-return

percent by the end of September), while only 46 percent of Forms 1099 were processed by the end of April (accelerating to 95 percent by July’s end and 99 percent by September’s). Holtzblatt, supra note 78, at 21 n. 26. Holtzblatt, supra note 78, at 22-23; DEPARTMENT OF THE TREASURY, supra note 72, at 34-35, 39. GAO, supra note 77, at 17-19.

This is not to say that the IRS failed to recognize or embrace the promise of e-filing and e-communication. In fact, it explicitly acknowledged the possibilities for a reformed filing regime due to technological innovation. “Electronic filing of information returns could be one way to get information returns processed in time to be used for a tax agency reconciliation system.” GAO, supra note 77, at 17. As early as 1986, the IRS had launched initiatives aimed at facilitating electronic filing. See id. at 16; DEPARTMENT OF THE TREASURY, supra note 72, at 41-43.

See supra note 84.

See Holtzblatt, supra note 78, at 17 (8.2 million); Burman, supra note 73, at 6 (8 million); Gale and Holtzblatt, supra note 78, at 483 (8 million).

See supra note 94 and accompanying text.
regime would reduce compliance burdens only marginally. These same taxpayers also submitted their tax returns early in the filing season in disproportionate numbers, with an equally disproportionate number receiving refunds. A no-return regime would have the effect of forcing these taxpayers to delay filing with a corresponding delay in receipt of refunds.

Perhaps most importantly, no-return systems frightened conservatives as well as progressives. Conservatives perceived a hidden, insidious agenda in calls for no-return systems, viewing them as a way to obscure the full extent of tax burdens and size of government. In the words of anti-tax ideologue, Grover Norquist, “moving to a so-called return-free system will reduce people’s understanding of what exactly they’re paying, and their [reduced] focus on it will make it easier to raise taxes” in order to pay for bigger government. This argument—that is, easing the filing burden leads inexorably to more taxes and more government—has been part of neo-conservative economic thought for many years, but rose to political prominence in

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108 See Holtzblatt, supra note 78, at 22; DEPARTMENT OF THE TREASURY, supra note 72, at 24, 37-38.
109 Statement of Grover Norquist, President’s Advisory Panel on Federal Tax Reform (2005), Transcript of Ninth Meeting, at 119. But see Holtzblatt, supra note 78, at 31 (observing that payroll taxes operate under a withholding regime, “but concern about the financing of Social Security and Medicare benefits do not appear to have suffered as a result. Citizens can be made aware of their tax burdens (by, for example, end-of-year reports from the IRS) without incurring the burden of filing returns.”).
110 As tax historian and political commentator Joe Thorndike explains: Withholding “makes things entirely too easy,” according to conservatives. “By insulating the taxpayers from their tax bills, it vitiates the bonds of healthy fiscal stewardship. After all, how can we starve the beast if we don’t know how much we’re feeding it?” Thorndike, supra note 59, at 430.
111 See e.g., Gary S. Becker and Casey B. Mulligan, Deadweight Costs and Size of Government, NBER Working Paper 6789 (1998); Walter Hettich and Stanley L. Winer, Economic and Political Foundations of Tax Structure, 78 AM. ECON. REV. 701 (1988); James B. Kau and Paul H. Rubin, The Size of Government, 37 PUB. CHOICE 261 (1981); Allan H. Melzer and Scott F. Richard, A Rational Theory of the Size of Government, 89 J. POL. ECON. 914 (1981); GEOFFREY BRENNAN & JAMES M. BUCHANAN, THE POWER TO TAX (1980). This argument can be viewed as a subset of the more encompassing (and as empirically unsubstantiated) argument that tax cuts create spending cuts. For this larger claim, see Robert J. Barro, There’s A Lot to Like About Bush’s Tax Plan, BUSINESS WEEK (Feb. 24, 2003), at 28; Gary S. Becker, Edward P. Lazear, and Kevin M. Murphy, The Double Benefit of Tax Cuts, WALL ST. J. (Oct. 7, 2003), at A20; Ronald Reagan, Address to the Nation on the Economy 2 (Feb. 5, 1981), available at http://www.presidency.ucsb.edu/ws/index.php?pid=43132&st=lecture+our+children&st1=extravagance (“Over the past decades we’ve talked of curtailing government spending so that we can then lower the tax burden. Sometimes we’ve even taken a run at doing that. But there were always those who told us that taxes couldn’t be cut until spending was reduced. Well, you know, we can lecture our children about extravagance until we run out of voice and breath. Or we can cure their extravagance by simply reducing their allowance.”). For research refuting this claim, see Michael Kumhof, Douglas Laxton, and Daniel Leigh, To Starve or Not to Starve the Beast, IMF Working Paper 10/199 (2010), at 23 (finding “no support for the idea that ‘starving the beast’ is a foolproof way to achieve
the 1990s and 2000s. The withholding system came under particular fire from conservative politicians and commentators, with members of Congress sponsoring legislation to “restore to taxpayers awareness of the true cost of government by eliminating the withholding of income taxes by employers and requiring individuals to pay income taxes in monthly installments.”\textsuperscript{112} Nevermind that empirical research debunked the connection between withholding and increased tax payments to feed Leviathan.\textsuperscript{113} Nevermind, too, that requiring taxpayers to write regular checks to the government would have “increase[d] the visibility of the tax burden” and been “highly inefficient.”\textsuperscript{114} In many respects, that was the point.


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\item[112] H.R. 3601, Cost of Government Awareness Act of 2007 (sponsored by Ron Paul (R-TX)), available at \url{http://www.govtrack.us/congress/bill.xpd?bill=h110-3601}. In the 1990s, House majority leader Dick Armey (R-TX) made an identical plan part of his long-running proposal for a flat tax. See Shlaes, supra note 3, at 8. See also Milton Friedman & Rose D. Friedman, \textit{Two Lucky People} 123 (1998) (Friedman laments his role as a Treasury economist in installing the withholding regime during World War II, calling it the “machinery that would make possible a government that I would come to criticize severely as too large, too intrusive, too destructive of freedom”).
\item[113] See e.g., Libor Dusek, “Do Governments Grow When They Become More Efficient?: Evidence from Tax Withholding” (2006), at 19 (showing that state governments did not respond to the administrative efficiency of withholding by increasing spending,” and concluding that “growth in demand for government seems to be a far more important reason behind the growth of income taxes than improvements in tax efficiency”).
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good for democracy,” public finance economist Joel Slemrod wrote.115 “A no-return system,” agreed Brookings Institution director William Gale and Treasury Department economist Janet Holtzblatt, “is likely to leave people less aware of the tax system they face and hence of the tax consequences of their actions.”116 “A well-informed citizenry,” they continued, “can in principle make better economic and political choices.”117 In fact, as noted earlier, tax filing can promote civic mindedness and republican virtue, in addition to reinforcing citizenship obligations and highlighting both the benefits and burdens of taxpaying. In the end, a return-based filing requirement “represents an appropriate compromise on the level of visibility and painfulness of taxation, and the filing of a tax return can serve an important ceremonial function as an expression of fiscal citizenship.”118

B. The Promise of a Data Retrieval System

Given bipartisan opposition to a no-return regime, future reforms to the filing process must embrace a filing requirement.119 Such a plan exists, and has been gaining momentum as a policy alternative. Commonly referred to as “data retrieval,” this reform would allow taxpayers and their tax professionals to view, access, and download tax account information from a secure database maintained by the federal government. The inventory would include third-party reported information including wages, interest income, dividends, income from sale of securities,

115 Id. at 12.
116 Holtzblatt, supra note 78, at 484.
117 Id. In thoughtful reflection, Holtzblatt queried whether less information necessarily leads to detached and disinterested citizen-taxpayers. “[T]he link between filing and understanding may be overblown. Payroll taxes in the United States operate under a no-return system for almost all taxpayers, but interest in Social Security and Medicare does not appear to have suffered as a result.” Id.
118 Zelenak, supra note 35, at 56. See also Toder, supra note 96, at Slide 15 (considering a filing requirement as a way to reinforce “responsibility of citizenship,” “awareness of costs of government,” and “transparency of tax burdens”).
119 This injunction necessarily means that tax simplification reforms based on eliminating the filing requirement should be rejected, however otherwise meritorious. For one such plan, see Michael J. Graetz, 100 Million Unnecessary Returns: A Fresh Start for the U.S. Tax System, 112 YALE L. J. 261 (2002) (arguing for a plan where the vast majority of taxpayers “would not be required to file any tax returns. They would have no dealings at all with the IRS”).
state taxes paid, and some of the most popular itemized deductions such as the tax subsidy for mortgage interest. Rather than having to gather all this information themselves and in piecemeal fashion from employers, financial institutions, and other third parties, taxpayers would be able to rely on a centralized clearinghouse from which they and their tax advisors could download the information directly onto returns. Taxpayers would still need to input some tax information not reported by third parties,¹²⁰ such as charitable contributions and certain capital gains, but a data retrieval system could simplify filing for all taxpayers—all 145 million of them.¹²¹

A particularly opportune policy moment has emerged for reforming the filing regime with a data retrieval platform. For several years, tax experts and scholars have been laying the groundwork for the idea.¹²² More recently, President Obama’s Economic Recovery Advisory Board, headed by former Federal Reserve Chairman, Paul Volcker, endorsed data retrieval (along with a tax reconciliation system for unsophisticated returns) as a way to simplify the tax system and improve compliance.¹²³ Moreover, during the 2010 tax-filing season, IRS Commissioner, Doug Shulman voiced support for the concept of data retrieval and individual taxpayer accounts maintained by the IRS containing information returns from third parties that taxpayers and tax professionals could access and download onto returns.¹²⁴ Indeed, supporters from across the political spectrum have come to embrace the common-sense conclusion expressed by Stanford law professor, Joe Bankman: “Sooner or later, it’s too stupid for the

¹²⁰ If data retrieval were incorporated into fundamental tax reform that, for instance, exempted certain kinds of income from taxation or restricted the use and value of deductions by establishing a flat rate of tax and/or a floor, fewer taxpayers would have to supplement the database with additional information. For further discussion, see infra notes 128-32 and accompanying text.
¹²¹ See IRS, supra note 71.
¹²² See e.g., Joseph Bankman, Using Technology to Simplify Individual Tax Filing, 61 NAT’L TAX J. 773 (2008); ELECTRONIC TAX ADMINISTRATION ADVISORY COMMITTEE, ETAA ANNUAL REPORT TO CONGRESS (2007).
¹²³ See supra note 67, at 41-44.
government to have these records and for you not to be able to download these forms.”

In the parlance of political scientists, several policy “streams” have been converging, and a unique “policy window” has opened through which data retrieval might be pushed successfully. Or, as John Kingdon describes the moment: “A problem is recognized, a solution is available, the political climate makes the time right for change, and the constraints do not prohibit action”

We have already considered the problem (unduly burdensome filing requirements) and available solution (data retrieval). The emergent policy window also enjoys an opportune political climate in the form of bipartisan support for fundamental tax reform based on simplification, compliance, and growth. Moreover, there do not appear to be any significant constraints. In fact, data retrieval sidesteps the obstacles that derailed earlier reform plans.

Momentum for fundamental tax reform in the mode of plugging loopholes to pay for rate reduction may be accelerating. In December 2010, a bipartisan majority of the members of the President’s National Commission on Fiscal Responsibility and Reform endorsed sweeping reforms to the federal income tax that would include, among other things: fewer, flatter, and lower rates (three total rates of 12, 22, and 28 percent); a standard deduction for all taxpayers; repeal of all itemized deductions; repeal of the Alternative Minimum Tax (AMT) (effectively, a parallel tax system to the income tax that hits unwitting upper-middle income taxpayers with higher tax bills); taxing capital gains and dividends at ordinary rates (rather than at favorable capital gain rates); transforming the deduction for mortgage interest into a 12-percent non-refundable credit, limiting principal debt to $500,000, and eliminating current subsidies for

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127 Id. at 93.
128 See Joseph J. Thorndike, Why Liberals Should Like Tax Reform, 129 TAX NOTES 1172 (2010) (“The smart money bets against tax reform—always and everywhere. But every once in a while—usually a long while—the smart money is wrong. In recent weeks, we’ve seen a few stray signals that this particular while may be almost over.”).
second homes and equity lines of credit; and similarly transforming the deduction for charitable contributions into a 12-percent credit, and further limiting the subsidy to contributions that exceed 2-percent of adjusted gross income.\textsuperscript{129} Several of the recommendations, moreover, embraced reforms proposed earlier in the year by Senators Ron Wyden, a Democrat, and Judd Gregg, a Republican.\textsuperscript{130} In addition, President Obama announced his intention to pursue fundamental tax reform over the next two years of his administration.\textsuperscript{131} The growing enthusiasm for simplifying the tax system not only increases the likelihood that reformers will tackle tax filing. Combining tax reform with tax-filing reform might also ensure that the reforms last; subsequently reinstituting tax preferences and targeted subsidies would reintroduce complexities and inefficiencies, and once again raise the burden on tax filing to unconscionable levels.\textsuperscript{132}

A developing tax reform moment is not the only factor proping open the policy window through which a new filing regime could pass. Just as important, the electronic and technological revolution of the last twenty-five years has remade the way Americans pay taxes and how the government administers the tax system. In 1990, slightly more than 4 million taxpayers submitted their returns electronically.\textsuperscript{133} By 2000, that figure jumped to 35 million,\textsuperscript{134} while last year nearly 100 million filers representing almost 70 percent of all taxpayers e-filed their returns, either through tax professionals or by themselves.\textsuperscript{135} The growth reflects several parallel developments, including the pervasiveness of home computers, taxpayer-consumers’ growing

\textsuperscript{129} NATIONAL COMMISSION ON FISCAL RESPONSIBILITY AND REFORM, MOMENT OF TRUTH 31 (2010).
\textsuperscript{132} See Holtzblatt, supra note 78, at 30.
\textsuperscript{133} DEPARTMENT OF THE TREASURY, supra note 72, at 43.
\textsuperscript{134} Id.
comfort with conducting their financial affairs online, and an emergent tax preparation software industry. It also reflects an aggressive effort at the IRS to encourage electronic filing as a way to ease the filing burden for taxpayers, third parties, and tax regulators.\textsuperscript{136} For taxpayers, e-filing reduces tax preparation time and costs, speeds up payments and refunds, reduces common errors, and provides immediate acknowledgement of receipt. Meanwhile, for third parties and tax administrators, e-filing compared to paper filing (or magnetic media for third-party payers) facilitates faster and less costly processing of tax returns and information returns with fewer errors. E-filing also produces greater security and privacy of taxpayer data.\textsuperscript{137} As a way to further leverage these gains associated with e-filing and e-transmission of taxpayer data, the IRS has mandated that beginning in tax year 2011 all paid preparers acquire a Preparer Taxpayer Identification Number (PTIN), and, furthermore, that they file clients’ tax returns through the IRS e-file program.\textsuperscript{138} The Service is also targeting an ambitious e-filing participation rate of 80 percent for all taxpayers by 2012,\textsuperscript{139} while it continues to enhance its suite of e-services. The agency is in the process of replacing its existing e-filing platform with a modernized, Internet-based system that will provide all taxpayers (individual, business, non-profit) with real-time processing of returns and extensions, improved error detection, expedited acknowledgments, and the ability to attach supporting documents to e-filed returns.\textsuperscript{140}

\textsuperscript{136} IRS launched the first mass pilot program for electronic filing in 1986. For a discussion of these early efforts, see e.g., DEPARTMENT OF THE TREASURY, supra note 72, at 41-43; GAO, supra note 77, at 16-17.

\textsuperscript{137} GOVERNMENT ACCOUNTABILITY OFFICE, IRS ELECTRONIC FILING SYSTEMS 1, 6 (2001).

\textsuperscript{138} See Jeremiah Coder and Nicole Duarte, New PTIN System in Place After IRS Finalizes Regulations, 129 TAX NOTES 12 (2010); Department of the Treasury, Internal Revenue Service, Furnishing Identity Number of Tax Return Preparer, 75 FED. REG. 14539 (Mar. 26, 2010). For the IRS e-file program, see http://www.irs.gov/efile/index.html.

\textsuperscript{139} IRS OVERSIGHT BOARD, ANNUAL REPORT TO CONGRESS 2009 28 (2010).

\textsuperscript{140} For a frank discussion of these programs see TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION (TIGTA), SYSTEM ERRORS AND LOWER THAN EXPECTED TAX RETURN VOLUMES AFFECTED THE IMPLEMENTATION OF THE MODERNIZED E-FILE SYSTEM FOR INDIVIDUAL TAX RETURN PROCESSING (Sept. 8, 2010); TIGTA, MODERNIZED E-FILE WILL ENHANCE PROCESSING OF ELECTRONICALLY FILED INDIVIDUAL RETURNS, BUT SYSTEM DEVELOPMENT AND SECURITY NEED IMPROVEMENT (May, 26, 2010).
The revolution in electronic filing made possible by a modernized technological infrastructure at IRS and among third-party payers makes data retrieval a supremely viable policy option. E-filing and e-communication has sped up transmission of taxpayer account information from employers and third-party payers to the government. By all accounts, the income tax is already a business-based regime with employers remitting more than 75 percent of taxes collected through withholding, and then forwarding to the government (nearly all electronically) more than 300 million W-2 Forms.141 Third-party payers send in another 1.5 billion information returns reflecting a vast array of tax account information, including mortgage interest,142 general interest,143 student loan interest144; brokerage sales145; dividends146; cancellation of indebtedness147; original issue discount148; qualified tuition and related expenses149; payments by state and local governments, such as unemployment benefits150; rents and royalties151; gambling winnings152; distributions from individual retirement accounts, retirement or profit-sharing plans, annuities, or insurance contracts153; proceeds from real estate transactions154; Social Security benefits155; distributions from Medical Savings Accounts156; currency transaction reports157; and partnership items.158

142 Form 1098.  
143 Form 1099-INT.  
144 Form 1098-E.  
145 Form 1099-B.  
146 Form 1099-DIV.  
147 Form 1099-C.  
148 Form 1099-OID.  
149 Form 1098-T.  
150 Form 1099-G.  
151 Form 1099-MISC.  
152 Form W-2G.  
153 Form 1099-R.  
154 Form 1099-S.  
155 Form 1099-SSA/RRB.  
156 Form 1099-MSA.  
157 Form 4789.  
158 Forms 1041, 1065, 1120S.
This is not to say that transitioning from the current filing regime to one based on data retrieval would be costless. Employers and third-party payers would have to, at a minimum, make additional investments in third-party information reporting software, prepare and file new information returns, and further expedite the preparation and filing of returns. These tasks have been made significantly easier, however, since the government began considering tax-filing reforms nearly 25 years ago. They will be made easier still as technological advances continue to provide gains in cost saving, productivity, security, and privacy that can be brought to bear in reforming the tax-filing regime.

C. Data Retrieval Exploits Government’s Core Competency to Ease the Filing Burden

Lingering concerns from earlier reform efforts may delay simplifying tax filing. But these concerns largely do not apply in the context of data retrieval. In fact, tax filing—particularly if based on the data retrieval model—reflects one of the few areas where the federal government enjoys an inherently competitive advantage over private sector firms. As this section explains, data retrieval capitalizes on and fulfills the government’s core competency in bringing maximum efficiency to the filing process.

First, and as noted above, conservatives argue that no-return filing obscures the full extent of tax burdens, and leads to higher taxes and bigger government. Also as noted above, empirical research disproves that assumption. More importantly, filing reform based on a data retrieval platform does not blunt tax consciousness in the way that exact withholding or tax agency reconciliation might. Rather, the efficiency gains associated with data retrieval involve leveraging technological advances to provide a secure inventory of tax account information

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159 See supra note 111 and accompanying text.  
160 See supra note 113 and accompanying text.
accessible by taxpayers and paid preparers that, if combined with an educative or communicative function as discussed in Part III of this Article, should raise rather than lower tax consciousness.

Second, some commentators have noted that filing reforms requiring taxpayers to share personal information with employers or third parties about changed family circumstances and additional sources of income could infringe on taxpayer privacy. Such concerns prevail, if at all, under exact withholding regimes, not under data retrieval, which merely inventories tax account information already provided by and in the possession of the taxpayer, her employer, and third parties. Moreover, privacy concerns have been substantially mitigated in a world where taxpayer-consumers conduct more of their personal and financial affairs online, and where they provide more of their personal and financial information to retailers.

Third, securing taxpayer information resonates as loudly today as 25 years ago when reformers began considering changes to tax filing. But like privacy issues, security concerns continue to recede into the background of a highly technological world. To be sure, security breaches occur, such as the breach that shut down the British government’s self-assessment tax return website in 2008. But on the whole, transmitting taxpayer information electronically is a considerably safer proposition than sending 145 million paper returns and more than 100 million refunds through the mail. Currently, electronic transmission of taxpayer information is based

161 See e.g., Burman, supra note 73, at 2 (wondering whether exact withholding would “result in a loss in privacy, because individuals might, for example, have to report to their employers information about their family circumstances and other sources of income”); Slemrod, supra note 114; Goolsbee, supra note 78, at 21; Boisture, et al., supra note 90, at 6, 21.
162 See e.g., Slemrod, supra note 114, at 11 (noting “the apparent willingness of many people to let companies collect information about their buying habits”).
on e-security and e-authentication protocols that comport with financial industry standards for authenticating banking customers. The platforms supporting both the IRS e-file program\footnote{165 See supra note 135-40 and accompanying text.} and California’s ReadyReturn,\footnote{166 See supra notes 58-59, 81 and accompanying text. See also Franchise Tax Board, ReadyReturn Service: Frequently Asked Questions (2007), at 4, available at http://www.ftb.ca.gov/readyReturn/readyreturn.971.pdf.} for instance, employ multi-factor authentication standards, which verify a person’s identity through a combination of user names, security questions, and unique, non-static, expiring passwords that make communicating with tax officials as secure as banking online. Under these e-filing programs, taxpayers identify themselves by providing personal information (first, middle, last name; Social Security number; email address; adjusted gross income from prior year’s return), answering security questions (mother’s maiden name; first pet; favorite book), inputting a complex password (combining letters and numerals, at least eight characters in length); and being shown a unique security image or “site key” familiar to the user. These tax agencies, like the financial industry, balance security with convenience by providing safe transmission of sensitive information alongside ease of use. While they could easily increase security with more onerous identification and authentication standards, consumers (both taxpayers and banking customers) would balk at the accompanying loss of convenience.

Fourth, timeliness and availability of tax account information remains an issue, though not necessarily for data retrieval. Unlike tax agency reconciliation, data retrieval depends on the government depositing relevant tax information into a database rather than verifying and processing that information earlier in the filing season. E-filing of tax returns and information returns has already greatly expanded the processing of tax information for employers and third parties even as the number of returns continues to grow. Additional technological advances will provide further gains in cost saving, productivity, security, and privacy. Moreover, the government could require employers and third parties to transmit wage and income data earlier
than the current March 31 deadline. In fact, an accelerated deadline is what makes California’s ReadyReturn program work: the state requires employers to submit wage and income data by January 31, the same date that federal law requires employers to send to employees (but which, inexplicably, need not arrive in federal mailboxes until two months later). And although some tax information may never make it into a taxpayer’s account by April 15—because processing that information on behalf of taxpayers is either cost prohibitive for third parties or less efficient than placing the reporting burden on taxpayers, such as reporting certain charitable contributions or capital gains—adopting data retrieval without altering the existing tax system would still simplify tax filing for all 145 million taxpayers and their paid preparers.

Fifth, concerns about how filing reforms at the federal level would affect taxpayers who use information from the federal return to determine state income tax liability would also subside under data retrieval. Recall that earlier concerns involved government-generated returns under a tax agency reconciliation regime arriving too late for taxpayers to rely on when calculating state income tax liability167; they would still have to compute their state tax liability but without the assistance of the federal return, thus receiving no net benefit from switching to the new regime. By comparison, data retrieval provides one-stop shopping for taxpayers, and yields considerable net benefits in terms of cost, time, convenience, and reduced taxpaying anxiety, even in the event that the system never succeeded in inventorying all tax account information.

Finally, some commentators question whether achieving efficiencies in tax filing are better left to the private sector. Government involvement in easing the filing burden, the argument goes, “would reduce competition in existing [tax preparation] markets,” and “have the

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167 See supra notes 102-03 and accompanying text.
unintended effect of reducing innovation in rapidly evolving software markets." While it is true that government generally should not enter markets with active and engaged private sector firms (particularly if such intervention reduces competition), this concern is inapposite in the context of tax filing. Indeed, the federal government enjoys a competitive advantage when it comes to maximizing efficiencies in the filing process due to various taxpayer confidentiality laws. Section 6103 of the Internal Revenue Code makes the IRS responsible for safeguarding taxpayer account information, and subjects it to numerous disclosure prohibitions. The strictures of 6103 do not apply to private firms that process and forward tax returns and information returns to the IRS. But such firms are subject to other safeguarding and privacy rules that impose a duty to ensure the security and confidentiality of taxpayer data, and to provide privacy notices to all taxpayers explaining how they collect and maintain the information. In addition, paid preparers—a category including tax prep software developers—face civil as well as criminal penalties for unauthorized disclosure or use of taxpayer data.

Data retrieval leverages the government’s competitive advantage and core competency in the area of tax filing. Under current law, the private sector is prohibited from providing a comparable service whereby a firm (or firms) would maintain a centralized database containing

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168 Joseph Cordes and Arlene Holen, Should the Government Prepare Individual Income Tax Returns? Technology Policy Institute (2010), at 16, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687256. See also Boisture et al., supra note 91, at 23 (“No compelling case has been made that government could provide this service at a lower cost than that at which it is already provided by the private sector.”).
170 The most recent research advancing this argument is not altogether independent as it has been funded by technology and computer trade associations (including The Technology Policy Institute and The Computer & Communications Industry Association) whose paying members include tax preparation software firms (prominently Intuit, manufacturer of TurboTax) that view filing reforms designed to help taxpayers as a threat to their business. See e.g., Cordes and Holen, supra note 167; Boisture et al., supra note 91. Indeed, the conclusions reached in these studies largely reflect the objections of the technology and computer industry.
173 See id., The Privacy Rule, 16 C.F.R. Part 313.
confidential tax accounts, supply the account with information from prior years’ tax returns as well as current-year information from employers and third parties, update its contents as information trickles in during the filing season, make the account accessible to taxpayers and paid preparers, and permit authorized parties to download account information directly onto individual tax returns. Only the government can bring these efficiencies to the filing process, and ease the filing burden for 145 million taxpayers.

In fact, tax filing represents one of the few places where government can overcome the “Baumol Effect” or “Baumol’s cost disease.”175 As identified by Princeton economist William Baumol in the 1960s, this phenomenon explains the difficulty in increasing output in industries that are not capital intensive despite ineluctably rising unit costs. Baumol first applied the theory to the performing arts where its effect is readily discernible. For one example, it still takes four highly skilled musicians in 2011 the same amount of time to perform live a Beethoven string quartet as it did in 1800, while other costs of production have gone up in the meantime.

Government, another labor-intensive industry, suffers from a similar “productivity lag,” such that public goods (education, law enforcement, health care) get more expensive relative to private goods but fail to achieve commensurate productivity gains. The result is that taxpayers pay more in taxes but receive less in return. In the arena of tax filing, however, the government is uniquely positioned to reap productivity gains from increased infrastructure investment. The equally unique result is a higher-quality product for taxpayers at lower cost. Reforming the filing regime by adopting a data retrieval system would deliver benefits simply unattainable through private sector alternatives, including savings in cost and time for taxpayers, reduced anxiety and

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175 For the seminal articulation of this phenomenon, see WILLIAM J. BAUMOL & WILLIAM G. BOWEN, PERFORMING ARTS: THE ECONOMIC DILEMMA (1966).
uncertainty surrounding the filing process, and a more efficient and customer-friendly interface linking taxpayers and their tax advisors with the government.

III. COMMUNICATING WITH TAXPAYERS AND PAID PREPARERS WHILE PROMOTING TAX CONSCIOUSNESS THROUGH RESPONSIVE REGULATION

Maximizing efficiencies in the filing process through data retrieval accomplishes even more than lower costs and reduced burdens for taxpayers. To be sure, both are significant accomplishments, making life easier for 145 million filers. But data retrieval provides additional benefits for taxpayers, tax professionals, and tax regulators. In particular, it offers an opportunity to communicate with citizen-taxpayers in a new way, one that promotes tax consciousness through responsive regulation; that is, a form of regulation that eschews the traditional command-and-control approach for one that promotes a cooperative, dialogic, dialectic, pluralist, and deliberative partnership between regulators and those entities they regulate. Responsive regulation involves supporting and rewarding compliant behavior through a collaborative approach, while being ready to escalate to punitive sanctions only when dialogue fails. In other words, according to its most influential proponent, John Braithwaite, responsive regulation is “firm yet forgiving in its demands for compliance. Reform must be rewarded just as recalcitrant refusal to reform ultimately is punished.” In the end, “The paradox of responsive regulation is that by having a capability to escalate to tough enforcement, most regulation can be about collaborative capacity building.”

The remainder of this Article discusses how data retrieval, particularly its communicative function, reflects and reinforces the basic tenets of responsive regulation, and promises to create a more informed, engaged, and participatory citizenry.

176 John Braithwaite, The Essence of Responsive Regulation, Fasken Visiting Scholar Lecture, University of British Columbia (Sept. 21, 2010), at 7.
177 Id. at 1.
As conceived by its progenitors, the heart of responsive regulation is “informed by a set of values that define not only a just legal order, but a caring civil society.” These values embody civic republicanism in that they “maximize freedom” through “non-domination.” “[B]y only resorting to more dominating, less respectful forms of social control when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate,” and when regulation is viewed as “more legitimate, more procedurally fair, compliance with the law is more likely.”

The tax filing moment offers an opportunity to promote these republican virtues. To the extent that we wish to communicate with taxpayers in an open, two-way exchange, what better time to reach out than the months and weeks leading up to April 15 when taxpayers are arguably most engaged with—or at least acutely aware of—their taxpaying obligations. Thanks to the revolution in e-communication, tax regulators can readily respond to the concerns of taxpayers and their tax advisors, even in real time. In the language of responsive regulation, the government can “listen actively” and “structure dialogue” that, among other things, “gives voice to stakeholders” and “settles agreed outcomes” in advance, such as how to treat certain income or expense items.

The communicative function of data retrieval is readily apparent. A data retrieval platform, for instance, could respond directly to taxpayer questions by better explaining and

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178 Id. at 9.
181 Braithwaite, supra note 176, at 14.
communicating information already on the return or information relevant to preparing and submitting the return. Such a platform could also relay specific information about changes in the tax law depending on a taxpayer’s individual circumstances. Moreover, it could provide hyperlinks for taxpayers to communicate with the IRS Taxpayer Advocate, local IRS offices, elected representatives to Congress, and perhaps even with an “IRS Complaint Department.”

If we were truly serious about the communicative function giving “voice to stakeholders,” we might consider allowing taxpayers to direct a capped portion of their tax refund to a government agency or department of their choice. We might even consider allowing tax payments to be similarly earmarked if we were confident the policy would not significantly disrupt or reshuffle regular appropriations. Ideally, agency or department recipients of these taxpayer funds would subsequently send annual reports to “taxpayer-investors” describing the operational performance of the past year and outlook for the following year, including a readily accessible budget description. Depending on how taxpayers responded to this funding opportunity, one could envision government agencies competing for taxpayer dollars with detailed proposals and prospectuses.

The communicative function of a data retrieval platform could also relay educational information directly to taxpayers. Such information could pertain to tax filing or to the tax system, but it could also involve the larger tax and transfer system by transmitting, for instance, public health messages describing the benefits of regular exercise or a balanced diet. Of course, the government would have to be careful about how much information it attempts to convey, as

182 For a proposal allowing taxpayers to earmark a supplemental payment (that is, in addition to tax owed) to government agencies or departments, see Ethan Porter, “Can’t Wait ‘Til Tax Day!” Democracy (Spring 2010), available at http://www.democracyjournal.org/article2.php?ID=6747&limit=0&limit2=1000&page=1.

183 It is worth noting that under current U.S. tax law, such payments would be tax deductible as charitable contributions (the earmarked refunds, not the tax payments themselves). See 26 U.S.C. § 170(c)(1). It would be up to Congress to decide whether those contributions should continue receiving favorable tax treatment.
taxpayers can only be expected to process perhaps one to four pieces of information before the communicative function begins to yield declining marginal utility.\textsuperscript{184} It would also be difficult to remain politically neutral in selecting what information to include when communicating with taxpayers. In fact, a “tax civics” function for data retrieval might generate sufficient political controversy to undermine the system’s legitimacy, and thus ultimately militate against meshing the personal tax filing function too closely or overtly with the civics function. Finally, at some point, the government might be better served simply giving back to taxpayers some of the savings in time gained from adopting data retrieval. As noted above,\textsuperscript{185} the time spent filing one’s taxes can be monetized, and we may not want to use up all the efficiencies of an improved filing regime with the communicative function. It may turn out, for instance, that a five- or ten-minute informational message could end up “costing,” say, $500 million a year in taxpayer time and, on net, not worth the expense.

Still, conveying at least some information to taxpayers during the filing process serves a critical role in enabling taxpayers to make accurate and informed cost-benefit analyses. Currently, taxpayers cannot aggregate the costs and benefits of taxpaying with any precision, because costs are easier to measure empirically and thus more salient to taxpayers who, in turn, assign them disproportionate weight. It is considerably more difficult to quantify the personal value of dispersed public benefits such as law enforcement, public health and safety, political and economic stability, interstate highways, transportation systems, and the convenience of sending first-class mail anywhere in the continental United States for $0.44. Taxpayers are even

\textsuperscript{184} More than 50 years ago, psychologist George Miller found that the capacity of short-term memory was limited to seven plus or minus two pieces or “chunks” of information. See George A. Miller, \textit{The Magical Number Seven, Plus or Minus Two}, 63 PSYCHOL. REV. 81 (1956). In the intervening period, psychologists have concluded that the capacity of short-term memory is even more restricted, particularly in the absence of note taking, to four chunks of information. See Nelson Cowan, \textit{The Magical Mystery Four: How Is Working Memory Capacity Limited, and Why?} 19 CUR. DIR. PSYCHOL. SCI. 51 (2010).

\textsuperscript{185} See supra notes 67-72 and accompanying text.
more likely to overestimate the burden side of the benefit/burden ledger during the agonizing months of tax season. Ill-informed taxpayer-citizens become susceptible to anti-tax, anti-government rhetoric, and begin making decisions about government, politics, and policy from ignorance rather than from knowledge. The informational function of tax filing can balance taxpayer-citizens’ understanding of the relationship between the benefits and burdens of taxation, and, in the process, create a more informed citizenry.

Basic confusion about the tax system leads to gross misperceptions over the burden and distribution of taxes that can have a dramatic impact on the tax system. A few years ago, Joel Slemrod found that a near majority of respondents to a national poll endorsed repealing the federal income tax due primarily to misconceptions over the incidence of the tax. In particular, respondents erroneously believed that proposals for either a flat tax or a national retail sales tax would fall more heavily on wealthy taxpayers than the existing progressive income tax. Indeed, the “general population’s incredible ignorance about taxes” threatens meaningful discussion over the role of taxes in our society. Americans regularly confuse statutory and marginal rates, for instance, believing that if they are “in” the 35-percent tax bracket all of their income is subject to the 35-percent rate rather than just their last dollars earned. In other words, they do not understand that lower portions of their income fall into the 10-percent, 15-percent, 25-percent, 28-percent, and 33-percent brackets, and that income earned only beyond a certain point falls into the 35-percent bracket. Additional distinctions between marginal, average, and effective rates are no less perplexing to the average taxpayer. The same can be said for the difference

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188 Again, marginal rates refer to the rate of tax on the last dollar earned, while average rates reflect total tax liability (before exemptions, deductions, and credits) divided by total income, and effective rates equal total tax liability
between deductions and credits, as well as the extent to which the tax system excludes certain items altogether from income, such as gifts, pension benefits, and the value of health and medical care provided by employers.

A data retrieval system could relay useful information to taxpayers as a way to overcome tax and financial illiteracy. In so doing, it could fulfill a tenet of responsive regulation that aims to achieve outcomes “by support and education to build capacity.” The data retrieval platform could offer taxpayers online tutorials, intelligently designed to give them precisely what they want, and inform them of nearby upcoming IRS educational workshops. In addition, it could direct taxpayers to free tax services, including several programs sponsored by the IRS: Volunteer Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE), and Free File. Moreover, it could link taxpayers to additional sources of tax information online.

In numerous ways, the filing season offers the government a chance to educate and connect with taxpayer-citizens. The IRS could borrow a communicative device from the Social Security Administration, and provide taxpayers a short pamphlet entitled something like, “Your Income Tax Statement,” similar to the two annual documents forwarded to all current and future Social Security recipients, “Your Social Security Statement” and “Thinking of Retiring? Consider Your Options.” As law professor Marjorie Kornhauser envisions it, the statement could include general information about the tax system, tailored information about the taxpayer’s last

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189 The value of a deduction is tied to a taxpayer’s marginal tax rate and thus rises with increasing increments of income. For example, a deduction for a taxpayer falling into the 35-percent tax bracket is worth $0.35 for every dollar of tax deduction but only $0.15 for a taxpayer in the 15-percent bracket, and $0.00 for the low-income taxpayer falling below the 10-percent bracket. A tax credit, meanwhile, provides a dollar-for-dollar reduction in tax liability and may even provide a cash subsidy. For example, a $1,000 tax credit reduces tax liability by $1,000 irrespective the taxpayer’s marginal tax rate (with the caveat that eligibility for tax credits phases out as income rises). If the tax credit is “refundable,” it may generate a cash subsidy. For example, a $1,000 refundable tax credit for a taxpayer with tax liability of $500 will offset the $500 tax and result in a cash payment of $500.

190 Braithwaite, supra note 176, at 22.

two or three tax years, comparisons between the taxpayer and other taxpayers, and, of course, links for obtaining additional information.\textsuperscript{192} Such an annual communication from the IRS would “reduce a sense of distance from the bureaucracy, give taxpayers a sense of ownership,” and “dispel many misperceptions that alienate taxpayers from the system.”\textsuperscript{193} The educative function of the statement, moreover, could raise compliance by elevating tax literacy and instilling confidence in the tax system. And it could explicitly link tax burdens with everyday government services that taxpayers count on.\textsuperscript{194} If made part of a data retrieval system, the pamphlet and any supporting documents could be dumped into taxpayers’ individual tax accounts early in the filing season for the taxpayer or her advisor to access or reference whenever they want.\textsuperscript{195}

The possibilities for educating taxpayers about their tax system through data retrieval are endless. The platform could provide information pertaining to: (i) the size of tax expenditures (over $1 trillion in lost revenues every year\textsuperscript{196}) as well as the distribution of these tax subsidies (heavily skewed in favor of high-income taxpayers\textsuperscript{197}); (ii) what other taxpayers paid across income cohorts, by state, city, zip code, over time; (iii) sources of national and subnational tax revenue besides federal income taxes (payroll taxes, estate taxes, gasoline other excise taxes, state income taxes, sales taxes, property taxes, state inheritance taxes, state and local fees and tolls); and (iv) how the U.S. tax system compares to other countries in terms of tax bases and

\textsuperscript{193} \textit{Id.} at 13.
\textsuperscript{194} \textit{Id.}
\textsuperscript{195} Another of Kornhauser’s proposals deserves mention: requiring taxpayers to complete and submit an annual Form W-4. \textit{Id.} at 16-17. Such a requirement would have the salutary effect of increasing the accuracy of taxpayers’ withholding at the same time that it raised compliance in the sense that taxpayers would be less likely to under-withhold on their taxes if they were forced to affirm and authenticate the under-withholding every year. Requiring updated withholding could also serve an educational function by indicating how changes in the tax law or changed personal circumstances (family status, number of dependents) influence tax liability.
\textsuperscript{196} See supra note 63.
revenue collected as a percentage of GDP, as a percentage of goods and services, as a percentage of labor costs, and on income and profits (categories in which the United States ranks near the bottom of all OECD countries).¹⁹⁸

Taxpayer-citizens could use as much tutelage with respect to how the government spends tax revenues as with taxes themselves. In July 2010, a national poll revealed that a majority of voters believe the $1.3 trillion budget deficit could be solved without touching Social Security and Medicare (together, these two programs account for more than 30 percent of the federal budget); instead, those polled thought government could close the gap by reining in government “waste.”¹⁹⁹ As one commentator noted of the polling data: “Elected officials cannot offer meaningful choices about changing revenue and spending unless voters appreciate where federal dollars currently go.”²⁰⁰ Equally depressing results from a 2005 poll revealed that more than half of all respondents mistakenly believe the United States spends more on foreign aid (which comprises one percent of the budget) than on Medicare and Social Security (which, again, comprises more than 30 percent of the budget).²⁰¹

¹⁹⁸ One additional reform—and one with historical precedent—involves publicizing individual tax information. The 1934 Revenue Act contained such a requirement, though it was repealed almost immediately. See Marjorie E. Kornhauser, Shaping Public Opinion and the Law: How a “Common Man” Campaign Ended a Rich Man’s Law, 73 LAW & CONTEMP. PROB. 101 (2009) (describing the campaign to repeal the “pink slip,” the pink-colored form that taxpayers were required to fill out with certain tax information which then became record). According to Kornhauser, such publicity, defined as the “dissemination of information” for educational purposes, could “foster social norms of compliance as well as strengthen more traditional enforcement techniques.” Id. at 22. The problem with a publicity proposal from the perspective of this Article is that it could fuel “bad” tax consciousness. See supra note 33 and accompanying paragraph. In fact, early tax consciousness scholars were similarly worried about the 1934 law: “Publicity of the amounts paid by income-taxpayers encourages curiosity in one part of the general public,” but it “may cause resentment in the taxpayer.” SHOUP et al., supra note 33, at 363).

¹⁹⁹ See Jim Kessler, Ryan McConaghy, & Anne Kim, New Third Way/Benson Strategy Group Poll on the Economy (July 2010,) available at http://content.thirdway.org (finding that 75 percent of Americans “think the deficit can be reduced without cuts to Social Security and Medicare,” and that the deficit “is the result of waste”).


Good-government organizations have mobilized to combat this national ignorance with comprehensible and consumer-friendly explanations of where our federal tax dollars go, all of which a data retrieval platform could include for easy viewing in taxpayer accounts. The Center on Budget and Policy Priorities, for instance, publishes an annual primer timed to coincide with April 15 that uses easy to understand pie charts (as well as more detailed narrative explanations) describing major components of the $3.5 trillion federal budget in 2010 (almost $2.2 trillion of which is financed by tax revenues, $1.3 trillion through borrowing). For the current fiscal year, the CBPP publication showed that a full 61 percent of the national budget is consumed by three categories: defense and security (20 percent), Social Security (20 percent), and Medicare, Medicaid, and the Children’s Health Insurance Program (21 percent). The IRS includes a similar set of pie charts with the annual instructional booklet for Form 1040, entitled, “Major Categories of Federal Income and Outlays.”

Other organizations have called on the government to go one step further and publish an individualized taxpayer receipt showing where their taxes dollars go. One group, Third Way, published a policy paper in 2010 illustrating what such a receipt might look like. Using a taxpayer with annual income at the U.S. median ($34,140) and corresponding tax liability ($5,400 for income and payroll taxes), the group produced an itemized receipt reflecting how the taxes supported various government programs: $1,040.70 for Social Security, $625.51 for Medicare, $229.17 for combat operations in Iraq and Afghanistan, $46.08 for foreign aid, $0.24

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202 CBPP, supra note 9, at 1.
203 Id. at 2. Other groups depict federal spending in user-friendly formats as well, also conveniently during tax season. See e.g., http://www.nationalpriorities.org/taxday2010.
204 The pie charts appeared on page 100 of the publication for tax year 2009, which ran an astonishing 175 pages in length. As part of its e-filing campaign, the IRS will stop mailing paper income tax packages and 1040 instructional booklets beginning in tax year 2010. See http://search.irs.gov/web/query.html?col=allirs&charset=utf-8&qp=&qs=-Wct%3A%22Internal+Revenue+Manual%22&qc=&qm=0&rf=0&oz=0&qt=1040+publication&search.x=0&search.y=0.
for funding the arts, $0.19 for Congressional salaries and benefits, among other items. In addition, several members of Congress recently sponsored the Taxpayer Receipt Act of 2011, which would provide every taxpayer an accounting, “similar to a grocery store receipt,” of where their payroll and income taxes go. The Obama Administration, for its part, included a “taxpayer receipt calculator” on the White House website to help Americans “understand how and where your tax dollars are being spent.” Even Google got into the act, sponsoring a contest “to create data visualizations that would make it easier for U.S. citizens to understand how the government spends our tax money.” All of these efforts embody the simple observation of the CBPP, “When thinking about the costs that taxes impose, it is essential to balance those costs against the benefits the nation receives from public services.”

Taxpayers have a right to reliable information pertaining to both the burdens and benefits of citizenship. A reformed tax-filing regime can help provide that information. Whatever policy alternative is chosen—this Article has made the case for data retrieval—reformers cannot ignore paid preparers, who help more than 60 percent of taxpayers every year fulfill their tax-filing obligations. In fact, all indicators suggest that preparers would embrace a new system based on

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205 Kendall and Kessler, supra note 200, at 3.
208 For the contest and the winners, see http://datavizchallenge.org/. For the database that provided the empirical data for all contest participants, see http://www.whatwepayfor.com/.
209 CBPP, supra note 9, at 3. Other organizations provide online calculators for computing individual tax receipts. See e.g., http://www.whatwepayfor.com and http://taxes.kareemshaya.com/. The idea of an individualized taxpayer or budget receipt has roots in the 1990s when Senator Charles Schumer (D-NY), then a member of the House of Representatives, introduced a bill, “The Taxpayer Right-To-Know Act,” which he, in turn, modeled on a similar taxpayer receipt produced by New York City’s Independent Budget Office. For a discussion of recent proposals a taxpayer receipt and some insight into its history, see http://www.ombwatch.org/node/11325.
the data retrieval model.\textsuperscript{211} Simply putting their clients’ tax information in one place would make preparers’ lives considerably easier. No longer would they have to track down dispersed information with respect to itemized deductions from lenders, banks, brokerage firms, property management services, states and municipalities. Nor would they have to deal with clients failing to tell them about 1099 income or income from rental properties, interest from investments, or even income unbeknownst to the client or lost to memory. A data retrieval system could also verify estimated tax payments, which clients regularly forget to satisfy throughout the year, think they satisfied but forwarded to the IRS without payment or with partial payment or in fact satisfied with a form of payment for which the IRS has no record.

Indeed, policymakers and tax officials ignore preparers at their peril. Not only because preparers form a powerful lobbying group, but also because they possess invaluable practical and professional knowledge that should inform any redesign of the filing process. Preparers provide the crucial link between taxpayers and tax officials, between success and failure of the individual income tax system and its long-term viability.

Members of the preparer community spend significantly more time communicating with the IRS than individual taxpayers. As such, their experiences, concerns, and suggestions should be given considerable weight in moving to a new filing regime. It is equally important to keep the lines of communication open once reforms are implemented. Soliciting the input of regulated actors—both preparers and taxpayers—and eliciting from them active responsibility reflect two

\textsuperscript{211} Preparers have long-supported IRS modernization efforts, particularly the move to electronic filing and communication. See e.g., Nicola M. White, \textit{TIGTA Calls IRS Rollout of New E-File System a “Challenge,”} 128 TAX NOTES 1336, 1337 (2010) (quoting an official with the National Association of Tax Professionals as praising enhancements to the IRS’s Modernized e-File system for the 2010 filing season, particularly the ability to attach electronic signatures, PDFs, supporting documents, and spread sheets); Jeremiah Coder, \textit{Tax Analysts Exclusive Conversations: Frank Degen,} 120 TAX NOTES 1272, 1273 (2008) (quoting a member of the IRS Advisory Council and former President of the National Association of Agents saying, “e-services have been a big help to practitioners”).
of the basic tenets of responsive regulation.212 Cultivating shared responsibility among regulated actors in upholding the integrity of the system feeds and reinforces a commitment to compliance such that the system becomes increasingly self-regulated. Taxpayers, for their part, begin to take responsibility for their actions vis-à-vis other taxpayers as the taxing agency becomes more responsive, establishing and committing to two-way communication.213 For the same reasons, preparers begin to assume roles as pseudo tax officials, not only regulating each other but also taxpayer-clients, because they correctly view their own success as depending on the success of the system. As a result, preparers also educate themselves and their clients on penalties for noncompliance, which, under the responsive regulation model, would be designed with substantial and ongoing input from the preparer community.214

Compliant preparers and taxpayers, in turn, could be rewarded for committing to compliance beyond simply avoiding deficiency notices.215 In the event they had a dispute over a return position, for instance, it could be fast-tracked for resolution. Or they might be afforded expedited pre-filing guidance to bypass currently slower procedures, such as requesting a Private

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212 See Braithwaite, supra note 176, at 25 (suggesting that regulators “engag[e] wider networks of partners,” and “enroll[] increasing numbers of more potent network partners to escalate pressure” on regulatees); Id. at 27 (calling for a system that promotes “active responsibility…for making outcomes better in the future” among regulated entities).

213 Indeed, as John Braithwaite astutely observes, regulators must reflect and commit to the same behaviors they expect of the entities they regulate. “Regulators must be the change they want to see by communicating openly” with regulated entities. “More than that, they do best to include [] industry in their processes” of designing regulatory rules and expectations. Braithwaite, supra note 176, at 25.

214 The preparers would be responding to—and reinforcing—another tenet of responsive regulation: “Signal, but do not threaten, a range of sanctions to which you can escalate: signal that the ultimate sanctions are formidable and are used when necessary, though only as a last resort. See Braithwaite, supra note 176, at 23. The data retrieval platform presents all kinds of possibilities for “signaling, but not threatening” sanctions to taxpayers and preparers. First, through a data retrieval platform, tax officials could create a virtual, consumer-friendly, fully searchable library of tax laws and regulations, including potential penalties for failure to accurately report income, and ways to avoid inadvertent underpayment. Second, during the e-filing process, it could help taxpayers avoid these pitfalls by using pop-ups that ask, for instance, “Are you forgetting any other forms of income from this year?” or, “We notice you indicated that you worked as a bartender this year; don’t forget that tips and cash must be reported as income.” And finally, it could fast-track for speedy and non-penal resolution of disputes those underpayments committed by taxpayers who, by all accounts, just made an honest mistake.

215 Braithwaite, supra note 176, as 22 (stating that agencies practicing responsive regulation should “praise those who show commitment, support their innovation, nurture motivation to continuously improve, [and] help leaders pull laggards up through new ceilings of excellence”).
Letter Ruling, which, if the Treasury Department considers at all, can take years to resolve.\textsuperscript{216} Or, for that matter, compliant taxpayers and advisors could be given a seat at the table to reformulate existing rules or to craft new ones. Whatever method was chosen for rewarding compliance, it should involve listening, facilitating future dialogue, and “giv[ing] voice to stakeholders.”\textsuperscript{217}

Finally, this communicative form of regulation reflected in a prospective data retrieval system should strive to evaluate successes and failures on an ongoing basis. Ideally, it would communicate lessons learned\textsuperscript{218} (including instances of resistance and failure where opportunities for learning may be greatest\textsuperscript{219}), value improvements to the system,\textsuperscript{220} adapt to changed circumstances and expectations of taxpayers, paid preparers, and tax officials, reject dogmatism, and appreciate context.\textsuperscript{221}

\textbf{IV. CONCLUSION}

This Article has recommended reforming the way people pay taxes with a proposal that significantly eases the burden for taxpayers and paid preparers, and communicates with taxpayer-citizens in a more responsive, dialogic fashion. By leveraging technology and exploiting the government’s core competency for maximizing efficiencies in filing taxes, the

\textsuperscript{216}See e.g., TIGTA, CHIEF COUNSEL CAN TAKE ACTIONS TO IMPROVE THE TIMELINESS OF PRIVATE LETTER RULINGS AND POTENTIALLY REDUCE THE NUMBER ISSUED (2010) (reporting that IRS responded in an untimely fashion to 50 of 65 sampled PLR requests; those cases remained open between 121 and 3,548 calendar days).

\textsuperscript{217}See supra note 181 and accompanying text.

\textsuperscript{218}See supra note 176 and accompanying text.

\textsuperscript{219}Valerie Braithwaite has demonstrated that resistance to a regulatory regime can be healthy in that it creates opportunities for improving the system. See e.g., VALERIE BRAITHWAITE, DEFIANCE IN TAXATION AND GOVERNANCE: RESISTING AND DISMISSING AUTHORITY IN A DEMOCRACY (2009); Valerie Braithwaite, Dancing with Tax Authorities: Motivational Postures and Noncompliant Actions, in TAXING DEMOCRACY: UNDERSTANDING TAX AVOIDANCE AND EVASION 15 (Valerie Braithwaite, ed., 2003). Or, as John Braithwaite describes the phenomenon: “The character with which democratic governance responds to resistance is vital to the quality and resilience of a democracy.” Braithwaite, supra note 176, at 20.

\textsuperscript{220}See supra note 215.

\textsuperscript{221}See Braithwaite, supra note 176, at 12-14.
plan slashes costs (both monetary and psychological), and provides a consumer friendly, secure, and educational portal for paying taxes.

Specifically, a tax-filing regime based on a data retrieval platform allows taxpayers and paid preparers to view, access, and download tax account information from a secure database maintained by the government. The inventory could include wages, interest income, dividends, income from security sales, state taxes paid, and some of the most popular itemized deductions such as mortgage interest. Rather than having to gather this information from employers, financial institutions, and other third parties, taxpayers and paid preparers could rely on a centralized clearinghouse. Taxpayers with sophisticated returns may still need to input information not reported by third parties, such as charitable contributions and some capital gains, but a data retrieval system would simplify filing for all 145 million tax filers.

Data retrieval provides more than an informational function. It offers an opportunity to communicate with taxpayers and their advisors, listen to concerns, meet needs, relay information, and improve the system. The communicative and educative function of a data retrieval system could turn the annual rite of taxpaying into a dialogue between citizens and their government, and an opportunity to improve fiscal literacy and raise tax consciousness. In this way, data retrieval reflects the modern regulatory theory of responsive regulation, which aims to open lines of communication between regulated entities and government regulators.

Finally, the government—and not the private sector—is uniquely positioned to lead this reform. Data retrieval leverages the government’s competitive advantage and core competency in the area of tax filing. Under current taxpayer confidentiality laws, the private sector is prohibited from providing a comparable service for maintaining and updating a centralized database.
containing sensitive tax account information. Only the government can bring these efficiencies to the filing process, and ease the filing burden for all taxpayers.

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