

## BOOK REVIEW

### **LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX. By Lawrence Zelenak. Chicago, Illinois: University of Chicago Press. 2013. Pp. 161.**

*Reviewed by Jay A. Soled\**

#### I. INTRODUCTION

For the last several decades, a few days immediately before and on April 15 itself, our country has experienced an annual ritual as taxpayers nationwide form long lines at their local post offices to file their income tax returns.<sup>1</sup> Akin to military service, undoubtedly few relish this obligation but recognize it as their civic obligation worthy of fulfillment. In a fascinating new book, *Learning to Love Form 1040*, published by the University of Chicago Press, Duke University School of Law professor Lawrence Zelenak details the origins of this obligation, traces its history, and explores how it has fostered what he terms *fiscal citizenship*, or “the important civic purpose of recognizing and formalizing the financial responsibilities of citizenship.”<sup>2</sup>

Throughout this book, Zelenak champions what he considers the principal virtue of Form 1040, namely, its ability to penetrate each taxpayer’s consciousness and to strengthen the bonds of fiscal citizenship. Taxpayers or their advisers must populate the lines of Form 1040 and examine its accuracy. Once taxpayers’ tax returns are complete, they must then draw the conclusion that such tax returns are worthy of submission and the quid pro quo that they receive—that is, to borrow phraseology from Justice Holmes, “civilized society”—is worth the price.<sup>3</sup> Use of a return-based method to collect tax is in contradistinction to other tax revenue collection methods, such as a national sales tax or an exact withholding system, which engender little or no conscious connection between the process of tax collection and government expenditures.

Notwithstanding Zelenak’s central premise that the tax return preparation process weaves taxpayers into the fabric of civilized society, technological advancements have fundamentally transformed the Form 1040 preparation landscape. These transformations have both advantages and disadvantages with respect to cultivating

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1. See, e.g., Kathleen Flynn, *April 15—Otherwise Known as Tax Day—Brings Long Lines to New Orleans Post Offices*, TIMES-PICAYUNE, Apr. 15, 2013, available at [http://www.nola.com/politics/index.ssf/2013/04/tax\\_day.html](http://www.nola.com/politics/index.ssf/2013/04/tax_day.html).

2. LAWRENCE ZELENAK, *LEARNING TO LOVE FORM 1040: TWO CHEERS FOR THE RETURN-BASED MASS INCOME TAX* 4 (2013); see also Ajay K. Mehrotra, *The Price of Conflict: War, Taxes, and the Politics of Fiscal Citizenship*, 108 MICH. L. REV. 1053, 1068 (2010) (reviewing STEVEN A. BANK, KIRK J. STARK & JOSEPH J. THORNDIKE, *WAR AND TAXES* (2008)) (examining the history of wartime tax policy in the United States and the meaning of “fiscal citizenship”).

3. See *Compañía Gen. de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting) (“Taxes are what we pay for civilized society . . .”).

fiscal citizenship. On the one hand, software preparation programs<sup>4</sup> and the proliferation of tax information returns<sup>5</sup> have greatly facilitated the tax return preparation process; on the other hand, these very same technological advancements have enabled Congress to fill the Internal Revenue Code with a myriad of tax expenditures,<sup>6</sup> the alternative minimum tax,<sup>7</sup> and various deduction phaseouts,<sup>8</sup> making it virtually impossible for ordinary taxpayers to comprehend the increasingly opaque nature of their tax burdens.<sup>9</sup>

In the Sections that follow, this Review explores Zelenak's assertion of a connection between tax return preparation and fiscal citizenship and anticipates how, in the upcoming decades, technological advancements may reshape this relationship. In Section II, this Review examines Zelenak's central thesis that a return-based mass income tax promotes fiscal citizenship. In Section III, the Review summarizes technological advancements related to the tax return preparation process and explores the impact of these technological advancements on fiscal citizenship as well as the role that Congress should play to maintain taxpayers' connectedness. In Section IV, the Review concludes.

## II. CONNECTEDNESS: THE RETURN-BASED INCOME TAX AND FISCAL CITIZENSHIP

There is no secret that governments need revenue to sustain themselves. It's not a question of if; instead, it's a question of how. Over the millennia, governments have taken numerous approaches to fulfilling this need: in the short term, some have pillaged and plundered to meet their financial thirsts;<sup>10</sup> in the long term, most have recognized the need to levy taxes. Such tax systems have long and varied lineages. While the Egyptians, for example, used the depths of the Nile to gauge the appropriate tax rate,<sup>11</sup>

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4. See generally John L. Guyton, Adam K. Korobow, Peter S. Lee & Eric J. Toder, *The Effects of Tax Software and Paid Preparers on Compliance Costs*, 58 NAT'L TAX J. 439, 446 (2005) ("Use of software or professional preparers is one way that taxpayers have taken advantage of technological change to adjust to an increasingly complex tax law.").

5. See, e.g., Jay A. Soled, *Homage to Information Returns*, 27 VA. TAX REV. 371 (2007) (exploring the nearly ubiquitous use of tax information returns to ensure taxpayer compliance).

6. See, e.g., STAFF OF JOINT COMM. ON TAXATION, 112TH CONG., ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2011–2015 3 (Comm. Print 2012), <https://www.jct.gov/publications.html?func=startdown&id=4385> ("Tax expenditures are defined . . . as 'revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.'") (quoting Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (codified as amended at 2 U.S.C. § 622(3) (2014))). See generally Linda Sugin, *Tax Expenditure Analysis and Constitutional Decisions*, 50 HASTINGS L.J. 407 (1999).

7. See I.R.C. §§ 55–59 (2014) (setting forth the alternative minimum tax).

8. See I.R.C. § 151(d)(3)(A) (2014) (permitting the gradual phaseout of personal exemptions based upon a taxpayer's adjusted gross income).

9. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-747T, TAX GAP: COMPLEXITY AND TAXPAYER COMPLIANCE 5 (2011), <http://www.gao.gov/assets/130/126530.pdf> ("The federal tax system contains complex rules.").

10. See, e.g., THE KINGFISHER HISTORY ENCYCLOPEDIA 132 (Miranda Smith et al. eds., updated ed. 2004) (describing how Norman invaders (i.e., the Vikings) in 1066 A.D. ransacked England for its resources).

11. Aristide Theodorides, *The Concept of Law in Ancient Egypt*, in THE LEGACY OF EGYPT 291, 292 (J.R. Harris ed., 2d ed. 1971).

other governments have used tariffs and custom duties to raise revenue for public goods.<sup>12</sup>

In his book, Zelenak summarizes the history of how the United States chose to raise revenue through a return-based mass income tax. What many readers may not realize is that, from the income tax's inception in 1913 and for several decades thereafter, the income tax applied only to a small sliver of the nation's population. Indeed, as late as 1941, the income tax-paying portion of the population was a mere 24.7%.<sup>13</sup> A tax that has such a meager application is not likely to be part of the general public's consciousness, which was obviously true of the income tax at the time, as evidenced by the fact that it was rarely the fodder of the popular press or other media outlets.

But the outbreak of World War II and our nation's involvement therein was transformative. By the late 1930s and the early 1940s, the Roosevelt administration knew that the nation's destiny was tied to protecting Europe and, as such, that the advent of war was on the horizon. To pay the concomitant expense associated with going to war, tax revenues were going to have to rise significantly. The public and Congress were apparently avid proponents of instituting a national sales tax.<sup>14</sup> The Roosevelt administration, however, was adamant that a sales tax was categorically unacceptable due to its regressive nature.<sup>15</sup> Instead, the Roosevelt administration proposed a broad expansion of the income tax.<sup>16</sup>

Ultimately, the Roosevelt administration prevailed, and Congress acquiesced to expanding the application of the income tax. Accordingly, Congress reduced the personal exemption amount and introduced the so-called Victory Tax.<sup>17</sup> By 1943, for the first time in our nation's history, a majority of the population was subject to the income tax and required to file an income tax return.<sup>18</sup> Thus, one of the war's many unintended rippling effects was to cause the general public to directly participate in the equivalent of a massive fundraising drive, orchestrated to support the nation's solvency.

The expansion of the income tax into the lives of ordinary citizens had a seismic effect in the popular media. Just as the dynamics of keeping one's marriage intact was a recurring theme to which listeners, viewers, and readers could easily relate, that same

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12. See, e.g., Kenneth L. Sokoloff & Eric M. Zolt, *Inequality and Taxation: Evidence from the Americas on How Inequality May Influence Tax Institutions*, 59 TAX L. REV. 167, 170 (2006) (explaining that during the nineteenth century, "[t]he United States, Canada, and the Latin American countries all relied overwhelmingly on customs duties, other tax levies on foreign trade, and excise taxes to fund government operations").

13. LAWRENCE H. SELTZER, THE PERSONAL EXEMPTIONS IN THE INCOME TAX 62 tbl.9 (1968). See generally Carolyn C. Jones, *Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax During World War II*, 37 BUFF. L. REV. 685, 685-88 (1989) (exploring what caused the percentage of Americans who paid the income tax to drastically increase during and after World War II).

14. *The Case for a Sales Tax*, N.Y. TIMES, July 25, 1942, at 12; *House Insists on Sales Tax*, L.A. TIMES, June 7, 1942, at 9; *Shift Toward Sales Tax Indicated by House Survey*, L.A. TIMES, Apr. 3, 1942, at 1.

15. Henry N. Dorris, *President Says Tax on Sales Is Wrong; Murray Opposes It*, N.Y. TIMES, Apr. 8, 1942, at 1; *Treasury Fights Levy on Sales*, L.A. TIMES, July 17, 1942, at 11.

16. Henry Morgenthau, Jr., *Secretary Morgenthau's Tax Statement to Senate Finance Committee*, N.Y. TIMES, July 24, 1942, at 10.

17. Revenue Act of 1942, Pub. L. No. 77-753, 56 Stat. 798 (1942).

18. See Jones, *supra* note 13, at 695.

interpersonal connectedness could be experienced as television sitcoms, the radio, and print media portrayed taxpayers in a gamut of tax-related situations: anguishing over the completion of their tax returns, cheating on their tax returns, struggling with the complexity of tax returns, and dealing with the demure nature of IRS employees.<sup>19</sup> As a portal into the everyday concerns of ordinary citizens, these and similar story lines were omnipresent in the popular media, indicating that the income tax had become an integral part of the national landscape.

It is exactly this in-your-face awareness on the part of ordinary citizens that, argues Zelenak, makes return-based income taxation so attractive. Taxpayers who must annually complete their tax returns bear direct witness to how much they earn over an annual period and correspondingly how much they must pay in income taxes; income tax return preparation leaves absolutely no room for benighted ignorance. To borrow Zelenak's phraseology, as a result of a return-based administrative compliance system, income taxes are "visible,"<sup>20</sup> particularly when compared to their counterparts, such as a sales tax, which alleviates the chore of filing but almost inevitably masks one's overall tax burden. Zelenak thus categorizes taxes such as the sales tax as low visibility in nature.<sup>21</sup>

The byproduct of high-visibility taxation is that taxpayers participate in a process known as fiscal citizenship. Zelenak bifurcates fiscal citizenship into two components. The first component is a recognition that being a societal member requires shared sacrifice.<sup>22</sup> The second component is an illumination of the tax collection and expenditure processes and the interrelatedness between the two.<sup>23</sup> In Zelenak's opinion, fiscal citizenship inspires more informed voting and the possibility of greater overall participation in the political process.<sup>24</sup>

Not all taxpayers apparently find fiscal citizenship attractive. As Zelenak points out, in a variety of fashions, citizens may seek to distance themselves from their fiscal citizenship duties or sever themselves entirely. Some aggressively attempt to unmoor themselves by participating in tax protest movements, claiming that they are not subject to the income tax,<sup>25</sup> others attempt to negate government funding allocations (say, to the military) and instead remit an equal sum to charitable organizations of their choice,<sup>26</sup> still others consciously pay less tax than they owe (i.e., they cheat) out of greed in order to augment their private consumption.<sup>27</sup> By having a return-based tax system in place, taxpayers subscribing to one or more of these various philosophies can act upon their beliefs, while other taxpayers can affirm their commitment to fiscal citizenship by being compliant.

Fortunately for the nation's financial solvency, the bonds of fiscal citizenship

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19. ZELENAK, *supra* note 2, at 83–110.

20. *Id.* at 12–16.

21. *Id.* at 13.

22. *Id.* at 17.

23. *Id.*

24. *Id.* at 17–35.

25. *Id.* at 39–46.

26. *Id.* at 46–47.

27. *Id.* at 48–54.

appear to be fairly strong. Numbers support this proposition. Recent studies indicate that the number of taxpayers who participate in tax protest and tax resistance movements are fairly minuscule.<sup>28</sup> Furthermore, the size of the so-called tax gap—the difference between what taxpayers truly owe and what they pay<sup>29</sup>—is not overwhelming.<sup>30</sup> And, relatively consistently over the last ten years, the vast majority of taxpayers have indicated that it is “not at all acceptable” to cheat on one’s taxes.<sup>31</sup>

In the last chapter of his book, however, Zelenak cautions that fiscal citizenship is at grave risk of subversion. Zelenak points to the Code’s increasing complexity as having a highly corrosive effect upon fiscal citizenship.<sup>32</sup> If taxpayers find themselves simply keying numbers into a computer terminal and cannot draw a connection between keypunching entries and their ultimate tax liability, taxpayers will, Zelenak fears, gradually lose trust in the system and ultimately withdraw their support for funding the enterprise.<sup>33</sup>

To counterbalance this trend and galvanize fiscal citizenship, Zelenak advocates that Congress take several steps. First, Congress should curtail using the Code as a mechanism for social spending (i.e., tax expenditures). These special allowances dazzle and confuse many taxpayers, besetting them with the uncertainty of whether they missed opportunities.<sup>34</sup> Second, in the spirit of transparency, Congress should fashion the Code in a manner that eliminates complex computational processes such as those embodied in the alternative minimum tax; eliminating these complex computational processes will enable ordinary citizens to more readily understand their anticipated tax liabilities.<sup>35</sup> Finally, Congress should avail itself of existing technologies in ways that give taxpayers immediate access to information in the government’s possession (such as that found on Forms W-2 and 1099), thereby facilitating tax return completion and accuracy.<sup>36</sup>

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28. See U.S. GEN. ACCOUNTING OFFICE, GAO-04-50, INTERNAL REVENUE SERVICE: CHALLENGES REMAIN IN COMBATING ABUSIVE TAX SCHEMES 9 (2003) (indicating that the number of tax protesters will probably be in the thousands); Danshera Cords, *Tax Protestors and Penalties: Ensuring Perceived Fairness and Mitigating Systemic Costs*, 2005 BYU L. Rev. 1515, 1517 (2005) (indicating that “tax protesters constitute only a small percentage of all taxpayers”); Oliver Lukacs, *Justice Launches National Tax Fraud Crackdown*, 119 TAX NOTES 141 (2008) (estimating the number of tax defiers to be somewhere between ten thousand and one hundred thousand).

29. See generally Robert E. Brown & Mark J. Mazur, *IRS’s Comprehensive Approach to Compliance Measurement*, 56 NAT’L TAX J. 689 (2003) (detailing how compliance measurement affects IRS tax gap estimates); Mark J. Mazur & Alan H. Plumley, *Understanding the Tax Gap*, 60 NAT’L TAX J. 569 (2007) (examining the process used to estimate the tax gap); Eric Toder, *What Is the Tax Gap?*, 117 TAX NOTES 367 (2007) (analyzing how the tax gap is calculated and suggesting ways to improve that computation).

30. See INTERNAL REVENUE SERV., TAX GAP FOR TAX YEAR 2006 1 (2006), available at [http://www.irs.gov/pub/newsroom/overview\\_tax\\_gap\\_2006.pdf](http://www.irs.gov/pub/newsroom/overview_tax_gap_2006.pdf) (2012) (estimating the federal (gross) tax gap for tax year 2006 to be \$450 billion, for a voluntary compliance rate of 83.1% of the total true tax liability).

31. See IRS OVERSIGHT BD., 2012 TAXPAYER ATTITUDE SURVEY 3 (2013), available at [http://www.treasury.gov/IRSOB/reports/Documents/IRSOB\\_TAS%202012\\_FINAL.pdf](http://www.treasury.gov/IRSOB/reports/Documents/IRSOB_TAS%202012_FINAL.pdf) (eighty-seven percent of respondents indicated that it was “not at all acceptable” to cheat on one’s taxes) (internal quotation marks omitted).

32. ZELENAK, *supra* note 2, at 111–24.

33. *Id.* at 114.

34. *Id.* at 114–15.

35. *Id.* at 121.

36. *Id.* at 121–24.

Zelenak ends his book on an optimistic note. He envisions that as the technological world changes, the Code can embrace these innovations and thereby strengthen the bonds of fiscal citizenship. These strengthened bonds bode well for enhancing the country's democratic principles as citizens become more deeply immersed in the political world, recognizing their stake in the process. Yes, taxpayers bemoan the process of completing their Form 1040, but most strongly support its end product, namely, a stable and civilized society. According to Zelenak, taxpayers should therefore learn to "love" the tool—namely, Form 1040—that enabled them to achieve this lofty and collective goal.

### III. THE TECHNOLOGY REVOLUTION AND ITS IMPACT ON TAXATION

In light of the technology revolution of recent times, how do the theories propounded by Zelenak in *Learning to Love Form 1040* play out? Part A of this Section details technological advancements in the tax administration process and possible avenues of expansion, and Part B discusses the implications associated with the adoption of these advancements in the context of fiscal citizenship.

#### A. *Technological Advancements in the Tax Administration Process*

For the past century, Form 1040 has remained basically unchanged.<sup>37</sup> However, largely due to technological advancements, virtually everything else surrounding the tax-compliance process has been transformed.

When Form 1040 was introduced in 1914, the nation was transitioning from the Industrial Revolution to the post-Industrial Revolution (i.e., the service sector generated more wealth than the manufacturing sector).<sup>38</sup> Notwithstanding that machinery and assembly lines were commonplace,<sup>39</sup> tax returns still had to be manually completed and audits conducted on a case-by-case examination basis.<sup>40</sup> Indeed, tax information returns such as Forms W-2 and 1099 were initially nonexistent,<sup>41</sup> making those taxpayers who were first subject to the income tax on an annual basis endure a tedious and laborious process.

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37. Compare UNITED STATES INTERNAL REVENUE, FORM 1040 (1913), available at <http://www.irs.gov/pub/irs-utl/1913.pdf>, with INTERNAL REVENUE SERVICE, FORM 1040 (2013), available at <http://www.irs.gov/pub/irs-pdf/f1040.pdf> (demonstrating that while Form 1040 has changed over the years to some degree, it still seeks to quantify the same thing in a similar manner).

38. Thomas Earl Geu & Martha S. Davis, *Work: A Legal Analysis in the Context of the Changing Transnational Political Economy*, 63 U. CIN. L. REV. 1679, 1699 (1995) (highlighting the work of commentators who have "posited that the changes wrought by the dawning information and microelectronic technologies will be an event to rival the changes caused by the market mechanism and steam power in the eighteenth and nineteenth centuries—the post-Industrial Revolution.")

39. DAVID A. HOUNSHELL, FROM THE AMERICAN SYSTEM TO MASS PRODUCTION 1800–1932: THE DEVELOPMENT OF MANUFACTURING TECHNOLOGY IN THE UNITED STATES 260–61 (1984) (discussing the manufacturing technology developed by Ford Motor Company and its rapid dissemination throughout the United States).

40. THE AMERICAN WAY IN TAXATION: INTERNAL REVENUE, 1862–1963 83–105 (Lillian Doris ed., 1963).

41. War Revenue Act of 1917, Pub. L. No. 65-50, ch. 63, § 1211, § 28, 40 Stat. 300, 337 (introducing the first tax information returns); see also Richard L. Doernberg, *The Case Against Withholding*, 61 TEX. L. REV. 595, 599–603 (1982) (detailing the history of information returns and statements).

Beginning in the mid-1980s, the technology revolution began,<sup>42</sup> gradually eclipsing the post-Industrial Revolution and quickly injecting itself into every sphere of daily existence. Some things that were previously difficult to achieve became remarkably easy. Consider the typewriter. Those using them had to struggle to make corrections, typically resorting to correction tape or whiteout. Enter the word processor. With a simple keystroke an error could be eliminated, and, as software packages continued to improve, instantaneously purged. A college term paper that might have originally taken twenty hours to perfect might now only take two.

Over the last three decades, the technology revolution has accelerated at a lightning pace. Simple calculators, for example, that were initially only accessible by the very wealthy have become so inexpensive that they can readily be found at the Dollar Store. The calculator is emblematic of virtually all technology in the way that, as the costs of production have plummeted, it has become accessible across the entire socioeconomic spectrum.<sup>43</sup>

As the wonders of and access to technology have increased, the technology revolution has permeated virtually every aspect of the tax return process. Consider four such aspects.

First, technology has afforded the ubiquitous use of tax information returns.<sup>44</sup> These returns supply invaluable information to taxpayers, enabling them to complete their tax returns; simultaneously, these very same returns enable the government to ensure tax compliance.<sup>45</sup> The number of these tax information returns issued annually has grown precipitously,<sup>46</sup> particularly as Congress has recognized that their issuance is vital to ensure tax compliance.<sup>47</sup>

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42. CHRIS FREEMAN & FRANCISCO LOUÇÃ, *AS TIME GOES BY: FROM THE INDUSTRIAL REVOLUTIONS TO THE INFORMATION REVOLUTION* §§ 9.1–9.5 (2002) (highlighting the technological developments of the mid-twentieth century that lead to the success of computers decades later).

43. Robert W. Keyes, *The Impact of Moore's Law*, IEEE SOLID-STATE CIRCUITS SOC'Y NEWSL. Sept. 2006, at 25 ("The integrated circuit [invented in 1960] offered manufacturers an opportunity to drastically reduce costs by handling and interconnecting many components simultaneously rather than one by one. The new technology was quickly adopted and only five years later Gordon Moore of Intel announced that the number of components placed on a silicon chip had approximately doubled each year.").

44. Soled, *supra* note 5.

45. See Leandra Lederman, *Reducing Information Gaps to Reduce the Tax Gap: When Is Information Reporting Warranted?*, 78 *FORDHAM L. REV.* 1733, 1736 (2010) ("With information reporting, the government obtains information about the taxpayer's tax situation from a third party and—equally important—the taxpayer knows that the government has the information.").

46. See, e.g., INTERNAL REVENUE SERV., PUB. NO. 55B, INTERNAL REVENUE SERVICE DATA BOOK 2013 37 tbl.14 (Mar. 2014), available at <http://www.irs.gov/pub/irs-soi/13databk.pdf> (indicating that over two billion tax information returns are issued annually); see also INTERNAL REVENUE SERV., PUB. NO. 55B, INTERNAL REVENUE SERVICE DATA BOOK 2003 32 tbl.25 (Sept. 2003), available at <http://www.irs.gov/pub/irs-soi/03databk.pdf> (indicating that 1.3 billion tax information returns were issued in 2003, approximately seven hundred million fewer than the number issued the following decade).

47. See INTERNAL REVENUE SERV., *supra* note 30, at 1 (estimating one percent noncompliance rate when income is subject to substantial information reporting and withholding, and an eight percent noncompliance rate when income is subject to substantial information reporting but not withholding); Karen Setze, *Taxpayers Honest When Someone's Checking, Say IRS Officials*, 111 *TAX NOTES* 1216, 1216 (2006) ("[R]esults from the recently completed individual reporting compliance study for 2001 . . . showed that only 1.2 percent of wage income was underreported, 57 percent of nonfarm proprietor income was misreported . . . and 72 percent of farm income was misreported."); News Release, Internal Revenue Serv., IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged from Previous Study 30 (Jan. 6, 2012)

Second, tax-preparation software programs enable both the general public and tax professionals to complete tax returns expediently. Program vendors pride themselves on making tax return preparation accessible to the general public. Often, television commercials and YouTube videos for these products assert that they can effortlessly enable users to prepare accurate returns.<sup>48</sup> While these software packages often are commercially sold for only twenty to fifty dollars, program vendors offer them for free to low-income taxpayers.<sup>49</sup> Tax professionals are likewise benefactors of these inexpensive software programs, as they are able to produce accurate tax returns that yesteryear might have taken quadruple the time or longer to complete.<sup>50</sup>

Third, taxpayers and tax professionals can now file tax returns electronically and are routinely availing themselves of this opportunity.<sup>51</sup> Electronic filing obviates the need to use the U.S. postal system, saving taxpayers and the government tremendous resources: taxpayers do not have to assemble their returns, take them to the post office, and pay postage; and the government does not have to process these returns and engage in the erstwhile, laborious task of re-key punching taxpayers' entries to ensure the accuracy of taxpayers' submissions.

Fourth, the IRS can readily perform initial audits in an automated fashion. More specially, using a so-called DIF score, the IRS can automatically select those tax returns that contain suspicious entries and devote its limited audit resources to examining such returns.<sup>52</sup> This is in clear contrast to the IRS's prior process, in which it

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available at <http://www.irs.gov/pub/irs-news/ir-12-004.pdf> ("Overall, compliance is highest where there is third-party information reporting and/or withholding. For example, most wages and salaries are reported by employers to the IRS on Forms W-2 and are subject to withholding. As a result, a net of only 1 percent of wage and salary income was misreported. But amounts subject to little or no information reporting had a 56 percent net misreporting rate in 2006."); see also Joseph Bankman, *Eight Truths About Collecting Taxes from the Cash Economy*, 117 TAX NOTES 506, 511 (2007) ("By now almost everyone knows the tremendous bang for the buck we get with third-party reporting. Current rules impose relatively minor compliance costs and effectively capture most income.").

48. See, e.g., Cellcom, *SnapTax – How to File Your Taxes From Your Phone*, YOUTUBE, <http://www.youtube.com/watch?v=Kg9IFMtgUwk> (last updated Feb. 10, 2012).

49. In 2013, TurboTax offered free tax-preparation software for taxpayers whose adjusted gross income was \$30,000 or less. Lisa Lewis, *TurboTax Freedom Edition and IRS Free File Alliance Offer Free Tax Filing*, INTUIT TURBOTAX BLOG (Mar. 18, 2014), <http://blog.turbotax.intuit.com/2014/03/18/turbotax-freedom-edition-and-irs-free-file-alliance-offer-free-tax-filing/>. The IRS's website for 2013 tax returns offers free tax-preparation software for taxpayers earning less than \$58,000. *Free File: Do Your Federal Taxes for Free*, IRS, <http://www.irs.gov/uac/Free-File:-Do-Your-Federal-Taxes-for-Free> (last updated Dec. 12, 2014).

50. Indeed, existing technology enables tax professionals to use resources halfway around the world to prepare tax returns. See, e.g., Jesse Robertson et al., *Offshore Outsourcing of Tax-Return Preparation: Promising Business Opportunities and Professional Standards*, CPA J., June 2005, available at <http://www.nyscpa.org/cpajournal/2005/605/essentials/p54.htm> ("Outsourcing tax-compliance work overseas can enable CPAs to focus on higher-margin services such as tax consulting, to reduce labor costs, and to increase the speed of tax-return processing.").

51. See INTERNAL REVENUE SERVICE DATA BOOK 2013, *supra* note 46, at 9–11 tbl.4 (indicating the number of returns filed electronically by state and type of return in 2013).

52. The returns with the highest DIF scores are the ones predicted to have the greatest potential for a substantial audit assessment, and these returns are then selected for possible audit consideration, subject to the availability of examination resources. See *Bologna v. Dep't of Treasury*, No. 93-1495(NHP), 1994 WL 381975, \*2 (D.N.J. Mar. 29, 1994) ("DIF scores are standards used by the IRS for the selection of tax returns for audits.").

had to examine tax returns in a manual fashion and cull returns for audit based upon a visceral or idiosyncratic misgiving.<sup>53</sup>

The technological changes just described are already in place and efficiently functioning.<sup>54</sup> In the areas of tax return submissions and substantive tax law, other possible technological innovations remain untapped.

In terms of tax return submissions, there is the possibility that Congress could make the process even more taxpayer friendly. Consider that the state of California has instituted a so-called ReadyReturn system.<sup>55</sup> As part of this program, California uses tax information that is submitted via tax information returns to populate the tax returns of low-income taxpayers, who may thereafter file, adjust, or reject such returns. In one of two ways, such a system could be expanded to a national level. First, Congress could mandate that, via a website portal, all information available to the IRS from tax information returns and Schedules K-1 be made simultaneously available to taxpayers. Second, Congress could mandate that the IRS actually use the information it has in its possession to populate taxpayers' tax returns, akin to California's ReadyReturn system, which taxpayers could thereafter, upon review, decide to accept, adjust, or reject.

In terms of substantive tax law, Congress should explore crafting the Code in a fashion that strategically capitalizes upon technological advancements. For illustration purposes, consider the deductibility of automobile expenses. The Code presently permits taxpayers who are "away from home" to deduct those business-related automobile expenses that are "ordinary and necessary" in nature.<sup>56</sup> Taxpayers, however, have a challenging time determining which of their automobile expenses meet this criteria and which are merely personal in nature and, as such, nondeductible.<sup>57</sup> Over the past several decades, the courts have been clogged with cases delving into this nettlesome issue.<sup>58</sup> Just as taxpayers have been challenged by

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53. See THE AMERICAN WAY IN TAXATION: INTERNAL REVENUE, *supra* note 40, at 85 (detailing the auditing process prior to the technology revolution).

54. DEP'T OF TREASURY, INTERNAL REVENUE SERV., PUB. NO. 556, EXAMINATIONS ON RETURNS, APPEAL RIGHTS, AND CLAIMS FOR REFUND 2-8 (2013), available at <http://www.irs.gov/pub/irs-pdf/p556.pdf> (explaining how returns are selected for examination through DIF scores).

55. See Joseph Bankman, *Simple Filing for Average Citizens: The California ReadyReturn*, 107 TAX NOTES 1431 (2005) (highlighting California's ReadyReturn pilot program).

56. I.R.C. § 162(a)(2) (2014).

57. I.R.C. § 262 (2014).

58. In each of the following cases, for example, the taxpayers' commuting expenses were held to be nondeductible: *Clark v. Comm'r*, 951 F.2d 1258 (10th Cir. 1991); *Feistman v. Comm'r*, 63 T.C. 129 (1974); *Russell v. Comm'r*, 60 T.C. 942 (1973); *Marot v. Comm'r*, 36 T.C. 238 (1961); *Donnelly v. Comm'r*, 28 T.C. 1278 (1957), *aff'd*, 262 F.2d 411 (2d Cir. 1959); *Thompson v. Comm'r*, 15 T.C. 609 (1950), *rev'd sub nom. Comm'r v. Thompson*, 193 F.2d 586 (10th Cir. 1951); *Bruton v. Comm'r*, 9 T.C. 882 (1947); *Bigdeli v. Comm'r*, T.C. Memo. 2013-148; *Saunders v. Comm'r*, T.C. Memo. 2012-200; *Washburn v. Comm'r*, T.C. Memo. 1991-195, *aff'd sub nom. United States v. Washburn*, 992 F.2d 321 (2d Cir. 1993); *Verbica v. Comm'r*, T.C. Memo. 1990-584; *Dickson v. Comm'r*, T.C. Memo. 1986-182; *Brown v. Comm'r*, T.C. Memo. 1983-726; *Henderson v. Comm'r*, T.C. Memo. 1983-372; *Taylor v. Comm'r*, 1981-8; *Krambo v. Comm'r*, T.C. Memo. 1980-425; *Alexander v. Comm'r*, T.C. Memo. 1979-436; *Fisher v. Comm'r*, T.C. Memo. 1979-191; *Clark v. Comm'r*, T.C. Memo. 1978-276; *McKinley v. Comm'r*, T.C. Memo. 1978-428; *Gudmundsson v. Comm'r*, T.C. Memo. 1978-299; *Potenga v. Comm'r*, T.C. Memo. 1976-151; *Beckley v. Comm'r*, 34 T.C. Memo. 1975-37; *Patti v. Comm'r*, T.C. Memo. 1975-107; *Roberts v. Comm'r*, T.C. Memo. 1971-282; *Pemberton v. Comm'r*, T.C. Memo. 1970-194; *Crist v. Comm'r*, T.C. Memo. 1970-115; *Hodgkinson v. Comm'r*, T.C. Memo. 1968-176; *Kutchinski v. Comm'r*, T.C. Memo. 1968-46; *Steinhort v. Comm'r*, T.C.

the issue of automobile expense deductibility, the IRS has been similarly flummoxed. When it comes to automobile expenses, it has to go through the resource-intensive task of conducting physical audits and directly challenging the accuracy of what taxpayers purport.<sup>59</sup>

How can technological advancements bring more accuracy and clarity to this area of the law? First, based upon driving averages, Congress could categorize every occupation and then set predetermined dollar amount deduction allowances. This categorization process would obviate the need to have taxpayers keep and maintain records and greatly facilitate the tax return compliance and audit processes. Alternatively, Congress could require that for automobile expenses to be deductible, taxpayers would have to maintain electronic driving records that GPS systems now make possible.<sup>60</sup>

When it comes to technological advancements, Congress should not limit itself to devising innovations pertaining to the deductibility of automobile expenses. Whenever Congress considers amending the Code, it should have staff members or a stand-alone committee evaluate each and every amendment to determine how readily the proposed statutory language can be transformed into easy-to-follow prompts for computer software programs to handle. Those amendments that are deemed easier to transform into prompts that would yield crisp answers (e.g., occupational categorization and automobile expense deduction allowances) should, assuming they are sufficiently meritorious, be readily passed; in contrast, those amendments that are difficult to transform into prompts that would yield crisp responses (e.g., a gray legal standard pertaining to the deductibility of meals and entertainment expenses that are business related) should, if possible, be avoided.<sup>61</sup>

#### *B. Impact of Technological Advancements Upon Fiscal Citizenship*

Technological adoptions in the sphere of tax return submissions will have important implications for the type of fiscal citizenship identified by Zelenak.<sup>62</sup>

If Congress is able to fully capitalize upon existing and new technologies, the tax return submission process could be made far less arduous. In the future, taxpayers might be able to readily download information from an IRS website.<sup>63</sup> Alternatively, by

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1962-233, *aff'd and remanded*, 335 F.2d 496 (5th Cir. 1964); *Bodholdt v. Comm'r*, T.C.Memo. 1961-87; *Steele v. Comm'r*, T.C.Memo. 1960-181; *Walker v. Comm'r*, T.C. Memo. 1959-206; *Ranstead v. Comm'r*, 10 T.C.M. 117 (1951); *Rogers v. Comm'r*, T.C. Summ. Op. 2001-188.

59. See Ridgeley A. Scott, *Reimbursed Employee Expenses: New Tales from the Grimm Brothers*, 28 WILLAMETTE L. REV. 1, 8 (1991) (explaining how time intensive IRS audits involving travel and entertainment expenses tend to be).

60. See, e.g., TAXBOT, <https://taxbot.com/z/2f14/> (last visited Dec. 12, 2014) (promoting the ability of this company's "app" to track business-related automobile expenses); ZONEWALKER LLC, <http://www.zonewalker.com/acar> (last visited Dec. 12, 2014) (same).

61. See Lawrence Zelenak, *Complex Tax Legislation in the TurboTax Era*, 1 COLUM. J. TAX L. 91, 91 (2010) (arguing that the tax return software revolution has, unfortunately, inspired Congress to enact some provisions of "great computational complexity").

62. See generally Jeremiah Coder, *Securities Basis Reporting Is a Step Toward Use of Technology*, 122 TAX NOTES TODAY 840 (2009) (discussing how technology is reshaping the process of tax administration).

63. See Jay A. Soled, *Call for the Gradual Phase-Out of All Paper Tax Information Statements*, 10 FLA. TAX REV. 345, 345 (2010).

mid-February, the IRS might send a proposed tax return to every taxpayer to review; the recipient taxpayer will then have to decide whether to submit, adjust, or reject it.<sup>64</sup> These and other possibilities exist that would, in most instances, reduce the time, resources, and anguish commonly associated with the tax return submission process.

However, the practical outcome of adopting these innovations is that the tax return submission process would become less visible. A less visible income tax might stoke the fears of some that the lack of “pain” associated with paying tax would embolden politicians to raise taxes and grow the size of government.<sup>65</sup>

Another potentially negative effect of technology is that technological innovations may signal a possible shift in the nature of tax laws away from an emphasis upon equity to an emphasis upon administrability. For decades, commentators have debated the supposed trade-offs between tax laws that are equitable and those that are administrable.<sup>66</sup> Many tax laws that are considered “equitable” attempt to take into account idiosyncratic differences between and among taxpayers. For example, I.R.C. § 62(a)(2)(D) permits elementary and secondary school teachers an above-the-line deduction, up to \$250, for “books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials.”<sup>67</sup> Yet, although fair, taking into account taxpayer individual circumstances adds significantly to the Code’s girth and complexity. Instead, with technology as its lodestar, Congress may emphasize administrability and deemphasize equity, subscribing perhaps to a new mantra: ease of administration makes the Code, on the whole, more equitable. Nonetheless, citizens may not latch onto this new mantra and may feel removed from the tax system.

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The technological age of the Internet, however, has fundamentally transformed the availability of information, including critical tax data, to make it more readily accessible. On the basis of this accessibility, this analysis calls for the phase-out of paper tax information statements. Instead, tax data would be available at a secure IRS website that, with a few keystrokes, taxpayers could conveniently use to prepare their tax returns. Adoption of this proposal promises to create tremendous administrative efficiencies and greatly simplify the tax return preparation process.

*Id.*; see generally, Austan Goolsbee, *Why Tell the I.R.S. What It Already Knows?*, N.Y. TIMES, Apr. 7, 2006, at A25.

64. AUSTAN GOOLSBEE, BROOKINGS INST., THE ‘SIMPLE RETURN’: REDUCING AMERICA’S TAX BURDEN THROUGH RETURN-FREE FILING 7–10 (2006), available at <http://www.brookings.edu/~media/Research/Files/Papers/2006/7/useconomics%20goolsbee/200607goolsbee.pdf>.

65. See, e.g., Grover G. Norquist, President, Americans for Tax Reform, Testimony at the President’s Advisory Panel on Federal Tax Reform 119 (May 17, 2005) (“[M]oving 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.”). To date, research in this area has thus far proven inconclusive, and no one is able to pinpoint the exact effects of tax visibility on the amount of taxes imposed and government size. See generally David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19 (2011) (discussing how tax presentation affects taxpayer behavior).

66. See, e.g., WILLIAM D. POPKIN, FUNDAMENTALS OF FEDERAL INCOME TAX LAW § 1.07, at 32–33 (4th ed. 2002) (exploring the sources of complexity that imbue the federal tax system); Alice G. Abreu & Richard K. Greenstein, *Defining Income*, 11 FLA. TAX REV. 295, 334–36 (2011) (“An unadministrable system will almost certainly be inequitable and inefficient because it will affect taxpayers arbitrarily, resulting in inequity and inefficiency”); Anthony C. Infanti, *Tax Equity*, 55 BUFF. L. REV. 1191, 1202 (2008) (“Like administrability, equity plays no more than a supporting role in achieving the overarching goal of an efficient tax.”).

67. I.R.C. § 62(a)(2)(D) (2014).

Despite the potential for decreased connectedness due to a lack of tax visibility and a lack of equity, there are other positive effects associated with incorporating technological innovations into the tax return submission process.

Taxpayers who appreciate efficiency in the private sector will no doubt relish efficiency when it comes to the tax return submission process. Taxpayers' admiration for a more efficient tax return submission process will boost their respect toward the tax system and presumably the government in general: taxpayers will correlate efficiency in the realm of tax return submissions with efficiency in the realm of other government expenditures, such as bridge and road construction. This efficiency will thus undoubtedly increase citizens' commitment to the tax system in much the same way that, as noted by Zelenak, a return-based system increases commitment.<sup>68</sup>

Another positive effect associated with the greater use of technological innovations is enhanced tax compliance. Taxpayers who witness firsthand that the government can tackle the issue of tax return submissions in a sophisticated fashion will likely extrapolate that the government can likewise handle tax return oversight and monitoring in a similarly sophisticated fashion. (Conversely, if the tax return submission process is handled ineptly, then some taxpayers would likely hold both Congress and the tax system in contempt, thereby jeopardizing their future adherence to the law.) Again, increased connectedness between the income tax system and fiscal citizenship is the result.

Finally, as technological innovations progress, more taxpayers will likely prepare their own tax returns rather than retain tax professionals to do so on their behalf.<sup>69</sup> By taking tax return "ownership," taxpayers will exhibit pride in both their work and a tax system that affords them the opportunity to fulfill their civic duties independent of having to rely upon others. (As for the tax professionals who previously prepared tax returns, they can use their creative energies and talents to buoy other spheres of the economy.) This, in turn, will cause taxpayers to feel more vested in the system.

On the whole, as the foregoing analysis demonstrates, the adoption of technological advancements in the tax return submission process should produce a plethora of positive changes, leading to a strengthening of fiscal citizenship.

#### IV. CONCLUSION

The technology revolution has touched virtually every sphere of our existence. Information via the Internet is always at our fingertips, cellular phones enable us to stay in touch wherever we are in the world, and computer systems facilitate productivity in

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68. See *supra* notes 20–27 and accompanying text for a discussion of the relationship between a return-based system and fiscal citizenship.

69. See, e.g., NAT'L TAXPAYER ADVOCATE REPORT: 2013 ANNUAL REPORT TO CONGRESS 61 (2013), available at <http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Volume-1.pdf> (citations omitted) ("For tax year (TY) 2011, taxpayers filed about 142 million 1040-series individual returns, with nearly 79 million taxpayers using paid preparers."); *More Taxpayers Filing from Home Computers in 2014, Many Taxpayers Eligible to Use Free File*, INTERNAL REVENUE SERV. (Mar. 13, 2014), <http://www.irs.gov/uac/Newsroom/More-Taxpayers-Filing-from-Home-Computers-in-2014--Many-Taxpayers-Eligible-to-Use-Free-File> (indicating the percentage of taxpayers preparing their own returns increasing and the percentage of taxpayers using tax professionals decreasing).

the workplace. These technological advancements have generally heightened citizens' expectations that virtually anything can get done accurately and efficiently.

The Code does not operate in a vacuum and is thus not immune to this technology revolution. To the contrary, taxpayers harbor expectations that tax compliance can also be conducted accurately and efficiently. When reforming the Code, Congress must capitalize upon technological advancements lest taxpayers lose faith in the tax system, believing it to be antiquated and ineffectual. By continually modernizing the Code, the tax system will facilitate taxpayer comprehension and compliance, which, in turn, will help galvanize fiscal citizenship.

As a practical matter, the long lines at the post office that were routinely seen for the past fifty years are ebbing. Fortunately, for the time being, the reason is not due to waning fiscal citizenship. Instead, the shortening of these lines is due to the fact that taxpayers are increasingly filing their tax returns electronically, obviating the need for taxpayers to queue up. Electronic filing is just one of several technological advancements that Congress has been able to capitalize upon.

Yet, some important technological innovations remain untapped. Assuming that Congress wants to strengthen fiscal citizenship, Congress should not tarry. It should explore every opportunity to make the tax return submission process easier and more efficient. However, Congress should ensure that in its haste to do so, it does not make the system more opaque to the general public—that is, it must not ignore the importance of a connectedness between the income tax and fiscal citizenship.

At least as reflected in the popular press, the communal bonds of April 15 remain vibrant. Indeed, media news coverage still enshrines April 15 as a ceremonial day of sorts that is nothing short of an annual rite of passage to be a U.S. citizen. Zelenak's hope is that April 15 continues to be portrayed in a favorable fashion and that our nation's love affair—begrudging though it may be—with Form 1040 continues unabated and, if anything, grows stronger.