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LEGAL CALCULATORS AND THE TAX SYSTEM

JOSHUA D. BLANK* & LEIGH OSOFSKY**

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I. Introduction

Automated customer service has become the primary way in which many consumers find answers to their questions about companies' products, whether they involve airline reservations,¹ medical insurance coverage² or unresponsive home appliances.³ Federal and state tax authorities have increasingly begun to offer online decision-making tools that provide guidance regarding the tax law to taxpayers. Some online tools, such as the IRS's "Withholding Calculator," direct taxpayers to input wage information in order to receive confirmation of whether their tax withholding is adequate.⁴ More comprehensive online tools, such as the IRS's "Interactive Tax Assistant," ask taxpayers personal questions and then deliver answers on topics ranging from whether the taxpayer is required to file a tax return to whether the taxpayer is entitled to claim certain tax credits to whether a type of income is taxable.⁵ These online tools can be described as "legal calculators": they not only perform mathematical calculations, but they attempt to calculate taxpayers' legal consequences as well.

Legal calculators often embody a characteristic that can be termed

¹ See, e.g., Jonathan Wolfe, *Want Faster Airline Customer Service? Try Tweeting*, N.Y. TIMES (Nov. 20, 2018), <https://www.nytimes.com/2018/11/20/travel/airline-customer-service-twitter.html> [<https://perma.cc/CT9Z-3H8X>] (describing automated airline customer service).

² See, e.g., David A. Ash et al., *How Bots Will Change the Doctor-Patient Relationship*, HARV. BUS. REV. (Jun. 4, 2019), <https://hbr.org/2019/06/how-bots-will-change-the-doctor-patient-relationship> [<https://perma.cc/7LJ2-3EVT>] (describing automated health insurance customer service).

³ See, e.g., Jason Maynard, *Beyond the Bot: Why AI in Customer Service Means More Than Just Chatbots*, TECHRADAR (May 13, 2019), <https://www.techradar.com/news/beyond-the-bot-why-ai-in-customer-service-means-more-than-just-chatbots> [<https://perma.cc/7Q8Q-4P2U>] (describing automated home appliance customer service); see also Tom Baker & Benedict Dellaert, *Regulating Robo Advice Across the Financial Services Industry*, 103 IOWA L. REV. 713, 727 (2017); Ming-Hui Huang & Ronald T. Rust, *Artificial Intelligence in Service*, 21 J. SERV. RES. 155, 168 (2018); P.V. Kannan & Josh Bernoff, *The Future of Customer Service Is AI-Human Collaboration*, MIT SLOAN MGMT. REV. (May 29, 2019), <https://sloanreview.mit.edu/article/the-future-of-customer-service-is-ai-human-collaboration/> [<https://perma.cc/7SK7-7X5W>].

⁴ *IRS Withholding Calculator*, IRS, <https://www.irs.gov/individuals/irs-withholding-calculator> [<https://perma.cc/DY6E-DV8J>] (last updated Oct. 9, 2019).

⁵ *Interactive Tax Assistant (ITA)*, IRS, <https://www.irs.gov/help/ita> [<https://perma.cc/3DUL-QX9S>] (last updated Oct. 31, 2019).

“simplicity.” As we have theorized, simplicity occurs when the government presents clear and simple explanations of the law without highlighting its underlying complexity or reducing this complexity through formal legal changes.⁶ In earlier work, we have argued that some elements of IRS publications (plain language summaries of the law for the general public) present contested tax law as clear tax rules, add administrative gloss to the tax law, and fail to fully explain the tax law.⁷

In this Article, we show that simplicity also occurs when the government offers legal calculators to deliver guidance to taxpayers. For example, depending on the individual taxpayer’s circumstances, the Interactive Tax Assistant may deliver seemingly clear and simple answers to questions such as whether gambling losses are deductible, self-employment tax is owed, medical expenses are deductible, scholarships are taxable, education expenses are deductible, tip income is taxable and exceptions to penalties for early IRA retirement account distributions are triggered, among many others.⁸

We argue that legal calculators present the potential for even more pervasive and powerful forms of simplicity than static IRS publications. First, legal calculators are interactive: not only do they provide simplified statements of the law, but legal calculators also ask simplified questions about the underlying facts. At worst, this exacerbates simplicity’s “garbage in, garbage out” tendencies. Second, legal calculators deliver personalized, rather than general, answers to taxpayers’ specific questions. The tailored nature of these responses may further induce taxpayers’ reliance upon them. Last, legal calculators provide answers almost instantaneously, limiting taxpayers’ need to spend time absorbing and applying a written summary of the law. This may reduce the incentive for taxpayers to seek guidance from professional third-party advisors, enhancing the role of simplicity in tax compliance.

⁶ See Joshua D. Blank & Leigh Osofsky, *Simplicity: Plain Language and the Tax Law*, 66 EMORY L.J. 189, 263 (2017).

⁷ See *id.*

⁸ Interactive Tax Assistant (ITA), *supra* note 5.

The remainder of this Article proceeds as follows: Part II reviews the concept of simplicity and describes its occurrence in IRS publications. Part III explores the potential for simplicity in legal calculators provided by the IRS, focusing specifically on the Interactive Tax Assistant. Part IV describes questions for future research. Part V concludes.

II. What is Simplicity?

a. Simplicity Generally

The tax law in the United States is notoriously complex.⁹ It contains numerous, extraordinarily detailed provisions.¹⁰ These provisions interact with each other in difficult and not always reasonable ways.¹¹ Despite the exceedingly large number of detailed rules, there still remains significant uncertainty about how even basic tax law questions should be applied to a particular taxpayer's situation.¹²

Yet, the tax system in the United States is a “voluntary compliance” system, which requires taxpayers to calculate their own tax liabilities initially, rather than having the government first provide this amount.¹³

⁹ This statement has been made so many times, it could almost be considered axiomatic. See, e.g., Edward J. McCaffery, *The Holy Grail of Tax Simplification*, 1990 WIS. L. REV. 1267, 1268 (1990) (examining the statement in detail).

¹⁰ See, e.g., Jennifer Harper, *4 MILLION WORDS: The U.S. Tax Code Is Seven Times the Length of 'War and Peace'*, WASH. TIMES (Apr. 15, 2014), <http://www.washingtontimes.com/news/2014/apr/15/4-million-words-us-tax-code-seven-times-length-war> [https://perma.cc/2Z82-EAME] (reporting in 2014 that “[a]t 3,951,104 words long, the U.S. Tax Code is seven times the length of Leo Tolstoy’s ‘War and Peace’ ... twice the length of the King James Bible plus the entire works of Shakespeare combined”).

¹¹ See, e.g., David A. Weisbach, *Formalism in the Tax Law*, 66 U. CHI. L. REV. 860, 871 (1999) (discussing interactions between the rules in the tax law).

¹² See, e.g., John A. Miller, *Indeterminacy, Complexity, and Fairness: Justifying Rule Simplification in the Law of Taxation*, 68 WASH. L. REV. 1, 50 (1993) (exploring how, paradoxically, the great number of tax rules may actually lead to more indeterminacy).

¹³ See *The Truth About Frivolous Arguments – Section I (A to C)*, IRS, <https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-section-i-a-to-c#a> [https://perma.cc/Q4E7-6G3V] (last updated Mar. 21, 2019) (rejecting notion that taxpayers need not file tax returns and explaining actual nature of the voluntary tax compliance system).

This means that a large number of unsophisticated taxpayers must attempt to apply complex tax law to their personal situations.¹⁴ The IRS is faced with the difficult task of helping these taxpayers file their tax returns correctly.¹⁵

One way in which the IRS fulfils this difficult task is with the help of “simplicity.” As we described in prior work, simplicity exists “when the government offers clear and simple explanations of the law without highlighting its underlying complexity or reducing this complexity through formal legal changes.”¹⁶ Simplicity is distinct from simplicity. Whereas simplifying the tax law involves reforming the law to reduce its complexity, for example, by eliminating certain particularly complicated rules, simplicity makes the law seem simpler, without actually engaging in the underlying simplification process through legislative or regulatory change.¹⁷

b. Simplicity in IRS Publications

In previous work, we have examined how the IRS engages in simplifications when explaining the tax law in IRS Publications, a primary source of communication by the IRS to non-expert taxpayers.¹⁸ IRS Publications are “static” guidance, in that they do not respond interactively to taxpayers, but rather offer stock, generalized explanations of the law to taxpayers. Taxpayers are not the only actors who rely on IRS Publications; as we illustrated in our prior work, intermediaries, such as commercial tax preparation software, tax accountants and return preparers, as well as secondary sources, all use

¹⁴ See, e.g., Emily Cauble, *Detrimental Reliance on IRS Guidance*, 2015 WIS. L. REV. 421, 422 (2015) (exploring difficulties unsophisticated taxpayers face, including having to rely on informal advice in filing their tax returns).

¹⁵ See *The Agency, Its Mission and Statutory Authority*, IRS, <https://www.irs.gov/uac/the-agency-its-mission-and-statutory-authority> [<https://perma.cc/VYR4-UHQ9>] (last updated Mar. 28, 2019) (describing that “[t]he IRS role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share”).

¹⁶ Blank & Osofsky, *supra* note 6, at 207.

¹⁷ *Id.* at 206-07.

¹⁸ Andrea Monroe, *Hidden in Plain Sight: IRS Publications and A New Path to Tax Reform*, 21 FLA. TAX REV. 81, 91 (2017).

IRS Publications.¹⁹ In IRS Publications, there are numerous examples of simplicity, which offer clear tax rules for what is really contested tax law, present the tax law with added administrative gloss, and do not fully explain the tax law, including, for instance, by not mentioning exceptions.²⁰

As an example of the last category, taxpayers often must determine whether an activity is profit-seeking in order to decide how to treat the expenses from the activity. If the activity is profit-seeking, taxpayers may be able to deduct ordinary and necessary expenses of such activity.²¹ If the activity is not profit-seeking, the taxpayer may be limited to deducting expenses only to the extent that the activity produces income.²² IRS Publication 535 (Business Expenses) offers taxpayers a list of the factors they should consider in making the profit-seeking determination.²³ However, the governing Treasury Regulations offer more nuanced factors, which may lead taxpayers to reach different conclusions about the issue.²⁴

Through simplicity, the IRS can present the tax law in a way that is clear and simple for most taxpayers, make its own view of the law transparent, and potentially even raise additional tax revenue.²⁵ However, simplicity also has costs, including reducing transparency about the underlying tax law and imposing unequal benefits and burdens on taxpayers in ways that are unlikely to be policed effectively by administrative law.²⁶ As we have suggested, some ways to manage this tradeoff in static guidance like IRS Publications could include ensuring appropriate internal review of this guidance, or requiring the IRS to red-flag instances where it has neglected to

¹⁹ Blank & Osofsky, *supra* note 6, at 229-33.

²⁰ *Id.* at 207.

²¹ I.R.C. §§ 162(a); 212. (2017).

²² I.R.C. § 183(a) (2017).

²³ I.R.S., DEP'T OF THE TREASURY, CAT. NO. 15065Z, PUBLICATION 535: BUSINESS EXPENSES 7 (2019), <https://www.irs.gov/pub/irs-pdf/p535.pdf>.

²⁴ Blank & Osofsky, *supra* note 6, at 227.

²⁵ *Id.* at 234-37.

²⁶ *Id.* at 237-49.

describe contradictory legal authority for taxpayers.²⁷

III. Legal Calculators as Taxpayer Guidance

As budget cuts over the past decade have forced the IRS to dramatically reduce the number of human customer service agents available to answer taxpayers' questions, the agency has simultaneously increased its use of legal calculators to deliver tailored taxpayer guidance.²⁸ These online tools attempt to calculate the legal consequences of a taxpayer's earnings, expenses, activities and life events in response to information that the taxpayer provides. We argue that legal calculators, such as the IRS's Interactive Tax Assistant, present the potential for even more pervasive and powerful forms of simplicity than static IRS publications.

This Part provides an overview of the Interactive Tax Assistant, the most prominent legal calculator available to taxpayers today, illustrates how the Interactive Tax Assistant showcases simplicity, contrasts the guidance of this legal calculator with that of IRS publications and predicts the likely future growth of the Interactive Tax Assistant and other legal calculators in the administration of the tax system.

a. The Interactive Tax Assistant

Launched in 2010, the Interactive Tax Assistant is an online resource that provides taxpayers with personalized responses to a number of tax law questions.²⁹ The IRS informs taxpayers that the Interactive Tax Assistant can “determine if a type of income is taxable, if you're

²⁷ *Id.* at 252-58.

²⁸ See *Nat'l Taxpayer Advocate, 1 Objectives Report to Congress Fiscal Year 2019*, 25 (2019), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-JRC/JRC19_Volume1.pdf (discussing increase in use of Interactive Tax Assistant); TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2011-40-070, THE INTERNAL REVENUE SERVICE PROVIDES HELPFUL AND ACCURATE TAX LAW ASSISTANCE, BUT TAXPAYERS EXPERIENCE LENGTHY WAIT TIMES TO SPEAK WITH ASSISTORS (2011), <https://www.treasury.gov/tigta/auditreports/2011reports/201140070fr.pdf> (describing the history of Interactive Tax Assistant).

²⁹ See TREASURY INSP. GEN. FOR TAX ADMIN., *supra* note 28.

eligible to claim certain credits, and if you can deduct expenses on your tax return.”³⁰ For example, a taxpayer may visit the Interactive Tax Assistant and select a category such as, “Can I Deduct My Moving Expenses?” or “Can I Claim a Deduction for Student Loan Interest?”³¹ The taxpayer then responds to a series of questions, such as whether the taxpayer intends to claim itemized deductions and what is the taxpayer’s adjusted gross income for the year at issue.³² After providing this information, the Interactive Tax Assistant presents the taxpayer with an “answer”, such as that the expense is or is not deductible.³³

The IRS has widely publicized the availability of the Interactive Tax Assistant to taxpayers as an alternative to guidance through the IRS help line or at Taxpayer Assistance Centers.³⁴ During the 2019 filing season, the IRS tweeted an image of toy robots standing in a line beneath a heading that read, “Need tax information that fits your own circumstances? No need to wait. Check the IRS Interactive Tax Assistant any time.”³⁵ Similarly, on its website, under the heading “Tax Law Questions,” the IRS lists the Interactive Tax Assistant as the first resource that taxpayers should consult, ahead of its list of “Frequently Asked Questions” and “IRS Tax Map” of IRS publications and forms.³⁶

The IRS’s reliance on legal calculators like the Interactive Tax Assistant is central to its customer service mission and likely to increase. The agency considers the Interactive Tax Assistant to be a cost-effective substitute for face-to-face guidance between human IRS

³⁰ Interactive Tax Assistant (ITA), *supra* note 5.

³¹ *Id.* (referencing the Topics by Category section).

³² *See id.*

³³ *See id.*

³⁴ *See, e.g.*, TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2019-44-030, INTERIM RESULTS OF THE 2019 FILING SEASON 16 (2019), <https://www.treasury.gov/tigta/auditreports/2019reports/201944030fr.pdf> (describing the Interactive Tax Assistant).

³⁵ IRS (@IRStaxpros), TWITTER (Jan. 28, 2019, 2:00 PM), <https://twitter.com/IRStaxpros/status/1089961466223042560> [<https://perma.cc/J75M-8GY2>].

³⁶ *Tax Law Questions*, IRS, <https://www.irs.gov/help/tax-law-questions> [<https://perma.cc/PC6D-9GEU>] (last updated Nov. 20, 2019).

customer service representatives and taxpayers.³⁷ While the IRS has reduced in-person assistance at Taxpayer Assistance Centers (according to the Taxpayer Advocate Service, nearly 30% of these centers had one or fewer employees in 2017),³⁸ it has increased its publicity of the Interactive Tax Assistant and other legal calculators.³⁹ Further, the IRS and the US Government Accountability Office characterize the Interactive Tax Assistant as increasing the accuracy of information provided to taxpayers by providing uniform guidance.⁴⁰ The IRS has also signaled that it plans to increase its use of tools like the Interactive Tax Assistant because they provide information to taxpayers 24 hours a day, seven days a week.⁴¹

b. Simplicity and Legal Calculators

While both the IRS and its oversight entities have lauded the agency's use of legal calculators as a way to help taxpayers comply with the tax law, this tool is also susceptible to simplicity. Like IRS publications, the Interactive Tax Assistant distills numerous interlocking statutes, regulations and judicial decisions into clear and simple answers that may fail to fully or accurately describe requirements and exceptions in the tax law.

Consider a hypothetical example. An aspiring actor living in Los Angeles has been struggling for years to find work in commercial television advertising. Concerned that his two front teeth are too large

³⁷ See TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2014-40-038, PROCESSES TO DETERMINE OPTIMAL FACE-TO-FACE TAXPAYER SERVICES, LOCATIONS, AND VIRTUAL SERVICES HAVE NOT BEEN ESTABLISHED 7 Fig. 2 (2014), <https://www.treasury.gov/tigta/auditreports/2014reports/201440038fr.pdf> (describing IRS plan to replace face-to-face interaction with Interactive Tax Assistant and other legal calculators).

³⁸ NAT'L TAXPAYER ADVOCATE, 1 ANNUAL REPORT TO CONGRESS 2017, 117 (2017), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_Volume1.pdf.

³⁹ *Id.*

⁴⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-111, 2010 TAX FILING SEASON: IRS'S PERFORMANCE IMPROVED IN SOME KEY AREAS, BUT EFFICIENCY GAINS ARE POSSIBLE IN OTHERS 21 (2010), <https://www.gao.gov/new.items/d111111.pdf> (discussing IRS's report that Interactive Tax Assistant resulted in "increased accuracy").

⁴¹ See, e.g., I.R.S. News Release IR-2017-76 (Apr. 6, 2017), <https://www.irs.gov/newsroom/irs-extends-call-service-hours-to-assist-taxpayers-on-saturdays-april-8-and-15> [<https://perma.cc/AHA4-RA8Q>].

and may be the cause of his difficulty in securing work, the actor visits a popular cosmetic maxillofacial surgeon in Beverly Hills. Despite the cost of \$10,000, not to mention pain and recovery time, the actor decides to undergo surgery to remove his two front teeth and replace them with two smaller, porcelain teeth.

The following April, the actor wonders whether he can claim any type of federal tax deduction for the \$10,000 cost of the maxillofacial surgery. Before paying an expensive accountant for advice, the actor searches for an answer on the IRS website. He quickly reaches the Interactive Tax Assistant and clicks on the question labeled “Can I Deduct My Medical and Dental Expenses?” and then selects “Artificial Teeth” from an alphabetical index of medical expenses.⁴² The actor answers fifteen questions, including inquiries regarding the amount of the actor’s adjusted gross income, whether the actor’s total medical and dental expenses exceeded 10% of his adjusted gross income and whether he paid for the full cost of the surgery himself.⁴³ After responding to the questions, an answer screen informs the actor, “Your artificial teeth expenses are a qualified deductible expense.”⁴⁴ Delighted by this response, the actor follows the Interactive Tax Assistant’s subsequent instruction to claim the deduction for the cost of the surgery.

While the actor has been able to receive an answer from the IRS quickly and without charge, this answer may be wrong (or at least may trigger an IRS audit). Under current tax law, taxpayers are not permitted to claim itemized deductions for “cosmetic surgery or other similar procedures.”⁴⁵ Although the relevant statute contains limited exceptions for cosmetic surgery that is necessary to ameliorate a deformity arising from personal injury or disease, these types of expenses generally are not deductible.⁴⁶ An IRS agent who reviews the

⁴² *Can I Deduct My Medical and Dental Expenses*, IRS: *Interactive Tax Assistant (ITA)*, <https://www.irs.gov/help/ita/can-i-deduct-my-medical-and-dental-expenses> (last updated Feb. 15, 2019).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ I.R.C. § 213(d)(9) (2017).

⁴⁶ I.R.C. § 213(d)(9)(A) (2017).

actor's tax return may determine that the expense for the artificial teeth was the result of cosmetic surgery and, therefore, is not deductible as medical care.⁴⁷ Consequently, the actor may not only have to bear the cost of the cosmetic surgery itself, but, as a result of following the "answer" provided by the Interactive Tax Assistant, he may also owe additional taxes (due to the disallowed deduction), interest and even tax penalties.⁴⁸

c. Legal Calculators versus IRS Publications

Legal calculators, such as the Interactive Tax Assistant, present the potential for even more influential and far-reaching instances of simplicity in tax law explanations than IRS publications for several reasons.

First, legal calculators embody what could be described as "interactive simplicity" in that both the questions asked and the answers supplied are designed to be simplified. In the example above, the Interactive Tax Assistant asked the actor a simplified question (artificial teeth?) and provided the actor with a simplified output (artificial teeth are deductible).⁴⁹ The legal calculator never raised the possibility that the cosmetic surgery statute could bar the actor's tax deduction.⁵⁰ It also did not ask the actor whether the surgery was necessary to replace teeth that were deformed due to a congenital abnormality, whether the surgery was necessary to meaningfully promote the proper function of the body, or any of the other statutory exceptions to non-deductibility that could have applied.⁵¹ Asking simplified questions is part of what

⁴⁷ See, e.g., I.R.S., DEP'T OF THE TREASURY, CAT. NO. 15002Q, PUBLICATION 502: MEDICAL AND DENTAL EXPENSES, COSMETIC SURGERY (2019), <https://www.irs.gov/pub/irs-pdf/p502.pdf> (indicating that cosmetic surgery is not deductible); *Topic Number 502 – Medical and Dental Expenses*, I.R.S., <https://www.irs.gov/taxtopics/tc502> [<https://perma.cc/YDE2-4MBX>] (last updated Aug. 1, 2019) (indicating the same).

⁴⁸ See *infra* Part IV.B for discussion of tax penalties.

⁴⁹ I.R.S. News Release IR-2017-76, *supra* note 41.

⁵⁰ *Id.*

⁵¹ *Id.* Further, the Interactive Tax Assistant did not prompt the actor to consider whether he could claim an ordinary and necessary business expense deduction under I.R.C. § 162(a). See Rev. Rul. 75-316, 1975-2 C.B. 54. *But see* Rev. Rul. 71-45, 1971-1 C.B. 51 (holding that

makes the Interactive Tax Assistant useful to taxpayers. Rather than having to wade through pages and pages of an IRS Publication summarizing the legal framework for medical deductions, or the many, many more pages of underlying law-governing statutory, regulatory, and judicial, the taxpayer just has to answer a few simplified questions, which are designed to cover the most common situations. But, as legal calculators increase ease of use through simplified questions, they also decrease comprehensive examination of the various tax possibilities. The use of simplified questions exacerbates ways that the analysis will tend to deviate from a more nuanced approach. IRS publications, in contrast, provide simplified explanations of the law, but, because they are not interactive, do not also narrow the facts to which the law may be applied in as extreme a way.

In addition, legal calculators create the impression that the IRS is speaking directly to the taxpayer, potentially causing their simplified answers to be even more persuasive than the guidance of IRS publications. The Interactive Tax Assistant, for instance, attempts to mimic a real conversation between a human IRS customer service representative and the taxpayer by referring to the taxpayer in the second person singular (e.g., “*Your* artificial teeth expenses are a qualified deductible expense”, “Did *you* receive any gambling winnings?”, etc.).⁵² As behavioral research has shown, an organization’s voice is more influential when it is personalized and directed toward a specific individual rather than to an anonymous group of individuals who may be affected by the direction or information (as is the case in IRS publications).⁵³

Finally, legal calculators deliver seemingly definitive answers to taxpayers instantaneously. The IRS estimates that taxpayers can

throat treatment expenses of professional singer not deductible as business expenses due to personal element).

⁵² I.R.S. News Release IR-2017-76, *supra* note 41.

⁵³ See, e.g., JESPER FALKHEIMER & MATS HEIDE, STRATEGIC COMMUNICATION: AN INTRODUCTION (2018); Lei Vincent Huang & Piper Liping Liu, *Ties That Work: Investigating The Relationships Among Coworker Connections, Work-related Facebook Utility, Online Social Capital, and Employee Outcomes*, 72 COMPUTERS HUM. BEHAV. 512, 522 (2017).

complete most of the online questionnaires in the Interactive Tax Assistant in 15 minutes or less and can use this service on their smart phones and other electronic devices.⁵⁴ IRS publications, on the other hand, exist only in printed form or electronic reproduction and can be several hundred pages in length.⁵⁵ Legal calculators, as a result, provide taxpayers with answers to specific questions with greater speed than IRS publications and may further disincentivize taxpayers from seeking additional advice from an accountant or lawyer (or from questioning the answer provided by the IRS through the Interactive Tax Assistant).

IV. Questions for Future Research

As the discussion above illustrates, the Interactive Tax Assistant can provide guidance to taxpayers that seems to be definitive and clear, even though the underlying law may be in some tension with or even contradict the response. In our next Article, we plan to address other instances where the Interactive Tax Assistant and other legal calculators administered by the IRS, and by non-tax agencies as well, provide guidance that offers clear answers despite legal ambiguity, adds administrative gloss to the underlying law or fails to describe the law accurately. Below, we outline several important questions that scholars and policymakers should consider and that we will explore in future research.

a. Should the IRS Use Legal Calculators?

In light of the potential for legal calculators to reflect simplicity, an initial question is whether the IRS should continue using this type of resource rather than investing in hiring human customer service representatives who are capable of providing more nuanced legal

⁵⁴ See, e.g., *I.R.S. News Release IR-2017-76*, *supra* note 41 (“Estimated Completion Time: 15 minutes”).

⁵⁵ See, e.g., I.R.S., DEP’T OF THE TREASURY, CAT. NO. 103116, PUBLICATION 17: YOUR FEDERAL INCOME TAX (2019), <https://www.irs.gov/pub/irs-pdf/p17.pdf> (containing 279 pages).

answers.⁵⁶ Legal calculators, like the Interactive Tax Assistant, offer a number of benefits to tax administration, including that they provide clear and simple answers to complex questions, cost less money than hiring additional employees, and are less likely to result in inconsistent guidance compared to human customer service representatives. They are also less likely to make outright mistakes about how the tax law applies to simple facts. On the other hand, legal calculators may provide guidance that fails to reach the correct conclusion given a more complicated set of facts or law, that unduly benefits the government (such as by dissuading taxpayers from claiming certain tax deductions or credits) and that disproportionately disadvantages the least-well-off and least-sophisticated taxpayers from a substantive perspective. These benefits and drawbacks show that policymakers must weigh the value of more comprehensive descriptions of the tax law versus delivery of quick answers when determining whether to provide guidance to taxpayers through legal calculators.

b. Should Taxpayers Be Entitled to Rely on Legal Calculators to Avoid Tax Penalties?

If the IRS continues to expand its use of legal calculators, a key question is whether taxpayers should be able to rely on the guidance they deliver in tax planning or in avoiding or abating tax penalties. The IRS does not consider answers provided by the Interactive Tax Assistant to be “written determinations” upon which taxpayers can rely when claiming tax positions.⁵⁷ This policy stands in stark contrast to the IRS’s treatment of private letter rulings, where a taxpayer submits information to the IRS about a proposed transaction or tax position, and also pays a fee.⁵⁸ Additionally, the IRS claims that taxpayers should not be entitled to tax penalty abatement where the Interactive Tax Assistant provides the taxpayer with “erroneous advice.”⁵⁹ Should legislators create a rule that enables taxpayers to rely

⁵⁶ Another option is for human representatives themselves to follow legal calculators in order to provide the exact same advice. This would have the same effect as taxpayers using legal calculators. In future research, we will discuss agencies using legal calculators internally.

⁵⁷ I.R.S. IRM 11.3.8.1 (Apr. 21, 2017); *see also* Cauble, *supra* note 14, at 438-439.

⁵⁸ I.R.C. § 6110(a), (b).

⁵⁹ *See, e.g., I.R.S. News Release IR-2017-76, supra* note 41.

on any of the guidance provided by the Interactive Tax Assistant and other legal calculators when engaging in tax planning, perhaps with disclosure of this reliance by the taxpayer? Should taxpayers be entitled to seek tax penalty abatement under Section 6404(f) of the Internal Revenue Code⁶⁰ when they receive erroneous advice from the Interactive Tax Assistant or be permitted to use this guidance to show “reasonable basis” as a defense to accuracy-related tax penalties under Section 6662 of the Internal Revenue Code?⁶¹ These are just a few of the examples of taxpayer reliance and tax penalty defense issues that Congress and the IRS should consider as the use of legal calculators in tax administration grows.

c. Are Legal Calculators Transparent?

Another question is whether there are adequate oversight and accountability measures in place to address legal calculators. Compared to a written IRS publication, it is not nearly as easy to determine when there has been revision to aspects of the questions and answers provided by the Interactive Tax Assistant. Each of the categories in the Interactive Tax Assistant requires taxpayers to respond to ten to fifteen separate questions before reaching the answer screen.⁶² Computer programmers could make adjustments, large or small, to the wording or ordering of the questions without causing individuals outside the IRS to realize that these changes have occurred. IRS publications, in contrast, undergo a lengthy review process by groups within the IRS, such as the Tax Forms and Publications and Customer Assistance, Relationships and Education groups. Proposed changes to IRS documents are reviewed and discussed and a written record of any changes exists, at least internally.⁶³ Does the IRS use a similar review processes in the case of legal calculators, should these review processes include organizations such as the IRS Oversight Board and should revisions and adjustments to legal calculators occur

⁶⁰ I.R.C. § 6404(f) (civil tax penalty abatement due to “erroneous advice furnished to the taxpayer in writing”).

⁶¹ Treas. Reg § 1.6662-4(d)(3)(iii).

⁶² Interactive Tax Assistant (ITA), *supra* note 5.

⁶³ *See, e.g.*, I.R.S. IRM 1.1.13.6 (Dec. 21, 2018).

in a way that is transparent to the public?

d. What Should the Default Rule Be in Unsettled Situations?

In situations where the law is unclear or not settled, should legal calculators deliver guidance that adopts a pro-government or pro-taxpayer default position? While some tax law questions have definite answers (*e.g.*, “What is the filing deadline this year for Form 1040?”), many issues exist in a grey area where the answer is not clear. Based on some of the categories where the IRS currently offers guidance through the Interactive Tax Assistant, such situations could involve whether business clothing expenses can be deducted, whether gambling is a hobby or an occupation, and whether an expense constitutes medical care.⁶⁴ As legal uncertainty is inherent in a broad-based income tax system, tax administrators must exercise discretion in determining how to set the default responses from legal calculators. The answer to this question may depend on the specific tax law issue and, perhaps even more importantly, the sophistication of the taxpayer requesting the guidance.

e. What Should the IRS Disclose When Using Legal Calculators?

Last, what should the IRS be required to disclose to taxpayers who seek guidance from legal calculators? Currently, on the Interactive Tax Assistant’s answer screen, the IRS states that “This does not constitute written advice in response to a specific written request of the taxpayer within the meaning of section 6404(f) of the Internal Revenue Code.”⁶⁵ In other words, taxpayers receive notice that the IRS will not allow them to seek abatement of civil tax penalties in the event that the IRS delivers erroneous guidance through the Interactive Tax Assistant. Should the IRS be required to disclose whether taxpayers can use guidance provided by the Interactive Tax Assistant, whether erroneous

⁶⁴ Interactive Tax Assistant (ITA), *supra* note 5.

⁶⁵ I.R.S. News Release IR-2017-76, *supra* note 41.

or vague, to claim a reasonable cause defense against tax penalties?⁶⁶ More generally, if the tax law is unclear and the IRS sets the default answer as one that adopts a pro-government position, should the IRS be obligated to inform taxpayers of this default and alert taxpayers that contrary legal authority exists?

V. Conclusion

As this Article reveals, the IRS has increasingly relied upon automated online decision-making tools, legal calculators, rather than human customer service representatives when providing guidance to taxpayers. After highlighting this shift in tax administration, we have offered three primary contributions.

First, we have demonstrated that legal calculators can result in guidance that reflects simplicity, simplified descriptions of the law that do not describe the law's underlying complexity or reflect actual reduction in the complexity of the law through formal legal changes. These simplifications, such as answers regarding the deductibility of medical expenses, can convey the law in misleading, even inaccurate, ways.

Second, we have illustrated how legal calculators may result in even more pervasive and powerful forms of simplicity than IRS publications. Legal calculators are interactive, requiring simplified inputs and resulting in simplified answers. They provide personalized guidance to taxpayers, increasing the likelihood that taxpayers will rely upon it. And because they deliver guidance instantaneously, they reduce the incentive for taxpayers to seek advice from professional advisors.

Finally, our analysis raises several important questions regarding the IRS's and non-tax government agencies' use of legal calculators. These include whether the IRS should use legal calculators rather than human customer service representatives, whether taxpayers should be

⁶⁶ I.R.C. § 6664(c) (reasonable cause exception for underpayments).

entitled to rely on legal calculators to avoid tax penalties, whether the process under which legal calculators are developed and adjusted is transparent, what the default response in unsettled legal contexts should be, and what the IRS should be required to disclose to taxpayers when using legal calculators. We leave these questions for future research.