

NON-EXPERTS' IMPRESSIONS OF INFORMAL TAX GUIDANCE

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ABSTRACT

I conducted a survey of 2,191 U.S. adults designed to gain insight into the impact that statements in informal IRS guidance have on non-expert taxpayers. The survey also examines whether respondents form different impressions when they receive guidance delivered by an automated tool rather than guidance contained in IRS publications. This Article reports that survey's results. The results demonstrate that statements included in actual IRS informal guidance are susceptible to interpretations that are inconsistent with actual tax law. In addition, in many cases, the delivery channel affects the impressions that respondents form.

These results underscore the need for reforms that mitigate the harms that follow when users interpret guidance inconsistently with tax law. In addition, while some of the participants' misconceptions were predictable, others differed from what legal experts might anticipate. This finding suggests a potential role for studying how non-experts interpret guidance—to supplement analysis of technical measures of its readability and reliance on expert review. Of course, carrying out this additional type of review would require additional resources, and, therefore, the need for additional review represents one more reason why the current steps to scale back IRS funding are detrimental.

This study contributes to an existing body of literature that examines non-experts' beliefs about law. Its focus is on how non-experts interpret guidance designed for non-experts. It concentrates on the tax

context because, given taxpayers' need to report their own tax liability, non-experts' understanding of informal tax guidance is particularly important. However, tax law is certainly not the only area in which knowing more about how non-experts understand informal guidance could prove useful.

INTRODUCTION

The U.S. tax system relies, to a degree, on self-assessment. In other words, taxpayers must file returns on which they report their own tax liability. When attempting to determine how they fare under applicable tax rules, non-expert taxpayers are unlikely to look to the Internal Revenue Code, the Treasury Regulations, or other formal sources of tax law. To the extent they seek guidance from the IRS, they are much more likely to make use of informal sources of IRS guidance, like IRS publications.¹ They might also call the IRS's helpline to ask their questions. As another alternative, the IRS recently started to make available an automated online tool called the "Interactive Tax Assistant" (the "ITA").² To use this tool, a taxpayer clicks on a topic of interest, answers a series of questions, and then the tool's response to the taxpayer's question appears on the screen. Similarly, the IRS makes another automated online tool available on its website—the "EITC Assistant."³ The landing page informs taxpayers that they can use the tool to find out, among other things, whether they are eligible for the Earned Income Tax Credit (the "EITC") and the estimated amount of their credit.⁴

1. See, e.g., Joshua D. Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law*, 66 EMORY L.J. 189, 228–29 (2017) [hereinafter, Blank & Osofsky, *Simplexity*]; Joshua D. Blank & Leigh Osofsky, *Automated Agencies*, 107 MINN. L. REV. 2115, 2165–66 (2023) [hereinafter, Blank & Osofsky, *Automated Agencies*]; Joshua D. Blank & Leigh Osofsky, *The Inequity of Informal Guidance*, 75 VAND. L. REV. 1093, 1129–30 (2022) [hereinafter, Blank & Osofsky, *Inequity*]; Emily Cauble, *Detrimental Reliance on IRS Guidance*, 2015 WIS. L. REV. 421, 463–65 (2015) [hereinafter, Cauble, *Detrimental Reliance*]; Stephanie Hunter McMahon, *Classifying Tax Guidance According to End Users*, 73 TAX L. 245, 246–47 (2020); Andrea Monroe, *Hidden in Plain Sight: IRS Publications and a New Path to Tax Reform*, 21 FLA. TAX REV. 81, 84 (2017).

2. See *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita> (last updated June 13, 2025) (on file with the Syracuse Law Review).

3. See *Use the EITC Assistant*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant> (last updated Dec. 5, 2024) (on file with the Syracuse Law Review).

4. See *id.*

Existing data shows that many taxpayers turn to informal sources of IRS guidance. For instance, the IRS website received 648.5 million visits during the 2022 tax filing season.⁵ During the 2023 filing season, IRS helpline representatives answered approximately 9 million phone calls, and the ITA tool was used approximately 1.3 million times.⁶ Even taxpayers who refrain from seeking guidance directly from the IRS may, indirectly, make use of informal IRS guidance. As others have noted, TurboTax allows its users to ask questions of tax professionals who often simply restate information contained in IRS publications, and TurboTax incorporates IRS publications into the information that it shares with users in other ways.⁷ In addition, taxpayers with incomes below specified thresholds are eligible for free tax filing assistance through Volunteer Income Tax Assistance (“VITA”) programs, and, as others have noted, VITA volunteers may be trained based on IRS publications.⁸

It is unsurprising that many taxpayers turn to informal sources of IRS guidance given that the purpose of such guidance is to convey applicable tax rules in a manner that is more understandable to a non-expert audience. Unfortunately, however, informal guidance contains some statements that are susceptible to interpretations that are inconsistent with actual tax law. In some cases, these statements may leave taxpayers with *unduly unfavorable* impressions about their tax treatment.⁹ In other words, the statements might lead taxpayers to incorrectly believe that they are *not* entitled to a deduction, are *not* entitled to a credit, or *must include* an item in income. Conversely, sometimes statements in informal guidance may cause taxpayers to harbor *unduly favorable* beliefs about their tax treatment.¹⁰ In other words, the statements might lead taxpayers to incorrectly believe that they *are* entitled to a deduction, *are* entitled to a credit, or *may exclude* an item from income.

Taxpayers who are led astray by informal tax guidance have limited ability to use their reliance on the guidance to seek relief.¹¹

5. See *Final Results of the 2023 Filing Season*, TREASURY INSPECTOR GEN. FOR TAX ADMIN. (Nov. 9, 2023), <https://www.tigta.gov/sites/default/files/reports/2023-11/2024400006fr.pdf> (on file with the Syracuse Law Review).

6. See *id.*

7. See Blank & Osofsky, *Simplexity*, *supra* note 1, at 229–30; see also Monroe, *supra* note 1, at 94–96.

8. See Monroe, *supra* note 1, at 96–98.

9. See *infra* Part III.

10. See *infra* Part III.

11. See *infra* Part II.

Because of unduly *unfavorable* informal tax guidance, a taxpayer might, for instance, refrain from claiming a tax credit or deduction to which they are, in fact, entitled. If they discover the error later, they cannot assert reliance on the guidance as a basis for relief, such as for obtaining an extension of the time during which they are allowed to amend their return.¹² Such a taxpayer is deprived of a tax benefit to which they would have been entitled had they claimed the credit or deduction earlier. These results are inequitable, particularly if taxpayers who are not well-advised are more likely to follow unduly unfavorable guidance.¹³

Now consider informal guidance that is unduly *favorable*. For instance, imagine that the guidance steers taxpayers towards claiming a tax credit or deduction for which they are ineligible. Unduly *favorable* guidance has tax revenue-reducing and inequitable effects. A taxpayer who follows unduly favorable guidance and is not audited pays less tax than they owe, leading to the government collecting less tax revenue than intended.¹⁴ By contrast, if the taxpayer's return is audited and the error is discovered, they will owe additional tax liability, interest, and potential penalties.¹⁵ Moreover, the chances of audit are not the same for all taxpayers. A recent study estimated that Black taxpayers encounter audit rates between 2.9 and 4.7 times the audit rate of non-Black taxpayers.¹⁶ In addition, EITC recipients face high audit rates. In the 2017 tax year, 1% of tax returns that included a claim to the EITC were audited, compared to 0.3% in the case of returns that did not include an EITC claim.¹⁷

Existing studies and literature explore and analyze several aspects of informal tax guidance and its potential to lead taxpayers astray. First, the IRS collects and reports data on how frequently people use

12. See *infra* Part II.

13. See Blank & Osofsky, *Simplexity*, *supra* note 1, at 243–44; see also Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2172; see also Blank & Osofsky, *Inequity*, *supra* note 1, at 1129–30; see also Cauble, *Detrimental Reliance*, *supra* note 1, at 463–65.

14. See Blank & Osofsky, *Simplexity*, *supra* note 1, at 242–43.

15. See *infra* Part II.

16. See Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, 140 Q.J. OF ECON. 113, 115 (2025); Steven A. Dean, *Filing While Black: The Casual Racism of the Tax Law*, 2022 UTAH L. REV. 801, 802 (2022) (“ProPublica has shown, for example, that because of the perils of filing income taxes while Black, the five most heavily audited counties in the United States are Black and poor.”).

17. See MARGOT L. CRANDALL-HOLLIK, CONG. RSCH. SERV., IN11952, AUDITS OF EITC RETURNS: BY THE NUMBERS 2 (2022).

informal guidance.¹⁸ Second, several studies report on the accuracy of informal guidance. For instance, the U.S. Government Accountability Office conducts studies of the accuracy of information dispensed by IRS helpline representatives.¹⁹ In addition, Professors Joshua D. Blank and Leigh Osofsky have identified examples of potentially inaccurate statements contained in IRS publications and conveyed by the ITA.²⁰ Third, existing literature analyzes the question of why current law does not allow legal reliance on informal guidance and critiques some of those rationales.²¹ Existing literature asserts that disallowing relief when taxpayers rely on unduly *unfavorable* informal guidance is not well grounded in policy considerations,²² and existing literature argues for reforms that would facilitate penalty relief when taxpayers rely on unduly *favorable* informal guidance in some cases.²³ Fourth, existing literature proposes reform measures that might reduce the likelihood that informal guidance will lead taxpayers astray or mitigate the harms that follow when it does.²⁴

Several important questions not addressed by existing studies and literature include: (1) whether taxpayers will, in fact, interpret statements in informal guidance in the ways that legal experts predict, (2) whether taxpayers who interpret statements in ways that are inconsistent with tax law are likely to think their interpretations are correct (which, all else equal, increases the likelihood that they might act based upon those interpretations), and (3) whether taxpayers will assume that they can legally rely on the informal guidance (another factor that could increase the likelihood that they would act based upon the guidance).

This Article reports the results of a survey I conducted to shed light on these questions. In the process, this Article contributes to a growing body of literature that examines non-experts' beliefs about law. For example, existing literature empirically examines how

18. See *infra* Part I.

19. See *infra* Part III.

20. See Blank & Osofsky, *Simplexity*, *supra* note 1, at 207–28; see also Joshua D. Blank & Leigh Osofsky, *Automated Legal Guidance*, 106 CORNELL L. REV. 179, 210–17 (2020) [hereinafter Blank & Osofsky, *Automated Legal Guidance*].

21. See Cauble, *Detimental Reliance*, *supra* note 1, at 444–63.

22. See *id.* at 469–71.

23. See Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2183–84; see also Cauble, *Detimental Reliance*, *supra* note 1, at 467–68, 473.

24. See *infra* Part VI(A).

laypersons interpret statutory text²⁵ or contractual language,²⁶ sometimes (but not always) in the service of shedding light on how courts ought to interpret the same. Some studies empirically examine what laypersons consider reasonable in the context of tort law.²⁷ Other studies examine non-experts' intuition or knowledge about a variety of other legal concepts.²⁸ The focus of this project is on how non-experts interpret guidance designed for non-experts.²⁹ It presents participants with informal legal guidance that is designed to communicate law to non-experts and tests whether the guidance effectively communicates substantive law.³⁰ This study concentrates on the tax context because, given taxpayers' need to report their own tax liability, non-experts'

25. See, e.g., James A. Macleod, *Finding Original Public Meaning*, 56 GA. L. REV. 1 (2021); Kevin P. Tobia, *Testing Ordinary Meaning*, 134 HARV. L. REV. 726 (2020); Kevin Tobia & John Mikhail, *Two Types of Empirical Textualism*, 86 BROOK. L. REV. 461 (2021); Kevin Tobia, Brian G. Slocum & Victoria Nourse, *Statutory Interpretation from the Outside*, 122 COLUM. L. REV. 213 (2022).

26. See, e.g., Omri Ben-Shahar & Lior Jacob Strahilevitz, *Interpreting Contracts via Surveys and Experiments*, 92 N.Y.U. L. REV. 1753 (2017); Lawrence Solan, Terri Rosenblatt & Daniel Osherson, *False Consensus Bias in Contract Interpretation*, 108 COLUM. L. REV. 1268 (2008).

27. See Christopher Brett Jaeger, *The Empirical Reasonable Person*, 72 ALA. L. REV. 887 (2021); see also Joseph Sanders et al., *Must Torts Be Wrong? An Empirical Perspective*, 49 WAKE FOREST L. REV. 1 (2014) (presenting empirical evidence relevant to non-experts' preferences for imposing liability under a strict liability or a negligence standard); Kevin P. Tobia, *How People Judge What is Reasonable*, 70 ALA. L. REV. 293 (2018) (examining the question of how people form judgments about what is reasonable).

28. See, e.g., Arden Rowell, *Legal Knowledge, Belief, and Aspiration*, 51 ARIZ. ST. L.J. 225 (2019) (reporting the results of a survey of respondents' knowledge of and beliefs about what law in their states should provide with respect to various topics); Meirav Furth-Matzkin & Roseanna Sommers, *Consumer Psychology and the Problem of Fine-Print Fraud*, 72 STAN. L. REV. 503 (2020) (studying intuitions about consent and enforceability in the contract law context); Roseanna Sommers, *Commonsense Consent*, 129 YALE L.J. 2232 (2020) (investigating laypersons' intuitions about when consent has been granted in various scenarios); Tess Wilkinson-Ryan, *The Perverse Consequences of Disclosing Standard Terms*, 103 CORNELL L. REV. 117 (2017); Tess Wilkinson-Ryan & David A. Hoffman, *The Common Sense of Contract Formation*, 67 STAN. L. REV. 1269 (2015) (studying intuitions about contract formation); see also Kevin Tobia, *Experimental Jurisprudence*, 89 U. CHI. L. REV. 735 (2022).

29. To be sure, in some cases, IRS publications are used by experts as well. However, in some cases, experts may tend to use them alongside other sources or as a last resort when no answer can be found elsewhere. See Cauble, *Detrimental Reliance*, *supra* note 1, at 438 (discussing publications providing answers that cannot be found elsewhere); see also *infra* Part II. Furthermore, the Interactive Tax Assistant tool, in particular, appears to be designed with non-experts in mind.

30. In a somewhat analogous vein, some studies have examined how non-experts interpret jury instructions. See Matthew R. Ginther et al., *The Language of Mens Rea*, 67 VAND. L. REV. 1327 (2014).

understanding of informal tax guidance is particularly important. However, tax law is certainly not the only area in which knowing more about how non-experts understand informal guidance could prove useful.

This study's results are based on an online survey completed by 2,404 U.S. adults. The reported results exclude responses from participants who failed attention checks, leaving a total sample size of 2,191. Each participant was randomly assigned to a group and encountered one of four potential fact patterns. Each of these four fact patterns was presented to three groups, resulting in twelve total groups. One of the three groups that encountered each fact pattern was told that the taxpayer sought advice in an IRS publication and was presented with language from an actual IRS publication. One of the groups viewed screenshots of answers that the taxpayer supplied to the ITA and was shown the response that the actual ITA produces. The last of the three groups read a hypothetical dialogue between the taxpayer and an IRS helpline representative, constructed to parallel the questions and responses seen in the case of the ITA variation.

In the case of two of the four fact patterns (and six of the twelve groups), the informal IRS guidance is potentially susceptible to interpretation in an unduly *favorable* direction. In the case of the other two fact patterns (and the other six groups), the informal IRS guidance is potentially susceptible to interpretation in an unduly *unfavorable* direction.³¹

After being presented with the relevant information, respondents were asked a series of questions aimed to determine, among other things, how they interpret the guidance, how confident they are in their interpretation, why they interpret it the way they do, and whether they think reliance on the guidance offers protection against penalties (in the case of the first six groups) or a basis for obtaining more time to amend a tax return (in the case of the remaining six groups).

The results show that a substantial share of the respondents interpret guidance in a way that likely (or, in some cases, at least potentially) does not align with actual tax law. Across the twelve groups, the share of respondents who interpret guidance this way ranges from a low of 29% to a high of 95%. Moreover, despite harboring a likely (or potentially) mistaken impression of tax law, respondents expressed a high degree of confidence in their interpretations. Among respondents who were mistaken or potentially mistaken, the percentage who

31. See *infra* Table 5 for an illustration.

were either “very confident” or “extremely confident” in their interpretations ranged, across the twelve groups, from 53% to 75%.

Finally, a substantial share of respondents believed that reliance on informal guidance affords legal relief. Across all delivery channels the percentage of respondents who predicted that the taxpayer would not be subject to penalties was 41% in the case of the first fact pattern and 48% in the case of the second fact pattern. Across all delivery channels, the percentage of respondents who predicted that the taxpayer would obtain additional time to amend a return was 56% in the case of the third fact pattern and 52% in the case of the fourth fact pattern.

In addition to exploring the questions described above, a second aim of the study was to test whether the likelihood that users will come away with incorrect impressions and their confidence in their interpretations vary by delivery channel. The ITA is a relatively new tool, its use has been increasing over time, and the IRS might continue to develop the tool and expand the scope of topics that it covers.³² Moreover, given the user-friendly nature of the ITA, non-expert taxpayers might gravitate towards it instead of using IRS publications. Therefore, it is important to gauge whether taxpayers’ reactions to automated guidance are different from taxpayers’ reactions to old-fashioned informal tax guidance.

On the question of whether the likelihood that users will form incorrect impressions varies by delivery channel, the ITA often presents information in a less nuanced way than IRS publications.³³ Sometimes, the difference is stark: the ITA omits information regarding caveats and exceptions entirely.³⁴ Sometimes, the difference is subtle: while the ITA mentions the exceptions, it presents them as an after-thought, secondary to its main answer.³⁵ In some cases, the ITA’s lack of nuance is a feature not a flaw. If exceptions do not apply given a user’s particular facts, keeping information about the exceptions from the user (or downplaying the information) may increase the likelihood that the user will reach an accurate conclusion about their tax treatment.³⁶ By contrast, if the exception applies given the user’s facts, the opposite is true.³⁷ The survey’s results (in particular, an

32. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 203–04.

33. *See id.* at 220–21.

34. *See id.* at 219–21; *see infra* Parts V(B), V(C).

35. *See infra* Parts III(A), III(B), V(A), V(D).

36. *See infra* Parts III(A), V(A) for an example.

37. *See infra* Parts V(B), V(C) for examples.

examination of how responses by participants in the ITA groups differed from responses by participants in the IRS publication groups) are generally consistent with these predictions.

In addition to forming different impressions about applicable law, ITA users may have more confidence that its answers are correctly calibrated to their particular questions and circumstances. Before providing an answer, the ITA poses a laundry list of questions. This could create the impression that the ITA is diligently gathering all relevant information and leaving no stone unturned. As a result, a user might think the ITA's answer is based on a thorough assessment of any potentially relevant fact and, therefore, tailored to the user's particular circumstances. However, the results of this study, at least, do not show that respondents are more confident in their interpretation of ITA guidance than in their interpretation of statements in an IRS publication. Of course, the lack of such a finding here does not rule out the possibility that, in practice, actual ITA users are more confident in the correctness of its responses or more likely to act upon its advice for other reasons.³⁸

This study's results have several implications. First, by demonstrating the potential of IRS guidance to misdirect users, the results bolster the case for reform measures that mitigate the harms that follow when informal guidance leads taxpayers astray.³⁹ Second, the results suggest ways that the IRS might harness the ITA's advantages while mitigating its disadvantages.⁴⁰ Third, the results suggest that testing models used by other agencies to provide automated, informal guidance may be warranted.⁴¹ Fourth, the results may shed light on perceptions of procedural (un)fairness in tax law.⁴²

Finally, the IRS, the Government Accountability Office (GAO) and other researchers already use various techniques to study and evaluate the readability of informal guidance.⁴³ Often these techniques rely on metrics like sentence length and word length.⁴⁴ While certainly important, readability does not capture everything that makes guidance more (or less) likely to convey accurate information. Indeed, one method of rating readability indicates that the excerpts from IRS publications presented to respondents in the survey fall between the grade

38. See *infra* Part VI(B) for further discussion.

39. See *infra* Part VI(A).

40. See *infra* Part VI(B).

41. See *infra* Part VI(C).

42. See *infra* Part VI(D).

43. See *infra* Part VI(E).

44. See *infra* Part VI(E).

reading levels of 6.9 to 12.6.⁴⁵ However, when presented with these excerpts, many respondents formed incorrect impressions about applicable tax law. The disconnect between reading level and understanding stems, in part, from the fact that readability does not prevent misunderstandings that arise from guidance omitting information entirely. As Professors Blank and Osofsky observe, informal IRS guidance sometimes leaves out details, exceptions, and caveats to present tax law as simpler than it actually is.⁴⁶ To address this potential source of misunderstanding, they propose an expanded role for outside tax law experts to review and comment upon informal guidance.⁴⁷ The results of this study underscore the usefulness of expert review because many respondents interpreted guidance in a manner that legal experts would likely predict. In addition, because respondents also interpreted statements in ways that may not be as easy for experts to anticipate, the results point to the need for expanded non-expert review and feedback as well.⁴⁸

Of course, carrying out this additional type of review would require additional resources, which is at odds with the direction in which things are currently headed. In 2025, the IRS fired numerous employees.⁴⁹ While some of the employees were later reinstated (at least temporarily),⁵⁰ additional reductions in IRS resources are likely to occur going forward.⁵¹ Resource constraints will interfere with the IRS's enforcement capacity and, therefore, with tax revenue collection.⁵² Resource reductions have also interfered with, and will likely continue to interfere with, the IRS's ability to help taxpayers. One way in which

45. See *infra* Part VI(E).

46. See *infra* Part VI(E).

47. See *infra* Part VI(E).

48. See *infra* Part VI(E).

49. See Alan Rappeport & Andrew Duehren, *I.R.S. Fires 6,700 Employees Amid Tax Filing Season*, N.Y. TIMES (Feb. 20, 2025), <https://www.nytimes.com/2025/02/20/business/irs-fires-employees-layoffs-trump.html> (on file with the Syracuse Law Review).

50. See e.g., Kristen A. Parillo, *IRS Layoffs Could Spark Use of Abusive Tax Shelters, Tax Pro Says*, TAX NOTES (Apr. 7, 2025), <https://www.taxnotes.com/tax-notes-federal/audits/irs-layoffs-could-spark-use-abusive-tax-shelters-tax-pro-says/2025/04/07/7rv4f> (on file with the Syracuse Law Review).

51. See Andrew Duehren, *Trump Administration Pushes to Slash I.R.S. Work Force in Half*, N.Y. TIMES (Mar. 4, 2025), <https://www.nytimes.com/2025/03/04/us/politics/irs-job-cuts.html> (on file with the Syracuse Law Review).

52. See Andy Kroll, *How DOGE's Cuts to the IRS Threaten to Cost More than DOGE Will Ever Save*, PROPUBLICA (Mar. 5, 2025), <https://www.propublica.org/article/how-doge-irs-cuts-will-cost-more-than-savings-trump-musk-deficit> (on file with the Syracuse Law Review); see also Parillo, *supra* note 50.

this has already occurred is through the closure of more than 110 taxpayer assistance centers,⁵³ and, as noted below, taxpayers with lower incomes report being more likely to seek in person IRS assistance.⁵⁴ More generally, as the results of this study suggest, effectively communicating information about tax law to the public is a challenging endeavor and improving upon what already occurs would require more resources, not less.

Before proceeding, three clarifications regarding the study's scope and implications are in order. First, the study's results do not suggest (and this Article does not claim) that informal guidance as it currently exists does more harm than good. Doubtlessly, in many cases, informal guidance allows taxpayers to reach correct conclusions more easily or more often than what might occur in the absence of informal guidance. Indeed, even in this study, some respondents formed correct impressions. Second, and relatedly, the news is not all bad because respondents who formed correct impressions about applicable tax law were also quite confident about their interpretations. Among respondents who formed likely correct impressions, the percentage who were either "very confident" or "extremely confident" in their interpretations ranged, across the twelve groups, from 53% to 76%. The fact that informal guidance can cause users to reach *correct* conclusions and be confident in their interpretations underscores the potential value of informal guidance.⁵⁵ Third, as discussed below, steps that the IRS might take to clarify informal guidance sometimes entail costs in the form of making the guidance longer (or increasing the number of questions that ITA users must answer).⁵⁶ This Article

53. See Shannon Najmabadi, Jacob Bogage & Jeff Stein, *IRS to close more than 110 offices with taxpayer assistance centers*, WASH. POST (Feb. 26, 2025), <https://www.washingtonpost.com/business/2025/02/26/irs-taxpayer-assistance-centers/> (on file with the Syracuse Law Review).

54. See TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2024-400-006, FINAL RESULTS OF THE 2023 FILING SEASON, 11 (2023) [hereinafter, TREASURY INSPECTOR GEN. FOR TAX ADMIN.].

55. While not tested by this study, it seems quite likely that respondents would be less confident they had reached the correct conclusions if they were asked to grapple with formal sources of tax law. In one study, researchers presented undergraduate and graduate accounting students with either: (1) the text of an Internal Revenue Code section or (2) secondary material (RIA's explanation) describing the provisions and asked participants questions to test their understanding of the provision. Bruce S. Koch & Stewart S. Karlinsky, *The Effect of Federal Income Tax Law Reading Complexity on Students' Task Performance*, 2 ISSUES IN ACCT. EDUC. 98 (1984). Participants, on average, answered more questions correctly and took less time to do so when presented with the secondary material instead of the Internal Revenue Code provision. *Id.*

56. See *infra* notes 225–226 and accompanying text.

does not claim that those tradeoffs should be ignored. However, more information about existing guidance's potential to mislead non-expert users ought to inform how tradeoffs are evaluated. Studying how non-experts, in fact, interpret existing guidance reveals some findings that the IRS might not otherwise anticipate. For example, it seems plausible that the IRS may have envisioned the ITA as an accessible tool that allows users to reach more easily the same conclusions reached by IRS publication readers. If so, it is noteworthy that respondents in the ITA groups tended to form different impressions about applicable tax law than respondents in the IRS publication groups.⁵⁷ Furthermore, in some cases, fairly small changes to the guidance could potentially make it much clearer.

The rest of this Article proceeds as follows. Part I summarizes existing data on the use of informal IRS guidance. Part II explains current law's limitations on the ability of taxpayers to rely on informal guidance. Part III describes studies that test the accuracy of informal IRS guidance and provides examples of statements contained in informal guidance that are susceptible to interpretations that are inconsistent with actual tax law. Part III also illustrates differences between how the ITA conveys information and how IRS publications provide guidance. Part IV describes the study's design, and Part V describes its results. Part VI discusses the implications of those results.

I. USE OF INFORMAL IRS GUIDANCE

Many taxpayers use informal IRS guidance delivered through various channels.⁵⁸ As of May 6, 2022, the IRS.gov website received 648.5 million visits for the 2022 tax filing season.⁵⁹ Over roughly the same time period, IRS representatives answered 5.429 million calls to the helpline (and 8.95 million calls as of May 13, 2023 in the case of the 2023 filing season).⁶⁰ Of course, not all website visits and phone calls are necessarily for the purpose of seeking guidance about tax law.

Some data provide information about uses that are specifically for the purpose of seeking tax law guidance. For instance, in response to a recent taxpayer attitude survey, 77% of 2,099 respondents noted that

57. For instance, this study's results suggest that users of the ITA come away with impressions regarding the effect of a doctor's recommendation on the ability to claim a medical expense deduction for trip expenses that differ markedly from the impressions formed by readers of the IRS publication. *See infra* Part V(D).

58. *See* Blank & Osofsky, *Simplexity*, *supra* note 1, at 228–33; *see also* Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 203–04.

59. *See* TREASURY INSPECTOR GEN. FOR TAX ADMIN., *supra* note 54, at 10.

60. *See id.* at 12.

hardcopy IRS publications are either “somewhat valuable” or “very valuable.”⁶¹ During 2023, the ITA tool (which answers substantive and procedural tax law questions) was used a total of 1.3 million times as of May 6, 2023 (a slight increase from the 1.2 million times in the previous year).⁶²

Some reports shed light on how use of informal guidance varies by taxpayer income. For example, in response to a 2017 IRS survey, slightly under 60% of taxpayers with incomes less than \$20,000 reported being very likely to use the IRS helpline, compared to slightly over 40% for taxpayers with incomes above \$50,000.⁶³ In response to that same survey, approximately 50% of taxpayers with incomes less than \$20,000 indicated that they would be very likely to seek assistance from an IRS office location near their home, compared to approximately 30% for taxpayers with incomes above \$50,000.⁶⁴

By contrast, the percentage of taxpayers who reported being very likely to use the IRS’s website generally increased with income. Slightly over 60% of taxpayers with incomes over \$50,000 reported being very likely to use the IRS website, compared to slightly over 40% in the case of taxpayers with incomes under \$20,000.⁶⁵

In summary, many taxpayers use informal guidance directly. Furthermore, even taxpayers who refrain from seeking guidance directly from the IRS often make indirect use of informal IRS guidance. As others have noted, TurboTax allows its users to ask questions of tax professionals who often simply restate information contained in IRS publications, and TurboTax incorporates IRS publications into the information that it shares with users in other ways.⁶⁶ In addition, taxpayers with incomes below specified thresholds are eligible for free tax filing assistance through Volunteer Income Tax Assistance (“VITA”) programs, and, as Professor Monroe has noted, VITA volunteers may be trained based on IRS publications.⁶⁷

61. INTERNAL REVENUE SERV., 71353Y, COMPREHENSIVE TAXPAYER ATTITUDE SURVEY (2021).

62. *See* TREASURY INSPECTOR GEN. FOR TAX ADMIN., *supra* note 54, at 11.

63. *See* INTERNAL REVENUE SERV., 71353Y, COMPREHENSIVE TAXPAYER ATTITUDE SURVEY (2017).

64. *See id.*

65. *See id.*

66. *See* Blank & Osofsky, *Simplexity*, *supra* note 1, at 229–30; *see also* Monroe, *supra* note 1, at 94–96.

67. *See* Monroe, *supra* note 1, at 96–98; *see also* *Volunteer training resources*, INTERNAL REVENUE SERV., <https://www.irs.gov/individuals/volunteer-training-resources> (last visited Sep. 3, 2025) (on file with the Syracuse Law Review).

II. LIMITATIONS ON ABILITY TO RELY

Taxpayers have limited ability to rely on informal IRS guidance like IRS publications, advice received via the IRS helpline, and answers delivered by the ITA.⁶⁸ Consider, first, a taxpayer who receives unduly *favorable* informal tax guidance that leads them to incorrectly believe that they can claim a deduction, claim a credit, or exclude an item from income. Imagine that they follow the advice and, as a result, pay less tax than they owe.

If their tax return is audited and the error is uncovered, they will owe additional tax liability, interest, and potential penalties.⁶⁹ In some cases, the tax law provides a defense against applicable penalties where the taxpayer acted with “reasonable cause” and in “good faith.”⁷⁰ On the one hand, reliance on informal guidance does not (and should not) *automatically* establish “reasonable cause” and “good faith.” For instance, in *Sadberry v. Commissioner*, the Tax Court determined that a taxpayer who was an attorney did not act with reasonable cause when the taxpayer claimed to have relied on tax form instructions.⁷¹ The court stated, “Petitioner’s knowledge, education, and experience as an attorney should have motivated him to seek professional tax advice rather than to engage in guesswork with respect to his return.”⁷²

On the other hand, given the fact dependent nature of the “reasonable cause” and “good faith” determination, reliance on informal guidance may be (and should be) one factor that is considered with respect to the penalty defense.⁷³ Indeed, the Internal Revenue Manual provides that the IRS “may provide penalty relief based on a taxpayer’s reliance on erroneous oral advice” received from the IRS.⁷⁴ In

68. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 234–35; see also Cauble, *Detrimental Reliance*, *supra* note 1, at 431–32.

69. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 234–35; see also Blank & Osofsky, *Inequity*, *supra* note 1, at 1151–54; Cauble, *Detrimental Reliance*, *supra* note 1, at 431–32; Mitchell Rogovin & Donald L. Korb, *The Four R’s Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View from Within*, 46 DUQ. L. REV. 323, 372–73 (2008) (in which a former IRS chief counsel describes the lack of ability to rely on the IRS’s publications, tax forms and accompanying instructions, and oral communications).

70. See I.R.C. § 6664(c)(1); Treas. Reg. § 1.6664-4(a), (c) (2025).

71. See *Sadberry v. Comm’r*, 2004 Tax Ct. Memo LEXIS 40, at *25–26 (T.C. Feb. 18, 2004).

72. See *id.*

73. See Treas. Reg. § 1.6664-4(b) (2025).

74. IRM 20.1.1.3.3.4.2 (Dec. 11, 2009). Somewhat relatedly, the IRS recently informed taxpayers that reliance on FAQs can establish a reasonable cause and good faith defense against penalties. See *IRS updates process for frequently asked*

determining whether to grant such relief, the IRS considers, among other factors, whether the taxpayer exercised “ordinary business care and prudence in relying on [the] advice,” whether the IRS provided correct information by other means (such as through tax forms), and the type of supporting documentation provided by the taxpayer.⁷⁵ If the availability of correct information elsewhere includes formal sources of tax law and is a factor that cuts against establishing penalty relief, that may be particularly likely to disadvantage taxpayers who are not well advised. In some cases, even taxpayers who are well advised may look to informal sources of IRS guidance alongside other sources or as a last resort if no answer can be found elsewhere.⁷⁶ By contrast, taxpayers who are not well advised may look to informal sources as a first, or even only, resort.

Moreover, even if the IRS refrains from assessing penalties against a taxpayer who relied on informal guidance, discovering that their tax liability is higher than they expected may leave the taxpayer in a worse position than where they would have been had they not received unduly favorable guidance. This occurs if the taxpayer has, in the interim, taken steps that cannot be easily undone.⁷⁷

Furthermore, a taxpayer who follows unduly favorable guidance will owe additional tax liability, interest, and potential penalties only if the error is uncovered on audit and not all taxpayers face the same likelihood of audit. A recent study estimated that Black taxpayers face audit rates that are between 2.9 and 4.7 times the rate of non-Black taxpayers.⁷⁸ The study found that only a small amount of the disparity (14%) stems from the higher audit rate faced by EITC recipients.⁷⁹ Regarding the high audit rate for EITC recipients generally, in the 2017 tax year, 1% of tax returns that included an EITC claim were audited, compared to 0.3% of tax returns that did not include an EITC claim.⁸⁰

questions on new tax legislation and addresses reliance concerns, INTERNAL REVENUE SERV. (Oct. 15, 2021), <https://www.irs.gov/newsroom/irs-updates-process-for-frequently-asked-questions-on-new-tax-legislation-and-addresses-reliance-concerns> (on file with the Syracuse Law Review).

75. *Internal Revenue Manual* (IRM) 20.1.1.3.3.4.2 (Dec. 11, 2009).

76. See Cauble, *Detrimental Reliance*, *supra* note 1, at 438.

77. See *id.* at 457–58; see also *Never Trust a Bureaucrat: Estoppel Against the Government*, 42 S. CAL. L. REV. 391, 399 (1969); Jonathan P. Schneller, *The Earned Income Tax Credit and the Administration of Tax Expenditures*, 90 N.C. L. REV. 719, 784–86 (2012).

78. See Elzayn et al., *supra* note 16, at 3.

79. See *id.* at 4.

80. See CRANDALL-HOLICK, *supra* note 17, at 2.

Consider, second, a taxpayer who receives unduly *unfavorable* informal tax guidance that leads them to incorrectly believe that they cannot claim a deduction, cannot claim a credit, or cannot exclude an item from income. If they follow the advice, they will pay more tax than they owe. Furthermore, if they discover the error after the time for amending their return has lapsed, they likely cannot use the fact that they were led astray by informal guidance to obtain more time to amend their return.⁸¹ Particularly because taxpayers who are not well represented may be more likely to follow unduly unfavorable informal guidance, the results are inequitable.⁸² The fact that taxpayers who are not well represented may be more likely to follow the guidance seems plausible. In addition, in response to a 2021 Taxpayer Attitude Survey, taxpayers with lower incomes were more likely to report that they trusted the IRS to help them understand their tax obligations.⁸³

III. ACCURACY OF INFORMAL IRS GUIDANCE

While IRS informal guidance doubtlessly helps to ensure accurate tax reporting in many cases, some inaccuracy is inevitable, especially given the IRS's limited resources.⁸⁴ Existing studies on IRS telephone accuracy show that, while recent levels of accuracy are quite high (higher than 90%), the helpline sometimes dispenses incorrect information. Studies of the accuracy rate of the IRS helpline's responses to tax law questions showed rates of 90.3% in 2008,⁸⁵ 92.5%

81. See, e.g., *Tallon v. United States*, No. 83-1349, 1984 U.S. Dist. LEXIS 23180, at *8 (C.D. Ill. Sep. 28, 1984); Cauble, *Detrimental Reliance*, *supra* note 1, at 435–37.

82. See Blank & Osofsky, *Simplexity*, *supra* note 1, at 243–44; see also Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2172; Blank & Osofsky, *Inequity*, *supra* note 1, at 1129–30; Cauble, *Detrimental Reliance*, *supra* note 1, at 463–65.

83. See INTERNAL REVENUE SERV., *supra* note 61, at 22.

84. See Table 33. *Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1995–2024*, INTERNAL REVENUE SERV., <https://www.irs.gov/pub/irs-ssi/24dbs06t33cs.xlsx> (on file with the Syracuse Law Review) (last visited Sep. 7, 2025) (reporting in 2023, the IRS employed the equivalent of 82,990 full-time employees, fewer than the number employed in 2014 (but more than the numbers employed in 2015–2022)). Going forward, IRS resources are likely to be even more constrained. See *supra* notes 49–53 and accompanying text.

85. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-133, IRS NEEDS TO DO MORE TO ADDRESS THE GROWING IMBALANCE BETWEEN THE DEMAND FOR SERVICES AND RESOURCES, 9 (2013).

in 2009,⁸⁶ 92.4% in 2010,⁸⁷ 92.9% in 2011, 92.5% in 2012, 95.6% in 2013,⁸⁸ 95% in 2018,⁸⁹ and 90.98% in 2019.⁹⁰

Regarding written guidance, the GAO examined the IRS's ability to publish guidance, prepare tax forms, and reprogram systems to reflect significant tax law changes wrought by 2017 tax legislation.⁹¹ While the report notes significant successes (particularly given resource challenges and the scope of the work required),⁹² the report also highlights some critical shortcomings. As one noteworthy example, the study found outdated and inaccurate information regarding tax filing requirements on non-English language portions of the IRS's website.⁹³

As further evidence of potentially inaccurate information in written guidance, Professors Blank and Osofsky have catalogued numerous examples of statements in IRS publications that might cause users to form incorrect views about tax law.⁹⁴ As they explain, by leaving out certain details, exceptions and caveats, IRS publications present tax law as simpler than it actually is.⁹⁵ As a result, taxpayers using the publications may come away with unduly favorable or unduly unfavorable impressions about what tax law provides. Professors Blank and Osofsky present various examples of information in IRS publications that might potentially steer taxpayers in the wrong direction.⁹⁶ Professors Blank and Osofsky have also identified a number of examples of overly simplistic responses provided by the ITA that are susceptible to interpretations that are inconsistent with actual tax law.⁹⁷ These include information about: (1) the deductibility of the cost of

86. *See id.*

87. *See id.*

88. *See id.*

89. *See U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-55, IRS SUCCESSFULLY IMPLEMENTED TAX LAW CHANGES BUT NEEDS TO IMPROVE SERVICE FOR TAXPAYERS WITH LIMITED-ENGLISH PROFICIENCY, 22 (2020).*

90. *See id.*

91. *See id.* at 14.

92. *See id.* at 63. Regarding resource challenges, *see* INTERNAL REVENUE SERV., *supra* note 61.

93. *See U.S. GOV'T ACCOUNTABILITY OFF., supra* note 89, at 41–45.

94. *See* Blank & Osofsky, *Simplexity*, *supra* note 1, at 207–28.

95. *See id.* at 207.

96. *See id.* at 209–28.

97. *See* Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 209–17. For additional examples, *see* Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2148–50.

artificial teeth,⁹⁸ (2) the deductibility of lead-based paint removal expenses,⁹⁹ (3) the deductibility of the cost of work uniforms,¹⁰⁰ (4) the deductibility of teeth whitening expenses,¹⁰¹ (5) the excludability from income of scholarship payments,¹⁰² and (6) the tax treatment of charitable contributions.¹⁰³

To further illustrate the potential for informal guidance to lead taxpayers astray and to illustrate how the ITA differs from IRS publications, this part will next discuss, in detail, one additional example of unduly *favorable* informal guidance and one additional example of (potentially) unduly *unfavorable* informal guidance.

A. Example of Unduly Favorable Informal Guidance

To start, imagine the facts of Example 1 below.

Example 1. Mindy attends an event where the organizers run a raffle. Mindy enters the raffle and is selected as the winner of one of the prizes: a new refrigerator. Mindy has no use for the refrigerator. Mindy asks the event organizers to send the refrigerator to her friend instead of sending it to Mindy, and the organizers follow Mindy's instructions. When it is time to complete her tax return, Mindy wonders if she needs to include the value of the refrigerator in her income.

Because she directed the raffle organizers to do something specific with the refrigerator, in substance, the transaction is the same as Mindy receiving the refrigerator as a prize and then transferring it to her friend (likely as a gift).¹⁰⁴ As a result, Mindy must include the value of the refrigerator in her income.¹⁰⁵

Consistent with this analysis of Mindy's tax treatment, in the 1950s, the IRS issued two Revenue Rulings regarding game show winnings. The first ruling states, “[w]here an individual refuses to accept an all-expense paid vacation trip he won as a prize in a contest, the fair market value of the trip is not includable in his gross

98. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 210–11.

99. *See id.* at 211–12.

100. *See id.* at 212–14.

101. *See id.* at 214–15.

102. *See id.* at 215–16.

103. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 216–17.

104. This would follow from the assignment of income doctrine. *See, e.g.*, *Lucas v. Earl*, 281 U.S. 111, 113–14 (1930).

105. *See* 26 U.S.C.S. § 74(a) (“Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.”).

income. . .”¹⁰⁶ In the second ruling, the executive director of an exempt organization appeared on a game show and requested that the producer pay any prize he won directly to the exempt organization.¹⁰⁷ He won a cash prize, and, consistent with his request, the game show paid the prize directly to the organization. The ruling concluded that the prize money must be included in the executive director’s gross income.¹⁰⁸

When Mindy attempts to find an answer to her tax questions, it is unlikely that she will uncover these Revenue Rulings unless she is a tax expert or seeks guidance from one. If she turns to IRS guidance, it is more likely that she will make use of informal sources of guidance.¹⁰⁹

If Mindy reads an IRS publication available on the IRS’s website, she will find information regarding prizes and awards in IRS Publication 525. This publication states,

If you win a prize in a lucky number drawing, television or radio quiz program, beauty contest, or other event, you must include it in your income. . . If you refuse to accept a prize, don’t include its value in your income. Prizes and awards in goods or services must be included in your income at their [fair market value].¹¹⁰

The publication does not explicitly address what occurs if the prize recipient directs the transferor to provide the prize to someone

106. Rev. Rul. 57-374, 1957-2 C.B. 69.

107. See Rev. Rul. 58-235, 1958-1 C.B. 26.

108. See *id.* The ruling reached this conclusion as an application of the assignment of income doctrine. See *id.* In some cases, Internal Revenue Code Section 74(b) could provide for a different result when a taxpayer directs that a prize be delivered to charity but only if the prize was made “in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement. . .” and certain other requirements are met. I.R.C. § 74(b). Furthermore, if Section 74(b) does not apply but the winner directs that the prize be given to charity, while the winner would realize prize income, they might, in some cases, also be eligible for a charitable contribution deduction. None of these complicating factors, however, affect Mindy who directs that the prize be delivered to her friend.

109. She might also ask the raffle organizers for guidance, but, in other circumstances, taxpayers face questions and have no third party to whom they might plausibly turn for advice. Moreover, the raffle organizers might, in turn, seek IRS informal guidance.

110. *Publication 525 (2024), Taxable and Nontaxable Income*, INTERNAL REVENUE SERV., <https://www.irs.gov/publications/p525> (on file with the Syracuse Law Review) (last visited Feb. 13, 2025).

else.¹¹¹ It seems entirely possible that Mindy will think that she has “refuse[d] to accept” the refrigerator and omit its value from her income. Omitting its value from her income leads to Mindy paying less tax than she owes.

Now, imagine, Mindy uses the Interactive Tax Assistant. On the ITA’s landing page, she will see the following description of the ITA: “You can use this tool to get answers to your tax questions. Choose a topic, then enter basic information to find your answer.”¹¹²

From there, she could click a link labeled “Prize or award – Is it taxable?” She could then respond to a short series of questions. In particular, she could select the relevant tax year from a dropdown menu, select “no” in response to the questions “was the prize or award from a foreign source?” and “was this award from your employer?”, and select “goods and/or services” from a dropdown menu of several options available as responses to the question “what type of prize or award did you receive?”¹¹³

She would then arrive at a page that states, “The prize or award is taxable,” immediately under the headings, “Answers to Your Questions About Income” and “Is the prize or award I received taxable?”.¹¹⁴ In subsequent paragraphs, the response conveys the other information that was included in the IRS publication, including the statement, “If you refuse to accept a prize, do not include its value in your income.”¹¹⁵

Like the statements in the IRS publication, this response may lead Mindy to believe that she can exclude the refrigerator from her income if she thinks she has refused to accept the prize. It is possible that she might be less likely to reach this conclusion in the case of the ITA (compared to the IRS publication) given the way in which it de-emphasizes the statement about refusing to accept the prize. In particular,

111. It does, separately, describe the special rule contained in Internal Revenue Code Section 74(b), but that rule does not apply, given Mindy’s facts. *See supra* note 108.

112. *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., (Jun. 13, 2025), <https://www.irs.gov/help/ita> (on file with the Syracuse Law Review). At the time the survey was conducted, the landing page stated: “The Interactive Tax Assistant (ITA) is a tool that provides answers to several tax law questions specific to your individual circumstances. Based on your input, it can determine if you have to file a tax return, your filing status, if you can claim a dependent, if the type of income you have is taxable, if you’re eligible to claim a credit, or if you can deduct expenses.”

113. *Id.*

114. *Id.*

115. *Id.*

it presents that statement as an after-thought, secondary to the main answer of “the prize or award is taxable.”¹¹⁶ In Mindy’s case, de-emphasizing this language may spare her from reaching the wrong conclusion given that she did not, in fact, refuse to accept the prize. Conversely, when it presents caveats as after-thoughts, the ITA may be more likely than the IRS publication to foster misconceptions for taxpayers to whom the caveats do apply. Moreover, on some other topics, the difference between the IRS publication and the ITA is even starker. On those other topics, rather than merely de-emphasizing them, the ITA omits discussion of caveats and exceptions entirely.¹¹⁷

B. Example of Potentially Unduly Unfavorable Informal Guidance

Mindy’s example illustrates an instance of unduly favorable informal IRS guidance. Now consider an illustration of potentially unduly unfavorable IRS guidance.

Example 2. Oliver suffers from vascular disease and breathing difficulties after having a stroke. Oliver lives in a city that is temporarily affected by hazardous air quality caused by smoke from wild-fires. Doctors generally know that hazardous air quality worsens breathing difficulties. Oliver’s doctor strongly recommends Oliver travel and stay in another location while his city is affected by hazardous air quality. Oliver follows his doctor’s advice and travels to another location until air quality in his city improves. Oliver does not go to any appointments with doctors or other medical professionals while in the other location. When it is time to complete his tax return, Oliver wonders if the cost of traveling to the other location is considered a medical expense for tax purposes, which could allow him to deduct the expense.

Under existing law, the answer to Oliver’s question is somewhat uncertain. The determination of whether his expense qualifies is a heavily fact-based one. Some existing case law deals, specifically, with whether trip expenses qualify for a medical expense deduction. For example, in *Havey v. Commissioner*,¹¹⁸ the Tax Court held that trip expenses did not qualify when the taxpayer’s spouse’s

116. *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., https://itap1.irs.gov/owda/0/investigate/PrizeAward_ITA/en-US/ScreenOrder~Main~qs%242fbc0882-dac1-4234-84d3-4c1ba8a78092%24global%24global (on file with the Syracuse Law Review) (last visited Sep. 27, 2025).

117. The artificial teeth and teeth whitening examples included in the study provide examples.

118. See *Havey v. Comm'r*, 12 T.C. 409 (1949).

cardiologist, who treated her for a serious heart condition, recommended that she take a trip to the seashore during the summer to benefit from humid weather and take a trip to Arizona during the winter.¹¹⁹ The court was not persuaded that the trips constituted medical care because a change in climate was not the generally accepted treatment for the taxpayer's wife's specific condition, the trips occurred sometime after the onset of the medical condition, the taxpayer and his wife had taken similar trips for vacation purposes in previous years, and the taxpayer's wife did not seek any medical services during the trips.¹²⁰

Along similar lines, in *Rodgers v. Commissioner*, the court denied a medical expense deduction for the costs of traveling to warmer locations in the winter and cooler locations in the summer.¹²¹ The trips were advised by the taxpayer's cardiologist who had diagnosed the taxpayer with "general arteriosclerosis."¹²² The taxpayer had taken similar trips in the past, and the taxpayer, who was retired, could have permanently moved to a location with a milder climate but did not do so.¹²³

By contrast, in *Watkins v. Commissioner*,¹²⁴ the court allowed a married couple to claim a medical expense deduction for the costs of trips taken to Florida.¹²⁵ Their physicians had each prescribed the trips because natural sunlight treatments mitigated each person's medical condition.¹²⁶ While one of the individuals did visit a doctor to monitor his condition while he was away, there was no suggestion that he could not have seen a doctor with similar expertise without taking the trip,¹²⁷ and the other individual did not seek any medical services while on the trip.¹²⁸ The court observed that the medical conditions existed immediately before the trips, the taxpayers' physicians prescribed the

119. *See id.* at 410, 412–13.

120. *See id.* at 412–13.

121. *See Rodgers v. Comm'r*, 241 F.2d 552, 555–56 (8th Cir. 1957).

122. *See id.* at 554.

123. *See id.* at 555–56.

124. *See Watkins v. Comm'r*, 1954 Tax Ct. Memo LEXIS 256, at *1 (T.C. Mar. 31, 1954).

125. *See id.*

126. *See id.* at *8–9.

127. *See id.* at *6–7 ("Watkins followed his doctor's advice while he was in Fort Lauderdale. He stayed out of doors in the sunshine every day for as many hours as possible. He consulted an ear specialist.").

128. *See id.* at *9 ("She went there solely for the mitigating effect of the sunshine and heat upon her arthritis, and so that she could take the prescribed amount of outdoor exercise. She did not consult a doctor there.").

trips, and the climate of Florida had a direct and beneficial effect on their specific conditions that was “apart from the general benefit to health which any vacationer or visitor would receive from being out of doors in the sun.”¹²⁹

In Oliver’s situation, the correct tax treatment is somewhat unclear. However, arguably existing case law suggests more of a possibility that the expense could qualify than what is conveyed by informal IRS guidance. The relevant IRS publication (IRS Publication 502) states,

You can include in medical expenses amounts you pay for transportation to another city if the trip is primarily for, and essential to, receiving medical services. . . . You can’t include in medical expenses a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor.¹³⁰

Because Oliver is not receiving medical services in the alternate location, he may conclude that his transportation costs are not deductible medical expenses. In other words, he may conclude that there is a

129. *Watkins*, 1954 Tax Ct. Memo LEXIS 256 at *15–16. For other cases allowing a deduction, *see, e.g.*, *Comm'r v. Stringham*, 183 F.2d 579, 579 (6th Cir. 1950); *Est. of Embry v. Gray*, 143 F. Supp. 603, 605–06 (W.D. Ky. 1956); *see also* Rev. Rul. 55-261, 1955-1 C.B. 307; Rev. Rul. 58-110, 1958-1 C.B. 155. For general discussion of cases on this topic, *see, e.g.*, Emily Cauble, *Questions the IRS Will Not Answer*, 97 IND. L.J. 523 (2022); Katherine T. Pratt, *Inconceivable? Deducting the Costs of Fertility Treatment*, 89 CORNELL L. REV. 1121, 1139–44 (2004). *See also* FEDERAL TAX COORDINATOR ¶ K-2209 WHEN ARE THE COSTS OF TRAVEL TO A THERAPEUTIC LOCATION A DEDUCTIBLE MEDICAL EXPENSE (2nd ed. 2025) (“IRS and the courts generally allow medical expense deductions for the *transportation costs* of such trips if (1) the trip is made in good faith for medical rather than pleasure or other personal considerations; (2) the person making the trip has a specific ailment or condition; and (3) the change in locality is recognized medically as an aid in curing or alleviating that ailment or condition. . . . However, the mere expectation that a change in environment and living conditions prescribed by a physician may mitigate an individual’s illness through improvement of his general health isn’t sufficient ground for deduction.”).

130. *Publication 502, Medical and Dental Expenses*, INTERNAL REVENUE SERV. (Dec. 21, 2023), <https://www.irs.gov/forms-pubs/about-publication-502> (on file with the Syracuse Law Review). Along similar lines, even a taxpayer who is not eligible for a medical expense deduction because they claim the standard deduction might want to determine whether an expense qualifies as medical care for purposes of using a health FSA. If they consult IRS Publication 969 for guidance, that publication refers them to Publication 502 for a discussion of qualified medical expenses. *See Publication 969 Health Savings Accounts and Other Tax-Favored Health Plans*, INTERNAL REVENUE SERV. (Jan. 13, 2025), <https://www.irs.gov/pub/irs-pdf/p969.pdf> (on file with the Syracuse Law Review).

categorical rule against claiming a deduction if he is not receiving medical services on the trip.

If Oliver turns to the ITA on the IRS's website, he might click on: "Can I Deduct My Medical and Dental Expenses?". He will next be prompted to select the relevant tax year from a dropdown menu. Assume he selects 2022. Next, he responds "yes" to the question "were the expenses incurred or paid in 2022?" He responds "no" to the question "were the expenses paid or incurred for someone who is deceased as of the last day of 2022?" He responds "unsure" to the question "are you itemizing deductions on Schedule A?" He responds "no" to the question "do you know the amount of adjusted gross income reported on this return?" From a dropdown menu asking him to supply his marital status, he selects "single, unmarried, or legally separated." When asked for his filing status for 2022, he selects "single" from a dropdown menu. Now, he is presented with a dropdown menu that will allow him to select an item that describes his expense from a long list of options.¹³¹ He picks "Trip Expenses." Then, he responds "yes" to the question "did you pay for transportation to another city?"

Now he faces the following question (the "Trip Purpose Question"): "Is the trip primarily for, and essential to, receiving qualified medical care?"¹³² He can click on the phrase "qualified medical care" to see the following definition: "Medical care expenses must be primarily to alleviate or prevent a physical or mental defect or illness. They do not include expenses that are merely beneficial to general health, such as vitamins or vacation."¹³³ When presented with this definition, it seems plausible that he might answer "no" because he is not traveling to the alternate location to consult with a doctor or other medical provider. If he answers "no," he obtains the following answer: "The trip expenses are not a deductible expense. You cannot include in medical expenses amounts you pay for transportation to another city if the trip is not primarily for, and essential to, receiving medical services."¹³⁴ If he follows this advice, he will forgo a deduction to which he is potentially entitled.

131. It is actually two parts—he clicks on a link to see an entire alphabetical list and sees that "Trip Expenses" is on the list. Then he picks "T" as the starting letter from a first drop-down menu that sends him to a second menu with all the items that start with T. From that, he picks "Trip Expenses."

132. *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita> (on file with the Syracuse Law Review) (last visited Sep. 23, 2025).

133. *Id.*

134. *Id.*

In addition to having the potential to cause Oliver to forgo a deduction, this example also illustrates how the ITA dispenses guidance in more of a “black box” fashion than IRS publications. When Oliver answers “no” to the Trip Purpose Question, he never sees a statement that parallels the IRS publication’s statement indicating that trips taken for “general improvement of health” do not qualify, even if the trip is made on the advice of a doctor.”¹³⁵

Oliver only sees something like that statement if he responds “yes” to the Trip Purpose Question. In that case, he would next be asked: “Is the expense for a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor?”¹³⁶ Moreover, even if he does make his way to this question, seeing this information in question form may not convey the notion that having a doctor’s recommendation is not sufficient with the same clarity that follows from reading the IRS publication’s statement. Unlike seeing the information in statement form, posing it as a question does not make clear that answering “yes” will disqualify the expense (unless the user tests the tool by supplying different responses). Moreover, a user who is operating under the impression that having a doctor’s recommendation is a helpful factor for someone who wants to claim the expense might think the question is asking about factors that are helpful (in other words, they might think that answering “yes” is a qualifying response rather than a disqualifying one).

C. Reasons to Think ITA Users Might Be More Confident

Because it frames some answers differently and keeps certain information away from users, the ITA might cause users to form different impressions about tax law than the impressions they would form if they used IRS publications, as discussed above. Furthermore, ITA users may be more confident that its answers are correctly calibrated to their individual circumstances. The ITA’s answer varies depending on the user’s responses to a laundry list of questions. As a result, the user might think the answer delivered is based on an assessment of all relevant facts and, therefore, tailored to the user’s circumstances. By contrast, if a taxpayer reads material in an IRS publication, the taxpayer may very well harbor misgivings and worry that they failed to unearth some relevant rule or exception contained elsewhere.

135. *Id.*

136. *Id.*

D. What Users Might Think About Ability to Rely

In addition to sometimes forming incorrect impressions of tax law, informal guidance users might think that reliance on it assures legal relief. Some courts and commentators have asserted that reasonable people ought to know that they cannot rely on informal guidance – at least in the case of oral guidance.¹³⁷ In fact, however, it seems entirely possible that non-experts assume they can legally rely on statements about tax law made by the IRS.¹³⁸ Many IRS publications include no disclaimer.¹³⁹ Likewise, the IRS website, which provides instructions on how to call the IRS helpline, includes no disclaimer.¹⁴⁰

ITA responses are accompanied by the following disclaimer: “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.”¹⁴¹ Section 6404(f) provides for the automatic abatement of penalties if the taxpayer’s underpayment of tax is attributable to erroneous written advice by an IRS officer or employee acting in their official capacity, the advice was relied upon by the taxpayer and was in response to a specific written request by the taxpayer, and the underpayment did not result from the taxpayer failing to provide adequate or accurate information.¹⁴² Thus, this cryptically-worded disclaimer conveys that reliance on the ITA does not provide

137. See, e.g., *Heckler v. Cnty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 65–66 (1984); *United States v. Guy*, 978 F.2d 934 (6th Cir. 1992); see also Peter Raven-Hansen, *Regulatory Estoppel: When Agencies Break Their Own “Laws”*, 64 TEX. L. REV. 1, 55 (1985) (“In a government that works overwhelmingly by paper, private reliance on oral representations by government officials will often be unreasonable . . .”).

138. See also Cauble, *Detrimental Reliance*, *supra* note 1, at 451.

139. The two IRS publications used in this study are: Internal Revenue Serv., Publication 502, Medical and Dental Expenses (2024); and Internal Revenue Serv., Publication 525, Taxable and Nontaxable Income (2024). Neither of them includes a disclaimer. Regarding disclaimers in IRS publications generally, see Blank & Osofsky, *Simplexity*, *supra* note 1, at 239–40. While the publications used in this study do not contain disclaimers, some publications do. For instance, Publication 17 states: “The explanations and examples in this publication reflect the interpretation by the Internal Revenue Service (IRS) of tax laws enacted by Congress, Treasury regulations, and Court decisions. However, the information given does not cover every situation and is not intended to replace the law or change its meaning.” Internal Revenue Serv., Publication 17, Your Federal Income Tax (2024).

140. See *Let Us Help You*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/let-us-help-you> (on file with the Syracuse Law Review) (last visited Sep. 23, 2025).

141. *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita> (on file with the Syracuse Law Review) (last visited Sep. 23, 2025).

142. See 26 U.S.C. § 6404(f).

for automatic penalty abatement.¹⁴³ The EITC Assistant (which provides information about eligibility for the EITC) provides a disclaimer in clearer (and broader) language: “The accuracy of this estimate depends on the accuracy of the information you provide. The IRS makes no guarantees about the accuracy of this estimate and accepts no liability resulting from your use of the estimation.”¹⁴⁴

Interestingly, when the ITA (or the EITC Assistant) provides an answer, it also gives taxpayers the opportunity to click on a “printer-friendly” button.¹⁴⁵ Doing so produces a document that shows the answer the online tool provided and all information the taxpayer supplied in response to the tool’s prompts. On the one hand, the ability to create a record might help overcome some of the practical barriers to asserting a “reasonable cause” and “good faith” defense against penalties.¹⁴⁶ On the other hand, the fact that the website allows taxpayers to create a record might cause taxpayers to think they can legally rely on the answer to an even greater degree than is the case.

IV. STUDY DESIGN¹⁴⁷

As described above in Part III, informal sources of IRS guidance include some statements that may cause taxpayers to reach incorrect conclusions about tax law. In addition, because the ITA presents information in a way that leaves out or de-emphasizes nuance, compared to IRS publications, it might foster incorrect impressions for more users who need to understand the omitted nuance to reach correct conclusions about their tax treatment. Conversely, the ITA may misdirect fewer users whose tax treatment is unaffected by the omitted details. Furthermore, the more “black box” nature of the ITA might cause users to form impressions about tax law that differ from the impressions

143. For further discussion, see Joshua D. Blank & Leigh Osofsky, *Automated Legal Guidance at Federal Agencies*, REPORT FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, at 33 [hereinafter Blank & Osofsky, ACUS Report]. For additional discussion of penalties, see *supra* Part II.

144. *Use the EITC Assistant*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant> (on file with the Syracuse Law Review) (last visited Sep. 23, 2025).

145. This was not always the case. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 238.

146. Internal Revenue Manual notes that one factor the IRS may consider is “supporting documentation provided by the taxpayer”. See *supra* note 75 and accompanying text. For discussion of the ability to create a record, see Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 238.

147. Survey conducted by Emily Cauble (October 27, 2023) (on file with author) [hereinafter Survey]. All references herein to “the survey” or “the study” are referencing this unpublished survey.

formed by IRS publication readers. Across channels of informal guidance, users might be surprised to learn that they cannot legally rely on the guidance. Finally, it is possible that, as compared to readers of IRS publications, users of the ITA might be more confident that their interpretations are correct. The survey described in this Article was designed to test each of these predictions.

A total of 2,404 respondents completed the survey in October 2023 on Prolific, an online survey platform. Reported results exclude answers supplied by: (1) 140 respondents who supplied incorrect answers to attention check questions and (2) 73 respondents who supplied answers to open-ended questions that clearly evidenced a lack of attention. For the remaining 2,191 respondents, the mean time to complete the survey was 9 ¾ minutes, and the median time to complete the survey was 8 minutes.

Among the 2,191 respondents, 0.41% identified as American Indian, Native American, or Alaskan Native; 6.53% identified as Asian; 10.22% identified as Black or African American; 3.88% identified as Hispanic or Latino/a/x; 71.52% identified as White; 6.30% identified as more than one of the preceding options; and 1.10% supplied another response. Among the 2,191 respondents, 49.75% identified as female; 48.11% identified as male; 1.41% identified as non-binary; and 0.73% supplied another response or did not answer. Of the 2,191 respondents, 63.81% were 18 – 44 years of age; 29.35% were 45 - 64; 6.71% were 65 or older; and 0.14% did not answer.

Table 1 shows the income of the 2191 respondents,¹⁴⁸ alongside corresponding population data.

148. The percentages in each range sum to less than 100% because 37 of the 2,191 respondents did not supply an answer or did not supply an answer that was precise enough to place within one of the listed categories (for instance, they listed a range that crossed multiple categories or said it was at least a given amount).

Table 1. Income of the Sample Compared to U.S. Population Income

Total Household Income Before Taxes in 2022	Percentage of Sample	Percentage of U.S. Households¹⁴⁹
Less than \$25,000	13.97%	15.79%
\$25,000 to \$49,999	23.28%	18.19%
\$50,000 to \$74,999	21.09%	16.23%
\$75,000 to \$99,999	15.02%	12.33%
\$100,000 to \$149,999	14.56%	16.42%
\$150,000 to \$199,999	6.12%	9.15%
\$200,000 or more	4.29%	11.92%

As Table 1 shows, compared to the U.S. population, a somewhat larger share of the sample reports household income in the \$25,000 to \$100,000 range, while somewhat smaller shares report income below \$25,000 and above \$100,000.

Table 2 displays the formal education obtained by the 2,191 survey respondents, and Table 3 summarizes the formal educational attainment of the U.S. adult population based on census data.

Table 2. Formal Education of the Sample

Highest Level of Formal Education	Percentage of Sample
Some High School or Less	0.73%
Completed High School or Obtained GED	12.60%
Trade School	1.96%
Some College	20.77%
Associate's Degree	9.77%
Bachelor's Degree	39.66%
Master's Degree	11.36%
Advanced Degree (including law degree)	3.15%
Law Degree	1.19%

¹⁴⁹. See *Current Population Survey: HINC-01. Selected Characteristics of Households by Total Money Income in 2022*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-hinc/hinc-01.html> (on file with the Syracuse Law Review) (last updated Aug. 8, 2025).

Table 3. Educational Attainment—Census Data

Highest Level of Formal Education	Percentage of U.S. Adult Population ¹⁵⁰
Less than high school graduate	9.56% ¹⁵¹
High school graduate	29.20% ¹⁵²
Some college no degree	16.50% ¹⁵³
Associate's degree	9.95% ¹⁵⁴
Bachelor's degree	22.08% ¹⁵⁵
Master's degree	9.47% ¹⁵⁶
Professional degree or doctoral degree	3.27% ¹⁵⁷

Comparing Tables 2 and 3 reveals that the respondents in the sample have achieved higher levels of formal education than the population generally. Approximately 54% of survey respondents earned at least a bachelor's degree, compared to 34.8% for the entire U.S. adult population.

More generally, the sample is not a random sample of the U.S. population as it only includes individuals who opt to participate on

150. See *Educational Attainment in the United States: 2022*, U.S. CENSUS BUREAU (Feb. 16, 2023), <https://www.census.gov/data/tables/2022/demo/educational-attainment/cps-detailed-tables.html> (on file with the Syracuse Law Review).

151. This represents, out of a total of 255,255,000, 24,393,000, which is the sum of 770,000 with no formal educational attainment plus 1,518,000 with formal educational attainment of 1st – 4th grade plus 2,812,000 with formal educational attainment of 5th – 6th grade plus 3,201,000 with formal educational attainment of 7th – 8th grade plus 2,926,000 with formal educational attainment of 9th grade plus 3,340,000 with formal educational attainment of 10th grade plus 9,826,000 with formal educational attainment of 11th grade.

152. This represents, out of a total of 255,255,000, 74,530,000 who are high school graduates.

153. This represents, out of a total of 255,255,000, 42,099,000 who have some college but no degree.

154. This represents, out of a total of 255,255,000, 25,388,000 who have an associate's degree.

155. This represents, out of a total of 255,255,000, 56,350,000 who have a bachelor's degree.

156. This represents, out of a total of 255,255,000, 24,160,000 who have a master's degree.

157. This represents, out of a total of 255,255,000, 8,337,000 who have a professional degree or doctoral degree.

Prolific, who accept the invitation to participate in the study, and who complete the study. When soliciting participants for the survey, in addition to providing information about completion time and payment (\$3), Prolific described the study as “a study of information interpretation”. Of 2,502 individuals who started the survey, 2,404 (96%) completed it.

The survey also asked for information about tax classes taken. Overall, 77.54% of the 2,191 sample reported having never taken a tax course. The remainder had taken at least one tax course – at the high school level, college-level, graduate level, or some other course (such as an online course or employer-provided training), as shown in Table 4. Even participants who have taken a tax course may not have encountered information relevant to the questions contained in the survey. However, for completeness, the results section does note how the subset who never took a tax class interpreted the information, in addition to reporting results for the entire sample.

Table 4. Sample – Tax Courses Taken

Has Taken Tax Course At....	Percentage of the Sample
High School-Level Only	8.03%
College-Level Only	4.02%
Graduate-Level Only	1.05%
Some Other Course	1.14%
More than One of the Above	8.22%
None of the Above	77.54%

After completing a consent form, each participant was randomly assigned to one of twelve groups and presented with a series of questions. After answering all questions associated with the assigned group, each respondent also encountered questions asking for the demographic information described above.

In each of the twelve randomly assigned groups, participants encountered one of four potential fact patterns. In the first fact pattern, a taxpayer wins a raffle prize and directs the raffle organizers to deliver the prize to a friend, like Mindy in Example 1 above. A second fact pattern is based upon an example of ITA advice that Professors Blank and Osofsky identified, featuring an aspiring model who obtains

artificial teeth to improve their appearance.¹⁵⁸ A third fact pattern is also based on an example described by Professors Blank and Osofsky, involving a taxpayer who obtains teeth whitening services to remove discoloration caused by chemotherapy.¹⁵⁹ In a final fact pattern, a taxpayer suffers from breathing difficulties and travels to a different location to avoid hazardous air quality on the advice of a doctor, like Oliver in Example 2 above.¹⁶⁰

Each of these four fact patterns is presented to three groups, resulting in twelve groups in total. One of the three groups is told that the taxpayer seeks advice in an IRS publication. That group is presented with language taken from an actual IRS publication (along with a screenshot of the website where the publication can be found, which includes no disclaimer).¹⁶¹

One of the three groups views screenshots of answers that the taxpayer supplies to the ITA's questions. That group reads the response that the actual ITA then produces. The response includes the disclaimer that accompanies actual ITA responses,¹⁶² and participants are also informed that the taxpayer clicks a printer-friendly link provided by the tool to create a record of the answers she supplied to the ITA and the ITA's ultimate response.¹⁶³

The last of the three groups sees a screenshot of the IRS webpage, which provides information on how to call the IRS helpline. That website informs taxpayers that "representatives must verify your identity before discussing your personal information" and lists information that taxpayers should have available when they call, including their Social Security numbers.¹⁶⁴ Like the actual IRS webpage, the screenshot includes no disclaimer.¹⁶⁵ They are then presented with a dialogue that the taxpayer has with the IRS employee who takes their call.

In all cases, the ITA's actual question prompts were used to create the hypothetical phone dialogue. It is impossible to verify that the

158. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 210.

159. See *id.* at 214.

160. For additional discussion of this fact pattern, see Emily Cauble, *Administering Facts-and-Circumstances Based Tax Tests*, 76 BAYLOR L. REV. 249, 278–79 (2024) [hereinafter Cauble, *Administering Tax Tests*].

161. See *supra* Part III(D) for discussion of the lack of disclaimer.

162. See *supra* Part III(D) for discussion of the disclaimer.

163. For discussion of this ability to create a printer-friendly version, see *supra* Part III(D).

164. See *Let us help you*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/let-us-help-you> (on file with the Syracuse Law Review) (last updated Jul. 16, 2025).

165. See *id.*

quoted conversation with the helpline representative tracks what any phone conversation would include. Given the flexible nature of a phone conversation and the likelihood that a caller might ask clarifying questions, it is entirely possible that a real phone conversation would result in a caller forming a different impression than the impressions formed by survey respondents. For that reason, the results discussion does not focus on any similarities (or differences) between the impressions formed by survey respondents in the phone call groups and other groups. Instead, the phone call groups are included for the purpose of gauging whether that delivery channel affects expectations about the ability to rely on the guidance.

Nevertheless, the history behind the ITA's development suggests that the questions posed by that online tool provide insight into what a helpline employee would ask. In particular, with the goal of increasing the accuracy of answers delivered via phone, the IRS developed an internal computer program (the "Interactive Tax Law Assistant") that IRS helpline employees could use for certain topics.¹⁶⁶ The program would pose questions that the helpline employee would ask the caller, and the helpline employee would then answer the program's questions to be directed to further questions and ultimately to an on screen answer that the helpline employee could provide to the caller.¹⁶⁷ The ITA is the externally available result of this internal program.¹⁶⁸

In the case of two of the four fact patterns (and six of the twelve groups) the informal IRS guidance might be interpreted in an unduly *favorable* manner. For the first fact pattern (and groups one through three), the guidance might suggest incorrectly that the raffle winner can exclude the prize from income.¹⁶⁹ For the second fact pattern (and groups four through six), the guidance might suggest incorrectly that the taxpayer can claim a medical expense deduction for the cost of artificial teeth.¹⁷⁰

In the case of the other two fact patterns (and the other six groups) the informal IRS guidance might be interpreted in an unduly *unfavorable* manner. For the third fact pattern (and groups seven through nine), the guidance might suggest, potentially incorrectly, that the

166. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 202–04.

167. *See id.*

168. *See id.*

169. *See infra* Part V(A).

170. *See infra* Part V(B).

cancer survivor cannot claim a medical expense deduction for the cost of teeth whitening services.¹⁷¹ For the fourth fact pattern (and groups ten through twelve), the guidance might suggest (potentially incorrectly) that the taxpayer cannot claim a medical expense deduction for the cost of a trip taken to avoid hazardous air quality.¹⁷² The twelve groups are displayed in Table 5 below.

Table 5. Twelve Survey Groups

Guidance Might Be Interpreted in an Unduly Favorable Manner	Guidance Might Be Interpreted in an Unduly Unfavorable Manner
<p>Can the taxpayer exclude a prize from income? Group One: IRS Publication Group Two: ITA Group Three: IRS Helpline</p>	<p>Can the taxpayer claim a medical expense deduction for teeth whitening expenses? Group Seven: IRS Publication Group Eight: ITA Group Nine: IRS Helpline</p>
<p>Can the taxpayer claim a medical expense deduction for the cost of artificial teeth? Group Four: IRS Publication Group Five: ITA Group Six: IRS Helpline</p>	<p>Can the taxpayer claim a medical expense deduction for the cost of a trip? Group Ten: IRS Publication Group Eleven: ITA Group Twelve: IRS Helpline</p>

In every group, respondents are asked questions to determine: (1) what they think the tax outcome is, (2) how confident they are in their response, and (3) why they selected their chosen response. In the case of groups one through six, after answering the questions just described, they are told that the taxpayer claimed the favorable tax position and was subsequently challenged by the IRS because tax law, in fact, disallows the deduction or requires including the item in income. They are asked whether they think the taxpayer will be subject to a penalty (on top of paying the additional tax owed), they are asked to explain that response, and they are asked whether they think the taxpayer should be subject to a penalty. For groups seven through twelve, in place of the questions about penalties, respondents are told that the taxpayer claimed the unfavorable tax position and subsequently learned that tax law, in fact, allows the deduction. They are asked

171. *See infra* Part V(C).

172. *See infra* Part V(D).

whether they think the taxpayer will be granted more than the standard amount of time to amend their return to claim the deduction, they are asked to explain that response, and they are asked whether they think the taxpayer should be granted additional time.

After responding to the questions above, respondents in each group also answered one or two attention check questions, testing their recall of key facts included in the hypothetical scenario they read at the outset.

V. RESULTS

The survey's results show that a substantial share of the respondents interpret guidance in a way that likely (or, in some cases, potentially) does not align with actual tax law. Across the twelve groups, the share of respondents who interpret guidance this way ranges from a low of 29% to a high of 95%. Also, in cases where nuance omitted by the ITA is necessary to paint a clear picture of tax law, more respondents interpret the guidance in a way that likely (or, at least, potentially) does not align with actual law when presented with ITA advice. Conversely, when the nuance omitted or de-emphasized by the ITA is irrelevant given the taxpayer's facts but might be mistakenly interpreted as relevant, fewer respondents interpret the guidance in a way that likely does not align with actual law when presented with ITA advice.

Despite harboring a mistaken (or, in some cases, potentially mistaken) impression of tax law, respondents expressed a high degree of confidence in their interpretations. Among respondents who harbored these impressions, the percentage who were either "very confident" or "extremely confident" in their interpretations ranged, across the twelve groups, from 53% to 75%.¹⁷³ The results of this study, at least, do not show that respondents are more confident in their interpretation of ITA guidance than in their interpretation of statements in an IRS publication. In fact, in one of the scenarios, they were, on average, less confident, as discussed below.

173. On a somewhat related note, a 2020 article reports the results of a survey of 1,131 U.S. individuals. See Elizabeth Lyon & J.R. Catlin, *Consumer Misconceptions about Tax Laws: Results from a Survey in the United States*, 43 J. CONSUMER POL'Y 807, 807–28 (2020). The survey asked respondents a series of questions to gauge their tax knowledge. *See id.* at 817–18. It also asked respondents to rate their own tax knowledge on a seven-point scale from "not at all knowledgeable" to "very knowledgeable." *Id.* at 818–19. The study's measure of tax knowledge (based upon the number of tax law questions answered correctly) was not strongly correlated with participants' self-assessment of their tax knowledge. *See id.* at 823.

A substantial share of respondents believed that reliance on informal guidance affords legal relief. Across all delivery channels, the percentage of respondents who predicted that the taxpayer would not be subject to penalties was 41% in the case of the first fact pattern and 48% in the case of the second fact pattern. Across all delivery channels, the percentage of respondents who predicted that the taxpayer would obtain additional time to amend a return was 56% in the case of the third fact pattern and 52% in the case of the fourth fact pattern. This Part will proceed by discussing each of the four fact patterns, in turn.

A. Prize Fact Pattern

Participants in the first three groups considered the scenario in which Alice won a refrigerator in a raffle and directed the raffle organizers to deliver the refrigerator to her friend. Users of informal IRS guidance encounter, among other information, the following statement: “If you refuse to accept a prize, don’t include its value in your income.”¹⁷⁴ As discussed above, the ITA de-emphasizes this statement, unlike the IRS publication.¹⁷⁵ Users who focus on the statement about refusing to accept the prize might believe, incorrectly, that Alice can exclude the refrigerator from income.¹⁷⁶

Among the 183 participants in the IRS publication group (group one), 43% indicated that they did not think Alice was required to include in income the value of the refrigerator. In the case of the 190 participants in the ITA group (group two), the corresponding percentage is 29%. Thus, some respondents do, indeed, form incorrect impressions; fewer in the case of the ITA than the IRS publication.¹⁷⁷

174. See *supra* Part III(A).

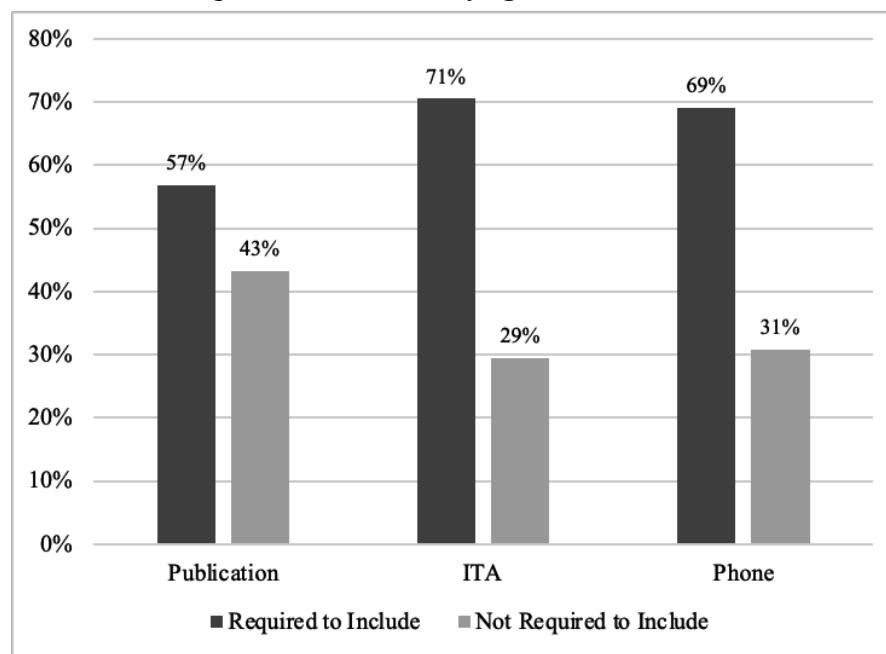
175. See *supra* notes 104–17 and accompanying text.

176. See *supra* notes 104–17 and accompanying text.

177. The results are similar in the case of the subset of respondents who had never taken a tax course. Among that group, the percentages of respondents who did not think Alice was required to include the refrigerator in income were: (1) 39% of 143 respondents in the IRS publication group, (2) 30% of 155 respondents in the ITA group, and (3) 32% of 154 respondents in the IRS helpline group. Comparing respondents who had obtained a bachelor’s degree (including those who also obtained an advanced degree) to respondents who had not, the percentages of respondents who did not think Alice was required to include the refrigerator in income were: (1) in the case of the IRS publication group: 50% for respondents who had not obtained a bachelor’s degree and 38% for respondents who had, (2) in the case of the ITA group: 34% for respondents who had not obtained a bachelor’s degree and 25% for respondents who had, and (3) in the case of the IRS helpline group: 34% for respondents who had not obtained a bachelor’s degree and 28% for respondents who had. Chi-square tests were performed to examine how the percentage of mistaken

These results are displayed below in Figure 1. A chi-square test was performed to examine how the percentage of mistaken participants varied based on whether the delivery channel is publication or ITA, and it showed that the relationship was significant.¹⁷⁸

Figure 1. Percentages of Respondents Who Think Alice Is (or Is Not) Required to Include Refrigerator in Income



Of course, some participants who think that Alice is not required to include the refrigerator in her income may have reached this conclusion based on an intuition that it is not income if she never receives it. That is, they may have reached this conclusion even without the guidance. Nevertheless, the fact that they *still* reach this conclusion even after considering the guidance is important. Stated another way, the relevant question is not whether the IRS should provide guidance at all, but, instead, how effective is the guidance that the IRS provides? When the tax treatment of a transaction is particularly counterintuitive,

participants varied based on whether respondents had obtained a bachelor's degree, and the relationship was not significant for any of Groups 1–3. For the IRS publication group, $\chi^2(1, N = 183) = 2.47, p = 0.116$. For the ITA group, $\chi^2(1, N = 190) = 1.94, p = 0.164$. For the IRS helpline group, $\chi^2(1, N = 191) = 0.62, p = 0.43$.

¹⁷⁸ $\chi^2(1, N = 373) = 7.57, p < .01$.

it may be especially important to design guidance that will disabuse taxpayers of their incorrect preconceived notions.

Moreover, open-ended responses to the question asking why they think Alice is not required to include the refrigerator in income suggest that the language of the guidance was taken into account by many respondents. The IRS informal guidance states, “If you refuse to accept a prize, don’t include its value in your income.”¹⁷⁹ Across all three channels, among the 194 respondents who thought Alice could exclude the refrigerator from her income, 48 (25%)¹⁸⁰ included in their explanations one of the words “refused,” “refuse,” or “refusal” and 75 (39%) did not use one of those words but did use the word “accept” in their explanations.¹⁸¹ Some of these explanations explicitly reference the IRS guidance. For instance, one wrote, “Because it says if you don’t accept it, you don’t have to report it, and she didn’t receive the fridge.” Another wrote, “Because the IRS publication says if a prize is refused, it shouldn’t be included as income.” Other explanations do not explicitly refer to the guidance but do use its key language (i.e., “refuse” or some variation on the word or “accept”). For example, one answered, “She did not accept the prize and gave it to a friend instead. So officially, she did not get the prize.” Finally, eight of the respondents who do not use the guidance’s key language nevertheless refer to the guidance as the basis for their answers, writing things like, “It said on the website if you don’t claim the prize, do not include it in your income.”

If an informal guidance user in Alice’s position mistakenly believes that they are not required to include the refrigerator in income, that misunderstanding may do more harm if the user is more confident that their understanding is correct. In such a case, they might be less likely to look for confirmation elsewhere. Figure 2 below displays, by delivery channel, the percentage of respondents expressing various levels of confidence in their response that Alice *can* exclude the value of the refrigerator from her income. Sixty-three percent of the 79 respondents who interpreted the IRS publication in this way were very confident or extremely confident in their interpretation. The corresponding percentage is 61% in the case of the 56 respondents who encountered advice via the ITA. Thus, the study’s results tend to show

179. This is true for the IRS publication. For the ITA (and the phone conversation based upon the ITA), “don’t” is replaced with “do not.”

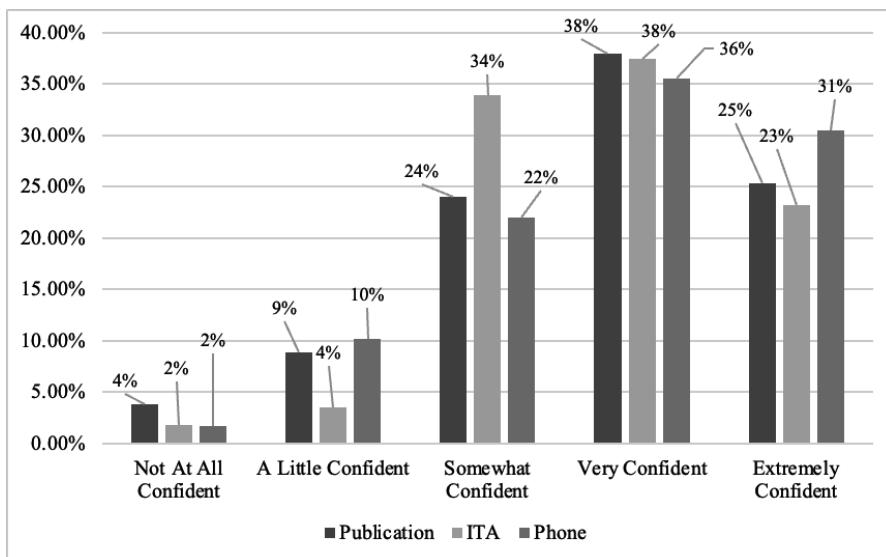
180. This includes some that also used the word “accept.”

181. This includes a few that, instead, wrote “except” but clearly meant “accept.”

that respondents who interpreted the guidance to allow Alice to exclude the prize from her income were quite confident in their interpretations.

On the question of whether the ITA generates more confidence, the average level of confidence was not different in any meaningful (or statistically significant) way. Looking at only the subset of respondents who interpret the guidance as allowing Alice to exclude the refrigerator from her income, the average level of confidence (with 1 being “not at all confident” and 5 being “extremely confident”) was 3.72 (with a standard deviation of 1.06) for the IRS publication and 3.77 (with a standard deviation of 0.91) for the ITA.¹⁸²

Figure 2. Level of Confidence That Refrigerator is Not Included in Income

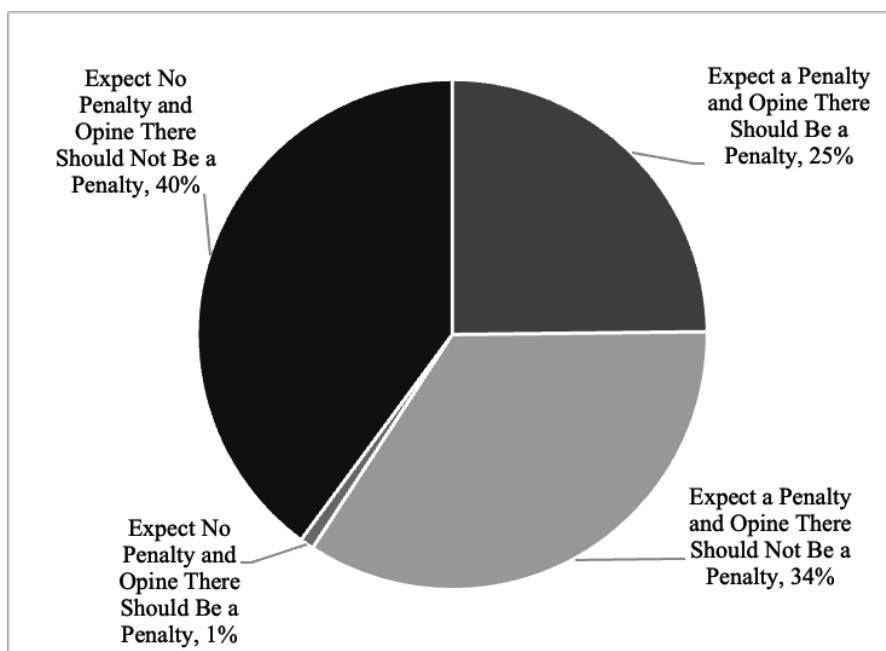


Users’ expectations about whether informal IRS guidance offers penalty protection might also affect the likelihood that they will act upon the guidance. Figure 3 below displays, across all delivery channels, the percentages of respondents who think that Alice will (or will not) be subject to penalties, along with their opinions about whether Alice should be subject to penalties. As this chart shows, 41% of respondents thought Alice would not be subject to penalties. Even among the respondents in the IRS helpline group, a substantial share

182. $t(113) = 0.271, p = 0.79$.

(43%) thought Alice would not be subject to penalties. Explanations were varied, but a few themes are worth noting. Some respondents who expected that she would be subject to penalties wrote things like, “Ignorance of a law is not a defense. Thus, even though she used the document, she misinterpreted it.” Some respondents who thought she would not be subject to penalties wrote things like, “I think the information from the IRS wasn’t too specific, so she misunderstood;” “Because she made her decision based on information provided directly from the IRS. I think penalties come into play if there is clear negligence, which doesn’t seem to be the case here;” or “Because it was a genuine mistake.”

Figure 3. Expectations and Opinions Regarding Penalties: All Delivery Channels Combined



Also, as shown in Figure 3, a majority of respondents opined that Alice should not be subject to penalties—74% in total. This 74% includes 40% of respondents who opined that Alice should not be subject to penalties and also expected that she would not be subject to penalties. In addition, this 74% includes 34% of respondents who expected Alice to be penalized but, at the same time, opined that she should not be.

Finally, and incidentally, respondents' opinions about whether Alice should be subject to penalties strongly correlated with whether they also interpreted the informal guidance to mean that she could exclude the refrigerator from income. Among the 370 respondents who (unlike Alice) thought she was required to include the refrigerator in income, 35% opined that she should be penalized, compared to only 8% of the 194 respondents who interpreted the guidance the same way as Alice. A chi-square test was performed to examine how opinions about penalties varied based on how respondents interpreted the guidance, and it showed that the relationship was significant.¹⁸³

B. Artificial Teeth Fact Pattern

Participants in groups four through six considered a scenario in which Alice, an aspiring model, replaced her teeth with artificial teeth to improve her appearance.¹⁸⁴ It is possible that users of informal IRS guidance might believe, incorrectly, that Alice is allowed to deduct the expense.¹⁸⁵ The guidance states, "You can include in medical expenses the amount you pay for artificial teeth" (in the case of the IRS publication)¹⁸⁶ or, "Your artificial teeth expenses are a qualified deductible expense" (in the case of the ITA).¹⁸⁷ In fact, if Alice uses the ITA, she sees only this information and does not see more general information regarding cosmetic procedures.¹⁸⁸ In the case of the IRS publication, the statement above does appear under the "Artificial

183. $X^2 (1, N = 564) = 50.04, p < .01$.

184. This is based on an example identified by Professors Blank and Osofsky. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 210.

185. As to why this is incorrect, the Internal Revenue Code provides that "medical care" does not include "cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease." 26 U.S.C. § 213(d)(9)(A). The Code defines cosmetic surgery to mean "any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease." *Id.* at § 213(d)(9)(B). Presumably, when listing artificial teeth expenses as an example of eligible expenses, the IRS envisioned a fact pattern in which the taxpayer obtained artificial teeth to correct a functional problem (loss of teeth, for instance) and not a situation in which the procedure was undertaken purely for cosmetic reasons. See also Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 210–11.

186. See INTERNAL REVENUE SERV., PUBLICATION No. 502, MEDICAL AND DENTAL EXPENSES (2024).

187. See *Interactive Tax Assistant (ITA)*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita> (on file with the Syracuse Law Review) (last visited Nov. 18, 2024).

188. See *id.*

Teeth” heading.¹⁸⁹ However, under the “Cosmetic Procedures” heading, the publication includes (among other information), the following statement, “Generally, you can’t include in medical expenses the amount you pay for cosmetic surgery.”¹⁹⁰ In other words, the ITA presents its answer in a *much* less nuanced fashion than the IRS publication. Moreover, in this scenario, the more nuanced information contained in the publication is necessary to avoid misinterpretation. Therefore, it is likely more respondents in the ITA group will form incorrect impressions.

Among the 188 participants in the IRS publication group (group four), 47% indicated that they thought Alice was allowed to claim the cost as a medical expense. In the case of the 176 participants in the ITA group (group five), the corresponding percentage is 91%.¹⁹¹ These results are displayed in Figure 4. As this figure shows, some respondents do form mistaken impressions, and a much higher percentage in the case of channels that involve less nuanced information. A chi-square test was performed to examine how the percentage of mistaken participants varied based on whether the participant read information from the publication or read the information provided by the ITA, and it showed that the relationship was significant.¹⁹²

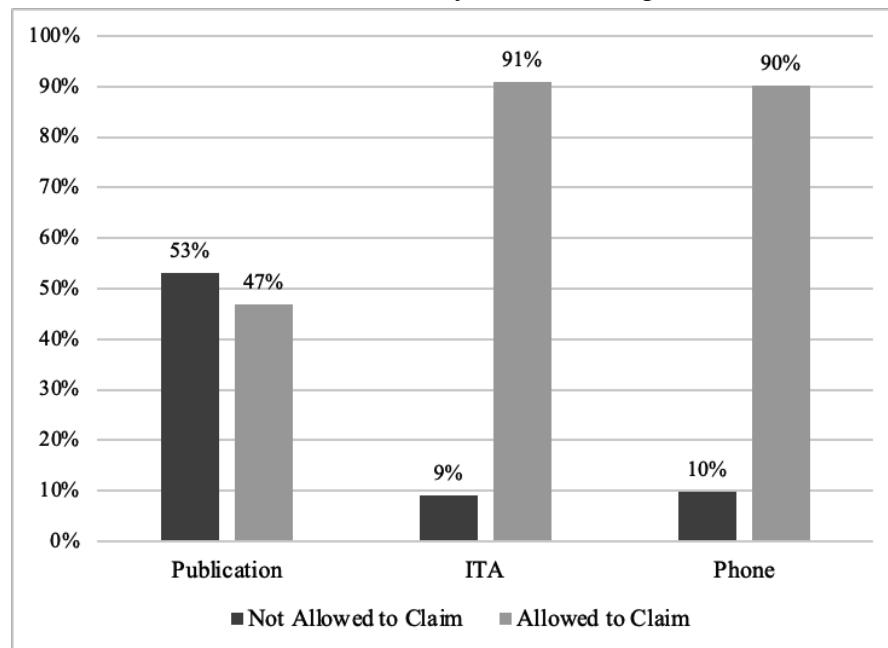
189. See INTERNAL REVENUE SERV., PUBLICATION No. 502, MEDICAL AND DENTAL EXPENSES (2024).

190. See *id.*

191. The results are similar in the case of the subset of respondents who had never taken a tax course. Among that group, the percentages of respondents who thought Alice was allowed to claim the cost as a medical expense were: (1) 47% of 154 respondents in the IRS publication group; (2) 92% of 123 respondents in the ITA group; and (3) 91% of 129 respondents in the IRS helpline group. Comparing respondents who had obtained a bachelor’s degree (including those who also obtained an advanced degree) to respondents who had not, the percentages of respondents who thought Alice was allowed to claim the cost as a medical expense were: (1) in the case of the IRS publication group: 51% for respondents who had not obtained a bachelor’s degree and 43% for respondents who had; (2) in the case of the ITA group: 92% for respondents who had not obtained a bachelor’s degree and 90% for respondents who had; and (3) in the case of the IRS helpline group: 92% for respondents who had not obtained a bachelor’s degree and 89% for respondents who had. Chi-square tests were performed to examine how the percentage of mistaken participants varied based on whether respondents had obtained a bachelor’s degree, and the relationship was not significant (at a $p = 0.05$ level) for any of Groups 4–6. For the IRS publication group, $\chi^2(1, N = 188) = 1.21, p = 0.272$. For the ITA group, $\chi^2(1, N = 176) = 0.09, p = 0.77$. For the IRS helpline group, $\chi^2(1, N = 183) = 0.63, p = 0.43$.

192. $X^2(1, N = 364) = 81.42, p < .01$.

Figure 4. Percentages of Respondents Who Think Alice Is Not (or Is) Allowed to Claim Artificial Teeth Expenses



The much higher percentage in the case of the ITA is fairly predictable because the ITA's answer includes no discussion of the fact that cosmetic procedures, generally, do not qualify as medical care. What is perhaps more surprising is that 47% of participants formed incorrect impressions when they were presented with the publication's discussion of both artificial teeth and cosmetic procedures. Many of these respondents' explanations for their answers made clear that they considered both sections of the publication and concluded that the section on artificial teeth governed Alice's outcome rather than the section about cosmetic procedures, because the former was more specific. Thus, they seem to rely on an intuition that parallels the interpretive canon that specific provisions govern over more general ones.¹⁹³

Examples of explanations in this category include: (1) "Though teeth are usually considered cosmetic at times, the fact that the IRS [h]as a special section for artificial teeth gives more hope for Alice to be able to claim it.>"; (2) "The form stated that you can claim artificial

193. For discussion of the use of this interpretative canon in the context of contract interpretation, *see, e.g.*, CHRISTINA L. KUNZ ET AL., *CONTRACTS: A CONTEMPORARY APPROACH* 552 (3d ed. West Academic 2018).

teeth as a deduction, without any qualifications or exceptions in that section.”; (3) “The website does explicitly say that artificial teeth can be claimed as a medical expense, with no additional context provided. That section being isolated from the [‘]cosmetic surgery[‘] paragraphs leads me to believe that artificial teeth are *always* claimable.”; and (4) “Because there was a section JUST for artificial teeth, which makes me feel like it is okay to deduct that expense no matter what the reason was. Despite the cosmetic surgery section.”

Figure 5 displays, by delivery channel, the percentage of respondents expressing various levels of confidence in their response that Alice can treat the cost as a medical expense. In the IRS publication group, 65% of the 88 respondents who think Alice can claim the expense were very confident or extremely confident in that interpretation. The corresponding percentage is 66% of the 160 respondents in the ITA group. Thus, respondents were quite confident in their views about her tax treatment. On the question of whether the ITA generates more confidence, the average level of confidence was not different in any meaningful (or statistically significant) way. Looking at only the subset of respondents who mistakenly believe Alice can claim the deduction, the average level of confidence (with 1 being “not at all confident” and 5 being “extremely confident”) was 3.78 (with a standard deviation of 0.95) for the IRS publication and 3.84 (with a standard deviation of 0.88) for the ITA.¹⁹⁴

194. $t(246) = 0.485, p = 0.63.$

Figure 5. Respondents' Level of Confidence that Alice Can Claim Artificial Teeth Expense

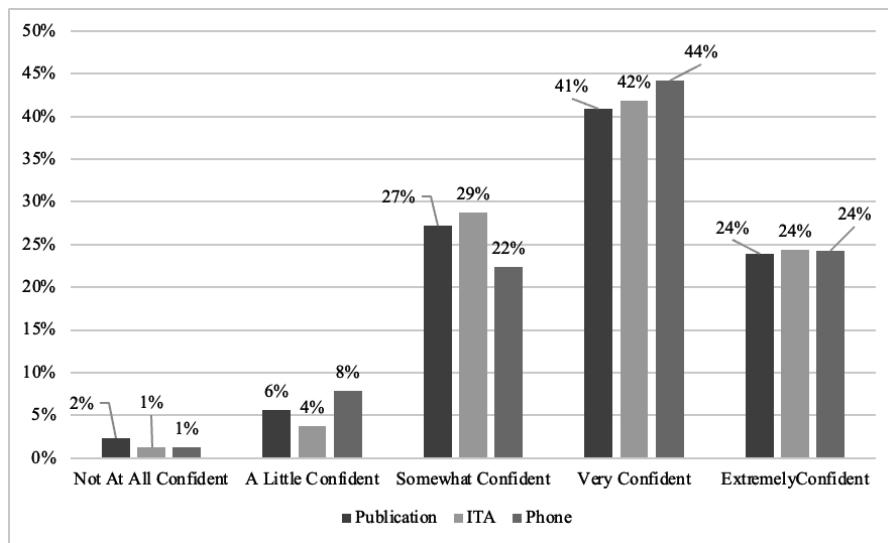
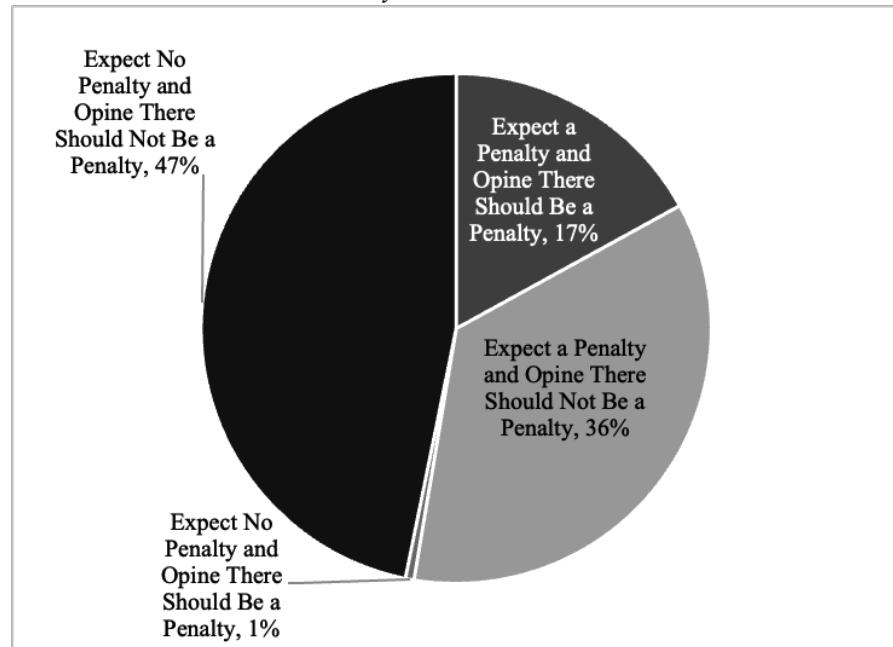


Figure 6 displays, across all delivery channels, the percentages of respondents who think that Alice will (or will not) be subject to penalties, along with their opinions about whether Alice should be subject to penalties. As this chart shows, 48% of respondents thought Alice would not be subject to penalties. Even among the respondents in the IRS helpline group, a substantial share (45%) thought Alice would not be subject to penalties. Here, like in the first three groups, explanations varied, but some comments echoed the themes of comments offered by respondents in those earlier groups. In particular, some respondents who expected that she would be subject to penalties wrote things like, "I think this is pretty explicit and Alice did the wrong thing anyway. Ignorance isn't acceptable reason to the IRS, so I would thin[k] there would be a penalty." Some respondents who thought she would not be subject to penalties wrote things like, "I think the IRS doesn't charge huge penalties on taxpayers that misinterpret a rule. I think the IRS penalties are for criminals that purposely try to avoid paying taxes." Some wrote things like, "If it was an honest mistake caused by confusion due to IRS information, they shouldn't make her pay a penalty."

*Figure 6. Expectations and Opinions Regarding Penalties:
All Delivery Channels Combined*



Also, as shown in Figure 6, a majority of respondents opined that Alice should not be subject to penalties — 83% in total. This 83% includes 47% of respondents who opined that Alice should not be subject to penalties and also expected that she would not be subject to penalties. In addition, this 83% includes 36% of respondents who expected Alice to be penalized but, at the same time, opined that she should not be.

Finally, once again, opinions about penalties correlated strongly with whether respondents, like Alice, thought she was entitled to a deduction for artificial teeth. Among the 134 respondents who thought she was not allowed to claim the cost as a medical expense, 42% thought she should be penalized, compared to only 10% of the 413 respondents who interpreted the guidance the same way that Alice did. A chi-square test was performed to examine how opinions about penalties varied based on how respondents interpreted the guidance, and it showed that the relationship was significant.¹⁹⁵

195. $X^2 (1, N = 547) = 72.07, p < .01$.

C. Teeth Whitening Fact Pattern

Participants in groups seven through nine considered a scenario in which Alice obtained teeth whitening services to correct discoloration caused by chemotherapy.¹⁹⁶ It is possible that users of informal IRS guidance might believe, potentially incorrectly, that Alice is not allowed to treat the cost as a medical expense. As to why this is potentially incorrect, the Internal Revenue Code provides that, while “medical care” generally does not include “cosmetic surgery or other similar procedures,” cosmetic procedures can qualify when they are “necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.”¹⁹⁷ Furthermore, the IRS has issued a Revenue Ruling concluding that teeth whitening services undertaken to correct discoloration due to age do not qualify that notes that the discoloration was not caused by a “disfiguring disease or treatment.”¹⁹⁸ This statement suggests that teeth whitening services that do correct discoloration caused by a “disfiguring treatment” might qualify, as Professors Blank and Osofsky note.¹⁹⁹ However, it is not certain that the IRS would agree with this analysis given that the Revenue Ruling also noted that the discoloration was not a “deformity.”²⁰⁰

The informal IRS guidance puts things in more definite terms. It states, “You can’t include in medical expenses amounts paid to whiten teeth” (in the IRS publication)²⁰¹ or “The teeth whitening expenses are not a deductible expense” (in the case of the ITA).²⁰² In fact, if Alice uses the ITA, she sees only this information and does not see more general information regarding cosmetic surgery.²⁰³

196. This is based on an example identified by Professors Blank and Osofsky. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 214.

197. 26 U.S.C § 213(d)(9)(A).

198. Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

199. See Blank & Osofsky, *Automated Legal Guidance*, *supra* note 20, at 214-15.

200. Rev. Rul. 2003-57, 2003-22 I.R.B. 959.

201. INTERNAL REVENUE SERV., PUBLICATION NO. 502, MEDICAL AND DENTAL EXPENSES (2024).

202. *Can I Deduct My Medical and Dental Expenses?*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita/can-i-deduct-my-medical-and-dental-expenses> (on file with the Syracuse Law Review). (last visited Nov. 18, 2024).

203. See *id.*

In the case of the IRS publication, by contrast, while the publication includes the statement about teeth whitening, it also includes the following:²⁰⁴

Cosmetic Surgery

Generally, you can't include in medical expenses the amount you pay for cosmetic surgery. This includes any procedure that is directed at improving the patient's appearance and doesn't meaningfully promote the proper function of the body or prevent or treat illness or disease. You generally can't include in medical expenses the amount you pay for procedures such as face lifts, hair transplants, hair removal (electrolysis), and liposuction.

You can include in medical expenses the amount you pay for cosmetic surgery if it is necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

Example. An individual undergoes surgery that removes a breast as part of treatment for cancer. The individual pays a surgeon to reconstruct the breast. The surgery to reconstruct the breast corrects a deformity directly related to the disease. The cost of the surgery is includable in the individual's medical expenses.

In addition, the publication's statement about teeth whitening refers users to the earlier discussion of Cosmetic Procedures (as shown in the box below):²⁰⁵

Teeth Whitening

You can't include in medical expenses amounts paid to whiten teeth. See *Cosmetic Surgery*, earlier.

In summary, the ITA presents its answer stripped of nuance, and, like the artificial teeth fact pattern, the more nuanced information is necessary to obtain a more complete picture, given Alice's facts.

204. INTERNAL REVENUE SERV., PUBLICATION NO. 502, MEDICAL AND DENTAL EXPENSES (2024).

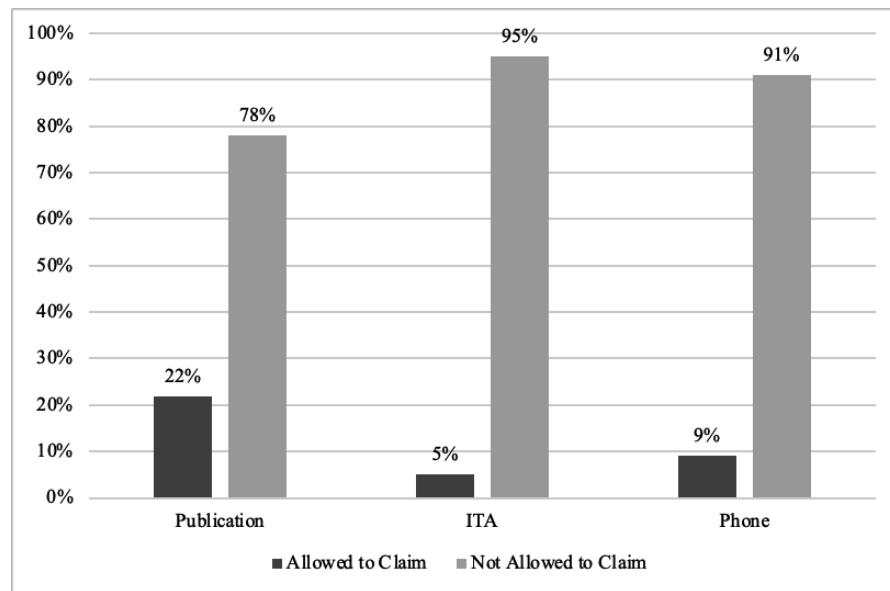
205. *Id.*

Among the 178 participants in the IRS publication group (group seven), 78% indicated that they thought Alice was not allowed to claim the cost of obtaining teeth whitening as a medical expense. In the case of the 178 participants in the ITA group (group eight), the corresponding percentage is 95%.²⁰⁶ These results are displayed in Figure 7. As this figure shows, many respondents do, indeed, reach potentially incorrect conclusions about Alice's tax treatment, more so in the case of the ITA than the IRS publication. A chi-square test was performed to examine how the percentage of potentially mistaken participants varied based on whether the participant reads information from the publication or reads the information provided by the ITA, and it showed that the relationship was significant.²⁰⁷

206. The results are similar in the case of the subset of respondents who had never taken a tax course. Among that group, the percentages of respondents who did not think Alice was allowed to claim the cost as a medical expense were: (1) 80% of 148 respondents in the IRS publication group, (2) 96% of 137 respondents in the ITA group, and (3) 91% of 152 respondents in the IRS helpline group. Comparing respondents who had obtained a bachelor's degree (including those who also obtained an advanced degree) to respondents who had not, the percentages of respondents who thought Alice was not allowed to claim the cost as a medical expense were: (1) in the IRS publication group, 77% of those without a bachelor's degree and 79% of those with one; (2) in the ITA group, 98% of those without a bachelor's degree and 92% of those with one; and (3) in the IRS helpline group, 90% of those without a bachelor's degree and 92% of those with one. Chi-square tests were performed to examine how the percentage of likely mistaken participants varied based on degree attainment, and the relationship was not significant ($p < .05$) for any of Groups 7–9. For the IRS publication group, $\chi^2(1, N = 178) = 0.17, p = 0.68$. For the ITA group, $\chi^2(1, N = 178) = 3.05, p = 0.08$. For the IRS helpline group, $\chi^2(1, N = 188) = 0.09, p = 0.76$.

207. $X^2(1, N = 356) = 21.67, p < .01$.

Figure 7. Percentages of Respondents Who Think Alice Is Not (or Is) Allowed to Deduct Teeth Whitening Expenses



Similar to the artificial teeth fact pattern, the fact that more participants concluded that Alice could not claim the expense based on the ITA's response (compared to the IRS publication) is fairly predictable given the ITA's omission of any discussion of cosmetic procedures. However, it is noteworthy that a large percentage of respondents also came away with this impression when they read the complete information in the IRS publication. Many of them appeared to consider all parts of the publication. For instance, they wrote things like, "Teeth whitening is specifically not allowed, it has it's [sic] own section instead of being grouped with other cosmetic procedures." Another wrote,

It strictly says Teeth Whitening is not allowed. If it were allowed in some cases, it would have a clause or example of when it IS accepted like the section about cosmetic surgery. Under cosmetic surgery it says it's generally not allowed UNLESS a specific situation happens. . . etc. If the teeth whitening had an exception, I imagine it would be included as well.

These responses seem to reflect the application of intuitive versions of various interpretive canons. The first, again, is in line with

giving specific statements more weight than general ones.²⁰⁸ The second draws inferences based on contrasting the teeth whitening statement with the cosmetic procedures statement that mirrors techniques many courts use when interpreting contracts, for example.²⁰⁹ In particular, participants seem to reason that, because exceptions to the general rule about cosmetic procedures were mentioned in the cosmetic procedures section, the IRS's omission of any discussion of exceptions in the teeth whitening section was intentional.

Some respondents seemed to view the facts as distinct from the example of allowable cosmetic procedures mentioned in the publication. They wrote things like, "It said cosmetic surgery and teeth whitening aren't allowed to be claimed unless the cosmetic surgery addresses disfigurement from an illness or injury. I'm not sure, but I don't think spots on teeth would count as disfigurement." This respondent seems to reason that, because Alice's facts were not as severe as the facts of the publication's example, her tax treatment will differ. While speculative, it seems possible that non-experts, when presented with an example, might reach different conclusions than legal experts as to whether particular departures from the facts of an example warrant different tax treatment.

Figure 8 displays, by delivery channel, the percentage of respondents expressing various levels of confidence in their response that Alice cannot treat the cost as a medical expense. 73% of the 139 respondents who interpreted the IRS publication to mean that she cannot deduct the expense were very confident or extremely confident in their interpretation. The corresponding percentage is 70% in the case of the 169 respondents who reached this conclusion based on advice via the ITA.

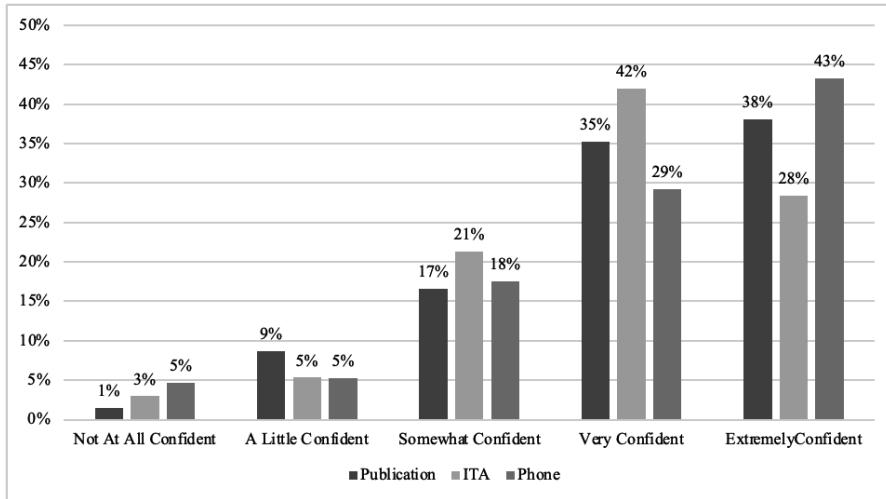
On the question of whether the ITA generates more confidence, the average level of confidence was not different in any meaningful (or statistically significant) way. Looking at only the subset of respondents who believe Alice cannot claim the deduction, the average level of confidence (with 1 being "not at all confident" and 5 being "extremely confident") was 4 (with a standard deviation of 1.01) for

208. See Kunz et. al., *supra* note 193 and accompanying text.

209. For one example, consider *WWW Assocs., Inc. v. Giancontieri*, in which a court concluded that a provision allowing "either party" to cancel a contract under specified circumstances truly meant "either party" (rather than just the buyer), in part because other contract provisions granted a right to cancel to only the buyer under other circumstances. See *WWW Assocs., Inc. v. Giancontieri*, 566 N.E.2d 639, 642–43 (N.Y. 1990).

the IRS publication and 3.88 (with a standard deviation of 0.98) for the ITA.²¹⁰

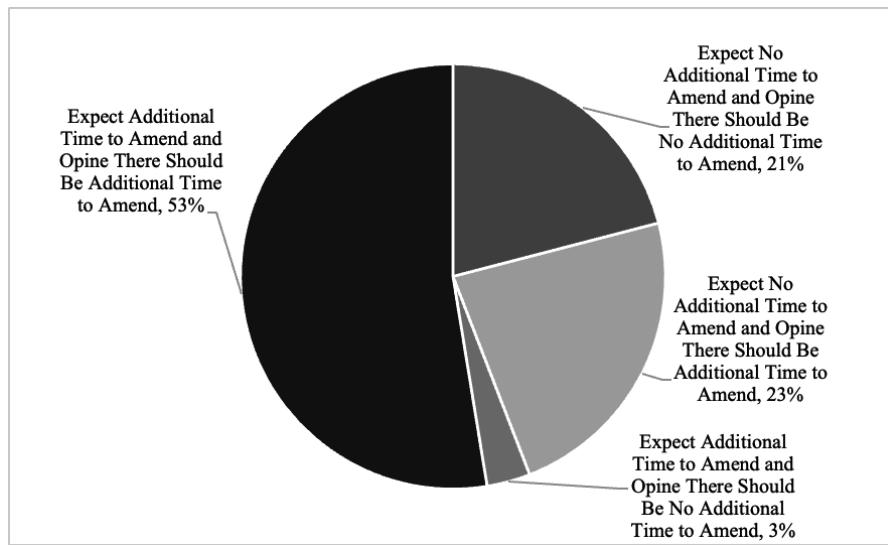
Figure 8. Respondents' Level of Confidence that Teeth Whitening Expense Is Not Deductible



Users' expectations about whether they can legally rely on informal IRS guidance might affect the likelihood that they will act upon the guidance without seeking advice elsewhere. Figure 9 displays, across all delivery channels, the percentages of respondents who think that Alice will (or will not) be allowed to have more than the usual amount of time to amend her return if she later discovers that she is allowed to claim the expense. As this chart shows, 56% of respondents thought Alice would be allowed additional time to amend her return. Even among the respondents in the IRS helpline group, a substantial share (62%) thought Alice would be allowed additional time to amend her return. Explanations were varied, but some themes are worth noting. Some who thought that she would not be granted additional time to amend her return wrote things like, "She made the decision herself, she could've spoken to an expert, but she didn't." Some who thought that she would be granted additional time to amend her return wrote things like, "She was mislead [sic] by the IRS website," or "I think the law allows Alice more than three years to claim a refund because the information in the IRS Publication was not 100% clear."

210. $t(306) = 1.08$, $p = 0.28$.

*Figure 9. Expectations and Opinions Regarding Ability to Amend:
All Delivery Channels Combined*



Also, as shown in Figure 9, 76% of respondents opined that Alice should be allowed additional time to amend. This 76% includes 53% of respondents who opined that Alice should be allowed additional time to amend her return and also expected that she would be allowed additional time. In addition, this 76% includes 23% of respondents who expected Alice not to be allowed additional time to amend her return, but, at the same time, opined that she should be allowed additional time.

Finally, unlike in the case of penalties, respondents' opinions about whether Alice should be allowed more time to amend her return were not strongly correlated with whether they interpreted the informal guidance the same way as Alice. Across all delivery channels, among the 65 respondents who thought she was allowed to deduct the expense, 75% thought she should be allowed more time to amend her return if she interpreted the guidance to disallow the deduction, compared to 76% of the 479 respondents who interpreted the guidance in the same way as Alice.

D. Trip Fact Pattern

Participants in groups ten through twelve considered a scenario in which Alice suffered from breathing difficulties and traveled to a different location to avoid hazardous air quality temporarily affecting

her home city.²¹¹ Her doctor advised the trip. She was not going to any appointments with doctors or other medical professionals while in the other location. In such a case, while the law is not entirely clear, Alice plausibly is allowed to claim the cost of the trip as a medical expense for tax purposes.²¹²

It is possible that users of informal IRS guidance in Alice's position might believe (potentially incorrectly) that they are not allowed to claim the cost as a medical expense. The IRS publication states that the cost only qualifies if the trip "is primarily for, and essential to, receiving medical services."²¹³ Presumably to disabuse taxpayers of the notion that having a doctor's note will always suffice, the IRS publication states, "You can't include in medical expenses a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor."²¹⁴

The ITA presents somewhat similar information but in a different fashion. In particular, participants assigned to group eleven encounter the following question (the "Trip Purpose Question") which is, in fact, posed by the tool: "Is the trip primarily for, and essential to, receiving qualified medical care? 'Qualified medical care' means expenses incurred primarily to alleviate or prevent a physical or mental defect or illness. They do not include expenses that are merely beneficial to general health, such as vitamins or vacation."²¹⁵

Respondents were asked how they would answer the Trip Purpose Question. If a respondent answers "no," they are told that the ITA's response was: "The trip expenses are not a deductible expense. You cannot include in medical expenses amounts you pay for transportation to another city if the trip is not primarily for, and essential to, receiving medical services." This is, in fact, the response the ITA would generate.²¹⁶ If a respondent takes this route, they never see a statement that parallels the "even if the trip is made on the advice of a doctor" statement contained in the IRS publication.

211. For additional discussion of this example, see Cauble, *Administering Tax Tests*, *supra* note 160.

212. See *supra* Part III(B).

213. INTERNAL REVENUE SERV., PUBLICATION NO. 502, MEDICAL AND DENTAL EXPENSES (2024).

214. *Id.*

215. *Can I Deduct My Medical and Dental Expenses?*, INTERNAL REVENUE SERV., <https://www.irs.gov/help/ita/can-i-deduct-my-medical-and-dental-expenses> (on file with the Syracuse Law Review). (last visited Nov. 18, 2024) (citing IRS questionnaire responses after inputting data from Trip Fact Pattern scenario).

216. *Id.*

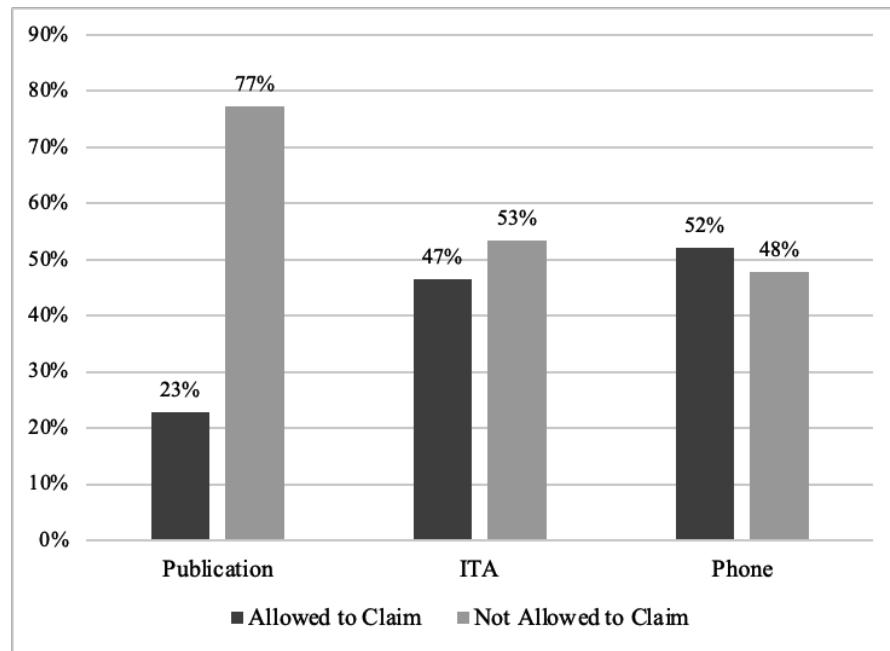
A respondent (like an actual ITA user) only sees something like the “advice of a doctor” statement if they respond “yes” to the Trip Purpose Question. In that case, they would next be asked the ITA’s follow-up question: “Is the expense for a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor?” Moreover, seeing this information in question form may not convey the notion that having a doctor’s recommendation is not always sufficient with the same clarity that follows from reading the statement in the IRS publication. Unlike seeing the information in statement form, posing it as a question does not make clear that answering “yes” will disqualify the expense (unless the user tests the tool by supplying different responses). Moreover, a user who is operating under the impression that having a doctor’s recommendation is a helpful factor for someone who wants to claim the expense might think the question is asking about factors that are helpful (in other words, they might think that responding “yes” will qualify rather than disqualify the expense).

Among the 176 participants in the IRS publication group (group ten), 77% indicated that they thought Alice was not allowed to claim the cost of the trip as a medical expense. In the case of the 174 participants in the ITA group (group eleven), the corresponding percentage is 53%.²¹⁷ These results are displayed below in Figure 10. As this figure shows, some respondents form the (potentially incorrect) impression that Alice is not allowed to treat the cost of the trip as a medical expense, fewer in the case of the ITA than the IRS publication. A chi-square test was performed to examine how the percentage of (potentially) mistaken participants varied based on whether the delivery

217. The results are similar in the case of the subset of respondents who had never taken a tax course. Among that group, the percentages of respondents who did not think Alice was allowed to claim the cost as a medical expense were: (1) 81% of 135 respondents in the IRS publication group, (2) 53% of 129 respondents in the ITA group, and (3) 49% of 144 respondents in the IRS helpline group. Comparing respondents who had obtained a bachelor’s degree (including those who also obtained an advanced degree) to respondents who had not, the percentages of respondents who thought Alice was not allowed to claim the cost as a medical expense were: (1) in the IRS publication group, 76% of those without a bachelor’s degree and 79% of those with one; (2) in the ITA group, 57% of those without a bachelor’s degree and 51% of those with one; and (3) in the IRS helpline group, 48% of those without a bachelor’s degree and 47% of those with one. Chi-square tests were performed to examine how the percentage of likely mistaken participants varied based on degree attainment, and the relationship was not significant for any of Groups 10–12. For the IRS publication group, $\chi^2(1, N = 176) = 0.26, p = 0.61$. For the ITA group, $\chi^2(1, N = 174) = 0.64, p = 0.42$. For the IRS helpline group, $\chi^2(1, N = 186) = 0.02, p = 0.89$.

channel is publication or ITA, and it showed that the relationship was significant.²¹⁸

Figure 10. Percentages of Respondents Who Think Alice Is Not (or Is) Allowed to Deduct Trip Expense



The routes that respondents in the ITA group took as they worked their way through the questions and their explanations for why Alice was allowed to claim the deduction tend to suggest that the ITA's more "black box" quality and its framing of statements as questions may be, at least partly, responsible for more respondents in the ITA group thinking Alice can claim the deduction. Among the 81 respondents in the ITA group who think Alice can claim the deduction, two answered "no" to the Trip Purpose Question and, consequently, never were told that having a doctor's recommendation is not necessarily sufficient. Both respondents mentioned the fact that her doctor recommended the trip when explaining why they thought Alice could claim the deduction.

In the ITA group, 79 of the respondents who thought Alice could claim the deduction answered "yes" to the "Trip Purpose Question"

218. $X^2 (1, N = 350) = 21.96, p < .01$.

(at this point in the process, they have not seen a statement to the effect that a doctor's recommendation is not sufficient). They were then asked the follow-up question: "Is the expense for a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor?" 14 of the 79 respondents answered "yes," were then told by the ITA that she could not claim the deduction, but nevertheless said Alice was entitled to claim it. Providing some tentative support for the possibility that delivering information in question form may not convey what the IRS intends to convey, one such respondent's explanation for their answer was telling: "Because we are able to answer yes to the questions of the IRS tax assistant." This respondent, at least, seemed to view the ITA as communicating the notion that a doctor's recommendation was required rather than the notion that it was insufficient. Moreover, ten of the other thirteen respondents also mentioned the doctor's recommendation in their explanations. The remaining 65 of the 79 respondents answered "yes" to the Trip Purpose Question and responded "no" to the follow-up question. When explaining their responses, many of them (32) mentioned that her doctor had advised the trip, some echoing the sentiment of the respondent above who seemed to view the ITA's follow-question as conveying the notion that a doctor's note is required (rather than the notion that it is not necessarily sufficient). For instance, one wrote, "Her situation fits all the criteria. It being doctor ordered, especially."

By contrast, in the case of the IRS publication group, only 15 of the 40 respondents who thought Alice could claim a deduction mentioned her doctor recommending the trip in their explanations. Moreover, of the 136 IRS publication group respondents who thought she was not entitled to claim a deduction, 59 explicitly referred to the "even if the trip is made on the advice of a doctor" statement contained in the IRS publication.

In summary, it seems that the ITA's more "black box" functionality and phrasing of a key statement as a question may be more likely to steer users towards thinking the deduction is allowed.²¹⁹ Given

219. As another example of ITA questions that seem prone to causing misunderstanding, consider the questions the tool poses if the user seeks information about whether surgical expenses qualify for a medical expense deduction. In that case, one question posed by the ITA is: "Was the operation legal AND, if for cosmetic surgery, was the operation necessary?" If the user answers "yes" to the preceding question, they are next asked, "Were the Surgical Expenses paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body?"

Alice's particular facts, while the law is not entirely clear, steering more users towards the deduction might be steering them in the right direction. However, if a taxpayer receives a doctor's recommendation to take a trip that is, indeed, for general improvement in health, so that, unlike Alice, it is clear that tax law disallows a deduction, the ITA might be more likely than the IRS publication to foster the incorrect belief that the expense is eligible. Moreover, reasonable minds might disagree about Alice's facts, so that, even with her facts, deductibility may be the wrong conclusion.

Figure 11 displays, by delivery channel, the percentage of respondents expressing various levels of confidence in their response that Alice cannot treat the cost as a medical expense. 75% of the 136 respondents were very confident or extremely confident in the case of the IRS publication group. The corresponding percentage is 53% in the case of the 93 respondents in the ITA group.

On the question of whether the ITA generates more confidence, for this fact pattern, the average level of confidence was actually *lower* in the case of the ITA than in the case of the publication, and the difference was statistically significant.²²⁰ Looking at only the subset of respondents who believe Alice cannot claim the deduction, the average level of confidence (with 1 being "not at all confident" and 5 being "extremely confident") was 4.04 (with a standard deviation of 0.86) for the IRS publication and 3.49 (with a standard deviation of 1.02) for the ITA. While speculative, it seems possible that this difference could be attributable to the fact that the ITA asks users legal questions (like whether the trip is for "qualified medical care"). If they are uncertain that they have supplied the correct response, they will, presumably, be less confident in the correctness of the answer they receive.

220. $t(227) = 4.219, p < .01$.

Figure 11. Respondents' Level of Confidence that Trip Expense Is Not Deductible

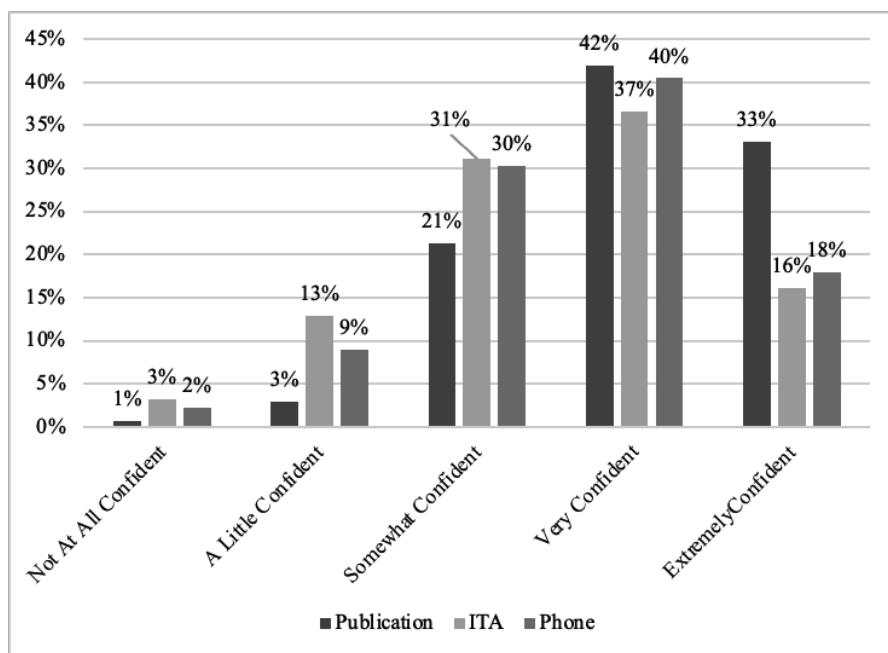
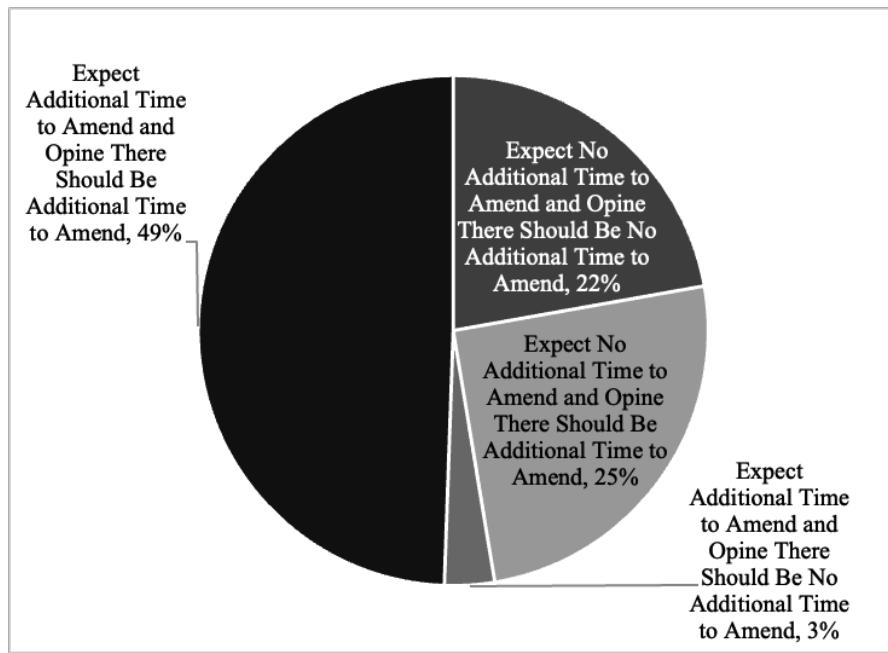


Figure 12 displays, across all delivery channels, the percentages of respondents who think that Alice will (or will not) be allowed to have more than the usual amount of time to amend her return if she later discovers that she is allowed to claim the expense. As this chart shows, a little more than 52% of respondents thought Alice would be allowed additional time to amend her return. Even among the respondents in the IRS helpline group, a substantial share (49%) thought Alice would be allowed additional time to amend her return. As with the teeth whitening fact pattern, explanations were varied, but some comments were in line with the themes highlighted for the teeth whitening fact pattern. In particular, some who thought that she would not be granted additional time to amend her return wrote things like, "The IRS could say she read it wrong or didn't understand it correctly and that she should've consulted a tax professional." Some who thought that she would be granted additional time to amend her return wrote things like, "Her original filing was done based on IRS issued guidance that seems to have been incorrect."

Figure 12. Expectations and Opinions Regarding Ability to Amend – All Delivery Channels Combined



Also, as shown in Figure 12, 74% of respondents opined that Alice should be allowed additional time to amend. This 74% includes 49% of respondents who opined that Alice should be allowed additional time to amend her return and also expected that she would be allowed additional time. In addition, this 74% includes 25% of respondents who expected Alice to not be allowed additional time to amend her return, but at the same time, opined that she should be allowed additional time.

Finally, across all delivery channels combined, among the respondents who interpreted the guidance to mean that Alice could not claim a deduction, a somewhat higher percentage (77%) opined that she should be granted more time to amend her return, compared to the percentage (71%) in the case of respondents who interpreted the guidance to allow the deduction, but the difference was not statistically significant.²²¹

221. $X^2 (1, N = 536) = 2.41, p = 0.12$.

VI. IMPLICATIONS

The results described above in Part V have several implications. First, by demonstrating the potential of IRS guidance to misdirect users, the results underscore the need for reform measures that mitigate the harms that follow when informal IRS guidance leads taxpayers astray. Second, the results suggest ways that the IRS might harness the ITA's advantages while mitigating its disadvantages. Third, exploring the effects of models used by other agencies to provide automated, informal guidance may be warranted. Fourth, the results may shed light on perceptions of procedural (un)fairness in tax law. Finally, the results suggest a key role for a different type of non-expert feedback on informal guidance than what agencies typically seek. Each of these implications is discussed below.

A. Underscoring Need for Reforms

Existing literature offers proposals that could mitigate the harms that follow when informal guidance leads taxpayers astray. These measures include allowing taxpayers additional time to amend returns when they are led astray by unduly unfavorable informal guidance²²² and reducing practical barriers that may stand in the way of obtaining penalty relief when a taxpayer, in fact, relies on unduly favorable informal guidance in good faith.²²³ Furthermore, because statements that might lead some taxpayers astray convey information about facts-and-circumstances-based tests and because it is particularly difficult, in guidance, to cover every possible outcome under such a test, existing literature proposes more detailed disclosure by taxpayers so that the IRS could more easily detect taxpayer error early.²²⁴ Facilitating early detection could mitigate the inequitable results that otherwise might follow when taxpayers are led astray. By demonstrating the potential of IRS guidance to misdirect users, this study's results bolster the case for these reforms.

B. Harnessing the ITA's Advantages and Mitigating Its Disadvantages

The study's results tend to show that the ITA's inclination to present less qualified answers gives the tool a distinct advantage over IRS

222. See Cauble, *Detrimental Reliance*, *supra* note 1, at 469–71.

223. See Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2184–85; Cauble, *Detrimental Reliance*, *supra* note 1, at 46–69.

224. For further discussion, see Cauble, *Administering Tax Tests*, *supra* note 160.

publications when the omitted detail is irrelevant to the user's tax treatment. Conversely, this feature becomes a flaw when the omitted detail is determinative of the user's tax treatment. In some cases, the ITA could be designed to harness this potential advantage and mitigate the disadvantage by incorporating additional filtering questions used to tailor the answer that it produces. For instance, with respect to the artificial teeth and teeth whitening examples, additional filtering questions could be added to determine whether the procedure was cosmetic and, if so, whether it nevertheless falls within an exception for cosmetic procedures that are allowed. With respect to the prize fact pattern, additional filtering questions could be used to determine whether the taxpayer (truly) refused a prize and to determine whether the taxpayer directed the prize to be given to another recipient. Answers to the filtering questions could then determine what the ITA's response should be.

The study's results also tend to show the advantages of asking simpler and factual questions — avoiding compound questions and questions that require the user to make legal determinations. For instance, with respect to trip expenses, many respondents seemed to infer that having a doctor's recommendation was required (rather than take away the idea that it was insufficient) from the following ITA question: "Is the expense for a trip or vacation taken merely for a change in environment, improvement of morale, or general improvement of health, even if the trip is made on the advice of a doctor?"

One disadvantage to adding more threshold questions and breaking apart compound questions is that doing so might lengthen the time that it takes for a user to get an answer from the tool. The website does currently tout short "estimated completion times" for each topic.²²⁵ For instance, when you click on "Can I deduct my medical and dental expenses?", you see that the tool's estimated completion time is 15 minutes.²²⁶ With more questions, that time could become longer. However, taking on potentially longer completion times in exchange for easier to answer questions and clearer responses may be a trade many users would willingly make. Along similar lines, Professor Thomas has observed that the IRS might take a page from website design advice that "people generally tolerate more steps ('clicks' on a

225. See Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2165.

226. *Id.*

website) if they require little thought and effort, as opposed to fewer steps that require a lot of thought.”²²⁷

More generally, even if the tradeoff of longer completion times is considered, information about existing guidance’s potential to mislead non-expert users ought to inform how that tradeoff is evaluated. To the extent that the IRS views the ITA as an accessible tool that allows users to reach more easily the same conclusions reached by IRS publication readers, it is noteworthy that respondents in the ITA groups tended to form different impressions about applicable tax law than respondents in the IRS publication groups.

One open question about the ITA is whether its tailored responses will cause users to be more certain that its answers are correct. This study’s results do not show that respondents are more confident in their interpretation of ITA guidance than in their interpretation of statements in an IRS publication. Indeed, in one fact pattern, they were less confident.

Of course, the lack of such a finding here does not rule out the possibility that, in practice, actual ITA users may be more confident in the correctness of its responses. In some respects, the experience of survey respondents in ITA groups aligned more closely with the true ITA experience than was the case for respondents in IRS publication groups. An actual user of the IRS publication on medical and dental expenses encounters a 27-page document,²²⁸ and may harbor some doubt about whether the section(s) they read are subject to exceptions and caveats elsewhere in the publication or in one of the IRS’s many other publications. By contrast, survey respondents viewed the sections of the IRS publication that I curated for them to read. One direction for further study would entail testing whether users are less confident if they have an experience that more closely mimics the actual IRS publication experience. In the case of the ITA experience, some users might assume that the tool asks all relevant questions, making them feel more confident about its responses. As one survey respondent in an ITA group who concluded that artificial teeth expenses were deductible stated, “I feel that if there was a caveat to the artificial teeth being a valid claim, there would be additional clarifying questions regarding being medically necessary.”

227. Kathleen DeLaney Thomas, *User-Friendly Taxpaying*, 92 IND. L.J. 1509, 1532 (2017).

228. See Internal Revenue Serv., Publication No. 502, Medical and Dental Expenses (2024); Internal Revenue Serv., Publication No. 502, Medical and Dental Expenses (2023).

C. Need to Test Other Models

The IRS is not the only agency that uses an automated guidance tool. As Professors Blank and Osofsky have observed, U.S. Citizenship and Immigration Services provides a tool that differs from the ITA in several respects.²²⁹ To name one, rather than provide users with the tool’s answer to a question, the tool points them in the direction of the location of potentially relevant information elsewhere (sometimes with added context or directions).²³⁰ In the tax context, a parallel approach could entail pointing the user to a specific part(s) of an IRS publication(s) when the user indicates a particular topic of interest.

There are likely some tax topics for which the current ITA’s design would become unwieldy given the number of potential exceptions and the existence of hard-to-anticipate exceptions. This is likely true of many facts-and-circumstances-based tests that tax law employs to make various determinations.²³¹ In those instances, pointing the user in the direction of discussion in a publication when they select a particular topic may be more feasible. Also, assuming that the publication conveyed the facts-and-circumstances-based nature of the determination,²³² such an approach might be less likely to create overconfidence in a response that could, in fact, be incorrect given the facts-and-circumstances-based nature of the topic. This approach might also streamline the process of providing informal guidance by obviating the need to convey (or attempt to convey) the same information through multiple channels. Before adopting such an approach, it would be useful to know whether the different design affects the answers that users take away from the tool, as well as how confident they are in those answers.

D. Perceptions of Procedural Tax (Un)fairness

The study’s results provide some insight into perceptions of procedural tax (un)fairness. As existing literature notes, a perception that the tax system is unfair, in addition to being important in and of itself, may be significant if such a perception affects taxpayers’ willingness to comply with tax law.²³³ In the case of penalties, a segment of the

229. See Blank & Osofsky, ACUS Report *supra* note 143, at 25, 41–42.

230. See *id.* at 25.

231. For further discussion, see Cauble, *Administering Tax Tests*, *supra* note 160.

232. This, in some cases, would require modifying the publication’s current language.

233. See, e.g., KARYL A. KINSEY, *Deterrence and Alienation Effects of IRS Enforcement: An Analysis of Survey Data*, in *WHY PEOPLE PAY TAXES: TAX COMPLIANCE*

respondents expect that tax law will operate in a way that they view as unfair. That is, they expect that the taxpayer who acts upon unduly favorable guidance will be subject to penalties even though they opine that they should not be. In the first fact pattern, 34% of respondents fall in this category. In the second fact pattern, 36% of respondents do.

In the case of the ability to obtain more time to amend a return, by contrast, a smaller share of respondents expected that tax law will operate in a way that they viewed as unfair. In other words, a smaller share expected that the taxpayer who acts upon unduly unfavorable guidance will not be afforded extra time to amend their return, even though they opined that they should be. The percentages of respondents falling in this group are 23% for the third fact pattern and 25% for the second. Interestingly, in some cases, reliance on informal advice might allow for protection against penalties, while obtaining additional time to amend a return is likely a non-starter.²³⁴

E. Need for Non-Expert Review

The IRS, the GAO, and others already use various techniques to study and evaluate the readability of informal tax guidance.²³⁵ Often these techniques rely on metrics like sentence length and word

AND ENFORCEMENT 259 (Joel Slemrod ed., 1992); Leandra Lederman, *The Interplay Between Norms and Enforcement in Tax Compliance*, 64 OHIO ST. L.J. 1453 (2003); STEVEN M. SHEFFRIN & ROBERT K. TRIEST, *Can Brute Deterrence Backfire? Perceptions and Attitudes in Taxpayer Compliance*, in *WHY PEOPLE PAY TAXES: TAX COMPLIANCE AND ENFORCEMENT*, *supra*, at 193–218; STEVEN M. SHEFFRIN, *TAX FAIRNESS AND FOLK JUSTICE* 161–90 (2013).

234. See *supra* Part II.

235. U.S. GEN. ACCOUNTING OFF., *Tax Administration: Selected IRS Forms, Publications, and Notices Could Be Improved* 5 (1993) (describing the GAO's measurements of the reading difficulty of IRS forms and IRS publications); INTERNAL REVENUE SERV., *Plain Writing Act Compliance Report* 12 (2017) (describing the assessment of readability metrics for IRS "Tax Tips"); William A. Raabe et al., *Tax Textbook Readability: An Application of the Cloze Method*, 1984 J. AM. TAX'N ASS'N 66 (2025) (describing measures of the readability of various tax textbooks as well as the Internal Revenue Code and Treasury Regulations); P.M.J. Reckers & A.J. Stagliano, *State Income Tax Forms: A Test of Readability*, 1980 AKRON BUS. & ECON. REV. 42 (1999) (describing a study of the readability of state and federal tax instructions). Some studies examine readability of non-U.S. tax materials. See, e.g., Caroline Pau et al., *Complexity of New Zealand's Tax Laws: An Empirical Study*, 22 AUSTL. TAX F. 59 (2007); Lin Mei Tan & Greg Tower, *The Readability of Tax Laws: An Empirical Study in New Zealand*, 9 AUSTL. TAX F. 355 (1992); Marianne Richardson & Adrian Sawyer, *Complexity in the Expression of New Zealand's Tax Laws: An Empirical Analysis*, 14 AUSTL. TAX F. 325 (1998); David Smith & Grant Richardson, *The Readability of Australia's Taxation Laws and Supplementary Materials: An Empirical Investigation*, 20 FISCAL STUD. 321 (1999).

length.²³⁶ While certainly important, readability does not capture everything that makes guidance more (or less) likely to convey accurate information.²³⁷ To underscore this point, I used an online text analysis tool²³⁸ to obtain a readability metric for the IRS publication excerpts that were presented to respondents. The table below displays that tool's readability metric for the IRS publication excerpt used for each IRS publication group, along with the percentage of respondents in each group that formed incorrect, or at least arguably incorrect, impressions about applicable tax law. As it shows, the metric for grade reading level was 6.9 for the raffle prize fact pattern (Group One),²³⁹ and, in that group, 43% of respondents formed incorrect impressions. The grade reading level metric was 12.5 for the artificial teeth fact pattern (Group Four),²⁴⁰ and, in that group, 47% of respondents formed incorrect impressions. The grade reading level metric was 12.6

236. See, e.g., Doug Barney et al., *Tax Simplification Through Readability*, 82 CPA J. 1, 9 (Dec. 2012); Caroline Pau et al., *supra* note 235; Reckers & Stagliano, *supra* note 235; Richardson & Sawyer, *supra* note 235; Smith & Richardson, *supra* note 235; Tan & Tower, *supra* note 235.

237. See, e.g., Raabe et. al, *supra* note 235, at 68 (noting that the method used to assess readability “cannot be used to assess the probability that a particular reader will receive the author’s message.”); Tan & Tower, *supra* note 235, at 361 (noting limitations of readability formulas). Consider, also, one study in which researchers presented undergraduate and graduate accounting students with either: (1) the text of an Internal Revenue Code section or (2) secondary material (RIA’s explanation) describing the provision. See Koch & Karlinsky, *supra* note 55. Participants were asked to subjectively rate various aspects of its readability on a Likert scale from “agree very strongly” to “disagree very strongly,” in response to prompts such as: “I thought the subject matter of the passage was easy to understand.” *Id.* Before supplying subjective ratings (in some cases) or after supplying subjective ratings (in other cases), participants answered questions testing their understanding of the provision. See *id.* While the language of the Internal Revenue Code and the secondary material scored comparably in terms of technical measures of readability, participants, on average, answered more questions correctly and took less time to do so when presented with the secondary material instead of the Internal Revenue Code provision. See *id.* Also, on average, they subjectively rated the secondary material as easier to understand. See *id.* For discussion of a similar study in which participants were tax professionals, see Stewart S. Karlinsky & Bruce S. Koch, *Impact of Tax Law Complexity on Professionals*, J. AM. TAX’N ASS’N, (Fall 1987).

238. See VOYANT TOOLS, <https://voyant-tools.org/> (on file with the Syracuse Law Review) (last visited Oct. 21, 2025).

239. See *Voyant Tools Readability of the Raffle Prize Fact Pattern*, VOYANT TOOLS, <https://voyant-tools.org/?corpus=6f7c55a825997428007e519813005385> (on file with the Syracuse Law Review) (last visited Aug. 24, 2025).

240. See *Voyant Tools Readability of the Artificial Teeth Fact Pattern*, VOYANT TOOLS, <https://voyant-tools.org/?corpus=5b93fc630b41baaf4a8ff3ded8045170> (on file with the Syracuse Law Review) (last visited Aug. 24, 2025).

for the teeth whitening fact pattern (Group Seven),²⁴¹ and, in that group, 78% of respondents formed potentially incorrect impressions. Finally, the grade reading level was 10.3 for the trip fact pattern (Group Ten),²⁴² and, in that group, 77% of respondents formed potentially incorrect impressions.

Table 6. Readability Metrics

Group	Readability (Grade Level)	Percentage of Respondents Who Formed (Potentially) Incorrect Impressions About Tax Law
Group One – Prize Fact Pattern	6.9	43%
Group Four – Artificial Teeth Fact Pattern	12.5	47%
Group Seven – Teeth Whitening Fact Pattern	12.6	78%
Group Ten – Trip Fact Pattern	10.3	77%

Some studies evaluate understandability of government websites in a multi-factored way to judge how well they comply with the Plain Writing Act of 2010.²⁴³ However, at least some of these studies appear to focus on small portions of the IRS's website – examining, for instance, information about how to contact the agency – not on portions of the website that provide substantive guidance.²⁴⁴

241. See *Voyant Tools Readability of Teeth Whitening Fact Pattern*, VOYANT TOOLS, <https://voyant-tools.org/?corpus=fbf6d8e6fa0e057a75963bdd640f63cd> (on file with the Syracuse Law Review) (last visited Aug. 23, 2025).

242. See *Voyant Tools Readability of Trip Fact Pattern*, VOYANT TOOLS, <https://voyant-tools.org/?corpus=f03500d2f3cf2d692cd5d2174c52562d> (on file with the Syracuse Law Review) (last visited Aug. 23, 2025).

243. See CENTER FOR PLAIN LANGUAGE, <https://centerforplainlanguage.org/reports/> (on file with the Syracuse Law Review) (last visited Aug. 22, 2025).

244. See *What We Graded in 2022*, CENTER FOR PLAIN LANGUAGE, <https://centerforplainlanguage.org/2022-federal-plain-language-report-card/#what> (on file with the Syracuse Law Review) (last visited Aug. 22, 2025).

Moreover, readability and plain writing do nothing to prevent misunderstandings that arise from guidance omitting information entirely. To address this potential source of misunderstanding, Professors Blank and Osofsky propose an expanded role for outside tax law experts to review and comment upon informal guidance.²⁴⁵ The results of this study underscore the usefulness of expert review because many respondents interpreted guidance in a manner that legal experts, likely, would predict. For instance, when told by the ITA that teeth whitening expenses are not qualified medical expenses without mention of any potential exceptions, many participants concluded that the expenses did not qualify. This outcome seems predictable, given that the ITA's response states that this is the case.

Sometimes at least a subset of IRS forms and publications will undergo outside expert review to ensure consistency with substantive law.²⁴⁶ It is not clear, however, whether this review captures instances when technically correct statements are nevertheless highly susceptible to misinterpretation. For instance, the statement that a prize winner who refuses a prize can exclude it from income is technically correct.²⁴⁷ At the same time, it is susceptible to misinterpretation by a user who thinks anyone who does not take possession of the prize has “refused” it.

In addition, because respondents also interpreted statements in ways that may not be as easy for experts to anticipate, the results point in the direction of the need for non-expert review and feedback. While agencies do solicit user feedback on their online tools and other resources,²⁴⁸ it appears that they generally solicit feedback on whether

245. See Joshua Blank & Leigh Osofsky, *Democratizing Administrative Law*, 73 DUKE L.J. 1615, 1661–65 (2024); Blank & Osofsky, ACUS Report, *supra* note 143, at 25; Blank & Osofsky, *Simplexity*, *supra* note 1, at 257–58; Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2187–88.

246. See *supra* note 93 and accompanying text. Similarly, in 1993, the GAO reviewed various tax forms and publications, did not identify any inaccuracies, but did recommend various steps (like use of consistent language) to improve clarity. See U.S. GOV’T ACCOUNTABILITY OFF., *GAO/GGD-93-72, Selected IRS Forms, Publications, and Notices Could Be Improved* 1, 4 (1993). For discussion of some of the limits of this review, see Blank & Osofsky, *Simplexity*, *supra* note 1, at 257–58.

247. For instance, in one revenue ruling regarding game show winnings, the IRS stated, “Where an individual refuses to accept an all-expense paid vacation trip he won as a prize in a contest, the fair market value of the trip is not includable in his gross income.” See *supra* note 106 and accompanying text.

248. The IRS, for instance, makes available a form for providing general feedback on its forms and publications. See *Comment on Tax Forms and Publications*, INTERNAL REVENUE SERV., <https://www.irs.gov/forms-pubs/comment-on-tax->

the tool was easy to use and on whether the user obtained *an* answer to their question.²⁴⁹ It does not appear to be the case that they seek information from users about *what* answer they took away from the tool — in other words, what the user thinks the guidance means given their particular facts. In the course of preparing a report for the Administrative Conference of the United States on the use of automated legal guidance at federal agencies, Professors Blank and Osofsky interviewed employees at several different agencies about various tools, including the ITA.²⁵⁰ They report that, generally, interviewees believed that it was not possible for the tools to provide incorrect answers.²⁵¹ As a result, agencies may not see a need to get feedback from non-experts on anything other than ease of use and whether they felt that they obtained an answer to each question asked.

As one illustration of a way in which expert review for consistency with tax law, assessments of readability, and evaluations for compliance with plain writing requirements may all fail to identify ways in which informal guidance is susceptible to potential misinterpretation, consider informal guidance's use of examples to illustrate general principles.²⁵² While not definitive (and while warranting further study), non-expert users might interpret specific examples differently than experts. Experts might conclude that a specific example indicates that similar treatment applies to any analogous situation.²⁵³ While non-experts likely will also assume that similar treatment applies to analogous situations, some might hold views about what makes another situation sufficiently analogous to a specific example that vary from what experts tend to conclude. Potential misinterpretations of this sort may be hard for experts to anticipate. They also have nothing to do with technical measures of readability and clarity of language. They can arise even if sentence length, word length, and other technical measures indicate that the material is readable.

Testing for this potential type of misunderstanding requires asking users not whether they obtained *an* answer from the guidance and

forms-and-publications (on file with the Syracuse Law Review) (last visited Aug. 22, 2025).

249. See Blank & Osofsky, ACUS Report, *supra* note 143, at 24, 27–28; *see also* Blank & Osofsky, *Automated Agencies*, *supra* note 1, at 2158–59, 2161–62.

250. See Blank & Osofsky, ACUS Report, *supra* note 143, at 25.

251. *See id.* at 26.

252. The guidance on cosmetic procedures in IRS publications offers one illustration. *See* Blank & Osofsky, *Simplexity*, *supra* note 1, at 214–15.

253. *See, e.g.*, Susan C. Morse & Leigh Osofsky, *Regulating by Example*, 35 YALE J. ON REG. 127, 159 (2018).

not whether they thought the tool was useful. Rather, it requires asking *what* answer they obtained – i.e., what they take away in terms of their tax treatment, given their particular facts. The remedy for this type of potential misunderstanding is also unclear. While speculative (and warranting further study) – offering multiple examples might help to reduce user confusion in some cases. Of course, undertaking additional review and refining informal tax guidance requires additional resources, and, thus, the need for this additional review represents one more reason why the current reductions in IRS resources are detrimental.

CONCLUSION

The survey results reported by this Article demonstrate that statements taken from actual IRS guidance are susceptible to interpretations that are inconsistent (or, in some cases, potentially inconsistent) with actual tax law. Moreover, many respondents who interpreted the statements in ways that were inconsistent with tax law (or, at least, potentially so) nevertheless expressed a high degree of confidence in their interpretations. These findings underscore the need for reforms that would mitigate the harms that follow when users interpret guidance inconsistently with tax law.

In contrast to IRS publications, the ITA tends to provide answers devoid of nuance or in which nuance is de-emphasized. If awareness of the nuance is necessary to determine the correct tax treatment, respondents were more likely to harbor mistaken beliefs about tax treatment when they encountered guidance delivered by that tool. Conversely, if the additional nuance was to blame for potential misunderstanding, keeping it from respondents or de-emphasizing it made respondents more likely to reach correct conclusions. These findings point in the direction of steps that might be taken to harness the ITA’s advantages while mitigating its disadvantages.

Finally, while some of the ways in which participants interpreted guidance were predictable, other interpretations differed from what, perhaps, legal experts might anticipate. This finding suggests a potential role for studying how non-experts interpret guidance, to supplement the analysis of technical measures of its readability and reliance on expert review.

