

Essay

Exceptional Cases

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INTRODUCTION

In their recent book, *AUTOMATED AGENCIES*, Professors Blank and Osofsky offer what the book front matter aptly describes as “the definitive account of how automation is transforming government explanations of law to the public.”¹ As they lay out in detail, for many decades the private sector has used automated systems to provide customer service, and government agencies have done the same by developing and making available various online tools to provide the public with guidance on applicable law. As they note, sometimes automated tools offer guidance that does not align with actual law. One example they describe entails the IRS’s automated tool informing a hypothetical user that they are not entitled to a medical expense deduction for the cost of a home health aide, an arguably incorrect answer given the user’s unique circumstances. As Professors Blank and Osofsky speculate, in that case, the IRS’s automated tool’s answer “likely reflects the IRS’s decision that the automated legal guidance system should offer responses that are correct for most taxpayers, even at the cost of offering incorrect responses for some.”² This theme—that automated guidance does not deal well with exceptional cases—is one theme upon which I will elaborate in this Essay.

As Professors Blank and Osofsky explain in the book and have explained in their prior work, informal guidance often

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1. JOSHUA D. BLANK & LEIGH OSOFSKY, *AUTOMATED AGENCIES: THE TRANSFORMATION OF GOVERNMENT GUIDANCE* (Cambridge University Press 2025).

2. BLANK & OSOFSKY, *supra* note 1, at 8.

features “simplicity” which “occurs when the government presents clear and simple explanations of law that is, in fact, ambiguous or complex.”³ In other words, through informal guidance, the government makes law appear simpler than it actually is by, for instance, omitting various exceptions, caveats, and sources of uncertainty. While this may make it easier for the public to understand the law when they are not affected by the exceptions, it also may mislead members of the public who are affected by the exceptions. Moreover, misled users may be left with limited legal recourse if they follow the guidance.

In this essay, I will elaborate upon seven observations and themes of the book: (1) the inequity inherent in informal guidance’s divergence from formal law, (2) the introduction of an important conceptual distinction: unilateral guidance versus bilateral guidance, (3) a question raised by the book that lurks a bit below the surface—what constitutes reliance on informal guidance?, (4) an interesting proposal to increase transparency by making available the decision tree that guides the IRS’s automated tool, (5) the insider perspective on agencies’ opinions about their automated tools, (6) the IRS automated tool’s tendency to ask the user legal questions that may deceptively appear non-technical, and (7) automated guidance’s failure to properly address exceptional cases. With respect to each of these observations and themes, I will offer additional commentary. Some of the additional commentary is based upon results obtained from surveys that I have conducted.

This Essay will proceed as follows. Part I will describe some examples of ways in which informal guidance could mislead users that will be used to inform later discussion in the Essay. Then Parts II through VIII will discuss the observations and themes listed above.

I. MOTIVATING EXAMPLES

Individuals who are misled by informal guidance (including automated informal guidance) have limited ability to seek legal relief.⁴ In some cases, users may be misled by guidance that is unduly favorable. To illustrate, consider the following example (“the MBA Example”) that Professors Blank and Osofsky offer in their book.⁵ Imagine a recent college graduate just started a job

3. *Id.*

4. *Id.* at 132–34.

5. *Id.* at 6–7.

at a large company and is considering obtaining an MBA. They use the IRS's Interactive Tax Assistant (ITA) to determine whether the expense of the MBA would be tax deductible. The tool prompts them to answer a series of questions.⁶ Because they are already working at their job, they answer “yes” to the question, “Were the expenses attributable to a trade or business or employment already established at the time the education was undertaken?”⁷ After they respond to a series of other questions, the tool provides the following response:⁸

Answers to Your Questions About Deductions	
Your work related education expenses are deductible.	HIDE DETAILS
Deductible expenses include:	
<ul style="list-style-type: none"> • Tuition, books, supplies, lab fees, and similar items • Certain transportation and travel costs • Other education expenses, such as the cost of research and typing when writing a paper 	
No double benefit is allowed. You can't deduct expenses you benefit from under any other provision of the law or expenses paid with tax-free scholarship, grant, or employer-provided educational assistance.	
Deducting as a business expense:	
<ul style="list-style-type: none"> • Self-employed persons - Use the appropriate form to report your business income and expenses, such as Schedule C (Form 1040), Profit or Loss From Business (Sole Proprietorship), or Schedule F (Form 1040), Profit or Loss From Farming. • Employees - Under the Tax Cuts and Jobs Act, employee educational expenses are no longer deductible. 	
For more information see, Business Deduction for Work-Related Education Expenses, in Publication 970, Tax Benefits for Education .	

As Professors Blank and Osofsky observe, this response could mislead the taxpayer. Whether a trade or business is “already established” can be a tricky, legal question, and it is not clear that the taxpayer’s “yes” response is correct based on existing case law.⁹

Even setting that aside, the detail presented later in the tool’s answer as an afterthought (“[u]nder the Tax Cuts and Jobs Act, employee educational expenses are no longer deductible.”) is a key clarification that effectively overrides the initial

6. *Id.* at 6.

7. *Id.*

8. *Id.* at 11 n.9 (citing *Are My Work-Related Education Expenses Deductible?*, IRS, <https://www.irs.gov/help/ita/are-my-work-related-education-expenses-deductible> [<https://perma.cc/CK7L-554K>] (click “Begin”; then click “Continue”; then select a tax year; then provide the answers indicated in the text to get this response from the Interactive Tax Assistant)); *Id.* at 6–7 (providing the answers in the text referenced in endnote 9).

9. *Id.* at 7.

“answer” for this taxpayer, as Professor Zelenak also notes.¹⁰ Even if the answers supplied by the employee were correct, the cost of the MBA expense is not deductible given that the employee is in the trade or business of being an employee. Presenting this as an afterthought is a recipe for misleading taxpayers into thinking they can deduct the expenses.

If the potential MBA seeker relies on this guidance, they cannot use that reliance to obtain more favorable tax treatment than what tax law allows. For instance, imagine the taxpayer relies on the guidance by obtaining an MBA but would not have done so had they known the expense was non-deductible. Despite their reliance, they will be unable to claim the deduction.

Furthermore, if the taxpayer did claim the deduction, the IRS could disallow it and, potentially, subject the taxpayer to penalties.¹¹ In some cases, tax law provides a defense against applicable penalties where the taxpayer acted with “reasonable cause” and in “good faith.”¹² 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.¹³

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.¹⁴ Indeed, the Internal Revenue Manual provides that the IRS “may provide penalty relief based on a taxpayer’s reliance on erroneous oral advice”

10. Lawrence A. Zelenak, *The Brave New World of Automated Agency Guidance*, TAX NOTES (June 27, 2025), <https://www.taxnotes.com/featured-analysis/brave-new-world-automated-agency-guidance/2025/06/26/7sf34> [<https://perma.cc/S3HC-3JKF>].

11. See e.g., Joshua D. Blank & Leigh Osofsky, *Automated Legal Guidance*, 106 CORNELL L. REV. 179, 234–35 (2020) [hereinafter, Blank & Osofsky, *Automated Legal Guidance*]; Joshua D. Blank & Leigh Osofsky, *The Inequity of Informal Guidance*, 75 VAND. L. REV. 1093, 1151–54 (2022) [hereinafter, Blank & Osofsky, *Inequity*]; Emily Cauble, *Detrimental Reliance on IRS Guidance*, 2015 WIS. L. REV. 421, 431–32 (2015) [hereinafter, Cauble, *Detrimental Reliance*].

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

13. 87 T.C.M. (CCH) 982 at 8.

14. See Treas. Reg. § 1.6664-4(b).

received from the IRS.¹⁵ In determining whether to grant such relief, the IRS considers a number of factors.¹⁶

In some cases, users may be misled by guidance that is unduly unfavorable, as illustrated by another example (the “College Athletic Scholarship Example”) that Professors Blank and Osofsky offer.¹⁷ In this example, a recipient of a college swimming scholarship uses the ITA to determine whether she must include the scholarship in income. She selects “All” in response to the ITA’s question: “What portion of the scholarship, fellowship or grant was a payment for services you were required to perform as a condition of receiving the scholarship, fellowship or grant?” She selects “All” because the scholarship award letter informed her that receipt of the scholarship was contingent on her remaining eligible to participate in swim meets, which requires her to meet physical fitness and health requirements.¹⁸ The letter also informed her that she could be required to “participate in fundraising and other promotional events.”¹⁹ Ultimately, the ITA supplies the following answer: “The payment must be included in income because the scholarship, fellowship or grant was received for services you were required to perform as a condition of receiving the scholarship, fellowship or grant.”²⁰ As Professors Blank and Osofsky note, it is possible that this answer is inconsistent with actual tax law.²¹ If this taxpayer includes the scholarship in income and later discovers that she was entitled to exclude it, she cannot use the fact that she relied on the guidance to obtain additional time to amend her return.²²

15. Oral Advice from IRS, IRM 20.1.1.3.3.4.2 (Dec. 11, 2009).

16. *Id.*

17. BLANK & OSOFSKY, *supra* note 1 at 82–83.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *See, e.g.,* Tallon v. United States, 1984 WL 1359, *3 (C.D. Ill. 1984)(ruling that reliance on an incorrect statement from an IRS agent wasn’t grounds for the court to provide an extension); *See also* Cauble, *Detrimental Reliance*, *supra* note 11 at 435–37.

II. INEQUITY INHERENT IN INFORMAL GUIDANCE'S DIVERGENCE FROM FORMAL LAW

One of the important themes of the book is that the divergence of informal guidance from formal law produces inequity. As Professors Blank and Osofsky write, “Inordinately complex statutes, regulations, and case law offer the law in great detail to the relative few who can understand them. At the same time, federal agencies offer significantly simplified, plain-language explanations of the law for everyone else.”²³ This phenomenon, combined with the fact that individuals cannot obtain legal relief if they follow informal guidance that diverges from formal law, perpetuates unfairness.

In the tax context, taxpayers who are not well represented may be more likely to follow unduly unfavorable informal guidance, meaning they may be more likely to miss out on tax benefits to which they are entitled.²⁴ The fact that taxpayers who are not well represented may be more likely to follow the guidance seems plausible. Indeed, 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.²⁵

Unduly favorable informal tax guidance also produces inequitable effects. A taxpayer who follows unduly favorable guidance and is not audited pays less tax than they owe.²⁶ By contrast, if the taxpayer's return is audited and the error is discovered, they will owe additional tax liability, interest, and potential penalties.²⁷ 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.²⁸ In addition, EITC recipients face high

23. BLANK & OSOFSKY, *supra* note 1 at 128.

24. Joshua D. Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law*, 66 Emory L. J. 189, 243–44 (2017) [hereinafter, Blank & Osofsky, *Simplexity*]; Joshua D. Blank & Leigh Osofsky, *Automated Agencies*, 107 MINN. L. REV. 2115, 2172 (2023); Blank & Osofsky, *Inequity*, *supra* note 11 at 1129–30; Cauble, *Detrimental Reliance*, *supra* note 11 at 463–65.

25. Comprehensive Taxpayer Attitude Survey (CTAS) 2021, I.R.S. (Jan. 2022), <https://www.irs.gov/pub/irs-prior/p5296-2022> [https://perma.cc/9JAX-K64A].

26. *See also* Blank & Osofsky, *Simplexity*, *supra* note 24 at 242.

27. *See supra* notes 10–16 and accompanying text.

28. *See* Hadi Elzayn, et al., *Measuring and Mitigating Racial Disparities in Tax Audits* 3 (Stan. Inst. Econ. Pol'y Rsch. Working Paper, 2023), available at <https://drive.google.com/file/d/1kA7CG3cLq6eWmwBVgTDOIMhXuGZwRJ5O/>

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.²⁹

Even taxpayers who receive professional assistance with tax filing may not, effectively, obtain access to formal tax law and robust advice. First, the guidance they receive is not error free. One study examined data from 3,457 of the tax returns filed in 1999 that included a claim to the EITC.³⁰ Among other things, the study found that the percentage of returns on which the IRS made adjustments to the amount of the EITC that was claimed was 51% in the case of self-prepared returns, and, in the case of returns prepared by paid preparers, the percentage on which the IRS made adjustments ranged from 45.2% (for CPAs and attorneys) to 71.6% (for enrolled agents).³¹

Second, some tax return preparers make use of informal IRS guidance. Recently, I conducted a survey of 143 professional tax return preparers.³² Early in the survey, before they encountered any mention of IRS publications, respondents answered an open-ended question asking them what sources they would consider before providing an answer to a client regarding a hypothetical question. Among the 143 respondents, a total of 85 (or 59.4%) mentioned some type of informal IRS guidance in their answers (including IRS publications, IRS fact sheets, tax form instructions, or, in one case, calling the IRS helpline) or mentioned the IRS website, generally. Towards the end of the survey, participants were prompted to respond to a multiple-choice question asking them to, in general, describe their use of IRS publications. The vast majority (81.82%) selected the response: “I typically use IRS publications to determine my clients’ tax treatment and also look for guidance in other sources.” The remaining options were: (1) “I typically use IRS publications to determine my clients’ tax treatment without seeking guidance from other sources.” (selected by 4.20% of respondents); (2) “I typically use IRS publications to determine my clients’ tax treatment only

view?pli=1. See also Steven A. Dean, *Filing While Black: The Casual Racism of the Tax Law*, 2022 UTAH L. REV. 801, 802 (2022).

29. See CONG. RSCH. SERV., IN11952 Audits of EITC Returns: By the Numbers 2 (2022).

30. Sagit Leviner, *The Role Tax Preparers Play in Taxpayer Compliance: An Empirical Investigation with Policy Implications*, 60 BUFF. L. REV. 1079, 1081 (2012).

31. *Id.* at 1111.

32. Working Draft (on file with author).

when I cannot find guidance in other sources.” (selected by 10.49% of respondents); and (3) “I typically do not use IRS publications to determine my clients’ tax treatment.” (selected by 3.5% of respondents).

III. THE INTRODUCTION OF AN IMPORTANT CONCEPTUAL DISTINCTION: UNILATERAL GUIDANCE VERSUS BILATERAL GUIDANCE

One interesting concept that Professors Blank and Osofsky briefly introduce in the book is the distinction between what they label “unilateral guidance” and what they label “bilateral guidance.”³³ As they explain, when an agency provides “unilateral guidance,” the agency “uses language that is fixed and intended for all users.”³⁴ In the case of “bilateral guidance,” an “agency tailors its statements to individual users based on information they enter.”³⁵ If an automated tool provides a set answer without prompting the user to respond to questions about their individual circumstances, they categorize the guidance as unilateral. If the tool prompts the user to answer a series of questions and the user’s responses affect the tool’s ultimate answer, they categorize the guidance as bilateral.

For example, assuming this same unilateral versus bilateral distinction applies to non-automated guidance, unilateral guidance arises when the IRS, in a publication, states:

[S]elf-employed individuals . . . can deduct the costs of qualifying work-related education as business expenses This is education that meets at least one of the following two tests. [which the publication goes on to describe].

However, even if the education meets one or both of the above tests, it isn’t qualifying work-related education if it:

- Is needed to meet the minimum educational requirements of your present trade or business, or
- Is part of a program of study that will qualify you for a new trade or business³⁶

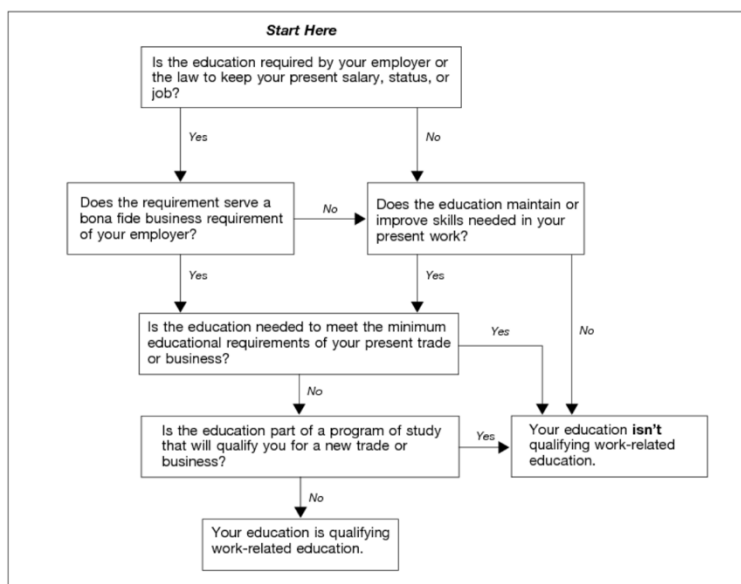
33. BLANK & OSOFSKY, *supra* note 1, at 175.

34. *Id.*

35. *Id.*

36. Tax Benefits for Education, IRS PUBL’N 970, https://www.irs.gov/publications/p970#en_US_2024_publink1000178638 [<https://perma.cc/AVL4-EP55>].

The same publication maps this analysis out in flowchart form:



By contrast, in the MBA example, the ITA presents users with a series of questions, where each response from the user dictates the next question that is asked, until the tool ultimately provides an answer. In essence, the tool steers the user down one path of a flowchart.³⁷ After setting out the distinction between unilateral and bilateral guidance, Professors Blank and Osofsky propose that users should be allowed to rely on unilateral guidance to a greater extent than bilateral guidance.³⁸ One potential justification for this approach is that an agency may be more faware and better able to control the information it provides in the case of unilateral guidance. As Professors Blank and Osofsky write, “[T]he quality of the bilateral guidance that automated tools deliver is only as good as the users’ inputs.”³⁹

Separate and apart from any policy recommendations, this conceptual distinction between “unilateral” and “bilateral” guidance is useful in its own right. One question that I have is

37. Although the questions posed by the ITA vary from what is displayed above.

38. BLANK & OSOFSKY, *supra* note 1 at 175–76.

39. *Id.* at 176.

whether a tool like the ITA is really offering “bilateral” guidance in any meaningful sense. The user must select from a fixed set of potential answers to pre-determined questions. As a result, when developing the tool, the IRS can foresee the precise combinations of answers that the user could supply and what answer the tool would provide in each variation. Put differently, while to the user the ITA may superficially appear to offer “bilateral” guidance, it offers something closer to unilateral guidance in disguise. Along similar lines, Professor Zelenak observes that, if the IRS provided users the decision tree on which the ITA’s programming is based “and told users to follow the decision tree on their own,” then “[t]hat would then be unilateral guidance”⁴⁰ Such an approach would be entirely comparable to the ITA tool in terms of the degree to which it allows the IRS to control and anticipate the information it provides. It is true that the ITA tool may seem, to the users, more like bilateral guidance. However, if anything, the fact that the ITA may appear to provide guidance tailored to their particular circumstances could make their reliance on it more justified not less so.

By contrast, if the IRS were to provide automated guidance using generative AI, for example, then the automated guidance would be very different from fixed, unilateral guidance. The IRS would not have the ability to predict the answer the user receives. As Professors Blank and Osofsky explain,⁴¹ and as Professor Zelenak also discusses,⁴² agencies have refrained from using generative AI to issue guidance because of the heightened risk that it could provide answers that departed from underlying law.

When thinking about unilateral versus bilateral guidance, it occurred to me that letter rulings offer a useful reference point. One way the IRS provides guidance that is truly bilateral (but not automated) is through the issuance of letter rulings. Often a taxpayer plans to carry out a transaction or has engaged in a transaction, and the taxpayer and the taxpayer’s advisors cannot determine how the transaction will be treated for tax purposes. The taxpayer’s advisors are unable to find an answer in the Internal Revenue Code, the Treasury Regulations, existing case law, and guidance issued by the IRS taking various forms,

40. Zelenak, *supra* note 10.

41. BLANK & OSOFSKY, *supra* note 1, at 100.

42. Zelenak, *supra* note 10.

including Revenue Rulings.⁴³ In such an instance, the taxpayer might request a letter ruling from the IRS.⁴⁴

To obtain a letter ruling, the taxpayer must submit a request that describes the facts of the transaction, discusses applicable legal authority, and explains the taxpayer's view of how the transaction ought to be treated based upon that authority.⁴⁵ The taxpayer must also pay a user fee—the amount of the fee depends upon the type of request, the taxpayer's income, and other factors.⁴⁶

If the IRS agrees that the transaction's tax treatment is what the taxpayer described in the request, the IRS will issue a letter ruling to the taxpayer. Provided that the taxpayer accurately and completely disclosed the relevant facts and provided that the taxpayer carries out the transaction in the manner described in the request, the taxpayer can generally rely upon the ruling.⁴⁷

Letter rulings offer a useful foil when thinking about fully unilateral guidance (like an IRS publication) or only superficially bilateral guidance (like the ITA). Among other distinctions, one ingredient of the letter ruling process that is absent when a taxpayer reads an IRS publication or interacts with the ITA is the ability of the taxpayer to completely disclose the relevant facts. Not only is the taxpayer able to fully disclose their facts when requesting a letter ruling, they, in fact, must do so if they wish to rely on the ruling. This provides the IRS with a real opportunity to discern whether the taxpayer's facts are exceptional and to truly tailor its response.

In the case of a taxpayer who reads fully unilateral guidance like an IRS publication or even in the case of a taxpayer who plays a somewhat more active role in determining the guidance by responding to the ITA's questions, there is no opportunity for the taxpayer to completely disclose the relevant facts to obtain tailored guidance. In the former case, there is no disclosure that affects the guidance (hence, its "unilateral" nature), and, in the

43. For discussion of various causes of uncertainty in tax law, *see, e.g.*, Yehonatan Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, 29 VA. TAX REV. 137, 144 (2009).

44. *See* Rev. Proc. 2025-1, 2025-1 I.R.B. 1, Section 2.01 (providing a definition of "letter ruling").

45. *Id.* at Section 7.

46. *Id.* at Appendix A.

47. Treas. Reg. § 601.201(l)(5).

latter case, the taxpayer can only disclose the information the tool solicits (hence its quasi-bilateral nature).

Given this, what should the law, then, provide in terms of legal reliance? On the one hand, it is easy to imagine sympathetic cases in which taxpayers reasonably read either an IRS publication or the ITA tool as providing that they are entitled to what is, in fact, unduly favorable tax treatment. In such a case, there is even something intuitively appealing about the idea that the taxpayer should not bear the risk that the IRS publication does not make important caveats clear or that the ITA tool's underlying decision tree is not structured to elicit the relevant facts. However, allowing taxpayers to legally rely on unduly favorable guidance for purposes of obtaining the tax result it described would have the result of granting to some taxpayers more favorable tax treatment than what the law allows, which would be an odd result as Professor Zelenak also observes.⁴⁸ To be clear, as Professor Zelenak also notes,⁴⁹ Professors Blank and Osofsky do not propose this type of reliance on the ITA, given that it falls within their definition of bilateral guidance.

It is also easy to imagine a taxpayer who acts in bad faith and opportunistically misreads a publication or intentionally takes ITA guidance out of context. The taxpayer is aware of their exceptional facts but chooses to read the guidance literally despite knowing (or at least suspecting) that the guidance is not intended to apply to them.⁵⁰ To illustrate, in some of their earlier work, Professors Blank and Osofsky offer an example of an aspiring model who obtains artificial teeth to improve their appearance.⁵¹ The ITA indicates that the cost of artificial teeth is a qualified deductible medical expense.⁵² However, this is not the case for their hypothetical taxpayer who obtains artificial teeth for purely cosmetic reasons.⁵³ I can imagine the hypothetical taxpayer, in good faith, believing the guidance applied to them, but I can also imagine the hypothetical taxpayer knowing better, or at least suspecting that the guidance was not intended to cover the somewhat atypical case in which artificial teeth were obtained for purely cosmetic purposes. In many cases, discerning

48. Zelenak, *supra* note 10.

49. *Id.*

50. Professors Blank and Osofsky discuss this in the context of bilateral guidance. BLANK & OSOFSKY, *supra* note 1, at 176.

51. Blank & Osofsky, *Automated Legal Guidance*, *supra* note 11, at 210.

52. *Id.*

53. *Id.*

whether the taxpayer has acted in good faith or bad faith may be difficult, although of course this tricky problem of proof arises already for penalty defense purposes in numerous contexts. The requirements for reliance on letter rulings minimize the need to examine motive to some degree. To rely on a letter ruling, a taxpayer must have completely disclosed all the relevant facts. If the taxpayer omitted a relevant fact, it would not matter whether the omission was innocent or opportunistic.

Ultimately, I am left with two, somewhat contradictory impressions. On the one hand, allowing legal reliance on unduly favorable informal guidance of any type for purposes of paying less tax than what is owed is likely untenable. At the same time, it feels unsatisfying to not craft a solution for sympathetic good faith cases. The best way forward, of course, would be to provide better guidance (which, in some cases, would have to be non-automated guidance) that was accessible to taxpayers who lack expert advice. However, this is easier said than done in the best of times and certainly in a world of drastically reduced agency resources.

IV. WHAT CONSTITUTES RELIANCE ON INFORMAL GUIDANCE?

AUTOMATED AGENCIES's initial chapter introduces the reader to the possibility that automated agency guidance may lead users astray by describing the MBA Example.⁵⁴ When crafting this hypothetical, Professors Blank and Osofsky specify that the taxpayer turns to the ITA for guidance at the planning stage. In particular, they ask the reader to imagine that the reader is the taxpayer considering obtaining an MBA and "You would have to pay for the MBA yourself . . . and you are not sure whether you can afford it. But if you could claim a tax deduction for the cost of the degree, you think you might be able to make it work."⁵⁵ The fact that the taxpayer obtains the advice in the planning context arguably makes the case for reliance more compelling. Without having been informed (incorrectly) that they could deduct the cost of the degree, the taxpayer may have refrained from obtaining it and, perhaps, ends up worse off after obtaining the degree.

By contrast, detrimental reliance on unduly favorable advice received in the compliance context may be less likely to

54. BLANK & OSOFSKY, *supra* note 1, at 6.

55. *Id.*

arise. If the guidance merely affects how the taxpayer reports a transaction that already transpired, then discovering that the guidance was incorrect simply causes the taxpayer to pay the amount of tax liability the taxpayer would have owed all along had the IRS not provided the unduly favorable guidance. Likely for this reason, for a taxpayer to legally rely on a letter ruling as to substantive tax treatment, it must be the case that the taxpayer received the ruling in a planning context. After issuing a letter ruling, if the IRS changes its position on the tax treatment of a transaction, the IRS may revoke the ruling retroactively if it concerns a transaction that was already completed when the taxpayer requested the ruling.⁵⁶ Revoking such a letter ruling generally subjects the taxpayer to greater tax liability and interest, although the issued letter ruling may still offer the taxpayer protection from penalties with respect to tax positions claimed by the taxpayer prior to revocation of the letter ruling.⁵⁷ Indeed, in various letter rulings, the IRS has denied taxpayer requests to apply revocation of previously issued letter rulings on a prospective basis when the rulings addressed the tax consequences of transactions that were already completed as of the time when the taxpayers requested the initial rulings.⁵⁸

It is unclear how often taxpayers seek informal IRS guidance at the planning stage. As Professor Zelenak observes, it is easy to imagine that, for many individuals, tax is only on their radar at the compliance stage so that they would only turn to the ITA when they are filing a tax return.⁵⁹ That said, it is not inconceivable that some taxpayers will turn to the ITA at the planning stage. Consider the fact that many sellers of commercial products and services provide prospective customers with information about the tax consequences of potential transactions and, in the process, often refer them to IRS informal guidance.⁶⁰ In

56. See Treas. Reg. § 601.201(l)(5)(iv).

57. This is true assuming that the ruling request did not misstate or omit any material facts and subsequently developed facts were not materially different from those on which the letter ruling was based. See Treas. Reg. § 1.6662-4(d)(3)(iv).

58. See, e.g., I.R.S. Priv. Ltr. Rul. 200613022 (Mar. 31, 2006); I.R.S. Priv. Ltr. Rul. 9226032 (Mar. 26, 1992); I.R.S. Priv. Ltr. Rul. 8410060 (Dec. 6, 1983). See, also, Treas. Reg. § 601.201(l)(9).

59. Zelenak, *supra* note 10.

60. See, e.g., *Can I deduct Student Loan Interest from My Taxes?*, COLLEGE AVE (MAR. 2, 2020), <https://www.collegeave.com/articles/can-i-deduct-interest-from-my-student-loans-on-my-taxes> [<https://perma.cc/KQH2-T8YP>] (including a link to the IRS tax assistant calculator). That link redirects the user to the

their closing recommendations, Professors Blank and Osofsky call upon agencies to gather information about the characteristics of users of automated informal guidance.⁶¹ I would add a call for agencies to also gather information about the purpose for which the guidance is sought—i.e. to assist with tax filing or to evaluate tax consequences of a potential transaction. The information collected would be anonymous and need not be particularly detailed.

Finally, for me this also triggers a broader question—is the idea that taxpayers can only rely to their detriment on unduly favorable tax guidance at the planning stage overly restrictive? If a taxpayer follows unduly favorable guidance at the compliance stage, they will owe additional tax liability, interest, and potential penalties if the error is uncovered on audit. Even if the IRS refrains from assessing penalties against the taxpayer, discovering that their tax liability is higher than 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 and faces liquidity costs as a result of the unexpected tax liability.⁶²

Also, of course, if a taxpayer follows unduly *unfavorable* guidance at the compliance stage, they will miss out on tax benefits to which they were entitled. As Professor Zelenak observes, such a taxpayer may never discover their error.⁶³ Moreover, even if they do get wind of it, it may be too late to amend their earlier return.

following. *Can I Claim a Deduction for Student Loan Interest?*, I.R.S. (Last Updated 9/5/2025), <https://www.irs.gov/help/ita/can-i-claim-a-deduction-for-student-loan-interest> [<https://perma.cc/Q85P-W4L5>]; *Homebuyers Guide*, REMAX, https://peak-static-prod.remax.eng.remax.tech/web/pdf/24_206_US_home_buyers_guide [<https://perma.cc/7F3P-3VDS>] (“You will have a number of new tax considerations, including new deductibles such as mortgage insurance and property tax to claim. If you’re not sure what you’ll be eligible to claim, consider visiting a tax consultant or visit IRS.gov.”).

61. BLANK & OSOFSKY, *supra* note 1, at 182–83.

62. See also Cauble, *Detrimental Reliance*, note 11, at 457–58; Case Comment, *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, 785–86 (2012).

63. Zelenak, *supra* note 10.

V. AN INTERESTING PROPOSAL TO INCREASE TRANSPARENCY

Professors Blank and Osofsky propose that agencies that use automated tools that are based upon a decision tree structure, like the ITA, “should publish the entire content of these decision trees.”⁶⁴ As they note, this would increase transparency by making it more obvious when the agency revises the tool.⁶⁵

This strikes me as a sensible proposal for the reason they explain. In some cases, seeing the entire decision tree could also prevent users from forming impressions that differ from impressions formed when reading IRS publications. Because it only illuminates the one path of the decision tree that the user would follow, the ITA operates in more of a “black box” fashion than IRS publications. In some cases, this is quite likely to have the effect that users of the ITA will reach different conclusions than what they might reach if they read an IRS publication.

Consider the following example, which I used in another survey—this one of non-experts—to test impressions formed by users of informal IRS guidance.⁶⁶

Example 1. 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 wildfires. 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 case law, the answer to Oliver’s question is somewhat uncertain.⁶⁷ The applicable sections of an IRS publication, however, provide him with a seemingly clear answer—suggesting that, because he is not receiving medical services in the other location, he is not entitled to a deduction. In particular,

64. BLANK & OSOFSKY, *supra* note 1, at 174.

65. *Id.*

66. Cauble, *Non-Experts’ Impressions of Informal Tax Guidance*, 76 Syracuse L. Rev. (forthcoming 2026), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5212867.

67. For discussion of uncertainty and applicable case law, see *id.*

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.”⁶⁸

The ITA also provides him with a definitive answer. If Oliver turns to the ITA, he clicks: “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 2024. Next, he responds “Yes” to the question “Were the expenses incurred or paid in 2024?” He responds “No” to the question “Were the expenses paid or incurred for someone who is deceased as of the last day of 2024?” He responds “Uncertain” 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 filing status for 2024, he selects “Single.” Now, he is presented with a series of dropdown menus that will allow him to select an item that describes his expense from a long list of options. 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?”⁶⁹ 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.”⁷⁰ 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 guidance: “The trip expenses are not a deductible expense. You cannot include in medical expenses amounts you pay for transportation to

68. Medical and Dental Expenses, IRS PUBL’N 502, <https://www.irs.gov/pub/irs-pdf/p502> [<https://perma.cc/7KG7-6EFN>].

69. Interactive Tax Assistant (ITA), I.R.S., <https://www.irs.gov/help/ita> [<https://perma.cc/W47M-F7X6>].

70. *Id.*

another city if the trip is not primarily for, and essential to, receiving medical services.”⁷¹

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.” 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?” (the “Change in Environment Question”).⁷²

In an earlier survey, I presented 176 respondents with a hypothetical like Oliver’s and asked them to read the IRS publication language. Among these 176 respondents, 77% concluded that the taxpayer was not entitled to a medical expense deduction.⁷³

I presented a different set of 174 respondents with a hypothetical like Oliver’s and asked them to answer questions that walked them through the questions posed by the ITA. Among these respondents, 53% concluded that the taxpayer was not entitled to a medical expense deduction.⁷⁴ A chi-square test was performed to examine how the percentage of participants forming this impression (77% versus 53%) varied based on whether the delivery channel was publication or ITA, and it showed that the relationship was significant.⁷⁵

If the IRS published the decision tree underlying the ITA and a taxpayer used the decision tree, then the Change in Environment Question would not be obscured even if the taxpayer thought they should answer “No” to the Trip Purpose Question. This is different from using the ITA where an answer of “No” to the Trip Purpose Question means the user never even sees the Change in Environment Question.

Moreover, while, in Oliver’s case, the correct tax treatment is not entirely clear,⁷⁶ some taxpayers may receive doctors’ recommendations for trips that are, clearly, merely for general

71. *Id.*

72. *Id.*

73. Cauble, *supra* note 66.

74. *Id.*

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

76. See Cauble, *supra* note 66.

improvement of health. In such a case, by obscuring the fact that a doctor's note is not necessarily sufficient, the ITA may be more likely than an IRS publication (or an IRS decision tree) to foster the incorrect belief that the expense is eligible for a medical expense deduction.

Of course, making the decision tree available only helps if the taxpayer refers to the decision tree. This begs the question of whether decision trees should be made available in addition to or instead of the ITA. Taking the latter approach may present a more complete picture of applicable law but at the cost of, perhaps, making the guidance less user friendly. This represents one more example of a trade-off that Professors Blank and Osofsky discuss in the book.⁷⁷ In addition to, perhaps, making the guidance less user friendly, presenting the entire decision tree could, for some taxpayers, increase the risk that they may be led astray. As discussed in Part VI, in some cases, the details obscured by the ITA are not relevant to the user's tax treatment but might, mistakenly, be interpreted as relevant.⁷⁸ In those cases, omitting the details may spare the user from forming an incorrect impression.

VI. THE INSIDER PERSPECTIVE ON AGENCIES' OPINIONS ABOUT THEIR AUTOMATED GUIDANCE TOOLS

Professors Blank and Osofsky share with their readers numerous, interesting kernels of information that they uncovered when interviewing agency employees as part of preparing a report for the Administrative Conference of the United States on automated agency guidance.⁷⁹ I will focus on one here. As Professors Blank and Osofsky write, "We were frequently told that the automated tools offered by agencies were highly effective [because] they provided answers that were consistent with the agency's own summaries of the law, either through the general counsel's office or other agency publications."⁸⁰

77. BLANK & OSOFSKY, *supra* note 2, at 135 (noting a "trade-off between (1) representing the law accurately and (2) presenting it in accessible and understandable terms").

78. This is true of an example involving guidance about including a prize in income included in the survey. See Cauble, *supra* note 66.

79. *Id.* at 99–108.

80. *Id.* at 181.

In some cases, this assumption may be at odds with the impressions formed by ITA users. The ITA's design obscures some information that is contained in IRS publications, as discussed above in Part V. In some instances, this can cause an ITA user to come away with a different impression than what an IRS publication reader would surmise about their tax treatment. In an earlier survey, I found that, across all four scenarios tested in the survey, respondents who considered the ITA's guidance formed different impressions about the appropriate tax treatment than respondents who read IRS publication excerpts, and, in all cases, the differences were statistically significant.⁸¹ Which route leads more users to form correct impressions could vary depending on the context. In some cases, the details obscured by the ITA are not relevant to the user's tax treatment but might, mistakenly, be interpreted as relevant.⁸² Conversely, when the omitted details are relevant, users of the ITA may be more likely to form incorrect impressions.⁸³ This illustrates another potential trade-off: in some cases, presenting a more complete picture of applicable law will spare users from misunderstanding their tax treatment, but, in other cases, it might guide users down the wrong path.

VII. THE ITA ASKS LEGAL QUESTIONS THAT MAY DECEPTIVELY APPEAR NON-TECHNICAL

One feature of some of the ITA examples that Professors Blank and Osofsky include in the book struck me as noteworthy. In some instances, the ITA presents the user with an outcome-determinative question that may appear colloquial or non-technical but that, in fact, calls upon a nuanced body of case law or other authority that does not offer clear answers in many situations. To the non-expert user, it may not seem like it entails a tricky, intricate legal analysis, but it does.

This is true of the MBA Example—the ITA asks the user, among other things, “Were the expenses attributable to a trade or business or employment already established at the time the education was undertaken?”⁸⁴ Whether something constitutes a

81. See *id.*

82. This is true of an example involving guidance about including a prize in income included in the survey. See *id.*

83. This is true of an example in the survey involving artificial teeth expenses. See *id.*

84. BLANK & OSOFSKY, *supra* note 1, at 6.

“trade or business” and whether it is “already established” might, to a non-expert, seem like every day phrases, but they are, in fact, phrases loaded with legal meaning. This is also true in the College Athletic Scholarship Example where the ITA asks whether the scholarship was payment for services that the student was “required to perform as a condition of receiving the scholarship.”⁸⁵ This also aptly describes the Trip Purpose Question, discussed above, which asks, “Is the trip primarily for, and essential to, receiving qualified medical care?”

Of course, when tax treatment turns on the answer to a legally nuanced question, an automated tool must ask the question to provide an appropriate answer. However, perhaps this suggests that the IRS re-evaluate topics addressed by the ITA. When tax treatment turns upon the answer to a legally nuanced question (which, is often the case when a standard or a facts-and-circumstances-based test governs tax treatment) providing guidance with an automated tool is likely to lead taxpayers astray. Based on their interviews with agency officials, Professors Blank and Osofsky learned that “[t]he IRS tries to include topics that are simple enough to address without the need for lengthy legal analysis or extensive follow-up inquiries.”⁸⁶ While this may have been the aspiration, it seems as if the IRS cast a net that is broader than this aim.

VIII. MISHANDLING OF EXCEPTIONAL CASES

Early on, Professors Blank and Osofsky provide an example in which the ITA incorrectly informs a hypothetical user that they are not entitled to a medical expense deduction for the cost of a home health aide.⁸⁷ As Professors Blank and Osofsky speculate, the ITA’s answer “likely reflects the IRS’s decision that the automated legal guidance system should offer responses that are correct for most taxpayers, even at the cost of offering incorrect responses for some.”⁸⁸

In other words, automated guidance does not deal well with exceptional cases. The mishandling of exceptional cases is a concerning feature of automated guidance that has the potential to produce inequitable results. Users who are well advised will be better able to recognize when their circumstances are

85. BLANK & OSOFSKY, *supra* note 1, at 82.

86. *Id.* at 47.

87. *Id.* at 7–8.

88. *Id.* at 8.

exceptional and know that the guidance's answer does not apply to them, while other guidance users may not be so fortunate.

CONCLUSION

Some issues with automated guidance could be addressed by incremental improvements. By contrast, dealing well with exceptional cases seems like a particularly tall order for automated guidance.

Automated guidance is not entirely unique in this regard and, sadly, in a world of shrinking agency resources, all types of guidance may become increasingly ill-suited to exceptional cases. As of May 31, 2025, the reduction in the number of IRS employees working in various programs that play a role in tax filing ranged from 17% to 19%.⁸⁹ Resource reductions have already interfered with and will likely continue to interfere with the IRS's ability to help taxpayers. Already, this has necessitated the closure of more than 110 taxpayer assistance centers,⁹⁰ and taxpayers with lower incomes report being more likely to seek in person IRS assistance.⁹¹

These resource constraints make it ever more difficult to get any response from a human. Furthermore, even if one can get a human response, it may be harder and harder to get a response from someone who has the expertise and institutional knowledge to spot an exceptional case and provide appropriate guidance when it arises.

Ultimately, this brings me back to a point I mentioned earlier, the best way forward is to provide better guidance (which, in some cases, would have to be non-automated guidance) that is accessible to taxpayers who lack expert advice. However, this is easier said than done in the best of times and certainly in a world of drastically reduced agency resources.

89. Treasury Inspector General for Tax Administration, *Final Results of the 2025 Filing Season*, Report No. 2025-400-048 (Sept. 29, 2025) <https://www.tigta.gov/sites/default/files/reports/2025-09/2025400048fr.pdf> [<https://perma.cc/324D-866X>].

90. Shannon Najmabadi et al., *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> [<https://perma.cc/QT86-6H4C>].

91. Comprehensive Taxpayer Attitude Survey (CTAS) 2017, I.R.S. (Nov. 2017) https://www.irs.gov/pub/irs-soi/17ctas_report [<https://perma.cc/A4XN-PJ7V?type=standard>].