

National Taxpayer Advocate

Report to Congress

# *Fiscal Year 2013 Objectives*

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## NATIONAL TAXPAYER ADVOCATE

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### FISCAL YEAR 2013 OBJECTIVES

Report to Congress



YOUR VOICE AT THE IRS

June 30, 2012

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## I. Introduction

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.<sup>1</sup> The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, or the Office of Management and Budget.<sup>2</sup> The first report, due by June 30 of each year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year.<sup>3</sup>

In any given year, the Internal Revenue Service (IRS) must balance demands from a trifecta of sources — the taxpaying public; congressional and other overseers; and the IRS itself, which constantly struggles to meet its increasing workload with limited resources. There is much in the following report and elsewhere that demonstrates the IRS has achieved considerable success in addressing the concerns of these participants in tax administration. The successful implementation of CADE 2,<sup>4</sup> the beginning of Virtual Service Delivery<sup>5</sup> and Fresh Start collection policies,<sup>6</sup> and the maturation of return-preparer regulation<sup>7</sup> are evidence that the IRS can heed its stakeholders' concerns even as it introduces new processes and approaches to its workplace.

But this report also contains ample evidence that satisfying these three sources simultaneously can be difficult and that failure in one area can seriously and negatively impact the other two. For example, our first Area of Focus, *Late-Year Tax Law Changes May Delay Tax Filings and Refunds Early Next Year*, describes how an aura of uncertainty prevails as the IRS and taxpayers wait for word about what will be the law governing us this year and for the near future. This uncertainty affects the IRS's ability to smoothly administer the filing season and taxpayers' ability to make plans. In fact, the IRS has had to plan for at least two distinct scenarios in three recent filing seasons, essentially doubling its work and drawing focus and resources from other important projects. The continual enactment of significant tax law and extender provisions late in the year has led to IRS delays in handling millions of taxpayers' returns and caused many taxpayers to underclaim benefits because they did not know what the law was, and IRS forms and instructions did not reflect the late-enacted provisions.

1 Internal Revenue Code (IRC) § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 IRC § 7803(c)(2)(B)(i).

4 See *CADE 2 Implementation – Unintended Consequences*, *infra*.

5 See *TAS Is Participating in the IRS's Virtual Services Delivery (VSD) Pilot*, *infra*.

6 See *Collection Update: IRS "Fresh Start" Initiatives – Significant Changes Have Been Made, but Further Improvements Are Needed*, *infra*.

7 See National Taxpayer Advocate 2011 Annual Report to Congress 427-436 (Status Update: *The IRS Has Made Significant Progress in Developing and Implementing a System to Register and Test Return Preparers*).

We are also seeing an increasing collision between two competing policy goals that no one seems willing to address. With the onslaught of organized efforts to defraud taxpayers and the public fisc through identity theft and other schemes (including those perpetrated by return preparers), the IRS must somehow prevent refunds from going out on over two million bogus claims — and at the same time quickly process returns and issue refunds to the over 145 million individual taxpayers who file legitimate claims.

I am not sure how the IRS can successfully reconcile these concerns under our current filing season structure.<sup>8</sup> While Congress and taxpayers rightfully demand that the IRS stop payment on fraudulent refund claims, Congress and taxpayers also rightfully demand that the IRS pay refunds out to legitimate taxpayers immediately. As the IRS develops more screens to identify and delay the processing of refund returns that appear questionable, more taxpayers are getting caught up in more delays.<sup>9</sup> Once a return is deemed suspect, an IRS employee at some point must look at the return. As we discuss in this report, the IRS is experiencing unprecedented backlogs in return processing because of identity theft<sup>10</sup> and other refund fraud, is instituting “hard freezes” on questionable returns because it cannot timely address them,<sup>11</sup> and is unable to answer anywhere from an average of about 30 percent overall in fiscal year (FY) 2012 to a low of 65 percent of calls on one product line.<sup>12</sup>

The filing season frustration is only the beginning of taxpayer frustration. In both post-filing examination and collection activities, the IRS is increasingly using automation to distance itself from communicating personally with taxpayers. In fact, as we discuss in this report, most taxpayers will never receive a call from the IRS before the IRS proposes an assessment of tax or levies on their assets or incomes.<sup>13</sup> Taxpayers’ patience is being sorely tested, and this impersonal work environment cannot be pleasant for IRS employees, either. In many ways, we seem to be reliving the years preceding enactment of the IRS Restructuring and Reform Act of 1998.<sup>14</sup>

8 I have suggested that the IRS and Congress explore the possibility of moving the issuance of refunds back to a date after the close of the filing season, as is the practice in several other countries. This approach will not be pain-free, since taxpayers over the years have come to expect to receive their refunds almost immediately upon filing their returns. But the benefits of such an approach require us at least to explore its advantages and disadvantages from both the government and taxpayer perspectives. See *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, *infra*; *Identity Theft and Tax Fraud*, Hearing Before the Subcomm. on Oversight and Social Security, H. Comm. on Ways and Means, 112th Cong. (May 8, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *Tax Compliance and Tax-Fraud Prevention*, Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Organization, Efficiency, and Financial Management, 112th Cong. (Apr. 19, 2012) (statement of Nina E. Olson, National Taxpayer Advocate).

9 See *Tax-Related Identity Theft Work Continues to Increase within TAS*, *infra*; *The Questionable Refund Program Results in Significant Delays in Processing Tax Refunds*, *infra*; *Adoption Credit Filing and Examination Procedures Placed Unnecessary Burdens on Taxpayers*, *infra*.

10 See *The IRS’s Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight*, *infra*.

11 See *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, *infra*.

12 See Joint Operations Center, Snapshot Reports (week ending June 9, 2012). For example, the Taxpayer Protection Unit, which was established in the 2012 filing season to respond to calls from taxpayers whose returns were flagged and held by identity theft filters, was able to answer just 35 percent of incoming calls, and those who managed to get through to a telephone assister had to wait an average of 40 minutes to get through to an assistor. See *Filing Season Effects of Reduced Funding for Taxpayer Service*, *infra*.

13 See *Improve Automated Examination Procedures*, *infra*; *Collection Update: IRS “Fresh Start” Initiatives – Significant Changes Have Been Made, but Further Improvements Are Needed*, *infra*.

14 Pub. L. No. 105-206, 112 Stat. 685 (1998).



So where is the Taxpayer Advocate Service in all this? Well, we continue to advocate for taxpayers both individually and collectively. From a case advocacy perspective, we received about 296,000 cases in FY 2011 from taxpayers who were experiencing problems with the IRS. From a systemic advocacy perspective, we pursue well over 100 advocacy projects internally within the IRS each year, provide hundreds of comments on draft Internal Revenue Manual provisions (most of which are accepted), and report to Congress twice yearly on how the tax administration system is working from a taxpayer perspective.

Over the last few years, TAS also has made increasing use of its Taxpayer Assistance Order (TAO)<sup>15</sup> and Taxpayer Advocate Directive (TAD)<sup>16</sup> authority to advocate for sound administrative policy and procedures. In an ideal world, once TAS identifies individual or systemic problems and makes recommendations to mitigate them, the IRS and TAS would collaborate to address our concerns. In practice, the IRS is subject to many competing pressures, and our concerns are sometimes given low priority.

In the past, TAS issued TAOs in cases very rarely and without regard to broader advocacy considerations. Over the last three years, we have developed and implemented a strategic approach for issues that arise in multiple TAS cases, that are the subject of many systemic advocacy projects and cross-functional teams, and about which we have repeatedly sought solutions from the IRS, to no avail. This approach includes:

- *Case Advocacy:* When an issue of this nature arises, the National Taxpayer Advocate issues interim guidance to her employees, analyzing how to advocate with respect to the issue and providing sample language and template TAOs. Case advocacy employees then implement this guidance in individual cases, including the issuance of well-developed TAOs. These cases provide concrete evidence of the harm taxpayers experience as a result of IRS action or inaction. The issuance of TAOs means that if the IRS disagrees with TAS's recommendation in a case, it must appeal the TAO to the next level of management, thereby increasing the visibility of the problem.
- *Systemic Advocacy:* The National Taxpayer Advocate issues proposed and final TADs to the highest levels of IRS leadership, providing analysis and recommendations, and directing resolution of the problem. TAS systemic advocacy employees continue to negotiate with IRS functional personnel in these cases.
- *Research:* TAS Research conducts empirical studies and analyses of IRS and TAS data (often involving representative samples of the impacted populations) to quantify impact and identify root causes of the problems, and to make systemic recommendations.

15 IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order upon a determination that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

16 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers. Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). See also IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

- *Transparency*: The National Taxpayer Advocate discusses these issues in her Annual Reports to Congress, with publication of relevant TADs and research studies, and in Congressional testimony.

TAS has applied this approach successfully with respect to several issues, including the IRS's lien filing and withdrawal policies.<sup>17</sup> As a consequence of our advocacy, the IRS has increased the dollar thresholds for lien filings and reversed its decades-old policy on lien withdrawals after lien releases.<sup>18</sup> We are now applying this approach to the Offshore Voluntary Disclosure settlement initiatives,<sup>19</sup> Earned Income Tax Credit examinations,<sup>20</sup> and Return Preparer Fraud cases.<sup>21</sup>

To me, this advocacy activity represents the maturation of TAS — where the issuance of a TAO is no longer a rarity but is viewed as an important tool to help bring about systemic change. Not unexpectedly, this vigorous advocacy has met with IRS challenges to the National Taxpayer Advocate's TAO and TAD authority. These challenges are, in my opinion, legally flawed and bad policy. The purpose of TAOs and TADs is to ensure that issues that may impinge on taxpayer rights or impose excessive taxpayer burden are elevated for consideration to the highest levels of the IRS leadership in a formal way that requires a written response, so that the issues and competing considerations are made transparent to Congress and other stakeholders.

In the case of both TAOs and TADs, the IRS Commissioner or Deputy Commissioner may ultimately overturn whatever action the National Taxpayer Advocate directs. For that reason, it is utterly mystifying to me why the IRS would seek to squelch the authority of the National Taxpayer Advocate to raise taxpayer rights and taxpayer burden issues to the

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- 17 See National Taxpayer Advocate, *Interim Guidance Memorandum*, Control No. TAS-13.1-0310-003 (Mar. 31, 2010). For a copy of this memorandum, see National Taxpayer Advocate Fiscal Year 2011 Objectives Report to Congress, Appendix IX, available at <http://www.irs.gov/pub/irs-utl/nta2011objectives-final.pdf>; National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 91-111 (TAS Research Study: *Estimating the Impact of Liens on Taxpayer Compliance Behavior and Income*); National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 1-18 (TAS Research Study: *The IRS's Use of Notices of Federal Tax Lien*); *Estimating the Impact of Liens on Taxpayer Compliance Behavior*, *infra*; National Taxpayer Advocate 2011 Annual Report to Congress 109-128; National Taxpayer Advocate 2010 Annual Report to Congress 302-310; National Taxpayer Advocate 2009 Annual Report to Congress 17-40. See also TAD 2010-1, *Immediately discontinue automatic lien filing on Currently Not Collectible (CNC) hardship accounts with an unpaid balance of \$5,000 or more, require employees to make meaningful notice of federal tax lien (NFTL) filing determinations, and require managerial approval for filings of an NFTL in all cases where the taxpayer has no assets* (Jan. 20, 2010); TAD 2010-2, *Withdrawal of a notice of federal tax lien (NFTL) where the statutory withdrawal criteria are satisfied, even if the underlying lien has been released* (Jan. 20, 2010). For copies of the TADs, see National Taxpayer Advocate Fiscal Year 2011 Objectives Report to Congress, Appendix VIII, available at <http://www.irs.gov/pub/irs-utl/nta2011objectivesfinal.pdf>. In FY 2011, TAS issued 27 TAOs pertaining to liens (issue codes 720 through 729). In FY 2012 (through May 31, 2012), TAS issued 11 TAOs pertaining to liens.
- 18 For a detailed discussion of this issue, see IRS Office of Chief Counsel, *Withdrawal of NFTL After Release*, PMTA 2009-158 (Oct. 9, 2009) and National Taxpayer Advocate 2011 Annual Report to Congress 109-128. See also *Collection Update: IRS "Fresh Start" Initiatives – Significant Changes Have Been Made, but Further Improvements Are Needed*, *infra*.
- 19 See *TAS Will Continue to Advocate that the IRS Modify the Offshore Voluntary Disclosure Program So that People Who Made Honest Mistakes Can Correct Them Without Fear of Excessive Penalties*, *infra*.
- 20 See *Earned Income Tax Credit (EITC) Examination Effectiveness*, *infra*; Memorandum for Taxpayer Advocate Service Employees, *Interim Guidance on Advocating for Taxpayers Claiming Earned Income Tax Credit (EITC) with Respect to a Qualifying Child* (Feb. 9, 2012) available at <http://www.irs.gov/pub/foia/ig/tas/tas-13-0212-006.pdf>.
- 21 See *Improve Tax Administration through Taxpayer Advocate Directives*, *infra*.

senior IRS leadership in this way, and we certainly will not accede to attempts to constrain our advocacy efforts of behalf of our nation's taxpayers.<sup>22</sup>

Now, more than ever, with all the competing demands on the IRS, taxpayers need a strong and effective voice inside the IRS. The strategic approach TAS is now taking represents the fulfillment of its statutory mission. So, in fiscal year 2013, as discussed throughout this report, TAS will continue to advocate to the best of its ability on behalf of U.S. taxpayers, both individually and collectively.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
27 June 2012

22 In the 2011 Annual Report to Congress, we make several legislative recommendations to strengthen and clarify the National Taxpayer Advocate's TAO and TAD authority, including a recommendation to codify the TAD. See National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*).

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## II. Areas of Focus

### A. Late-Year Tax Law Changes May Delay Tax Filings and Refunds Early Next Year

Many sections of the tax code that impact nearly all taxpayers expired in 2011 or are scheduled to expire in 2012.<sup>23</sup> Temporary provisions add complexity and uncertainty, making it difficult for both the government and taxpayers to plan, especially when it is unclear whether Congress will extend a provision.<sup>24</sup> The extension of expiring provisions (in a so-called “extenders” package) late in the year magnifies these problems, particularly when the change is retroactive.<sup>25</sup>

For example, during the 2011 filing season, millions of taxpayers — those claiming an itemized deduction on Schedule A, the higher education tuition and fees deduction, or the educator expenses deduction — had to wait until February 14, 2011, to file their returns because the IRS was still reprogramming its systems to handle late-year tax-law changes.<sup>26</sup> Other last-minute changes similarly affected the 2006 and 2008 filing seasons,<sup>27</sup> creating the following problems for taxpayers:

23 See Joint Committee on Taxation, JCX-1-12, *List of Expiring Federal Tax Provisions 2011-2022* (Jan. 6, 2012); Joint Committee on Taxation, JCX-6-12, *Legislative Background of Expiring Federal Tax Provisions 2011-2022* (Jan. 27, 2012). See also Margot Crandall-Hollick, Congressional Research Service, R42485, *An Overview of Tax Provisions Expiring in 2012* (Apr. 17, 2012) (Table 2).

24 National Taxpayer Advocate 2008 Annual Report to Congress 397-409 (Legislative Recommendation: *Eliminate (or Reduce) Procedural Incentives for Lawmakers to Enact Tax Sunsets*).

25 National Taxpayer Advocate 2007 Annual Report to Congress 3-12 (Most Serious Problem: *The Impact of Late-Year Tax-Law Changes on Taxpayers*); IRS, Prepared Remarks of Commissioner Douglas H. Shulman Before Tax Council Policy Institute (Feb. 15, 2012) (“[W]hile the IRS muddles through and does its best by rushing through revised forms and instructions, last-minute retroactive extensions cause significant taxpayer confusion, with a clean-up that often drags on for many months...[In addition] passing legislation with immediate effective dates adds operational risk to the IRS and makes it hard for taxpayers to plan properly to take advantage of tax benefits.”). See also John L. Harrington, *Taking a New (and Troubling) Look at Expiring Tax Provisions*, 2012 TNT 54-7 (Mar. 20, 2012).

26 Treasury Inspector General for Tax Administration (TIGTA), 2011-40-032, *Interim Results of the 2011 Filing Season*, 1 (Mar. 31, 2011), available at <http://www.treasury.gov/tigta/auditreports/2011reports/201140032fr.pdf>. The IRS estimated the delay would impact about nine million individuals. *Id.* Electronic Return Originators had to hold approximately 6.5 million e-file tax returns to be transmitted on February 14. *Id.* at 4. As of February 11, 2011, the IRS had received and held for processing approximately 100,000 paper tax returns. *Id.* Other taxpayers likely decided to wait until February 14 to file their returns.

27 National Taxpayer Advocate 2007 Annual Report to Congress 4-5.

1. Because on average more than three-fourths of all tax returns claim refunds, delays in processing returns create hardship for taxpayers who rely their refunds to pay essential bills.<sup>28</sup>
2. Because of obsolete instructions and confusion about which rules apply, taxpayers risk filing inaccurate returns with both the federal government and the state governments that “piggyback” on federal computations.<sup>29</sup>
3. Even taxpayers who file accurate returns may face burdensome and counterintuitive instructions, that may require them to report items on lines designed for a different purpose (*e.g.*, reporting a deduction for tuition and fees on a line labeled “domestic production activities deduction”).<sup>30</sup>
4. Late-year and retroactive changes reduce the impact of tax incentives, particularly for activities that require preparation and planning.<sup>31</sup>
5. For the same reason, late-year and retroactive changes make it much more difficult, if not impossible, for taxpayers to engage in legitimate tax planning.<sup>32</sup>

28 For example, in response to a November 9, 2010 letter from the House Ways and Means Committee and Senate Finance Committee urging the IRS to prepare for an expected late-year Alternative Minimum Tax (AMT) “patch,” which would prevent the AMT exemption from reverting to 2001 levels, IRS Commissioner Shulman noted the IRS was reprogramming its computers, but warned “if legislation has not passed by the end of this year, our computers will have been programmed incorrectly, and we will need to delay filing for these individuals [the 21 million taxpayers] as we re-program our computers to the actual law in effect. Douglas H. Shulman, Commissioner of Internal Revenue, Letter to The Honorable Max Baucus, Chairman, Committee on Finance, United States Senate, *reprinted as, IRS Is Ready for AMT Relief, Shulman Says*, 2010 TNT 231-17 (Dec. 2, 2010). He also noted that “[I]t would be an unprecedented and daunting operational challenge to open the tax filing season under one set of tax laws with respect to AMT and extenders, begin accepting tax returns, and then have the law change.” *Id.* For the 2010 and 2011 calendar years, 77 and 75 percent of all returns claimed refunds, respectively, and the average refund was \$3,003 and \$2,913, respectively. IRS, *2011 and Prior Year, Filing Season Statistics, Cumulative through the weeks ending 12/31/10 and 12/31/11* (Jan. 9, 2012), <http://www.irs.gov/newsroom/article/0,,id=252176,00.html>. Taxpayers who filed on or before Feb. 26, 2010 and Feb. 25, 2011, claimed refunds at an even higher rate – 85 and 87 percent, respectively, and the average refund was even higher – \$3,149 and \$3,129, respectively. IRS, *2011 and Prior Year, Filing Season Statistics, Cumulative through the weeks ending 2/26/10 and 2/25/11* (Jan. 9, 2012), <http://www.irs.gov/newsroom/article/0,,id=237562,00.html>.

29 As previously reported, fewer taxpayers claim tax benefits that are retroactively extended. National Taxpayer Advocate 2007 Annual Report to Congress 6-7. This may be because the IRS does not have time to update paper instructions or forms used to claim them and electronic filers sometimes fail to update their software before filing. This may also be a problem at the state level, as 37 states use computations from the federal return as a starting point. See Federation of Tax Administrators, *State Personal Income Taxes: Federal Starting Points (as of January 1, 2012)*, [http://www.taxadmin.org/fta/rate/stg\\_pts.pdf](http://www.taxadmin.org/fta/rate/stg_pts.pdf). While only 18 states use computations from the “current” version as the starting point, state forms that base their state income tax computations on a prior-year Code generally instruct taxpayers to start with the “current” version and then make adjustments to unwind recent federal tax-law changes. *Id.* Late-year federal tax law changes delay updates to such state instructions.

30 See line 35 of Form 1040 and IRS FS-2007-4, *Special Steps Needed for Paper 1040 Filers to Claim Late Tax Changes* (Jan. 2007), <http://www.irs.gov/newsroom/article/0,,id=165640,00.html>.

31 Commissioner Shulman recently noted that: “The purpose of the research and experimentation (R&E) credit] is to foster innovation and technological development while spurring economic growth and competitiveness. However, for the past 30 years, it has been extended 14 times, many of those retroactively, for periods ranging from six months to five years. Such persistent uncertainty about the future availability of the R&E credit diminishes its incentive effect as taxpayers often do not know if they can depend on the credit when making decisions on future investments in research and development.” IRS, Prepared Remarks of Commissioner Douglas H. Shulman Before Tax Council Policy Institute (Feb. 15, 2012), <http://www.irs.gov/newsroom/article/0,,id=254888,00.html>.

32 For example, taxpayers are often advised to make estate tax plans. Yet, the estate tax expired at the end of 2009 and was retroactively reinstated at the end of 2010, making estate tax planning very difficult. See IRS, Prepared Remarks of Commissioner Douglas H. Shulman Before Tax Council Policy Institute (Feb. 15, 2012) (“The most recent visible example of this [retroactive revisions that created confusion for taxpayers and difficulty for the IRS] was the expiration of the estate tax at the end of 2009, which was then reinstated at the end of 2010. Upon reinstatement, Congress gave taxpayers the option of using either the 2009 or the new 2011 rules for 2010. This kind of result is not optimal.”).

6. When late-year changes increase taxes, taxpayers may be subject to unanticipated penalties for failure to pay sufficient estimated tax. When the changes reduce taxes, taxpayers may have paid or had an employer withhold more than necessary.
7. The burdens associated with late-year changes could reduce tax compliance, as some taxpayers “give up” when faced with the extra complications.
8. The burdens associated with late-year changes undermine public confidence in the fairness and competence of the government.
9. The extensive work the IRS must perform to accommodate late-year changes has an opportunity cost — it requires the IRS to pull employees off other priority work — potentially reducing service to taxpayers who are not directly affected by late-year legislation.<sup>33</sup>

Notwithstanding these problems, late-year tax-law changes could be enacted again this year. Sixty tax provisions expired by the end of 2011 — some of which may be extended retroactively before the end of 2012 — and 41 more are scheduled to expire during 2012.<sup>34</sup> The changes at the end of 2011 include:

- The so-called AMT patch, which kept the Alternative Minimum Tax exemption amount above its pre-2001 levels, has expired.<sup>35</sup> Without retroactive legislation, an estimated 27 million more middle-class taxpayers are subject to the AMT in 2012.<sup>36</sup>
- The deduction for state and local sales taxes (in lieu of the deduction for state and local income taxes) is no longer available.<sup>37</sup> About 11 million returns claimed the deduction for state and local sales taxes in 2010.<sup>38</sup>

33 See, e.g., Douglas H. Shulman, Commissioner of Internal Revenue, Letter to The Honorable Max Baucus, Chairman, Committee on Finance, United States Senate, *reprinted as, IRS Is Ready for AMT Relief, Shulman Says*, 2010 TNT 231-17 (Dec. 2, 2010) (“The overall strain on IRS service operations [to address retroactive changes to the AMT patch or extenders after the beginning of the filing season] would affect not only AMT taxpayers and those who benefit from extenders, but would also spill over into service disruptions and/or delayed refunds for tens of millions of other taxpayers.”).

34 See Joint Committee on Taxation, JCX-1-12, List of Expiring Federal Tax Provisions 2011-2022 (Jan. 6, 2012); Joint Committee on Taxation, JCX-6-12, Legislative Background of Expiring Federal Tax Provisions 2011-2022 (Jan. 27, 2012).

35 IRC § 55(d)(1). The AMT exemption amount was first increased on a temporary basis by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 701, 115 Stat. 38, 148 (2001) and most recently increased by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 201, 124 Stat. 3296, 3299 (2010). Between 2011 and 2012, the exemption declined from \$74,450 to \$45,000 for a married couple filing jointly, from \$48,450 to \$33,750 for a single person or the head of a household, and from \$37,225 to \$22,500 for married people filing separately. *Id.* The National Taxpayer Advocate has repeatedly identified the AMT as a serious problem for taxpayers and has recommended its repeal in prior reports and congressional testimony. See National Taxpayer Advocate 2008 Annual Report to Congress 356-362 (Legislative Recommendation: *Repeal the Alternative Minimum Tax for Individuals*); National Taxpayer Advocate 2006 Annual Report to Congress 3-5 (Most Serious Problem: *Alternative Minimum Tax for Individuals*); National Taxpayer Advocate 2004 Annual Report to Congress 383-385 (Legislative Recommendation: *Alternative Minimum Tax*); National Taxpayer Advocate 2003 Annual Report to Congress 5-19 (Most Serious Problem: *Alternative Minimum Tax for Individuals*); National Taxpayer Advocate 2001 Annual Report to Congress 166-177 (Legislative Recommendation: *Alternative Minimum Tax for Individuals*); see also *Alternative Minimum Tax*, Hearing Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means (Mar. 7, 2007) (statement of Nina E. Olson, National Taxpayer Advocate); *Blowing the Cover on the Stealth Tax: Exposing the Individual AMT*, Hearing Before the Subcomm. on Taxation and IRS Oversight of the Senate Comm. on Finance (May 23, 2005) (statement of Nina E. Olson, National Taxpayer Advocate).

36 Tax Policy Center, Table T11-0131, *Aggregate AMT Projections, 2011-2022* (June 3, 2011), <http://www.taxpolicycenter.org/numbers/displayatab.cfm?DocID=3012>.

37 IRC § 164(b)(5)(I).

38 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A), <http://www.irs.gov/pub/irs-soi/12inwinbulincomeprlim10.pdf>.

- People over age 70½ can no longer make tax-free withdrawals from their IRAs for a charitable contribution.<sup>39</sup> About six million returns filed by people over age 65 reported taxable IRA distributions in 2009.<sup>40</sup>
- The deduction for mortgage insurance premiums is no longer available.<sup>41</sup> About four million returns claimed the deduction for mortgage insurance premiums in 2009.<sup>42</sup>
- Teachers can no longer deduct up to \$250 for classroom supplies they buy with their own money.<sup>43</sup> About four million returns claimed the deduction for classroom supplies in 2010.<sup>44</sup>
- Individuals can no longer deduct qualified tuition and related expenses.<sup>45</sup> About two million returns claimed the qualified tuition and related expenses deduction in 2010.<sup>46</sup>
- The 15-year straight-line cost recovery method applicable to certain improvements has expired.<sup>47</sup>
- The dollar limitation on certain assets that small businesses can deduct rather than depreciate declined, as did the phase-out range for this deduction.<sup>48</sup>
- The research and experimentation tax credit expired again.<sup>49</sup> About 70,000 returns claimed the research and experimentation credit in 2010.<sup>50</sup>

The changes scheduled to take effect at the end of 2012 include:

- The Bush-era tax cuts, which set marginal income tax rates of 10 percent, 15 percent, 25 percent, 28 percent, 33 percent, and 35 percent, are set to expire.<sup>51</sup> About 82 million returns computed tax liability at one of these rates in 2009.<sup>52</sup>

39 IRC § 408(d)(8)(F).

40 IRS, Statistics of Income, Pub. 1304, *Individual Income Tax Returns – 2009*, Table 1.5 All Returns: Sources of Income, Adjustments, and Tax Items, by Age 73 (July 2011), <http://www.irs.gov/pub/irs-soi/09inalcr.pdf>.

41 IRC § 163(h)(3)(E)(iv).

42 IRS, Statistics of Income, *Individual Statistical Tables by Filing Status*, Table 1.2 (2012), <http://www.irs.gov/pub/irs-soi/09in12ms.xls>.

43 IRC § 62(a)(2)(D).

44 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

45 IRC § 222(e).

46 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

47 IRC § 168(e)(3)(E)(iv).

48 IRC § 179(b). These amounts are scheduled to decline again in 2013. *Id.*

49 IRC § 41(h)(1)(B).

50 TAS Research (Mar. 9, 2012).

51 IRC § 1(i); The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, § 901, 115 Stat. 38, 150 (2001); The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRCA), Pub. L. No. 111-312, § 101, 124 Stat. 3296, 3298 (2010).

52 Statistics of Income Bulletin, *Individual Income Tax Rates and Shares, 2009* (Winter 2012) (Figure A), <http://www.irs.gov/pub/irs-soi/12inwinbulratesshare.pdf>.



- Reduced dividend and capital gains tax rates of zero percent and 15 percent are set to expire.<sup>53</sup> In 2010, about 28 million returns reported dividends and about 20 million reported a net capital gain (seven million) or loss (13 million).<sup>54</sup>
- Various marriage penalty relief provisions are set to expire.<sup>55</sup> The IRS received about 54 million returns from married taxpayers filing jointly and another three million from married taxpayers filing separately in 2009.<sup>56</sup>
- The increased earned income tax credit (EITC) for families with three or more children and the higher EITC income limits for joint filers are set to expire.<sup>57</sup> About 27 million returns claimed the EITC in 2009 and about three million of them reported three or more qualifying children.<sup>58</sup>
- The American Opportunity Credit for tuition and other higher education expenses is set to expire.<sup>59</sup> About 12 million returns claimed the American Opportunity Credit in 2010.<sup>60</sup>
- The so-called “Pease” limitation on itemized deductions (known as Pease after the member of Congress who helped create it) and the personal exemption phase-outs (“PEP”) are set to return, re-injecting complexity into the tax code.<sup>61</sup> About six million returns were subject to the Pease limitation in 2009 before its repeal.<sup>62</sup> About four million returns reporting income in excess of \$200,000 claimed a personal exemption in 2009.<sup>63</sup>

53 IRC § 1(h); The Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Pub. L. No. 108-27, § 303, 117 Stat. 752, 764 (2003); The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109-222, § 102, 120 Stat. 345, 346 (2006); TRUIRJCA, Pub. L. No. 111-312, § 102, 124 Stat. 3296, 3298 (2010).

54 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

55 See, e.g., IRC § 1(f)(8); The Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108-311, § 105, 118 Stat. 1166, 1169 (2004); JGTRRA, Pub. L. No. 108-27, § 107, 117 Stat. 752, 755 (2003); EGTRRA, Pub. L. No. 107-16, § 901, 115 Stat. 38, 150 (2001); TRUIRJCA, Pub. L. No. 111-312, §§ 101, 102, 124 Stat. 3296, 3298 (2010).

56 IRS, Statistics of Income, Pub. 1304, *Individual Income Tax Returns – 2009*, Table 1.6 *All Returns: Number of Returns, by Age, Marital Status, and Size of Adjusted Gross Income, Tax Year 2009 77* (July 2011), <http://www.irs.gov/pub/irs-soi/09inalcr.pdf>.

57 IRC § 32; EGTRRA, Pub. L. No. 107-16, §§ 201, 901, 115 Stat. 38, 45, 150 (2001); TRUIRJCA, Pub. L. No. 111-312, §§ 101, 103, 124 Stat. 3296, 3298-99 (2010).

58 IRS, Statistics of Income, Pub. 1304, *Individual Income Tax Returns – 2009*, Table 2.5 *Returns with Earned Income Credit, by Size of Adjusted Gross Income 100* (July 2011), <http://www.irs.gov/pub/irs-soi/09inalcr.pdf>.

59 IRC § 25A(i).

60 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

61 IRC §§ 68(g) (Pease) and 151(d)(3)(F) (PEP); EGTRRA, Pub. L. No. 107-16, §§ 101, 901, 115 Stat. 38, 41, 150 (2001); TRUIRJCA, Pub. L. No. 111-312, §§ 101, 102, 124 Stat. 3296, 3298 (2010). In 2011, the applicable threshold would have been \$169,550 for Pease (regardless of filing status), and \$169,550 (for single filers) or \$254,350 (for married joint filers). See Margot L. Crandall-Hollick, Congressional Research Service, R42485, *An Overview of Tax Provisions Expiring in 2012 7* (Apr. 17, 2012). For a discussion of problems with phase-outs such as these, see National Taxpayer Advocate 2008 Annual Report to Congress 410-413 (Legislative Recommendation: *Eliminate (or Simplify) Phase-outs*).

62 IRS, Statistics of Income, Pub. 1304, *Individual Income Tax Returns – 2009*, Table 2.1 *Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income, Tax Year 2009 81* (July 2011), <http://www.irs.gov/pub/irs-soi/09inalcr.pdf>.

63 IRS, Statistics of Income, Pub. 1304, *Individual Income Tax Returns – 2009*, Table 2.3 *All Returns: Exemptions by Type and Number of Exemptions, by Size of Adjusted Gross Income, Tax Year 2009 81* (July 2011), <http://www.irs.gov/pub/irs-soi/09inalcr.pdf>.

- The increased child tax credit of \$1,000 per child is set to expire.<sup>64</sup> About 23 million returns claimed a child tax credit in 2010.<sup>65</sup>
- The increased credit for expenses associated with the adoption of a child is set to expire.<sup>66</sup> About 97 thousand returns claimed the adoption credit in 2010.<sup>67</sup>

For the IRS, delivering a successful filing season requires extensive planning and coordination among numerous functions. For every change in law, the IRS must:

1. Develop forms, instructions, and publications for taxpayers;
2. Develop training materials for IRS telephone assistors, field assistance personnel, and others to help them answer taxpayer questions;
3. Work with tax preparation software developers to ensure that they have the guidance they need to produce accurate products and that they and others who transmit returns electronically do so in a format the IRS can accept;
4. Provide instructions to personnel at Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites to ensure that they can prepare accurate returns; and
5. Write programming code that allows the IRS to accept and perform various automated reviews of the returns.

Because of the magnitude of these challenges, and the uncertainty about such a large number of important provisions, the 2013 filing season is already at risk. In her 2007 report, the National Taxpayer Advocate recommended that the Treasury Department and the tax-writing committees create a formal process through which IRS estimates of the filing-season impact of significant tax legislation are transmitted to the tax-writing committees at several points during the year, with a focus on legislation to extend expiring tax provisions.<sup>68</sup> The 2013 filing season is likely to pose problems for many (if not most) taxpayers and the IRS if Congress does not address the many provisions that have already expired or soon will. In FY 2013, TAS will work with lawmakers, the IRS, and taxpayers to help avert or minimize problems associated with any late-year tax-law changes.

64 IRC § 24(a); EGTRRA, Pub. L. No. 107-16, §§ 201, 901, 115 Stat. 38, 45, 150 (2001); TRUIRJCA, Pub. L. No. 111-312, §§ 101, 103, 124 Stat. 3296, 3298-99 (2010). The credit will drop to \$500 in 2013.

65 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

66 IRC § 36C and its predecessor, IRC § 23; EGTRRA, Pub. L. No. 107-16, §§ 201, 901, 115 Stat. 38, 45, 150 (2001); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10909, 124 Stat. 119, 1021 (2010); TRUIRJCA, Pub. L. No. 111-312, § 101(b), 124 Stat. 3296, 3298 (2010).

67 IRS, Statistics of Income Bulletin, *Individual Income Tax Returns, Preliminary Data, 2010* (Winter 2012) (Figure A).

68 National Taxpayer Advocate 2007 Annual Report to Congress 12.

## B. Improve Tax Administration through Taxpayer Advocate Directives

The National Taxpayer Advocate is required by IRC § 7803(c)(2)(A)(iii) to propose changes to the IRS's administrative practices to mitigate systemic problems faced by taxpayers. In furtherance of this statutory requirement, the Commissioner of Internal Revenue delegated to the National Taxpayer Advocate the authority to issue Taxpayer Advocate Directives (TADs) to change IRS procedures<sup>69</sup> to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.<sup>69</sup> Only the Commissioner, Deputy Commissioner, or National Taxpayer Advocate may modify or rescind a TAD.<sup>70</sup>

A TAD enables the National Taxpayer Advocate to formally elevate systemic problems to IRS executives. Since 2001, the National Taxpayer Advocate has issued eight TADs.<sup>71</sup> She issued four (50 percent) in the last 12 months, as she has increasingly relied upon TADs as an important way to fulfill the statutory mandate. The TAD procedures themselves, however, could be more effective in prompting the IRS to address or respond to problems.

For example, IRS executives have failed to respond to proposed TADs timely.<sup>72</sup> On June 13, 2011, the National Taxpayer Advocate issued a proposed TAD to the Commissioner of the W&I division, directing him to issue guidance and implement a procedure for adjusting the

69 Delegation Order 13-3 (formerly DO-250, Rev. 1), *reprinted* as IRM 1.2.50.4 (Jan. 17, 2001); see also IRM 13.2.1.6 (July 16, 2009).

70 *Id.*

71 This figure does not include "proposed TADs."

72 A proposed TAD is a preliminary step to issuance of a TAD, but a proposed TAD may not be elevated in the same manner as a TAD. IRM 13.2.1.6.1.2 (July 16, 2009).

accounts of taxpayers victimized by fraudulent return preparers.<sup>73</sup> The W&I Commissioner failed to respond timely to the proposed TAD.<sup>74</sup>

As another example, in response to a TAD directing the IRS to take various actions, the IRS challenged the National Taxpayer Advocate's authority to issue a TAD to the Chief Counsel or to interpret the law.<sup>75</sup> Interpreted broadly, this conclusion could severely limit the National Taxpayer Advocate's TAD authority. The IRS may be saying that it will not even bother to respond in writing to any TAD (even if only to modify or rescind it) if the TAD could be viewed as interpreting the law. Because nearly everything the IRS does is governed by law, it is very difficult for a TAD to address problems that taxpayers are facing without making a recommendation as to how the law should be interpreted. For example, if a TAD seeks to prevent the IRS from infringing taxpayer rights, which are embodied in law, the IRS may decline to respond to the TAD on the basis that it interprets law. The IRS's position significantly reduces the utility of these directives and undermines the purpose for which they were created.

73 Proposed TAD 2011-1 (June 13, 2011) (seeking various actions within 10, 45, and 90 days). See also National Taxpayer Advocate 2011 Annual Report to Congress 48 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*) and National Taxpayer Advocate 2011 Annual Report to Congress 558 (Legislative Recommendation: *Assessment of Civil Penalties Against Preparers of Fraudulent Returns*).

74 On August 16, 2011, the National Taxpayer Advocate elevated four Taxpayer Assistance Orders involving the same issue to the Deputy Commissioner for Services and Enforcement. On September 2, 2011, the Deputy Commissioner for Services and Enforcement wrote to the National Taxpayer Advocate that the IRS is "in the process of developing procedures to adjust taxpayers' accounts where the taxpayer never received a refund or portion of a refund due to preparer fraud and appropriate documentation has been submitted." As those procedures were not timely implemented, on January 12, 2012, the National Taxpayer Advocate issued a TAD to the Commissioners of the SB/SE and W&I operating divisions directing various actions within 14, 45, and 90 days. Taxpayer Advocate Directive 2012-1 (Establish procedures for adjusting the taxpayer's account in instances where a tax return preparer altered the return without the taxpayer's knowledge or consent, and the preparer obtained a fraudulent refund) (Jan. 12, 2012), See *Tax Fraud by Identity Theft Part 2: Status, Progress, and Potential Solutions, Hearing before the Subcomm. on Fiscal Responsibility and Economic Growth, S. Comm. on Finance* (Mar. 20, 2012) (statement of Nina E. Olson, National Taxpayer Advocate, [http://www.irs.gov/pub/irs-utl/nta\\_testimony\\_idtheft\\_032012.pdf](http://www.irs.gov/pub/irs-utl/nta_testimony_idtheft_032012.pdf)). These Commissioners responded on Feb. 2, 2012, by agreeing to address the problem, but proposing to complete the actions more slowly - within 14 days, 90 days, and six months. See Memorandum for Steven T. Miller, Deputy Commissioner for Services and Enforcement, Appeal of TAD 2012-1 (Feb. 3, 2012), at [http://www.taxpayeradvocate.irs.gov//userfiles/file/TAD\\_2012-1\\_appeal.pdf](http://www.taxpayeradvocate.irs.gov//userfiles/file/TAD_2012-1_appeal.pdf). SB/SE issued interim guidance to its employees regarding collection activity in cases where the taxpayer has been victimized by a tax return preparer. See Interim Guidance Memo (IGM) SBSE-05-0612-035, *Return Preparer Fraud or Misconduct* (June 5, 2012), [http://apps2.irs.gov/pub/foia/ig/sbse/igm\\_sbse\\_05-0612-035.pdf](http://apps2.irs.gov/pub/foia/ig/sbse/igm_sbse_05-0612-035.pdf). W&I, however, has yet to issue guidance to its employees. In response, the National Taxpayer Advocate issued Interim Guidance to TAS employees, providing additional direction and suggestions about effectively advocating in these cases. See IGM TAS-13-0212-008, *Interim Guidance on Advocating for Taxpayers When a Return Preparer Appears to Have Committed Fraud* (Feb. 7, 2012), <http://www.irs.gov/pub/foia/ig/tas/tas-13-0212-008.pdf>. Recently, in response to continued delays by W&I in developing procedures, the National Taxpayer Advocate issued a supplemental Interim Guidance Memorandum, instructing her employees to elevate all cases involving return preparer fraud adjustments to their Local Taxpayer Advocates, who will issue Taxpayer Assistance Orders (TAOs) rather than first submit the request to adjust the case through less-urgent channels. See IGM TAS-13-0512-017, *Interim Guidance for Preparing Taxpayer Assistance Orders (TAOs) Involving Return Preparer Fraud* (May 22, 2012), <http://www.irs.gov/pub/foia/ig/tas/tas-13-0512-017.pdf>.

75 TAD 2012-3 (Jan. 12, 2012) (*Review IRS Priorities in the Examination Process to Protect Taxpayer Rights, Improve Taxpayer Service, and Further Compliance*), [http://www.irs.gov/pub/irs-utl/taxpayeradvocatedirective\\_2012-3.pdf](http://www.irs.gov/pub/irs-utl/taxpayeradvocatedirective_2012-3.pdf); Memorandum for National Taxpayer Advocate from Deputy Commissioner for Services and Enforcement and Deputy Commissioner for Operations Support, *Taxpayer Advocate Directive 2012-3* (Jan. 27, 2012), [http://www.irs.gov/pub/irs-utl/irsresponse\\_taxpayeradvocatedirective\\_2012-3.pdf](http://www.irs.gov/pub/irs-utl/irsresponse_taxpayeradvocatedirective_2012-3.pdf) ("We have consulted with the Office of Chief Counsel and concluded that the National Taxpayer Advocate has no authority to issue a TAD to the Chief Counsel. Moreover, the procedures governing the issuance of TADs provide that a TAD may not be issued to interpret the law, and that procedural limitation remains in effect today. The Chief Counsel concurs with our interpretation regarding the limitations on the issuance of TADs."). The TAD was issued to elevate problems taxpayers were facing in connection with the correspondence examination process, as described in a TAS study, including problems caused by obsolete regulations. National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 63-90 (*An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*). One portion of the TAD directed the IRS to update the obsolete regulations.

In addition, if obsolete regulations are causing problems for taxpayers and the National Taxpayer Advocate wants to elevate those problems through a TAD, the IRS should be required to respond in writing. There is no apparent reason for the IRS to be required to respond to TADs addressing non-legal problems, but not TADs addressing problems caused by obsolete regulations.

As a final example, on August 16, 2011, the National Taxpayer Advocate issued a TAD seeking to resolve problems resulting from the IRS's interpretation of key terms of its offshore voluntary compliance program, as further discussed below.<sup>76</sup> The IRS appealed the TAD to the Deputy Commissioner for Services and Enforcement, who rescinded portions of the TAD.<sup>77</sup> On September 26, 2011, the National Taxpayer Advocate elevated her concerns to the Commissioner of Internal Revenue for a formal response, pursuant to authority under IRC § 7803(c).<sup>78</sup> IRC § 7803(c)(3) specifically requires the Commissioner to “establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months...” The Commissioner did not provide a formal written response. We understand the Commissioner has interpreted IRC § 7803(c)(3) as requiring the IRS to establish a process that allows it to respond in writing to the “Most Serious Problems” identified by the National Taxpayer Advocate. As the examples discussed here illustrate, the TAD process could be updated and improved.

In FY 2013, the National Taxpayer Advocate plans to continue to use TAD authority. She will also continue to seek legislation to codify the TAD process so that TADs can be more effective, including authority to elevate a TAD to the IRS Commissioner.<sup>79</sup>

### C. The IRS's Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight

In general, tax-related identity theft occurs when an individual intentionally uses the Social Security number (SSN) of another person to file a false tax return with the intention of obtaining an unauthorized refund.<sup>80</sup> Identity theft wreaks havoc on our tax system in many

76 See TAD 2011-1 (*Implement 2009 Offshore Voluntary Disclosure Program FAQ #35 and Comply with the Freedom of Information Act*) (Aug. 16, 2011), <http://www.irs.gov/advocate/article/0,,id=251887,00.html>. For further discussion of these problems, see National Taxpayer Advocate 2011 Annual Report to Congress (Most Serious Problem: IRS Offshore Voluntary Disclosure Program “Bait And Switch” May Undermine Trust for the IRS and Future Compliance Programs).

77 See Memorandum for National Taxpayer Advocate from Deputy Commissioner for Services and Enforcement, *Taxpayer Advocate Directive 2011-1* (Oct. 14, 2011), [http://www.irs.gov/pub/irs-utl/dcir\\_memo\\_tad\\_2011-1.pdf](http://www.irs.gov/pub/irs-utl/dcir_memo_tad_2011-1.pdf).

78 Memorandum for Commissioner of Internal Revenue from National Taxpayer Advocate, *Recommendations Regarding Taxpayer Advocate Directive 2011-1* (Sept. 26, 2011), [http://www.irs.gov/pub/irs-utl/recommendations\\_tad2011-1.pdf](http://www.irs.gov/pub/irs-utl/recommendations_tad2011-1.pdf).

79 Because the IRS sometimes is slow in responding to TADs, which are issued pursuant to a delegation order, TADs could be a more effective tool if Congress codified them, as proposed by the National Taxpayer Advocate. See National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*). They might also be more effective if they could be elevated by the National Taxpayer Advocate to the Commissioner of Internal Revenue for a formal written response.

80 This type of tax-related identity theft is referred to as “refund-related” identity theft. In “employment-related” identity theft, an individual files a tax return using his or her own taxpayer identification number, but uses another individual's SSN to obtain employment, and consequently, the wages are reported to the IRS under the SSN. The IRS has procedures in place to minimize the tax administration impact to the victim in these employment-related identity theft situations. Accordingly, we will focus on refund-related identity theft in this report.

ways. Victims of identity theft not only must deal with the aftermath of an emotionally draining crime, but may also have to deal with the IRS for years to untangle the resulting tax account problems. Identity theft also impacts the public fisc, as Treasury funds are diverted to pay out improper refunds claimed by opportunistic perpetrators. In addition, identity theft takes a significant toll on the IRS, tying up limited resources that it could otherwise shift to taxpayer service or compliance initiatives.

Since 2004, the National Taxpayer Advocate has written extensively about the impact of identity theft on taxpayers and tax administration, and TAS has worked closely with the IRS to improve its efforts to assist taxpayers who become identity theft victims.<sup>81</sup> The IRS has adopted many of TAS's recommendations and made significant progress in this area in recent years. Notwithstanding these efforts, identity theft continues to pose significant challenges for the IRS.

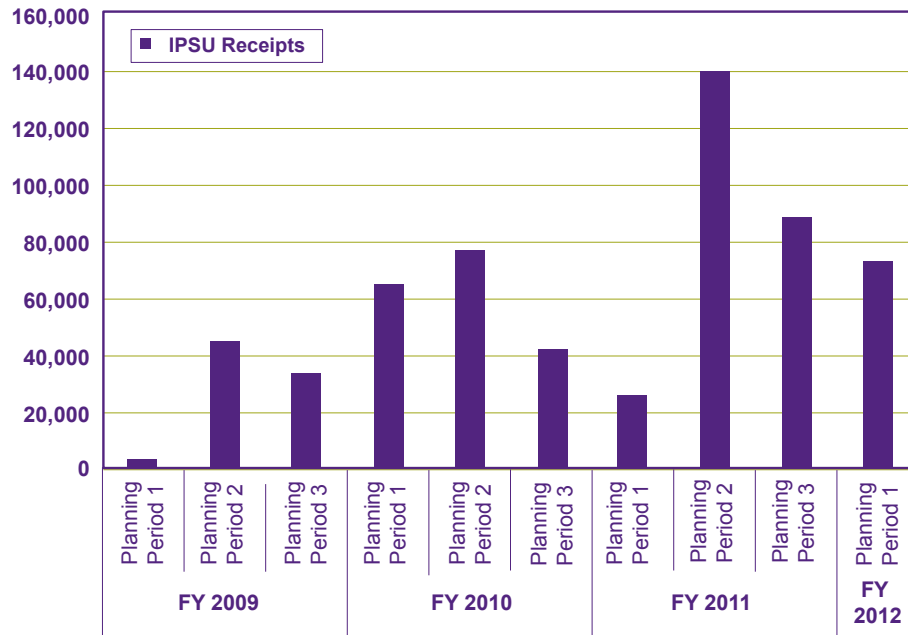
### 1. The IRS and TAS Continue to See Unprecedented Levels of Identity Theft Casework

Today, identity theft can be an organized, large-scale operation. Indeed, the most recent IRS data show more than 450,000 identity theft cases servicewide.<sup>82</sup> The Identity Protection Specialized Unit (IPSU), the centralized IRS organization established in 2008 to assist identity theft victims, is experiencing unprecedented levels of case receipts.<sup>83</sup> As this chart shows, IPSU receipts have increased substantially over the two previous years.

81 See National Taxpayer Advocate 2011 Annual Report to Congress 48-73 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*); National Taxpayer Advocate 2009 Annual Report to Congress 307-317 (Status Update: *IRS's Identity Theft Procedures Require Fine-Tuning*); National Taxpayer Advocate 2008 Annual Report to Congress 79-94 (Most Serious Problem: *IRS Process Improvements to Assist Victims of Identity Theft*); National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (Most Serious Problem: *Identity Theft Procedures*); National Taxpayer Advocate 2005 Annual Report to Congress 180-191 (Most Serious Problem: *Identity Theft*); National Taxpayer Advocate 2004 Annual Report to Congress 132-142 (Most Serious Problem: *Inconsistence Campus Procedures*); *Hearing on Identity Theft and Tax Fraud Before the Subcomm. on Oversight and Social Security*, H. Comm. on Ways and Means, 112th Cong. (May 8, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *Hearing on Tax Compliance and Tax-Fraud Prevention*, H. Comm. on Oversight and Government Reform, Subcomm. on Government Organization, Efficiency, and Financial Management, 112th Cong. (Apr. 19, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *Tax Fraud by Identity Theft Part 2: Status, Progress, and Potential Solutions* Hearing Before the S. Comm. on Finance, Subcomm. on Fiscal Responsibility and Economic Growth, 112th Cong. (Mar. 20, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); *The Spread of Tax Fraud by Identity Theft: A Threat to Taxpayers, a Drain on the Public Treasury*, Hearing Before the S. Comm. on Finance, Subcomm. on Fiscal Responsibility and Economic Growth, 112th Cong. (May 25, 2011) (statement of Nina E. Olson, National Taxpayer Advocate); *Filing Season Update: Current IRS Issues*, Hearing Before the S. Comm. on Finance, 111th Cong. (Apr. 15, 2010) (statement of Nina E. Olson, National Taxpayer Advocate); *Identity Theft: Who's Got Your Number*, Hearing Before the S. Comm. on Finance, 110th Cong. (Apr. 10, 2008) (statement of Nina E. Olson, National Taxpayer Advocate).

82 Data provided by the IRS Office of Privacy, Governmental Liaison, and Disclosure (email dated Apr. 17, 2012).

83 With the IRS moving to a specialized approach to identity theft victim assistance, it is unclear what role the IPSU will play in the future. The National Taxpayer Advocate believes it is important for the IPSU to continue to serve as the "traffic cop" and serve as the single point of contact with the identity theft victim, as discussed later in this report.

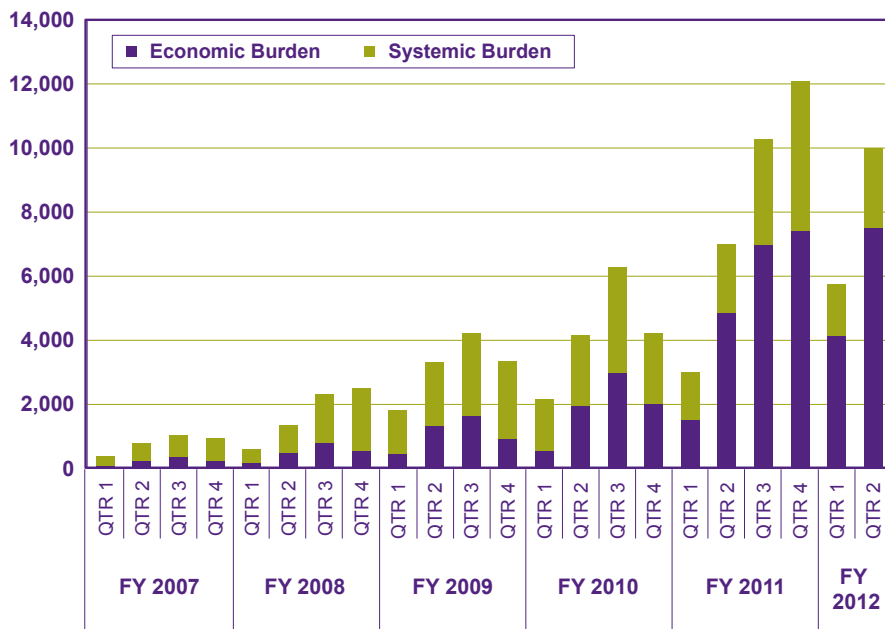
**FIGURE II.1, IPSU PAPER INVENTORY RECEIPTS, FY 2009 TO FY 2012 BY PLANNING PERIOD<sup>84</sup>**

The Taxpayer Advocate Service has experienced a similar surge in cases, as TAS identity theft receipts rose 93 percent in fiscal year (FY) 2011 over FY 2010. The upward trend continued in the first two quarters of FY 2012, when TAS received nearly 16,000 identity theft cases, a 57 percent increase over the same period in FY 2011.<sup>85</sup> The growth in casework reflects the both the increase in identity theft incidents and the IRS's inability to address the victims' tax issues promptly.

84 Data obtained from IRS Identity Protection Specialized Unit (Mar. 13, 2012). The IPSU tracks cases by "planning period." Planning Period 1 covers Oct. 1 to Dec. 31, Planning Period 2 covers Jan. 1 to June 30, and Planning Period 3 covers July 1 to Sept. 30.

85 There were over 10,000 identity theft cases in TAS during the same period in FY 2011. Data obtained from TAMIS (Apr. 1, 2012; Apr. 1, 2011).

**FIGURE II.2, IDENTIFY THEFT CASES RECEIVED QUARTERLY IN TAS, FY 2007 THROUGH FY 2011 AND SECOND QUARTER OF FY 2012<sup>86</sup>**



## 2. The Social Security Administration Should Restrict Access to the Death Master File

The National Taxpayer Advocate is concerned that the federal government continues to facilitate tax-related identity theft by making public the Death Master File or DMF — a list of recently deceased individuals that includes their full name, SSN, date of birth, date of death, and the county, state, and ZIP code of the last address on record.<sup>87</sup> There is some uncertainty about whether the Social Security Administration (SSA) has the legal authority to restrict public access to DMF records in light of the Freedom of Information Act.<sup>88</sup> For that reason, we strongly support legislation to restrict public access to the DMF.<sup>89</sup> However, we believe the SSA has at least a reasonable basis for seeking to limit public access to the DMF. By waiting for legislation that may or may not pass, we unnecessarily expose taxpayers to potential harm. For this reason, in FY 2013 we will continue to encourage the SSA to act on its own to restrict public access to the DMF.

86 Data obtained from TAMIS. TAS retrieved the data on the first day of the month following the end of each quarter for FY 2007 through second quarter of FY 2012.

87 See Office of the Inspector General, SSA, *Personally Identifiable Information Made Available to the General Public via the Death Master File*, A-06-08-18042 (June 2008).

88 The Freedom of Information Act, 5 USC § 552, provides for public access to records and information maintained by Federal agencies.

89 See National Taxpayer Advocate 2011 Annual Report to Congress 519-523 (Legislative Recommendation: *Restrict Access to the Death Master File*).



### 3. Creating New Exceptions to Taxpayer Privacy Protections Poses Risks and Should Be Approached Carefully, if at All

Internal Revenue Code (IRC) § 6103 generally provides that returns and return information shall be confidential and then delineates a number of exceptions to this general rule. Section 6103(i)(2) authorizes the disclosure of return information (other than “taxpayer return information”<sup>90</sup>) in response to requests from federal law enforcement agencies for use in criminal investigations. There is no corresponding exception in IRC § 6103 that allows for the release of identity theft information to state or local agencies.<sup>91</sup> However, IRC § 6103(c) provides that a taxpayer may consent to disclosure of returns and return information to any person designated by the taxpayer. Under this exception, the IRS has developed a pilot that would facilitate a consent-based sharing of identity theft information with state and local law enforcement agencies.<sup>92</sup>

It is our understanding that some have called for the expansion of exceptions to IRC § 6103, ostensibly to help state and local law enforcement combat identity theft. The current framework of IRC § 6103 includes sufficient exceptions to allow the IRS to share information with state and local law enforcement about identity thieves. In FY 2013, the National Taxpayer Advocate will continue to advocate that loosening of these statutory privacy protections is not appropriate at this time.

Based upon advice from its Office of Chief Counsel, the IRS has developed a pilot in which tax data related to the “bad return” may be shared with state and local law enforcement agencies based on the victim’s written consent.<sup>93</sup> We believe this approach strikes an appropriate balance — protecting taxpayer return information while simultaneously giving state and local authorities more information to investigate and combat identity theft. However, we are concerned that once the information is in the hands of state and local law enforcement, there is no prohibition in the tax code against redisclosure. Therefore, we renew our request that Congress consider modifying IRC § 6103(c) to explicitly limit the use of tax return information to the purpose agreed upon by the taxpayer and to prohibit the redisclosure of such information.<sup>94</sup> Further, the IRS should make any participation in this pilot conditional on an agreement that state and local authorities will not use this information for any purpose unrelated to the identity theft investigation.

90 “Taxpayer return information” is defined as return information “which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.” IRC § 6103(b)(3).

91 Note, however, that certain disclosures to state law enforcement are permissible. See IRC § 6103(i)(3)(B)(i) (disclosure of return information, including taxpayer return information, can be made to the extent necessary to advise appropriate officers or employees of any state law enforcement agency of the imminent danger of death or physical injury to any individual; disclosure cannot be made to local law enforcement agencies). While identity theft may cause emotional and economic injury, the typical identity theft situation does not pose an imminent danger of death or physical injury.

92 See <http://www.irs.gov/privacy/article/0,,id=256965,00.html> (last visited June 8, 2012).

93 See *id.*

94 See National Taxpayer Advocate 2011 Annual Report to Congress 505.

#### 4. There is a Continuing Need for the IRS's Identity Protection Specialized Unit (IPSU) to Play a Centralized Role in Managing Identity Theft Cases

In April 2008, before the IRS created the Identity Protection Specialized Unit (IPSU), Commissioner Shulman described his vision of IPSU as providing “a central point of contact for the resolution of tax issues caused by identity theft.” He further elaborated that “[t]his unit will provide end-to-end case resolution. Victims will be able to communicate with one customer service representative to have their questions answered and issues resolved quickly and efficiently.”<sup>95</sup>

The IRS has now changed its strategy for assisting identity theft victims and is moving away from using a single “traffic cop” to resolve cases and toward a “specialized” approach, which may make the process more complicated for victims. In this specialized environment, each function that deals with identity theft will create a dedicated group of employees to work solely on these issues.

While the National Taxpayer Advocate acknowledges potential benefits to this specialized approach (if implemented properly), she does see the value in retaining IPSU as a “traffic cop” to help the taxpayer navigate around the IRS as various functions handle different aspects the case. In FY 2013, the National Taxpayer Advocate will continue to advocate for IPSU to remain involved as the single point of contact for identity theft victims.

In FY 2013, TAS will:

- Work cooperatively with the IRS to determine what role the IPSU should play in the specialized approach to helping victims;
- Review and suggest improvements to the identity theft processing procedures developed by the specialized units in each function;
- Encourage TAS's Local Taxpayer Advocates (LTAs) to advocate for identity theft victims by issuing Taxpayer Assistance Orders (TAOs) when appropriate; and
- Continue to train TAS employees on how to resolve identity theft cases.

#### D. The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims

In FY 2013, TAS will remain focused on the IRS response to refund fraud. The growth of spending programs that are run through the tax code and require large IRS payments to taxpayers has made this kind of refund fraud more alluring. The IRS has had difficulty verifying the legitimacy of claims for recently enacted tax benefits such as Economic Stimulus Payment, First-Time Homebuyer Credit, Work Opportunity Credit, and Making Work Pay Credit. In FY 2011, the Accounts Management Taxpayer Assurance Program (AMTAP)

<sup>95</sup> *Identity Theft: Who's Got Your Number*, Hearing Before the S. Comm. on Finance, 110th Cong. (Apr. 10, 2008) (response of IRS Commissioner Douglas H. Shulman to questions from Chairman Max Baucus), available at <http://finance.senate.gov/hearings/hearing/download/?id=f989b16e-5da3-452d-9675-b75d796fe2b4>.

delayed nearly two million refund claims, identifying them as questionable or potentially fraudulent.<sup>96</sup> The Electronic Fraud Detection System (EFDS) selected over one million returns for screening, a 72 percent increase from the previous year.<sup>97</sup> The large volume of fraudulent tax refund claims requires the IRS to devote significant resources to filtering out these claims and adjusting the accounts of the affected taxpayers.

To better protect the public fisc from a surge of new refund schemes, the IRS has expanded its use of sophisticated fraud detection models based on data mining to filter out questionable refund claims. The IRS estimates that EFDS has an 89 percent accuracy rate — which means the system may still catch upwards of 100,000 legitimate taxpayers.<sup>98</sup> While the IRS can try to screen out as many suspicious refund claims as possible, it is unrealistic to expect the IRS to detect and stop all such claims given its resource and time constraints. Because the fraud detection algorithms are constantly evolving in response to new patterns, there will always be a lag in the filters.

The IRS is responsible for processing over 145 million individual income tax returns annually, including more than 109 million requests for refunds.<sup>99</sup> In 2011, the average refund amount was approximately \$2,913, representing a significant lump-sum payment for individual taxpayers with incomes below the median adjusted gross income of \$31,494.<sup>100</sup>

At the same time the IRS is being urged to do more to combat refund fraud, taxpayers are clamoring for the IRS to process returns and issue refunds faster. While there is still room for the IRS to make marginal improvements in both areas, the two goals are fundamentally at odds.

With the introduction of e-filing, combined with the increasing number of refundable credits run through the tax code, our tax system has shifted, for better or worse, to one of instant gratification. Approximately 77 percent of taxpayers file electronically, which means the IRS can process most refund requests within ten days.<sup>101</sup> If the overriding goal is to process returns and deliver legitimate refunds as quickly as possible, it is inevitable that some dishonest people will get away with fraud and some honest taxpayers will be harmed.

On the other hand, if the IRS decides to place greater value on deterring refund fraud, it will need additional time and resources to review returns. As a result, the roughly 110

96 The Electronic Fraud Detection System (EFDS) is one tool the IRS uses to select questionable returns for verification prior to releasing refunds. EFDS selected 1,054,704 questionable returns for screening in calendar year (CY) 2011. The IRS stopped an additional 893,267 potentially fraudulent returns as part of the Operation Mass Mail (OMM) program. See Wage and Investment (W&I) Division response to TAS information request (July 27, 2011, and updated Nov. 4, 2011).

97 The volume of returns selected to be screened rose from 611,845 in CY 2010 to 1,054,704 in CY 2011 (through Oct. 15, 2011), a 72 percent increase. See W&I response to TAS information request (July 27, 2011, and updated Nov. 4, 2011).

98 National Taxpayer Advocate 2011 Annual Report to Congress 28.

99 In calendar year 2011, the IRS processed 145,320,000 individual tax returns, with 109,337,000 requests for refunds. IRS, *Filing Season Statistics – Dec. 31, 2011*, at <http://www.irs.gov/newsroom/article/0,,id=252176,00.html> (last visited Mar. 12, 2012).

100 IRS, *Filing Season Statistics – Dec. 31, 2011*, at <http://www.irs.gov/newsroom/article/0,,id=252176,00.html> (last visited Mar. 12, 2012); Compliance Data Warehouse, Individual Returns Transaction File for CY 2011.

101 IRS, *IRS e-file Launches Today; Most Taxpayers Can File Immediately*, IR-2012-7 (Jan. 17, 2012).

million taxpayers who receive refunds will have to wait longer to get them, perhaps considerably longer.<sup>102</sup> It is unfair to the IRS for us to ignore this reality; we must recognize that there is no way around these trade-offs.

The National Taxpayer Advocate supports the IRS's increased use of data mining and automated screens to identify suspicious refund claims. We commend the IRS's efforts to use every tool at its disposal to combat refund fraud. However, we have cautioned the IRS to not lose sight of the fact that no matter how well-developed a particular filter is, it will inevitably affect legitimate taxpayers. The National Taxpayer Advocate has insisted that as the IRS develops these filters, it must also create procedures that would allow honest taxpayers with legitimate refund claims to receive their money without unnecessary delay.

The IRS established the Taxpayer Protection Unit (TPU) to communicate with the taxpayers whose refunds it is holding, so they have the opportunity to document and explain their claims. Taxpayers whose returns were flagged by the identity theft filters were instructed to call the TPU. Unfortunately, the TPU has been woefully understaffed and has had difficulty answering taxpayer calls.<sup>103</sup> In her testimony before the Senate Finance Committee in March, the National Taxpayer Advocate noted that the TPU's level of service had fallen as low as 11.7 percent, meaning that only one out of nine callers got through and those who did had to wait an average of 3,990 seconds (roughly one hour and six minutes)<sup>104</sup>

The IRS Office of Return Integrity and Correspondence Services (RICS) has taken steps to ensure that the TPU is staffed at the appropriate level. In FY 2013, TAS will continue to monitor the effectiveness of the identity theft filters and the TPU. We will also work with RICS to review any proposed new filters and minimize their impact on legitimate taxpayers.

For example, if EFDS cannot initially verify wage and withholding information, AMTAP applies a "soft freeze" (*i.e.*, the refund will be released systemically) on the account while its employees begin a manual verification process<sup>105</sup> that can take up to 11 weeks.<sup>106</sup> In many cases, AMTAP cannot verify the information within this timeframe. Rather than releasing the refunds, AMTAP is now placing permanent freezes on these accounts while the wage verification is completed. The National Taxpayer Advocate is concerned that once a case is placed in a "hard freeze" (*i.e.*, the refund must be manually released), it will lose its urgency in being worked. Thus, TAS has been advocating that the IRS develop the ability to briefly

102 In calendar year 2011, the IRS processed 145,320,000 individual tax returns, with 109,337,000 requests for refunds. *IRS, Filing Season Statistics – Dec. 31, 2011*, at <http://www.irs.gov/newsroom/article/0,,id=252176,00.html> (last visited Mar. 12, 2012).

103 See *Filing Season Effects of Reduced Funding for Taxpayer Service*, *supra*.

104 *Tax Fraud by Identity Theft Part 2: Status, Progress, and Potential Solutions*, Hearing Before the S. Comm. on Finance, Subcomm. on Fiscal Responsibility and Economic Growth, 112th Cong. (Mar. 20, 2012) (statement of Nina E. Olson, National Taxpayer Advocate).

105 This includes contacting the taxpayer's employer or if directed by the employer, the payroll processing firm to verify wages and withholding. AMTAP employees will also perform research to ensure they have the employer's current address.

106 IRM 21.9.1.2.3(1) (Mar. 7, 2011).

extend the soft freeze period. It is TAS's position that only those returns that have been verified as not legitimate should be placed in a hard freeze.

In FY 2012, TAS will begin to analyze a representative sample of its "held refund" cases to identify and quantify the main causes for cases coming to TAS. We will prepare a report summarizing important findings from this analysis and identifying the "highest risk" TAS cases (i.e., the types of refund hold cases most likely to come to TAS). The report will include recommendations for how the IRS can handle these types of cases more effectively. TAS anticipates completing this report by the end of June 2013.

As noted above, the National Taxpayer Advocate is very concerned that AMTAP has not developed procedures that would allow employees to complete the verification within the 11-week period.<sup>107</sup> In FY 2013, we will focus on helping AMTAP develop better procedures to verify wages for questionable tax returns.

## E. Improve Automated Examination Procedures

Faced with growing responsibilities and shrinking examination resources, the IRS increasingly turns to automated procedures to assess tax liabilities (*e.g.*, the automated substitute for return (ASFR) program, automated underreporter (AUR) program, math error adjustments, automated questionable credit or refund (AQC) program, and correspondence examinations).<sup>108</sup> In FY 2011, the IRS made 12,660,956 contacts — mostly automated — that taxpayers might regard as examinations, but only 1,564,690 of which were "real" examinations of individuals.<sup>109</sup>

The National Taxpayer Advocate refers to automated assessments (*i.e.*, AUR, ASFR, math error, and AQC) as "unreal" examinations because they do not provide the same taxpayer rights as "real" examinations. For example, while the IRS is generally prohibited from auditing a return twice, it can examine a return that was already subject to an "unreal" audit.<sup>110</sup>

Even real audits have become more automated, as correspondence examinations have increased. Between FY 2000 and FY 2011 face-to-face audits of individuals rose by 56 percent (from 251,108 to 391,621), but correspondence exams increased by 220 percent (from 366,657 to 1,173,069).<sup>111</sup> By FY 2011, the IRS was conducting 75 percent (1,173,069) of all individual examinations by correspondence in a highly automated campus setting.<sup>112</sup>

107 IRM 21.9.1.2.3(1), *Stopping the Refund* (Oct. 1, 2010).

108 See *e.g.*, National Taxpayer Advocate 2011 Annual Report to Congress 15-27 (*Introduction to Revenue Protection Issues*).

109 IRS Pub. 55B, Data Book, Tables 9a, 14, and 15 (2011) (including 4,703,000 AUR contact cases, 4,998,266 math error notices, and 1,395,000 ASFR). Some math errors may make taxpayer-favorable adjustments. The math error data was for calendar year 2011.

110 See IRC § 7605(b); Rev. Proc. 2005-32, § 4.03, 2005-1 C.B. 1206 (discussing procedures the IRS does not consider examinations).

111 IRS Pub. 55B, Data Book, Table 9a (2000); IRS Pub. 55B, Data Book, Table 9a (2011).

112 IRS Pub. 55B, Data Book, Table 9a (2011).

This reliance on automation is likely to expand as the IRS receives, and attempts to process and use, more third-party data. For example, credit card issuers recently began reporting the charges they process for businesses,<sup>113</sup> and brokerage firms recently began reporting the cost basis (as well as gross proceeds) of stock, bond, and mutual fund sales.<sup>114</sup>

Automated assessment procedures rely on unexplained data mismatches to change a taxpayer's liability. However, a return may not match third-party data even if the return is accurate, and some mismatches remain unexplained due to communication difficulties.

As recently described in the 2011 Annual Report to Congress, the National Taxpayer Advocate's blog, a Taxpayer Advocate Directive, and in testimony before Congress, these automated assessment procedures present the following challenges:<sup>115</sup>

- The IRS could resolve many apparent mismatches without contacting taxpayers.<sup>116</sup>
- Computer-generated letters do not always reach taxpayers.<sup>117</sup>
- When the letters are delivered, the taxpayers often find them confusing.<sup>118</sup>
- When a taxpayer calls, the IRS does not always answer the phone timely.<sup>119</sup>

113 IRC § 6050W.

114 IRC § 6045(g).

115 See, e.g., National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 63-91 (*An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*); National Taxpayer Advocate 2011 Annual Report to Congress 15-27 (*Introduction to Revenue Protection Issues*); TAD 2012-3 (Jan. 12, 2012) (*Review IRS Priorities in the Examination Process to Protect Taxpayer Rights, Improve Taxpayer Service, and Further Compliance*, at [http://www.irs.gov/pub/irs-utl/taxpayer\\_advocatedirective\\_2013-13.pdf](http://www.irs.gov/pub/irs-utl/taxpayer_advocatedirective_2013-13.pdf)); *Tax Compliance and Tax-Fraud Prevention*, Hearing Before the Subcomm. on Government Organization, Efficiency, and Fin. Management, House Comm. on Oversight and Government Reform (Apr. 19, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate, Blog, *What Is an Audit Anyway?* (Jan. 25, 2012), <http://www.taxpayeradvocate.irs.gov/Blog/Whats-an-Audit-Anyway>; National Taxpayer Advocate, Blog, *Are IRS Correspondence Audits Really Less Burdensome for Taxpayers?* (Feb. 6, 2012), <http://www.taxpayeradvocate.irs.gov/Blog/are-irs-correspondence-audits-really-less-burdensome-for-taxpayers>; National Taxpayer Advocate, Blog, *IRS Correspondence Examinations: Are They Really As Effective As the IRS Thinks?* (Mar. 13, 2012), <http://www.taxpayeradvocate.irs.gov/Blog/irs-correspondence-examinations-are-they-really-as-effective-as-the-irs-thinks>; National Taxpayer Advocate, Blog, *Virtual Face-To-Face Audits: A Prescription for Curing the IRS's Ailing Correspondence Examination Process* (Apr. 4, 2012), <http://www.taxpayeradvocate.irs.gov/Blog/virtual-face-to-face-audits>.

116 A TAS study found that the IRS had sufficient information to avoid charging math errors for incorrect dependent TINs 56 percent of the time. National Taxpayer Advocate 2011 Annual Report to Congress vol. 2 113, 120, 139. TAS recommended the IRS review the types of adjustments that have a high abatement rate to see if it could resolve more of the apparent mismatches without charging a math error. See *id.*; National Taxpayer Advocate 2011 Annual Report to Congress 74-92 (*Most Serious Problem: Expansion of Math Error Authority and Lack of Notice Clarity Create Unnecessary Burden and Jeopardize Taxpayer Rights*).

117 Ten percent of IRS mail is undeliverable. TIGTA, Ref. No. 2010-40-055, *Current Practices Are Preventing a Reduction in the Volume of Undelivered Mail 1* (May 14, 2010). TAS recommended the IRS create a unit to research current addresses before sending important notices. See National Taxpayer Advocate 2010 Annual Report to Congress 221-234 (*Most Serious Problem: The IRS Has Not Studied or Addressed the Impact of the Large Volume of Undelivered Mail on Taxpayers*).

118 A 2007 survey of EITC taxpayers subject to a correspondence exam indicated 26.5 percent did not know the notice they received was an audit notice and only about half knew what they needed to do to respond to the notice. National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 103-104.

119 Although its telephone customer service representatives (CSR) achieved an 88 percent level of service (LOS) in FY 2004, the LOS declined to 70 percent in FY 2011, and due to funding constraints, the IRS has reduced its LOS goal for FY 2012 to 61 percent. IRS, Joint Operations Center, *Snapshot Reports: Customer Account Services – CAS* (week ending Sept. 30, 2011); Wage and Investment, Business Performance Review 4 (Feb. 2012). In other words, in FY 2011, 30 percent of the calls did not get through, and if the IRS reaches its goal for FY 2012, nearly 40 percent will not get through. The average wait time on the correspondence exam lines was 9.5 minutes in FY 2011, not counting an additional 12 minutes or more if you tried to reach the examiner through the main IRS toll-free number. National Taxpayer Advocate, Blog, *IRS Correspondence Examinations: Are They Really As Effective As the IRS Thinks?* (Mar. 13, 2012).

- If the taxpayer reaches an IRS employee, the employee may not be able to resolve the inquiry.<sup>120</sup>
- If a taxpayer calls again, he or she is unlikely to reach the same examiner.<sup>121</sup>
- If the taxpayer writes to the IRS, the agency does not always respond timely.<sup>122</sup>
- When taxpayers can communicate with the IRS, it often abates the assessment.<sup>123</sup>
- When taxpayers do not communicate with the IRS, it often does not collect any assessed liability.<sup>124</sup>

The current correspondence examination procedures present many of the same communication issues. While all taxpayers may have problems communicating with the IRS, these challenges are more daunting for low income taxpayers who may be less likely to have a current address on file with the IRS and may have even greater difficulty navigating the IRS or understanding its computer-generated letters. Consider the following exam-related data.

- Forty-two percent of all correspondence exams in FY 2010 were closed without any personal contact.<sup>125</sup>
- Forty-six percent of all correspondence exams in FY 2011 (536,174 out of 1,173,069) covered the Earned Income Tax Credit.<sup>126</sup>
- Correspondence examinations involving the EITC produced a 30 percent response rate for FY 2010,<sup>127</sup> but face-to-face exams covering EITC resulted in an 85 percent response rate for FY 2007.<sup>128</sup>

120 According to one recent study, 62 percent of correspondence examination callers are repeat callers, and 13 percent called more than eight times. POP Team Recommendations, *Solutions to Improve Taxpayer Satisfaction in Correspondence Examination Briefing Document* (June 21, 2010).

121 Correspondence examination moved in 2008 to a universal call routing (UCR) system that directs incoming calls to the first available tax examiner. We note that legislation provides that “to the extent practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to handle a taxpayer’s matter until it is resolved.” The IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3705(b), 112 Stat. 685, 777 (1998). RRA 98 also required the IRS to include in all manually-generated correspondence the name, telephone number, and unique identifying number of the employee the taxpayer may contact regarding the correspondence. Pub. L. No. 105-206, § 3705(a), 112 Stat. 685, 777 (1998). The IRS avoids this requirement, however, by defining manually generated correspondence narrowly. See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 81-82.

122 Comparing the final week of FY 2004 with the final week of FY 2011, the backlog of taxpayer correspondence in the tax adjustments inventory jumped by 158 percent (from 357,151 to 920,768), and the percentage of correspondence classified as “over-age” increased by 309 percent (from 11.5 percent to 47.0 percent). Compare IRS, Joint Operations Center, *Weekly Enterprise Adjustments Inventory Report* (week ending Oct. 1, 2011) with IRS, Joint Operations Center, *Weekly Enterprise Adjustments Inventory Report* (week ending Sept. 25, 2004).

123 The IRS granted 83.3 percent of all AUR abatement requests in FY 2011. IRS, Enforcement Revenue Information System Summary Database (Dec. 2011).

124 From FY 2006 through FY 2011, the IRS collected less than ten percent of the Taxpayer Delinquent Account (TDA) dollars established through the ASFR process. National Taxpayer Advocate 2011 Annual Report to Congress 93-108.

125 Automated Information Management System (AIMS) from the CDW (Dec. 2011).

126 IRS Pub. 55B, Data Book, Table 9a (2011).

127 National Taxpayer Advocate 2011 Annual Report to Congress (Most Serious Problem: *The IRS Needs to Reevaluate Earned Income Tax Credit Measures and Take Steps to Improve Both Service and Compliance*) (IRS comments).

128 *Id.*

- Taxpayers who use representatives during an audit are nearly twice as likely to be found eligible for the EITC compared to those who are not represented.<sup>129</sup>
- Among EITC audit reconsideration cases where the examination was originally closed as “late response” or “no response,” about 43 percent had favorable outcomes from the audit reconsideration process — about the same as the favorable outcome rate for all taxpayers in the sample.<sup>130</sup>
- Thirty-eight percent of taxpayers who received no phone calls from the IRS were awarded EITC under audit reconsideration, but 67 percent of those who received three or more calls were awarded EITC.<sup>131</sup>
- Over 70 percent of EITC taxpayers who had been audited said they would prefer an examination method other than correspondence.<sup>132</sup>
- According to the IRS’s 2011 customer satisfaction surveys, 40 percent of taxpayers were dissatisfied with correspondence exams, but only 18 percent were dissatisfied with face-to-face exams.<sup>133</sup>

These data suggest that automated procedures are more likely to produce inaccurate over-assessments, particularly for taxpayers who have literacy challenges or lack representation. They may also diminish end-to-end accountability by IRS employees, generate rework, burden, and other hidden costs, and leave many taxpayers unsatisfied.

The National Taxpayer Advocate offered a number of recommendations to address these problems in the 2011 Annual Report,<sup>134</sup> including that the IRS establish a team to consider examination strategy from the taxpayer’s perspective. She also recommended that the IRS consider expanding its use of “virtual service delivery” — technology that allows taxpayers to meet with IRS employees by video conference.

Following publication of that report, she discussed the difficulties with the correspondence examination process in a series of blog postings, and issued a Taxpayer Advocate Directive

129 National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 96, 108-113.

130 National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, ii and 9-10 (*EITC Reconsideration Study*). When they had a favorable outcome, they retained about 96 percent of the EITC they originally claimed. *Id.*

131 National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, ii and 9-10 (*EITC Reconsideration Study*).

132 National Taxpayer Advocate 2007 Annual Report to Congress vol. 2 106-108.

133 ICF Macro, IRS, SB/SE, Field Examination Program Customer Satisfaction Survey, Annual National Report Closed Cases Apr. 2010–Mar. 2011; Pacific Consulting Group, IRS, Customer Satisfaction Survey, Correspondence Exam (CCE) SB/SE National Report, Covering January through March 2011, with Annual Results 5 (July 2011).

134 National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 63-90 (*An Analysis of the IRS Examination Strategy: Suggestions To Maximize Compliance, Improve Credibility, And Respect Taxpayer Rights*); National Taxpayer Advocate 2011 Annual Report to Congress 15-27 (*Introduction to Revenue Protection Issues*).



to formally elevate these concerns.<sup>135</sup> The IRS modified the TAD,<sup>136</sup> and declined to convene a team or expand VSD, but invited the National Taxpayer Advocate to discuss the problem at the IRS Enforcement Committee meeting. The National Taxpayer Advocate addressed the committee in April and continues to advocate for improvements to correspondence examination procedures.<sup>137</sup> The IRS has yet to convene a team to conduct a comprehensive of its examination program and address her concerns.

As described in more detail below, TAS is also collaborating with the IRS to study whether additional communications with EITC taxpayers generate significantly different audit results. In FY 2013, TAS will continue this study while working with the IRS to address the problems identified in the 2011 report.

#### F. TAS Will Continue Advocating for American Taxpayers Abroad Who Are Expressing Fear and Frustration about FBAR, FATCA and Other International Penalties<sup>138</sup>

U.S. taxpayers abroad who do not comply with complex information reporting requirements may be subject to financially devastating penalties that often are not commensurate with the tax liability at issue.<sup>139</sup> Most penalty provisions applicable to international taxpayers, including FATCA and FBAR, contain a reasonable cause exception and give the IRS broad authority to issue regulations and guidance.<sup>140</sup> The National Taxpayer Advocate remains concerned about the apparent lack of clear procedures and transparent published guidance in the Internal Revenue Bulletin (IRB) that describes and reaffirms the taxpayer-favorable procedures provided by IRM regarding the application of these penalties to “benign” U.S. taxpayers abroad.<sup>141</sup> Organizations representing U.S. taxpayers abroad, as well as

135 TAD 2012-3 (Jan. 12, 2012) (*Review IRS Priorities in the Examination Process to Protect Taxpayer Rights, Improve Taxpayer Service, and Further Compliance*), [http://www.irs.gov/pub/irs-utl/taxpayeradvocatedirective\\_2012-3.pdf](http://www.irs.gov/pub/irs-utl/taxpayeradvocatedirective_2012-3.pdf).

136 Memorandum for National Taxpayer Advocate from Deputy Commissioner for Services and Enforcement and Deputy Commissioner for Operations Support, *Taxpayer Advocate Directive 2012-3* (Jan. 27, 2012), [http://www.irs.gov/pub/irs-utl/irsresponse\\_taxpayeradvocatedirective\\_2012-3.pdf](http://www.irs.gov/pub/irs-utl/irsresponse_taxpayeradvocatedirective_2012-3.pdf). The IRS also challenged the National Taxpayer Advocate’s authority to elevate these issues using a TAD without the intervening step of a proposed TAD. *Id.* (“it is our view that the requirements under IRM 13.2.1.6.1.3 for issuance of the TAD without the intervening step of a proposed TAD have not been satisfied in this case.”). As discussed above, codifying the National Taxpayer Advocate’s authority to issue a TAD would allow her to be more effective in addressing the systemic problems that taxpayers are facing.

137 National Taxpayer Advocate, *Briefing for the Enforcement Committee* (Apr. 23, 2012).

138 For a list of international information return penalties see National Taxpayer Advocate 2011 Annual Report to Congress 133-34 (*Introduction to International Issues*). Among the most publicized are the penalties for failure to disclose foreign financial accounts (FBAR) and foreign financial assets (FATCA).

139 Penalties for failure to file information returns may range, for example, depending on willfulness, prompt remediation and other factors, from \$10,000 per violation to the greater of \$600,000 or 300 percent of the foreign account balance for certain willful failures that continue for extended periods. See, e.g., penalties imposed under 31 U.S.C. § 5321(a)(5) and IRC §§ 6038, 6038A, 6038B, 6038C, 6039F, 6046, 6046A, 6048. See also IRC §§ 6038D, 6662(b)(7) and 31 U.S.C. § 5321(b)(1). For a list of international information return penalties, see National Taxpayer Advocate 2011 Annual Report to Congress 133-34 (*Introduction to International Issues*). Among the most publicized are the penalties for failure to disclose foreign financial accounts (FBAR) and foreign financial assets (FATCA).

140 See, e.g., IRC §§ 6038D(g); 6038A(d)(3); 6038B(c)(2); 6039F(c)(2); 31 U.S.C. § 5321(a)(5)(B)(ii); (reasonable cause exception); IRC §§ 6038A(a); 6038B(a)(2); 6038D(h); 6039F(e) (authority to issue regulations).

141 Reasonable cause applies to most, but not all, of the penalties. See generally IRM 20.1.9.1, International Penalties - Overview; see also IRM 20.1.1, *Introduction and Penalty Relief*; IRM 4.26.16, *Report of Foreign Bank and Financial Accounts (FBAR)*.

individuals, continue to complain about being intimidated by excessive penalties that the IRS can apply to relatively “benign actors.”<sup>142</sup>

In the 2011 Annual Report to Congress, the National Taxpayer Advocate urged the IRS to reaffirm its longstanding policy of using penalties “to encourage voluntary compliance,”<sup>143</sup> and to reassure “benign” U.S. taxpayers abroad, who are trying to comply or return into compliance, that it would not always seek to apply the maximum penalties.<sup>144</sup> She also recommended giving “benign” taxpayers clear guidance about what to do if they have inadvertently failed to file FBARs or other international information returns and how they can return into compliance.

In early December of 2011, as the Annual Report to Congress was *en route* to the printer, the IRS posted a fact sheet on its website making clear that it would apply a “reasonable cause exception” when imposing penalties for non-willful failure to file an FBAR.<sup>145</sup> In late December, the IRS also issued temporary regulations implementing FATCA reporting requirements for individuals and released the final version of Form 8938, *Statement of Specified Foreign Financial Assets*.<sup>146</sup>

The National Taxpayer Advocate commends the IRS for releasing the fact sheet and establishing higher FATCA reporting thresholds for U.S. taxpayers abroad.<sup>147</sup> These developments are steps in the right direction.

However, she remains concerned that the fact sheet does not have the same level of authority as changes made to the IRM itself or items of guidance published in the Internal Revenue Bulletin — and the IRS itself would be the first to point out that taxpayers generally cannot rely on fact sheets and press releases. In addition, organizations representing U.S. taxpayers abroad and the press have voiced concerns about unintended consequences

142 See, e.g., Michael Cohn, *Expats Protest IRS Treatment of Citizens Overseas*, Accounting Today (Mar. 12, 2012), at <http://www.accountingtoday.com/news/Expats-Protest-IRS-Treatment-Citizens-Overseas-61998-1.html> (last visited Apr. 18, 2012); Robert W. Wood, *Despite FATCA, FBAR Penalties Still Under Fire*, Forbes (Mar. 12, 2012), at <http://www.forbes.com/sites/robertwood/2012/03/12/despite-fatca-fbar-penalties-still-under-fire/> (last visited Apr. 18, 2012). TAS also continues to receive complaints about FATCA and FBAR penalties through Systemic Advocacy Management System (SAMS). SAMS submissions involving international issues increased more than threefold from calendar year (CY) 2008 to CY 2011, with a spike of 48 submissions in CY 2011. There were 27 SAMS submissions in CY 2012 (through May 29, 2012).

143 See, e.g., H.R. Conf. Rep. No. 101-386 at 661 (1989) (“the IRS should develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance.”); the IRS’s 1998 Penalty Policy Statement acknowledged “the Service uses penalties to encourage voluntary compliance by ...helping taxpayers understand that compliant conduct is appropriate and that non-compliant conduct is not.” See Policy Statement P-1-18 (Aug. 20, 1998), *superseded by* Policy Statement 20-1 (June 29, 2004). For an in-depth analysis of the civil tax penalty regime, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, at 1 (*A Framework for Reforming the Penalty Regime*).

144 National Taxpayer Advocate 2011 Annual Report to Congress 191-205.

145 See IRS, *Information for U.S. Citizens or Dual Citizens Residing Outside the U.S.*, FS-2011-13 (Dec. 7, 2011). The “reasonable cause exception” is mandated by statute (see 31 U.S.C. § 5321(a)(5)(B)(ii)(II)). See also Kristen A. Parillo, *IRS to Minimize Penalties on Dual U.S.-Canadian Citizens Unaware of U.S. Tax Filing Obligations*, 2011 TNT 233-9 (Dec. 5, 2011); Marie Sapirie, *Reasonable Cause May Save Expats from Failure-to-File Penalties*, 2011 TNT 237-3 (Dec. 9, 2011).

146 See Temp. Reg. §§ 1.6038D-0T through 1.6038D-8T; IRS Form 8938, *Statement of Specified Foreign Financial Assets* and Form Instructions (Nov. 2011).

147 A taxpayer with a foreign tax home and who meets certain additional foreign presence tests must report specified foreign assets, the total value of which exceeds \$400,000 on the last day of the tax year, or more than \$600,000 at any time during the year, for married filing jointly (\$200,000 and \$300,000 respectively for filing statuses). Reporting thresholds for taxpayers living in the U.S are substantially lower. See Temp. Reg. § 1.6038D-2T; Instructions to Form 8938, *Statement of Specified Foreign Financial Assets* (Nov. 2011).

of new FATCA rules for foreign financial institutions,<sup>148</sup> which make it harder for U.S. taxpayers living abroad to open and maintain legitimate bank accounts overseas.<sup>149</sup>

In FY 2013, TAS will address these concerns and continue advocating to alleviate burden for U.S. taxpayers abroad by eliminating duplicate FBAR and FATCA filings and providing formal guidance on filing compliance for non-resident U.S. taxpayers.<sup>150</sup> We look forward to working with the IRS on future formal guidance for these taxpayers and will report to Congress on the results.<sup>151</sup>

Specifically, the National Taxpayer Advocate has recommended the IRS future guidance follow these general principles:

- *Achieving certainty for both the affected taxpayers and the IRS in the context of FBAR and information reporting compliance.* Certainty for the taxpayer means that the taxpayer knows what penalties (if any) apply to past noncompliance if he or she comes back into compliance, and that any such penalties will not be disproportionate given his or her particular facts and circumstances. Certainty for the IRS means the taxpayer is back in the tax system with his or her past noncompliance treated appropriately, and in such a way that it encourages (rather than discourages) future compliance.
- *Publishing a full and complete description of international compliance regimes in the Internal Revenue Bulletin.* Since 2009, the IRS has published more than 20 documents or statements regarding offshore voluntary disclosure and FBAR compliance, many of which have back-tracked from previous positions, cross-referenced cross-references in other documents, and left taxpayers and IRS employees confused about the IRS's

148 FATCA also applies to foreign financial institutions (FFIs) which are required to report to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. IRC §§ 1471-1474. On Feb. 8, 2012, the IRS issued proposed regulations under IRC §§ 1471-1474 requesting comments by April 30, 2012. IRS News Release, IR-2012-15 (Feb. 8, 2012).

149 See, e.g., American Citizens Abroad (ACA) Comments on the Proposed Treasury Regulations Concerning FATCA Dated February 8, 2012 (Apr. 4, 2012), at <http://www.aca.ch/acastatementapril2012s.pdf> (last visited Apr. 19, 2012); April Carvelli, Taxes Pushing U.S. Citizens to Renounce, Imperfect Parent (Apr. 17, 2012) (quoting Francisca N. Mordi, Vice President and Senior Tax Counsel at the American Bankers Association, who stated she received a number of calls from Americans in Europe complaining about banks closing their accounts. "They're going to drop Americans like hot potatoes," Mordi says. "The foreign banks are upset enough about the regulations that they're saying they just won't keep American customers, and it's giving (Americans living abroad) a lot of sleepless nights."), at <http://www.imperfectparent.com/topics/2012/04/17/taxes-pushing-u-s-citizens-to-renounce/> (last visited Apr. 19, 2012); James Fellows, *The FATCA Chronicles: Tales From China, Canada, and Estonia*, The Atlantic (Jan. 3, 2012), at <http://www.theatlantic.com/international/archive/2012/01/the-fatca-chronicles-tales-from-china-canada-and-estonia/250771/> (last visited Apr. 19, 2012); Judi Lembke, *Americans in Sweden Suffer U.S. Tax Crackdown*, The Local (Sweden's News in English) (Mar. 6, 2012), at <http://www.thelocal.se/39522/20120306/> (last visited Apr. 18, 2012).

150 FATCA requirements appear to overlap significantly with the disclosure requirements of the FBAR. See IRS, *Comparison of Form 8938 and FBAR requirements*, at <http://www.irs.gov/businesses/article/0,,id=255986,00.html> (last updated Mar. 26, 2012). Temporary regulations under IRC § 6038D eliminate duplicative reporting of assets on Form 8938 if the asset is reported or reflected on certain other timely-filed international information returns (e.g., Forms 3520, 3520A, 5471, 8621, 8865, or 8891), provided the Form 8938 indicates the filing of the form on which the asset is reported. See Temp. Reg. §§ 1.6038D-7T(a); IRS Form 8938, *Statement of Specified Foreign Financial Assets and Form Instructions* (Nov. 2011). See also *Information Reporting: FATCA Worsening Tension Surrounding FBAR, Form 8938 Reporting Abroad, Group Says*, BNA Daily Tax Report (Apr. 11, 2012).

151 In March 2012, the IRS sought TAS comments on proposed new procedures for U.S. taxpayers abroad who have recently become aware of their international information reporting obligations and now seek to come into compliance with the law. The National Taxpayer Advocate provided specific recommendations to the IRS. Email from the National Taxpayer Advocate to the Deputy Commissioner for Services and Enforcement, and Commissioner, Large Business and International Division (Mar. 9, 2012); TAS email to Assistant Deputy Commissioner for Services and Enforcement (May 18, 2012) (reiterating recommendations).

position. The IRS should publish a single, comprehensive document in the IRB that incorporates (not by reference, but in full) a full and complete approach to FBAR and information reporting compliance. Anything less will confuse taxpayers, lead to errors by IRS employees, and not achieve the certainty so desperately needed in this area.

- *Requesting comments from the public and tax practitioner community.* To ensure that the single, comprehensive document is thorough, clear, and complete, the IRS should provide public notice and ask for comment under the Administrative Procedure Act. We recommend the IRS also conduct a roundtable discussion with the tax practitioner community to hear practitioners' concerns and sound out ways to address them. Such transparency will improve compliance and increase confidence in the tax system.
- *Developing procedures tailored for different groups of noncompliant taxpayers.* Procedurally, the IRS should not employ a one-size-fits-all approach. Taxpayers who have not timely filed an FBAR and other information returns should not be herded into one approach developed for tax evaders and then be required to opt-out if they believe they do not have those characteristics. Such an approach may stigmatize "benign" actors and discourage future compliance. The National Taxpayer Advocate recommends establishing broad but clearly defined categories for these taxpayers, based on the level of non-compliance, each of which is described below. The amount of the penalty (or relief from penalty) would depend on the taxpayer's category, with a broad anti-abuse rule.<sup>152</sup> These categories include:

#### **Category 1. Full relief from FBAR and information reporting penalties.**

(a) The taxpayer has properly reported taxable income on the subject returns, but failed to file information returns such as FBAR. This taxpayer should just file the information returns for the related years and the IRS would not impose penalties.<sup>153</sup> This exception would apply to both resident and nonresident U.S. taxpayers.

(b) The taxpayer has not properly reported all taxable income, but the tax liability is less than or equal to a threshold amount. We encourage the IRS to adopt a threshold set forth in IRC § 6662(d) (i.e., the greater of ten percent of the tax required to be shown on the return for the taxable year or \$5,000 for individuals).<sup>154</sup> This exception should apply to both residents and nonresidents. These taxpayers should file amended returns, pay the tax due, interest, and in the absence of reasonable cause, accuracy-related penalties, but the IRS should not impose any FBAR or information reporting penalties.

152 The IRS can review submissions under categories described above, and if the taxpayer did not properly disclose all information and thus came in to the wrong category, full FBAR penalties will apply.

153 This is similar to the policy enunciated in the 2011 Offshore Voluntary Disclosure Initiative, FAQs 17 and 18, at <http://www.irs.gov/businesses/international/article/0,,id=235699,00.html> (last visited June 7, 2012).

154 Under FATCA, the period of limitation on assessment and collection of taxes increases when gross income in excess of \$5,000 attributable to an asset for which information is required to be reported under IRC § 6038D is omitted for the year. See IRC § 6501(e)(1)(A)(ii). In addition, if any portion of an underpayment is attributable to any undisclosed foreign financial asset understatement, the IRC § 6662 penalty increases from 20 percent to 40 percent of the portion. See IRC § 6662(j).

## Category 2. Taxpayers who have reasonable cause or acted non-willfully.<sup>155</sup>

(a) Nonresident U.S. taxpayers who do not qualify under Category 1, because they did not file tax returns and owe more in tax than the threshold amount in at least one year. This category would include the “accidental citizen.” These taxpayers have little or no contact or substantial physical presence in the United States (excluding vacations and short visits to friends or family), and thus may have been unaware of their filing requirements. These taxpayers should provide an explanation of their circumstances, file delinquent returns, pay tax due, interest, accuracy-related penalties, and Title 26 information reporting penalties. However, no FBAR penalty would be imposed.

(b) Individuals, whether resident or nonresident, who had more significant contact with the U.S. and thus should have known about their filing requirements, did not report all or part of their foreign income, and owe more in tax than the threshold amount in at least one year, yet the IRS could not prove the FBAR violations were willful. These taxpayers should file either original or amended returns, pay tax due, interest, accuracy-related penalties and Title 26 information reporting penalties. Depending on the circumstances and explanation, these taxpayers would be required to either pay no FBAR penalty under the reasonable cause exception or pay the non-willful FBAR penalty.

## Category 3. Taxpayers not included in category 1 or 2.

These taxpayers should file delinquent or amended returns, pay tax due, interest, accuracy-related penalties and a 27.5 percent offshore penalty.<sup>156</sup> In addition to working with the IRS on the formal guidance in the penalty area, TAS will advocate for the IRS to allow an extension for FATCA Form 8938 or relief from penalties during the first year of enforcement.<sup>157</sup> We will suggest that the IRS increase the threshold for FBAR reporting from

<sup>155</sup> The published guidance should define what constitutes “reasonable cause” for the purposes of FBAR and provide examples about the difference between willful and nonwillful violations, based on the taxpayer’s background, education level, cultural concerns, etc. In developing a broader “reasonable cause” standard to apply to FBAR violations, the *Ratzlaf* standard of “a voluntary intentional violation of a known legal duty” is a good starting point. See *Ratzlaf v. U.S.*, 510 U.S. 135(1994) (U.S. Supreme Court case discussing Bank Secrecy Act violations; however, not dealing with FBAR directly). The *Ratzlaf* analysis involves both the “knowledge of the reporting requirement” and a “specific intent,” *i.e.*, “a purpose to disobey the law.” *Ratzlaf*, 510 U.S. at 141 (internal citations omitted). See also *Cheek v. U.S.*, 498 U.S. 192 (1991) (holding that an airline pilot did not have the requisite “willfulness” for criminal tax evasion because he had a sincere belief that his income was not taxable; no matter how unreasonable that belief might be).

<sup>156</sup> See IR-2012-5 (Jan. 9, 2012), discussing the reopening of the Offshore Voluntary Disclosure Program (OVDP) for 2012, and in particular the rate of penalties imposed under the program as extended with respect to the highest aggregate balance in previously undisclosed foreign bank accounts/entities, or the value of previously undisclosed foreign assets, in each case during the eight full tax years prior to the disclosure (up from 25 percent in the 2011 program).

<sup>157</sup> Similar to the relief the IRS provided to Foreign Financial Institutions (FFIs) under FATCA by phasing in the FATCA requirements for FFIs in Notice 2011-53. For example, due diligence requirements for identifying new and pre-existing U.S. accounts (including certain high-risk accounts) will begin in 2013. Reporting requirements will begin in 2014. Organizations of U.S. citizens abroad request an extension for mandatory filing of the new Form 8938, *Statement of Specified Foreign Financial Assets* (commonly known as FATCA) for individual taxpayers. In the alternative, they request a relief from penalties during the first year of Form 8938 enforcement. National Taxpayer Advocate meeting with representatives of the Federation of American Women’s Clubs Overseas (FAWCO) and American Citizens Abroad (ACA) (Jan. 31, 2012).

\$10,000 at any time during the year to the levels contemplated in the FATCA regulations<sup>158</sup> by changing Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts* (commonly known as FBAR) instructions<sup>159</sup> or through changes to FinCEN regulations.<sup>160</sup>

### **G. TAS Will Continue to Advocate that the IRS Modify the Offshore Voluntary Disclosure Program so that People Who Made Honest Mistakes Can Correct them Without Fear of Excessive Penalties**

In the past few years, the IRS actively promoted the 2009 Offshore Voluntary Disclosure Program (OVDP) and the 2011 Offshore Voluntary Disclosure Initiative (OVDI).<sup>161</sup> These initiatives allowed people who failed to file a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), reporting foreign accounts and the income from those accounts to settle with the IRS by paying a single “offshore” penalty instead of several other penalties that the IRS might seek to apply, including severe civil and criminal penalties designed for willful violators. However, these initiatives were not promulgated through issuance of published guidance in the Internal Revenue Bulletin or even in the Internal Revenue Manual (IRM).<sup>162</sup> Instead, the IRS published and then often updated and revised the terms of these initiatives on its website.<sup>163</sup> In the 2011 Annual Report to Congress, the National Taxpayer Advocate discussed her concerns about the “bait and switch” approach the IRS took in administering the 2009 OVDP and recommended several actions to restore IRS’s credibility among taxpayers and practitioners and promote fair tax administration based on the generally accepted concepts of due process, transparency, and procedural fairness.<sup>164</sup>

Specifically, the IRS announced that “[U]nder no circumstances will a taxpayer be required to pay a penalty greater than what he would otherwise be liable for under existing statutes,”

158 A taxpayer with a foreign tax home and who meets certain additional foreign presence tests must report specified foreign assets, the total value of which exceeds \$400,000 on the last day of the tax year, or more than \$600,000 at any time during the year, for married filing jointly (\$200,000 and \$300,000 respectively for filing statuses). Reporting thresholds for taxpayers living in the U.S. are substantially lower - more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year for unmarried taxpayers and married filing separate returns, and more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year for married filing joint returns. See Temp. Reg. § 1.6038D-2T; Instructions to Form 8938, *Statement of Specified Foreign Financial Assets* (Nov. 2011).

159 Unlike other IRS form instructions, FBAR reporting instructions may carry the force of law. See 31 C.F.R. § 1010.350; *U.S. v. Clines*, 958 F.2d 578 (4th Cir. 1992), *cert. denied*, 505 U.S. 1205 (1992).

160 See generally 31 CFR Part 1010.

161 See, e.g., IRS, *Voluntary Disclosure: Questions and Answers*, <http://www.irs.gov/newsroom/article/0,,id=210027,00.html> (Feb. 9, 2011) (first posted May 6, 2009) (hereinafter 2009 OVDP); IRS, *2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers*, <http://www.irs.gov/businesses/international/article/0,,id=235699,00.html> (first posted Feb. 8, 2011) (hereinafter OVDI).

162 Cf. Rev. Proc. 2003-11, 2003-4 I.R.B. 311 (2003 Offshore Voluntary Compliance Initiative); IRM 4.26.16.4.6.4 (July 1, 2008) (Last Chance Compliance Initiative (LCCI)).

163 E.g., the 2009 Offshore Voluntary Disclosure Program Frequently Asked Questions (FAQs) were “updated” five times: on Jan. 8, 2010 - added Q&As 53-54; on Aug. 25, 2009 - added Q&A 52; on July 31, 2009 - modified A6, A21 and A22; on June 24, 2009 - modified A26 and added Q&A 31-51; on May 6, 2009 - posted Q&A 1-30, at <http://www.irs.gov/newsroom/article/0,,id=210027,00.html> (last visited Apr. 24, 2012). The 2011 OVDI FAQs were revised online eight times, last time on March 5, 2012 (while the program ended on Sept. 9, 2011), at <http://www.irs.gov/businesses/international/article/0,,id=235699,00.html> (last visited Apr. 24, 2012).

164 National Taxpayer Advocate 2011 Annual Report to Congress 206-272.

prompting those whose violations were not willful to enter the program.<sup>165</sup> On March 1, 2011, more than a year after the 2009 OVDP ended, the IRS issued a memo suggesting it would no longer consider whether a taxpayer would pay less under existing statutes.<sup>166</sup> Those with inadvertent violations could either agree to pay more than they should or “opt out.” Given the confusion surrounding what penalty would apply outside of the program, many agreed to the offshore penalty. Continuing concern that the IRS may apply excessive penalties for inadvertent violations has generated public outrage among those with foreign accounts, such as U.S. citizens living in Canada.

The National Taxpayer Advocate also issued a Taxpayer Advocate Directive (TAD) recommending that the IRS take steps to address her concerns.<sup>167</sup> The Small Business/Self-Employed and Large Business and International Divisions appealed the TAD to the Deputy Commissioner for Services and Enforcement, who modified it without providing a satisfactory explanation or rationale.<sup>168</sup> Following the Deputy Commissioner’s memo, the National Taxpayer Advocate elevated her concerns to the Commissioner of Internal Revenue for a formal response.<sup>169</sup> The Commissioner has not provided a formal written response.<sup>170</sup> However, the National Taxpayer Advocate has personally discussed her concerns and recommendations with the Commissioner.

TAS has also continued to assist taxpayers by issuing Taxpayer Assistance Orders (TAOs) when the IRS has failed to follow its public guidance with respect to the 2009 OVDP or 2011 OVDI.<sup>171</sup> In response to one such TAO, the SB/SE Commissioner recently challenged the National Taxpayer Advocate’s authority to issue a TAO that directed the IRS to follow its procedures, review its determination at a higher level, and reconsider facts that it seemed to have overlooked.<sup>172</sup>

165 OVDP FAQ #35.

166 Memorandum from Director, SB/SE Examination, and Director, International Individual Compliance, for all OVDI Examiners, *Use of Discretion on 2009 OVDP Cases* (Mar. 1, 2011).

167 See National Taxpayer Advocate 2011 Annual Report to Congress 242-51 (Taxpayer Advocate Directive 2011-1 (*Implement 2009 Offshore Voluntary Disclosure Program FAQ #35 and comply with the Freedom of Information Act*) (Aug. 16, 2011)).

168 See National Taxpayer Advocate 2011 Annual Report to Congress 252-72 (Memorandum for Deputy Commissioner for Services and Enforcement from Commissioner, LB&I and Commissioner, SB/SE, *Appeal of Taxpayer Advocate Directive 2011-1 (Implement 2009 Offshore Voluntary Disclosure Program FAQ #35 and comply with the Freedom of Information Act)* (Aug. 30, 2011); Memorandum for Deputy Commissioner for Services and Enforcement from National Taxpayer Advocate, *Appeal of Taxpayer Advocate Directive 2011-1 (Implement 2009 Offshore Voluntary Disclosure Program FAQ #35 and comply with the Freedom of Information Act)* (Sept. 22, 2011); Memorandum for National Taxpayer Advocate from Deputy Commissioner for Services and Enforcement, *Taxpayer Advocate Directive 2011-1*. The Deputy Commissioner agreed to release the March 1 memo to the public, but disagreed with the National Taxpayer Advocate’s other recommendations.

169 Memorandum for Commissioner of Internal Revenue from National Taxpayer Advocate, *Recommendations Regarding Taxpayer Advocate Directive 2011-1* (Sept. 26, 2011), available at [http://www.irs.gov/pub/irs-utl/recommendations\\_tad2011-1.pdf](http://www.irs.gov/pub/irs-utl/recommendations_tad2011-1.pdf).

170 For a more detailed discussion, see *Improve Tax Administration through Taxpayer Advocate Directives*, *supra*.

171 The National Taxpayer Advocate (or a Local Taxpayer Advocate) may assist a taxpayer by issuing a Taxpayer Assistance Order (TAO) to the IRS, if the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered. IRC § 7811.

172 Memorandum for Nina E. Olson, National Taxpayer Advocate, from Faris R. Fink, Commissioner, Small Business/Self-Employed Division, *Appeal of Taxpayer Assistance Order (TAO)* [taxpayer name redacted] (Mar. 22, 2012).

While the Deputy Commissioner may modify or rescind a TAO, the scope of what a TAO may direct is necessarily broad.<sup>173</sup> A TAO may order the IRS to “cease any action, take any action as permitted by law, or refrain from taking any action, with respect to the taxpayer” under enumerated chapters of the IRC dealing with collection or bankruptcy, or “any other provision of law which is specifically described by the National Taxpayer Advocate in such order.”<sup>174</sup> Accordingly, a properly constructed TAO can order the IRS to take “ANY” action.<sup>175</sup> However, the IRS may not always be willing and able to comply — and because of the TAO appeal process, the IRS retains the final decision-making authority.

Because the IRS retains the authority (and duty) to make substantive determinations, a TAO will only prompt the IRS to take actions that it is legally permitted to take based on its own determinations (not TAS’).<sup>176</sup> For example, a TAO could not actually cause the IRS to change a tax assessment unless the IRS determined the change was legally permissible based on its own factual and legal determinations. In this way, TAS avoids becoming a second Appeals function.

The SB/SE Commissioner argued that the National Taxpayer Advocate had no authority to issue the TAO (described above) because guidance posted to the IRS website indicated that if a taxpayer disagreed with the IRS’s determination, his or her only option was to “opt out” of the settlement initiative.<sup>177</sup> Thus, he reasoned, TAS could not issue a TAO requiring the IRS to reconsider its decision at a higher level or to consider facts that it appeared to have overlooked.

The National Taxpayer Advocate finds this reasoning flawed. Some IRS procedures allow taxpayers to appeal the determination to Appeals or to Tax Court, but none expressly authorize taxpayers to seek TAS assistance if they disagree. As the Treasury Regulations explain, a TAO is “not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures.”<sup>178</sup> In this case, the TAO is not seeking special relief outside of the established process. Instead, it seeks exactly what the regulations contemplate — a supplement to the existing procedures by having the IRS review at a higher level its preliminary determination under an established administrative procedure (OVDP). The fact that other administrative or judicial procedures might be available to the taxpayer in the future, *i.e.*, opting out, is of no consequence at this time. Based on the posture of the case, *i.e.*, a TAO seeking review at a higher level, the

173 IRC § 7811(b).

174 *Id.*; Treas. Reg. § 301.7811-1(c)(2). See also *Hylar v. Comm’r*, T.C. Memo. 2002-321.

175 Specifically, a TAO may state the National Taxpayer Advocate’s substantive recommendation and order the IRS to review, reconsider, or elevate its own determination in light of the National Taxpayer Advocate’s recommendation. Recently published regulations illustrated this point. See Treas. Reg. § 301.7811-1(c)(2) and (3).

176 See Treas. Reg. § 301.7811-1 (“A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures...”); IRM 13.1.20.3 (2007) (“A TAO only requires actions that are otherwise permitted by law, regulations, or other guidance. They may not be issued to determine the merits of a taxpayer’s liability or to overturn or circumvent an established process for administrative or judicial review of a taxpayer’s case.”).

177 For further discussion of this problem, see National Taxpayer Advocate 2011 Annual Report to Congress 206-72.

178 Treas. Reg. § 301.7811-1(b).



current administrative procedure (OVDP) is appropriate. If the taxpayer later opted out and the IRS conducted a full examination, TAS could issue a TAO at that time elevating consideration of that administrative procedure, the examination.

Accordingly, if the IRS could so restrict National Taxpayer Advocate's statutory authority to issue a TAO, it could prevent TAS from assisting taxpayers in any IRS process by simply issuing a statement on a website. The National Taxpayer Advocate strongly disagrees with the SB/SE Commissioner's interpretation of her statutory authority and will seek to address it in FY 2013, including acting in accordance with her office's understanding of the National Taxpayer Advocate's statutory authority.

In addition, the National Taxpayer Advocate is looking forward to meaningful TAS participation in developing procedures for the new Offshore Voluntary Disclosure Program the IRS announced on January 9, 2012.<sup>179</sup> TAS believes any such procedures should be published in the IRM or the IRB as formal guidance upon which taxpayers can rely.<sup>180</sup> As described above, the National Taxpayer Advocate has provided specific recommendations about the general principles of how the formal guidance should be drafted as well as how to treat different categories of taxpayers.<sup>181</sup> The amount of the penalty (or relief from penalty) would depend on the taxpayer's category, with a broad anti-abuse rule.<sup>182</sup>

In FY 2013, TAS will also continue advocating for taxpayers who were harmed by the IRS's refusal to consider whether a taxpayer would qualify for less penalties under existing statutes according to FAQ#35 of the 2009 OVDP.

179 IRS News Release, IR-2012-5 (Jan. 9, 2012). The IRS reopened the OVDP for an indefinite period. In the new program, which would be similar in terms to the 2011 OVDI, a penalty of 27.5 percent of the highest aggregate balance in foreign bank accounts or value of foreign assets during the eight full tax years prior to the disclosure would apply, which is up from 25 percent in the 2011 OVDI. The IRS will have five and 12.5 percent penalty brackets for eligible taxpayers. *Id.*

180 For more details, see *TAS Will Continue Advocating for American Taxpayers Abroad Expressing Fear and Frustration about FBAR, FATCA and Other International Penalties*, *supra*.

181 In March 2012, the IRS sought TAS comments on proposed new procedures for U.S. taxpayers abroad who have recently become aware of their international information reporting obligations and now seek to come into compliance with the law. The National Taxpayer Advocate provided specific recommendations to the IRS. Email from the National Taxpayer Advocate to the Deputy Commissioner for Services and Enforcement, and Commissioner, LB&I Division (Mar. 9, 2012); TAS email to Assistant Deputy Commissioner for Services and Enforcement (May 18, 2012) (reiterating recommendations).

182 The IRS can review submissions under categories described above, and if the taxpayer did not properly disclosed all information and thus came in to the wrong category, full FBAR penalties will apply. For a detailed discussion of proposed principles and categories of taxpayers, see *TAS Will Continue Advocating for American Taxpayers Abroad Expressing Fear and Frustration about FBAR, FATCA and Other International Penalties*, *supra*.

## H. TAS Will Work with the IRS on Improving Taxpayer Service Options for International Taxpayers and Alleviating Their Compliance Challenges

In recent years, the IRS has devoted substantial resources to improving international tax administration and responding to the challenges of globalization.<sup>183</sup> However, this strategy continues to focus on stepped-up enforcement without adequate IRS-wide coordination or a corresponding increase in service.<sup>184</sup> The National Taxpayer Advocate is concerned that the lack of adequate taxpayer service may undermine international enforcement initiatives and discourage future compliance by taxpayers dealing with the complexity and procedural burden of international tax rules. The inability of international taxpayers to access IRS services from abroad contributes to growing confusion and frustration about U.S. tax administration.

The National Taxpayer Advocate's 2011 Annual Report to Congress addressed the challenges facing millions of international taxpayers in understanding and meeting their federal tax obligations. These taxpayers include U.S. individuals working, living, or doing business abroad; U.S. entities doing business abroad; foreign individuals working or doing business in the United States; and foreign entities doing business in the United States.<sup>185</sup> The report identified six Most Serious Problems related to international issues, emphasized the increasing need for IRS services for these taxpayers, and proposed innovative and cost-efficient solutions for many of the challenges.<sup>186</sup>

The National Taxpayer Advocate commends the IRS for continued research on the filing behaviors, needs, and preferences of individual taxpayers living abroad, including

183 In FY 2011, the IRS requested an enforcement account increase of \$293.4 million, an increase of about \$121 million allocated to international compliance and only about \$1.7 million to international taxpayer services. IRS, *The Budget in Brief*, FY 2011. Similarly, in FY 2010, the IRS requested an increase of \$332.2 million "for investments in strong compliance programs, including a robust portfolio of international enforcement initiatives." Of the \$332.2 million increase, about \$128 million was requested for international compliance, of which \$3.1 million was for international service. IRS, *The Budget in Brief*, FY 2010. It appears that the IRS requests for enforcement spending for FYs 2010 and 2011 were funded in full (for FY 2011 - on FY 2010 levels). See Pub. L. No. 111-117 (Dec. 16, 2009); Pub. L. No. 112-10 (Apr. 15, 2011).

184 The FY 2013 IRS Budget Proposal requests additional 700 full time equivalents (FTEs) and over \$110.7 million in additional funding for offshore compliance programs, and additional 223 FTEs and \$38.9 million in additional funding for international compliance programs (in addition to funding international investigations, international examinations, and international collections that are not listed as separate lines in the enforcement budget). IRS, *The Budget in Brief*, FY 2013. The FY 2010 budget included an additional 742 full time equivalents and \$104.11 million to support international enforcement, and only 42 FTE and \$3.12 million to support international taxpayer service. The FY 2011 budget did not fund the requested additional 30 FTE and \$1.78 million for international taxpayer service. IRS response to TAS research request (Nov. 22, 2011).

185 See National Taxpayer Advocate 2011 Annual Report to Congress 129-272. These challenges include the overwhelming complexity of international tax law; the complexity, level of detail, and sometimes the duplication present in international reporting requirements; penalties that may be disproportionately steep; the IRS's focus on stepped-up enforcement without adequate coordination and a corresponding increase in service; and most importantly, the lack of targeted taxpayer service for each group of international taxpayers.

186 See Most Serious Problems (MSPs): MSP 7, *Foreign Taxpayers Face Challenges in Fulfilling U.S. Tax Obligations*, at 137-150; MSP 8, *Individual Taxpayers Working, Living, or Doing Business Abroad Require Expanded Service Targeting Their Specific Needs and Preferences*, at 151-165; MSP 9, *Small Businesses Involved in International Economic Activity Need Targeted IRS Assistance*, at 166-175; MSP 10, *Globalization Requires Greater Internal IRS Coordination of International Taxpayer Service*, at 176-190; MSP 11, *U.S. Taxpayers Abroad Face Challenges in Understanding How the IRS Will Apply Penalties to Taxpayers who are Reasonably Trying to Comply or Return into Compliance*, at 171-205; and MSP 12, *The IRS's Offshore Voluntary Disclosure Program "Bait and Switch" May Undermine Trust for the IRS and Future Compliance Programs*, at 206-272.

the excellent survey W&I Research & Analysis concluded in 2012.<sup>187</sup> In March 2012, the National Taxpayer Advocate met with the Commissioner, Large Business & International Division, and Deputy LB&I Commissioner International, and discussed recommendations to improve taxpayer service for international taxpayers. The Commissioner, LB&I, and the Deputy LB&I Commissioner (International) agreed to create a team including LB&I, TAS, and W&I representatives to review the findings of the recent W&I survey and develop international taxpayer service initiatives based on that information.

In FY 2013, the National Taxpayer Advocate will continue to hold periodic meetings with LB&I leadership and collaborate on key international taxpayer service initiatives. These initiatives include Virtual Service Delivery, seminars and Tax Forums (for tax practitioners) via webcasts, piloting secure e-service applications, such as SMS text and email communications, and access to the MyIRS account application, and establishing Local Taxpayer Advocate positions overseas. Because TAS is the only IRS function exclusively devoted to assisting taxpayers in resolving their issues with the IRS, the international taxpayers' right to TAS assistance is constrained by the lack of Taxpayer Advocate offices overseas.<sup>188</sup> Therefore, to meet the international taxpayers' need for TAS assistance, the National Taxpayer Advocate recommends that the IRS establish International LTA offices by funding nine positions at the IRS's four tax attaché offices abroad in FY 2014.<sup>189</sup>

In addition, in FY 2012 TAS is participating in the IRS Virtual Services Delivery pilot.<sup>190</sup> TAS proposes expanding VSD, web-based videoconferencing overseas, and secure email messaging as a cost-effective way to serve U.S. taxpayers abroad and foreign taxpayers who have a U.S. filing requirement.<sup>191</sup>

187 See W&I Research & Analysis, *WIRA Portfolio of International Taxpayer Research: Filing Behaviors, Service Preferences, and Use of Service*, Presentation for the Services Committee Meeting (Jan. 2012). IRS, Wage & Investment Division (W&I) Research & Analysis, *Understanding the International Taxpayer Experience: Service Awareness, Use, Preferences, and Filing Behaviors, Research Study Report* (Feb. 2010); *W&I International Taxpayer Topline Report 5*, Pacific Consulting Group (Dec. 2009); W&I, Research & Analysis, *Focus Group Testing Report: Customer Service Needs of U.S. Taxpayers Living Abroad*, Project # 3-08-07-S-017T (Dec. 2008).

188 TAS is statutorily required to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have problems in dealing with the IRS and, to the extent possible, propose changes in the administrative practices of the IRS to mitigate the problems identified. IRC § 7803(c)(2)(A)(i) – (iii). While TAS has at least one office in all 50 states, the District of Columbia, and Puerto Rico, the international taxpayers' right to TAS assistance is constrained by the lack of Local Taxpayer Advocate (LTA) offices overseas. See generally IRC §§ 7803; 7811. See also IRS Pub. 1, *Your Rights as a Taxpayer*. The law requires at least one LTA be made available for each state. International taxpayers cannot access TAS toll-free from abroad.

189 The IRS posts are in Frankfurt, Germany; London, United Kingdom; Paris, France; and Beijing, China. See IRM 4.30.3 (Oct. 1, 2010), *Overseas Posts*. TAS estimates the total annual cost for nine full-time equivalents (FTEs) including four LTAs, four support staff, and one W&I Accounts Management (indirect) support position at \$2.8 million. Cf. The IRS FY 2013 budget proposal which requests an additional 700 FTEs and over \$110.7 million in additional funding for the offshore compliance program, and an additional 223 FTEs and \$38.9 million in additional funding for international compliance programs (in addition to funding international investigations, international examinations, and international collections that are not listed as separate lines in the enforcement budget). IRS, *The Budget in Brief*, FY 2013.

190 VSD uses video communications technology to (1) provide a service delivery alternative outside of IRS facilities; (2) enhance utilization of IRS resources; (3) smooth staffing and workload imbalances; and (4) increase access to face-to-face service where it is currently unavailable. *Virtual Service Delivery - Delivering Taxpayer Services Using Video Communications Technology, IRS Commissioner Briefing* (Sept. 26, 2011). In the pilot, the Jacksonville, Florida TAS office is connected to a Taxpayer Assistance Center in Tampa, Florida, where TAS does not have its own office, to provide service to taxpayers using VSD. Low Income Taxpayer Clinics (LITCs) in Washington State and Tennessee are also testing VSD to connect their clients with Appeals offices in the Fresno and Memphis campuses to conduct Collection Due Process hearings and Offer in Compromise appeals, respectively.

191 For additional information on TAS' participation in the VSD pilot and secure email and text messaging capabilities, see *TAS Is Participating in the IRS's Virtual Services Delivery (VSD) Pilot* and *TASIS Will Deliver Significant Benefits to Taxpayers, Employees, and Partners in Tax Administration*, *infra*.

## I. Collection Update: IRS “Fresh Start” Initiatives – Significant Changes Have Been Made, but Further Improvements Are Needed

Over the past 18 months, the IRS significantly changed a number of its Collection policies:

- In FY 2011, the IRS modified the criteria used in filing Notices of Federal Tax Lien (NFTL), enabling taxpayers to request and obtain lien withdrawals from the IRS, expanding the criteria under which small businesses pay past due taxes in installments, and formalizing the “streamlined” offer in compromise (OIC) procedures used by the IRS’s centralized OIC operation.<sup>192</sup>
- In FY 2012, the IRS announced expanded criteria for individual taxpayers to qualify for “streamlined” installment agreements, and provided an opportunity for a six-month grace period on failure-to-pay penalties for certain wage earners and self-employed taxpayers.<sup>193</sup>
- In May 2012, the IRS expanded its “Fresh Start” initiative further by offering more flexible terms to the OIC program in an effort to allow some of the most financially distressed taxpayers to clear up their tax problems.<sup>194</sup> The new procedural changes focus on the financial analysis used to determine which taxpayers qualify for an OIC, and provide much more flexibility to certain Collection employees in determining the acceptability of offers. The revised financial analysis guidance provides allowances for repayment of student loans, payments on tax debts to state and local governments, and expanded allowances for payments on unsecured debt.

As of March 2012, perhaps because of the changes in the lien-filing criteria, the IRS has filed 41 percent fewer NFTLs than in the same period in FY 2011, including a corresponding 61 percent reduction in liens filed by the Automated Collection System (ACS).<sup>195</sup> We also note that the IRS has accepted 26 percent more offers in compromise than in March 2011, and that the actual number of accepted offers has doubled when compared to the first two quarters of FY 2010.<sup>196</sup> As of March 2012, the offer acceptance rate of 38 percent is the highest we have seen in many years.<sup>197</sup> Through March 2012, thousands of financially struggling taxpayers have successfully obtained lien withdrawals to help regain their financial viability.<sup>198</sup> These results indicate that components of the “Fresh Start” initiative have produced significant changes in IRS collection actions, which in turn have had positive, meaningful results for many taxpayers.

192 IRS, IR-2011-20, IRS Announces New Effort to Help Struggling Taxpayers Get a Fresh Start; Major Changes Made to Lien Process (Feb. 24, 2011).

193 IRS, IR-2012-31, IRS Offers New Penalty Relief and Expanded Installment Agreements to Taxpayers under Expanded Fresh Start Initiative (Mar. 7, 2012).

194 IRS, IR-2012-53, IRS Announces More Flexible Offer-in-Compromise Terms to Help a Greater Number of Struggling Taxpayers Make a Fresh Start (May 21, 2012).

195 IRS, Collection Activity Report NO-5000-25, *Liens Report* (Apr. 2012).

196 IRS, Collection Activity Report NO-5000-108, *Monthly Report of Offer in Compromise Activity* (Apr. 2012).

197 *Id.*

198 IRS, Collection Activity Report NO-5000-25, *Liens Report* (Apr. 2012). Through March 2012, the IRS issued 5,781 lien withdrawals.

### 1. Small Business Taxpayers Have Received Little Relief Through the “Fresh Start” Initiative

On the other hand, the expanded criteria for “express” installment agreements have not succeeded in providing more small business taxpayers with access to this very important payment option. In fact, notwithstanding today’s difficult economic climate, through March 2012, the number of business taxpayers receiving agreements has actually declined by approximately one percent, and the number of “streamlined” business agreements has declined by four percent.<sup>199</sup> Business-related installment agreements continue to account for only four percent of all agreements issued through March 2012.<sup>200</sup> The IRS needs to identify the barriers that deny small business taxpayers the opportunity to resolve tax problems through installment agreements and offers in compromise.

### 2. Further Improvements Are Needed in the Criteria Used by the IRS to File Notices of Federal Tax Liens

While the overall reduction in lien filings may be a positive change for many taxpayers, the National Taxpayer Advocate continues to believe that lien filings should be based on the facts and circumstances of each case, not simply determined by an arbitrary dollar figure representing unpaid liabilities. In the 2011 Annual Report to Congress, we shared with the IRS the results of a TAS research study that shows how indiscriminate lien filings may actually have a negative influence on revenue collection and future filing compliance.<sup>201</sup> TAS will continue to work with the IRS to develop more meaningful, fair, and realistic criteria for determining the need for NFTLs in collection cases.<sup>202</sup> Further, although the new procedures for lien withdrawals have been helpful and productive, TAS continues to receive reports that some IRS employees are not aware of the new policies, and tax professionals have found them difficult to locate on the IRS website. The IRS has recently updated the IRM material reflecting the new procedures. When published, the revised IRMs should alleviate these concerns, although we believe the IRS should be more proactive in its internal training and external outreach efforts to communicate these important changes.

### 3. Prudent Use of IRS Collection Resources Will Be a Key Factor in Realizing the Benefits of the “Fresh Start” Changes

In March 2012, the Treasury Inspector General for Tax Administration reported that inadequate staffing and increased demand in the OIC program have created inventory backlogs and processing delays that could affect a significant number of taxpayers.<sup>203</sup> The National Taxpayer Advocate shares these concerns, and has questioned the IRS about the very small

199 IRS, Collection Activity Report NO-5000-6, *Installment Agreement Cumulative Report* (Apr. 2012).

200 *Id.*

201 National Taxpayer Advocate, 2011 Annual Report to Congress vol. 2, 91-112 (Research Study, *Estimating the Impact of Liens on Taxpayer Compliance Behavior and Income*).

202 For a more detailed discussion of the work TAS is doing in this area, see *Estimating the Impact of Liens on Taxpayer Compliance Behavior*, *infra*.

203 TIGTA, Ref No. 2012-30-033, *Increasing Requests for Offers in Compromise Have Created Inventory Backlogs and Delayed Responses to Taxpayers*, (March 30, 2012).

number of Collection employees authorized to work OIC cases, especially in light of the high volumes of cases routinely assigned to the Collection Queue inventory, and those systemically reported as uncollectible prior to any personal contact with the IRS.<sup>204</sup> Over the past two years, the IRS has made very significant improvements to the OIC program. It would be equally unfortunate for tax administration if the benefits of these changes were under-realized due to internal limits on the Collection resources available to handle OIC applications.

The National Taxpayer Advocate is concerned that the IRS is not using Collection resources in a manner that properly emphasizes personal service, problem resolution, and the long-term compliance of taxpayers with delinquencies. TIGTA's observation regarding the inadequate number of Collection employees available to work OIC cases is an excellent example of this concern. The offer in compromise is an important Collection tool, and is especially effective in resolving difficult collection cases. Yet very few Revenue Officers are empowered to recommend acceptance of a taxpayer's offer to resolve outstanding tax debts, which would also provide a reasonable path for the taxpayer to return to compliance.

Collection cases involving complex issues, *e.g.*, determining the viability of a small business struggling with employment tax debt or accurately evaluating the reasonable collection potential in a case involving a self-employed taxpayer with complicated financial circumstances, can often benefit from the timely intervention of a local Revenue Officer. In FY 2013, TAS plans to work closely with the SB/SE division to explore opportunities to identify and recapture the value of the Revenue Officer occupation in effective, compliance-oriented collection work. In particular, TAS and SB/SE will develop a study that will explore and quantify the potential benefits of using revenue officers to selectively and timely address complex collection cases in a service-oriented manner. Possible study methodologies include the analysis of historic data, and the development of a "field experiment" using alternative collection methods on comparable groups of collection cases. Our principal goal is to determine if the selective application of this holistic collection approach is more productive than the highly automated, enforcement-oriented methods upon which the IRS increasingly relies. This will entail measuring a variety of outcomes, such as revenue protected and subsequent taxpayer compliance, in addition to the direct cost per dollar collected.

#### **4. The IRS Needs to Reevaluate and Adjust the Imbalanced Focus of the Collection Field Operation**

Collection's use of the field-based Revenue Officer position appears to be reverting to an over-emphasis on technically complex enforcement actions. This approach does not balance the service-related needs of taxpayers, as well as the effectiveness of Collection

204 IRS, Collection Activity Reports NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Apr. 2012). As of March 2012, approximately 3.6 million Taxpayer Delinquent Accounts (TDAs), involving over one million taxpayers and \$59.3 billion in delinquent revenue were assigned to the Collection Queue. Approximately 33 percent of these accounts have been assigned to the Queue for 16 months or longer. Additionally, approximately \$3 billion of the Queue inventory was systemically reported as uncollectible during the first six months of FY 2012. A more flexible approach to using collection payment alternatives, such as the offer in compromise, should assist the IRS in resolving more of these accounts, and consequently collecting more of these debts.

treatments on long-term taxpayer compliance, with the impact of the powerful enforcement tools available to Revenue Officers.

For example, TAS has recently been involved in a number of cases involving IRS recommendations to the Department of Justice to initiate judicial foreclosure actions on taxpayers' homes. Usually, these cases have involved old tax debts that had been assigned to the Collection Queue or reported as uncollectible for several years, but were reassigned to the Collection Field operation shortly before the expiration of the collection statute. The National Taxpayer Advocate is very concerned that although the foreclosure actions in these cases would have created severe economic hardship for the taxpayers, IRS procedures for recommending these actions do not provide for adequate consideration of the potential harm for the taxpayers or other affected parties.<sup>205</sup> While the end result of a judicial foreclosure is essentially the same as that of an administrative seizure of a taxpayer's primary residence, IRS procedures for the suit to foreclose recommendations do not provide similar consideration of the taxpayer's circumstances as do the procedures for administrative seizure.<sup>206</sup> In FY 2013, TAS will work with the IRS to develop procedures in this area that adequately protect taxpayer rights.

With the focus on liens and collection payment options, the National Taxpayer Advocate acknowledges the efforts of the IRS to address collection issues that are highly significant to taxpayers struggling to resolve delinquent tax debts. These issues have been repeatedly discussed in past Annual Reports to Congress, and significant portions of the "Fresh Start" initiatives reflect recommendations by the National Taxpayer Advocate.<sup>207</sup> Additionally, TAS has worked extensively with the IRS on the development of the "Fresh Start" implementation guidance. In the upcoming year, the National Taxpayer Advocate will look closely at the policy and procedural changes implemented within the "Fresh Start" initiative and analyze their impact on taxpayers serviced by the Collection operations. TAS will carefully analyze IRS program data related to the new policies, as well as resources allocated to support the "Fresh Start" efforts, and recommend meaningful actions the IRS can take to realize maximum benefits from this important initiative.

205 See IRM 5.17.4.8, *Foreclosure of Federal Tax Lien*, for more information regarding judicial foreclosure actions recommended by the IRS.

206 See IRM 5.10.1, *Pre-Seizure Considerations*, for detailed information regarding the actions required of Revenue Officers prior to initiating a seizure action. This IRM section includes a reference to IRS Policy Statement P-5-34, which states, "Collection to be enforced through seizure and sale of assets of a taxpayer only after thorough consideration of all factors and alternative collection methods."

207 National Taxpayer Advocate 2010 Annual Report to Congress vol. 2, 39-70 (*An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission*); National Taxpayer Advocate 2010 Annual Report to Congress 302-310 (Most Serious Problem: *The IRS Has Been Slow to Address the Adverse Impact of its Lien Filing Policies on Taxpayers and Future Tax Compliance*) National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*).

## J. Coordinating Tax Issues Involving Classes of Taxpayers with Government Oversight Agencies Besides the IRS

In recent years, TAS has assumed responsibility for assisting groups of taxpayers who have been harmed by one person or entity. Typically, federal, state, or local government officials bring these taxpayer classes to the attention of the National Taxpayer Advocate. TAS not only ensures that the IRS has adequate processes in place to address the taxpayers' problems but also accepts many of these taxpayers' cases into its inventory and informs the taxpayers about the availability of assistance from Low Income Taxpayer Clinics.<sup>208</sup>

### 1. TAS Assists Taxpayers Impacted by Receivership of the Deutch Law Firm

On August 23, 2010, the State of California filed suit against the law firm Roni Deutch, a professional tax corporation, and Roni Lynn Deutch individually (the defendants), alleging they swindled thousands of dollars from taxpayers who had collection problems with the IRS. The complaint alleged that the defendants engaged in a scheme to cheat taxpayers, including senior citizens and the disabled, who could not afford to pay their tax debts by enticing them to hire the defendants to assist in negotiating a resolution of their debts with the IRS.<sup>209</sup> On May 20, 2011, Roni Deutch surrendered her law license.<sup>210</sup> The court appointed a receiver to wind down the firm's affairs. The receiver and the attorney general's office provided TAS with a list of 929 taxpayers identified as having "critical needs" and a second list of 3,994 impacted taxpayers, and asked the National Taxpayer Advocate to provide the firm's clients with information about TAS and work with the IRS to resolve their problems.

TAS sent the taxpayers letters with information on how to get their collection issues worked in the IRS and provided IRS and Low Income Taxpayer Clinic phone assistance numbers. TAS and LITCs contacted taxpayers who appeared to have current IRS levies, established special internal processes for working these cases, and negotiated with the IRS to refrain from any automated collection activity through September 30, 2011. Additionally, the IRS agreed to refrain from returning or rejecting any offers in compromise the taxpayers submitted and instead work with them to try to perfect the offers or arrive at another resolution.

208 See *generally* IRC § 7526. The LITC program serves individuals whose income is below a certain level and require assistance with the IRS. LITCs are independent from the IRS and most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or for a nominal fee. IRC § 7526 authorizes the IRS to award matching grants of up to \$100,000 per year to qualifying clinics that represent low income taxpayers involved in controversies with the IRS, or that provide education and outreach on the rights and responsibilities of U.S. taxpayers who speak English as a second language.

209 Complaint filed in *The People of the State of California v. Roni Deutch, a Tax Corporation and Roni Lynn Deutch, an individual*, Docket No. 34-2010-00085933 (Sup. Ct. Cal.), available at [http://ag.ca.gov/cms\\_attachments/press/pdfs/n1978\\_complaint.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1978_complaint.pdf).

210 The State Bar of California website, available at <http://members.calbar.ca.gov/fal/Member/Detail/152429>.



Through April 30, 2012, TAS has received 356 inquiries from the former Roni Deutch clients, all of which resulted in new TAS cases. TAS provided some form of relief in 52 percent of the 313 cases closed so far.<sup>211</sup>

## 2. TAS Assists Taxpayers Allegedly Victimized by Mo' Money Taxes

On March 14, 2012, the Illinois Attorney General's office sued Mo' Money Taxes, a tax preparation service and lender based in Memphis, Tennessee.<sup>212</sup> The suit accuses the company of filing unauthorized federal income tax returns and charging undisclosed and exorbitant fees for tax preparation services. The Attorney General alleged the returns were riddled with errors and the company failed to provide some customers with their promised refund checks. The Attorney General's office contacted the National Taxpayer Advocate and TAS worked with the office to:

- Provide information to alleged victims on seeking assistance from the IRS;
- Ensure the IRS was aware that taxpayers would need assistance; and
- Coordinate actions such as holds on collection activity on the taxpayers' accounts.

The IRS's guidance for handling return preparer complaint issues applies in assisting those who had unauthorized returns filed as described in the suit. It calls for the taxpayer to submit, depending on the situation, a Form 14157, *Complaint: Tax Return Preparer*, or Form 14157-A, *Tax Return Preparer Affidavit*, to the IRS for assistance.<sup>213</sup> Taxpayers victimized by a return preparer may be able to use the services of an LITC.<sup>214</sup> TAS also issued guidance to its Case Advocates on recognizing refund theft by preparers and advocating for the taxpayers.<sup>215</sup> The National Taxpayer Advocate also directed her employees to issue Taxpayer Assistance Orders immediately when the IRS does not have procedures to address corrections to these taxpayer accounts.<sup>216</sup>

To date, TAS has received 76 inquires related to Mo' Money issues, all of which resulted in new TAS cases. TAS provided some form of relief in 56.6 percent of the 56 cases closed.<sup>217</sup>

211 Data obtained from TAMIS (Apr. 30, 2012).

212 Illinois Attorney General, Madigan Sues National Tax Preparer Mo' Money, Lawsuit Highlights Need to Crack Down on High Costs, Fees of Refund Anticipation Loans (Mar. 14, 2012), available at: [http://illinoisattorneygeneral.gov/pressroom/2012\\_03/20120314.html](http://illinoisattorneygeneral.gov/pressroom/2012_03/20120314.html).

213 SERP Alert 12A0238 (Apr. 10, 2012).

214 LITCs may provide professional representation on federal tax issues to individuals whose income is below a certain level. Some LITCs can provide information about taxpayer rights and responsibilities for individuals who speak English as a second language. LITCs must provide services for free or a small fee. See IRC § 7526.

215 See TAS Interim Guidance Memorandum TAS-13-0212-008, *Interim Guidance on Advocating for Taxpayers When a Return Preparer Appears to Have Committed Fraud* (Feb. 7, 2012), available at <http://www.irs.gov/pub/foia/ig/tas/tas-13-0212-008.pdf>.

216 See TAS Interim Guidance Memorandum TAS-13-0512-017, *Interim guidance for Preparing Taxpayer Assistance Orders (TAOs) Involving Return Preparer Fraud* (May 23, 2012), available at: <http://www.irs.gov/pub/foia/ig/tas/tas-13-0512-017.pdf>.

217 Data obtained from TAMIS (June 17, 2012).

### 3. TAS Assists Former Customers of TaxMasters

On March 18, 2012, TaxMasters, Inc., filed for bankruptcy subsequent to a lawsuit by the Attorney General of Texas. The U.S. Bankruptcy Court appointed a Chapter 7 trustee to wind down the firm's affairs. Concerned about the well-being of thousands of TaxMasters customers who were left without representation, the Texas Attorney General's Office contacted the TAS in late April 2012.

TAS has been working with the trustee and the Deputy Attorney General to help these customers resolve their outstanding tax issues. TAS is in the process of developing communications to customers and worked with the IRS to develop procedures for handling their cases.

### 4. Federal Emergency Management Agency (FEMA) Disaster-Related Assistance Overpayments

The Federal Emergency Management Agency (FEMA) made overpayments of assistance for disasters that occurred between August 28, 2005, and December 31, 2010, and some taxpayers were obligated to repay the excess distributions. For some cases in which the overpayments were the result of FEMA error and did not involve fraud, the presentation of a false claim or misrepresentation, and in which collection of the debt would be against equity and good conscience, FEMA was authorized to waive the debts pursuant to the Disaster Assistance Recoupment Fairness Act of 2011.<sup>218</sup> FEMA notified approximately 89,000 taxpayers that they might be eligible for a waiver. However, this waiver would expose taxpayers to possible tax liability on cancellation of debt income.<sup>219</sup> On March 9, 2012, IRS Chief Counsel advised FEMA that the waivers would not result in cancellation of debt income. The determination was based on the IRS's general welfare exception pursuant to which "discharge of indebtedness does not result in taxable income when the repayment would cause economic hardship and the discharge was granted for the promotion of the general welfare."<sup>220</sup>

Unfortunately, most of the taxpayers who might be eligible for a waiver of their debt to FEMA have not applied for it. Therefore, these taxpayers' IRS refunds will be subject to offset under the Treasury Offset Program.<sup>221</sup> If FEMA is still authorized to grant the

218 Disaster Assistance Recoupment Fairness Act of 2011 (DARFA), Pub. L. No. 112-74 § 565(b)(2), 125 Stat. 786, 982 (2011).

219 A taxpayer whose debt is canceled must generally include the amount canceled in his or her income when filing a tax return, while a creditor that cancels a debt is generally required to report that amount to the IRS on Form 1099-C, *Cancellation of Debt*. IRC §§ 61(a)(12), 6050P(a). The National Taxpayer Advocate has long identified cancellation of debt and attendant reporting requirements as serious problems faced by taxpayers (National Taxpayer Advocate 2010 Annual Report to Congress 149-159; National Taxpayer Advocate 2007 Annual Report to Congress 13-34; National Taxpayer Advocate 2006 Annual Report to Congress 13), and has recommended legislation to modify creditors' reporting obligations (National Taxpayer Advocate 2010 Annual Report to Congress 383-386) and to simplify the tax treatment of cancellation of debt income (National Taxpayer Advocate 2007 Annual Report to Congress 391).

220 See *Debt Waived by FEMA Isn't Taxable*, Chief Counsel Say, Tax Notes Today (June 4, 2012), available at 2012 TNT 107-94. TAS is working with IRS Chief Counsel and FEMA to determine whether compromises of FEMA debt in 2011 would be subject to a similar exception.

221 IRC § 6402(d) generally requires the IRS to reduce the amount of taxpayers' refunds by the amount of debt owed to other federal agencies.

waivers that would allow these taxpayers to recoup their offset refunds, TAS will provide the proper information and assistance to any who come to TAS for help.<sup>222</sup>

### 5. Discrimination Class Action Settlements Against the USDA (Pigford I, Pigford II, Keepseagle and Cobell)

In the *Pigford v. Glickman* case (*Pigford I*), African American farmers alleged that the United States Department of Agriculture discriminated against them from 1983 to 1997. The acts of discrimination occurred when African American farmers were unfairly denied federal loans and other federal assistance to start and maintain farms. Upon settlement of the case, claimants could choose between two tracks for settlement payments. Most chose the track that entitled them to receive a one-time award of \$50,000 and up to an additional \$12,500 estimated tax payment made on their behalf to cover taxes resulting from the settlement income. In addition to the monetary award, claimants were entitled to debt relief.

In the *Pigford I* settlement, claimants encountered multiple issues when attempting to file tax returns showing receipt of settlement payments and when claiming the estimated tax payments that were part of those settlements. Outreach and education to the claimants regarding the tax consequences of the settlement were inadequate. Further, the USDA did not effectively issue tax payments to the IRS or timely issue Forms 1099 to the claimants.

Many potential claimants missed the application deadline for a settlement payment in *Pigford I*. To address this issue, Congress enacted The Claims Resolution Act of 2010 on December 8, 2010.<sup>223</sup> The 2010 Act enables African American farmers who did not receive their portion of the original settlement to file claims and appropriates \$1.15 billion for the eligible farmers (*Pigford II*).<sup>224</sup> The bill also includes a settlement of the \$3.4 billion *Cobell v. Salazar* trust fund lawsuit brought forth by American Indian tribes against the United States government for mismanaging royalty payments for natural resources on tribal land. Finally, in *Keepseagle v. Vilsack*, a separate case not involving congressional action, Native American farmers and ranchers settled a class action against the USDA alleging that the agency discriminated against Native Americans in its farm loan and farm loan servicing programs.<sup>225</sup>

TAS has taken a proactive role in minimizing the burden faced by claimants from all of the settlement classes. TAS has worked with the Class Monitor<sup>226</sup> and attorneys for the *Pigford I* claimants since 2004 and in December 2006 TAS helped coordinate a streamlined

222 If the taxpayer responds to an offset notice and demonstrates, by Oct. 1, 2012, that he or she never received notification of the waiver program, a waiver may still be available. FEMA's authority to issue waivers pursuant to DARFA after Oct. 2012, however, may depend on agency appropriations for the 2013 fiscal year.

223 Pub. L. No. 111-291 § 201, 124 Stat. 3064, 3070 (2010).

224 *Id.*

225 USDA Press Release, *Agriculture Secretary Vilsack and Attorney General Holder Announce Settlement Agreement with Native American Farmers Who Claim to Have Faced Discrimination by USDA in Past Decades* (Oct. 19, 2010).

226 The Class Monitor reports to the court and to the Secretary of Department of Agriculture on the implementation of the settlement as provided in the Consent Decree.

process to get all payments applied so affected taxpayers could file timely. TAS worked closely with the Class Monitor and Class Counsel to ensure that all parties understand tax consequences and reporting obligations. TAS also contacted and met with the class counsels for the various other settlements.

In FY 2013, TAS will continue to elevate emerging issues that need special handling to identify ways to reduce taxpayer burden and protect taxpayer rights.

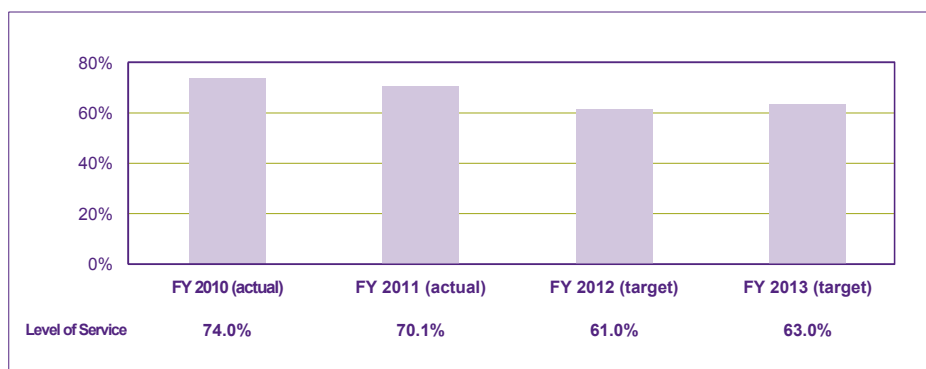
### III. Filing Season Review

#### A. Filing Season Effects of Reduced Funding for Taxpayer Service

TAS identified inadequate IRS funding to serve taxpayers and collect taxes as the Most Serious Problem (MSP) in the 2011 Annual Report to Congress.<sup>227</sup> Data from the recent (2012) filing season show IRS taxpayer service continues to erode in several areas.

The likelihood of taxpayers reaching an IRS telephone representative (*i.e.*, level of service) is declining. A basic definition of level of service is the percentage of calls that reached IRS telephone assistors among all calls attempting to do so. Due to budget constraints, the IRS projected its level of service in fiscal year 2012 would fall significantly below FY 2011 levels.

**FIGURE III.1, LEVEL OF SERVICE FOR IRS TELEPHONE CUSTOMER ACCOUNT SERVICES TELEPHONE OPERATIONS, FYS 2010 - 2013<sup>228</sup>**

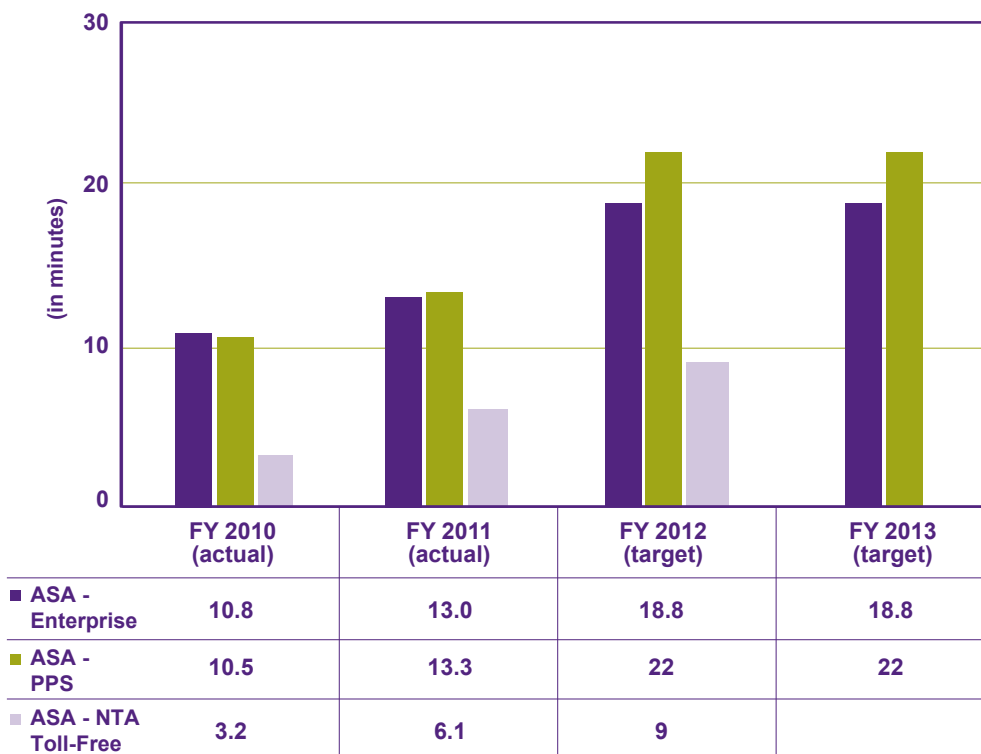


A lower level of service is the result of callers finding they cannot get through or hanging up due to a prolonged wait time. The IRS measures wait time as the Average Speed of Answer (ASA). In FY 2012, the ASA got worse for all IRS telephone applications, its Practitioner Priority Service (PPS), and even for the NTA Toll-Free line, a referral line staffed by Wage & Investment employees to screen and refer inquiries to TAS.

227 National Taxpayer Advocate 2011 Annual Report to Congress 3.

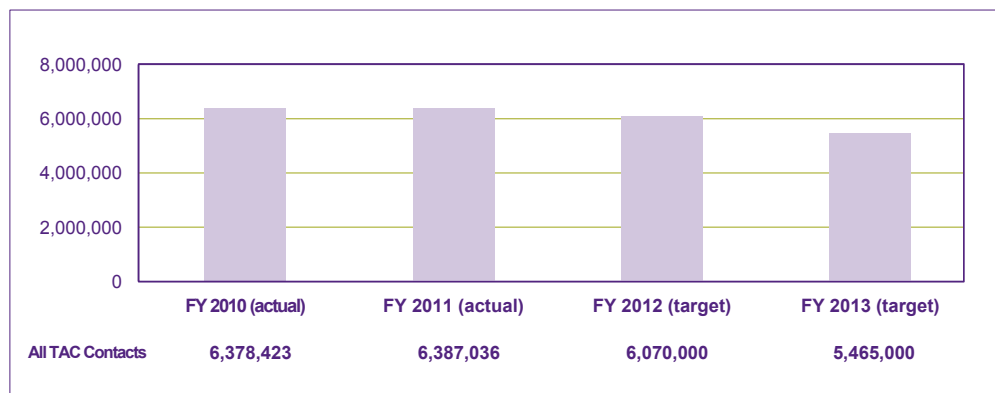
228 W&I Business Performance Review, *Customer Service Representative Level of Service* 20 (Feb. 15, 2012).

**FIGURE III.2, AVERAGE SPEED OF ANSWER (ASA) FOR IRS CUSTOMER ACCOUNT SERVICES TELEPHONE OPERATIONS IN MINUTES, FY 2010 – 2013<sup>229</sup>**



The IRS projects that face-to-face contacts in Taxpayer Assistance Centers will also decline. Data on total TAC contacts (historical and targets) appear below.

**FIGURE III.3, TAXPAYER ASSISTANCE CENTER CONTACTS, FY 2010 THROUGH 2013<sup>230</sup>**



229 W&I Business Performance Review 20 (Feb. 15, 2012). W&I does not make ASA targets for NTA Toll-Free. The ASA listed for NTA Toll-Free in the FY 2012 column is the actual ASA for the first six months of FY 2012. The actual ASA data for NTA Toll-Free is from an IRS response to a TAS inquiry (Apr. 10, 2012).

230 W&I Business Performance Review 16 (Feb. 15, 2012).

IRS reductions to field assistance staff are the cause of the reduced TAC contacts. In the 2012 filing season:

- TACs were not open to support Earned Income Tax Credit Saturdays;<sup>231</sup>
- Three TAC offices closed;
- Compared to June 2011, seven offices have no current staffing, one office now has only one employee; and
- Six additional offices now have only two employees.<sup>232</sup>

TACs with one or two employees are subject to unexpected closures due to employee absence, and to extended wait times due to higher-than-projected customer traffic. When offices are understaffed, some core tax administration services are out of reach for taxpayers. For example, as shown in the picture below, when certain employees are not available, the IRS refuses to accept cash payment — *i.e.*, the IRS turns away money!

**FIGURE III.4, THE OKLAHOMA CITY TAC OFFICE DID NOT ACCEPT CASH PAYMENTS ON MAY 30, 2012 WHEN CERTAIN EMPLOYEES WERE NOT AVAILABLE**

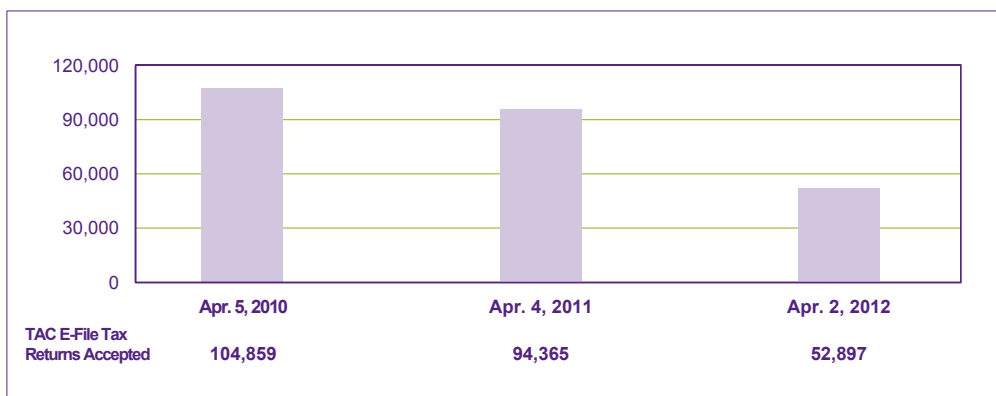


231 The IRS and its coalition partners use Earned Income Tax Credit Super Saturday events to increase awareness and participation in the EITC by eligible workers. For example, in 2009 the IRS opened over 250 TAC offices from 9 a.m. to 2 p.m. on Saturday March 21, 2009 to support this initiative. See IRS News Release IR-2009-25, *IRS Partners Mark Super Saturday March 21 to Help Taxpayers*.

232 W&I Business Performance Review 5 (Feb. 15, 2012).

TACs reduced the number of days in which they offered tax return preparation, and no longer set appointments for this service.<sup>233</sup> This nearly halved the number of e-filed tax returns prepared and accepted in TAC offices compared to just two years ago, even though the target population for these services (the poor and the elderly) is growing. In 2010, over 46 million individuals in the U.S. were below the poverty level (compared to about 38 million in 2005), and over 39 million were over the age of 65 (compared to under 35 million in 2005).<sup>234</sup>

**FIGURE III.5, TAC E-FILED TAX RETURNS ACCEPTED DURING THE FILING SEASON THROUGH THE DATE LISTED, 2010 – 2012<sup>235</sup>**



To its credit, the IRS has taken steps to expand or maintain TAC services in some communities. During the 2012 filing season, a videoconferencing pilot program allowed taxpayers to interact “virtually” with an IRS assistor in another office, giving them access to most TAC services.<sup>236</sup> Ten sites have videoconferencing workstations for taxpayer use, and 19 TAC offices provide staff to interact with taxpayers. IRS assistors may physically staff the office at least some of the time, and virtual service supplements the employees on site. Based on the results, the IRS will continue (and possibly expand) use of this service in communities with no TAC staffing.<sup>237</sup>

In another example of reduced service, the IRS’s Stakeholder Partnerships, Education, and Communication (SPEC) unit shifted employees and resources from outreach and financial education to focus on its volunteer return preparation program.<sup>238</sup> However, as shown below, the number of returns prepared by the volunteers is still declining, even as the population eligible for this assistance continues to grow.

233 SERP alert 12A0095 (Jan. 27, 2012). See also *Contact My Local IRS Office* available at <http://www.irs.gov/localcontacts/index.html> (last visited Feb. 23, 2012).

234 U.S. Census Bureau’s 2010 and 2005 American Community Survey S1701, *Poverty Status in the Last 12 Months*.

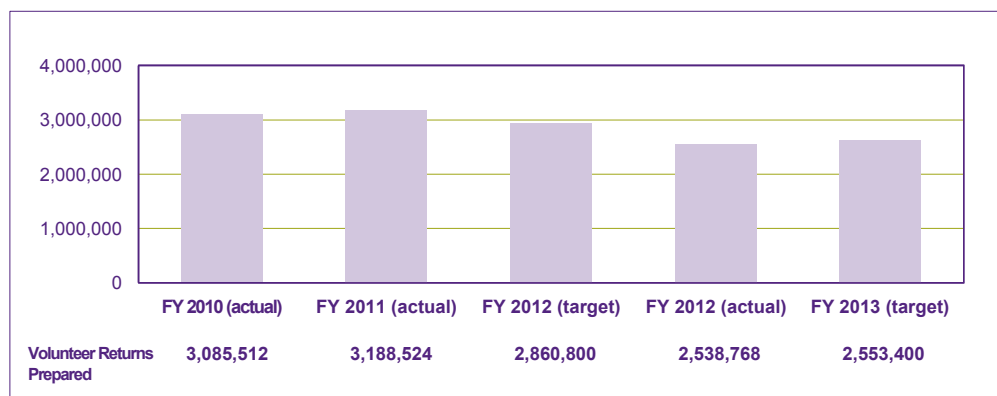
235 Field Assistance E-file reports (Apr. 3, 2012).

236 W&I Offline newsletter 10 (Oct. 2011).

237 For additional information on TAS’s participation in this pilot, see *TAS Is Participating in the IRS’s Virtual Services Delivery (VSD) Pilot*, *infra*.

238 W&I Business Performance Review 6 (Feb. 15, 2012).



**FIGURE III.6, VOLUNTEER RETURN PREPARATION PROGRAM RETURNS PREPARED, FY 2010 - 2013<sup>239</sup>**

### B. Refunds for Early Filers Delayed Due to Fraud Detection Programming Errors and Transmission Problems with Modernized E-file

Generally, the IRS issued refunds more quickly this filing season due to its successful implementation of the Customer Account Data Engine 2 (CADE 2).<sup>240</sup> However, two problems that arose early delayed about 12.5 million refunds.<sup>241</sup> These types of delays tend to acutely affect low income taxpayers, who often file early to receive their refunds as soon as possible, and whose refunds are often substantial (relative to their incomes) due to refundable credits.

The first problem affected about six million returns filed between January 17 and January 26, 5.5 million of which claimed refunds.<sup>242</sup> The IRS's refund fraud filters delayed many legitimate returns along with potentially fraudulent ones, which meant the IRS held up about 80 percent of all individual returns filed between January 17 and 25, rather than the expected 12 percent.<sup>243</sup> Pre-filing season testing failed to identify the problem. The IRS fixed it by the end of January, but issued the affected refunds one week late.

The other problem involved transmitting data from returns filed electronically under the Modernized e-File (MeF) system between January 17 and February 7.<sup>244</sup> MeF data did not transmit correctly to other return processing systems, delaying approximately 7.8 million

239 W&I Business Performance Review 19 (May 18, 2012). The FY 2012 actual data only includes volunteer returns prepared through March 31, 2012.

240 CADE 2 is a new relational database the IRS uses to process tax returns on a daily rather than weekly basis. Generally, unless refunds are delayed by revenue protection filters, CADE 2 allows the IRS to issue direct deposit refunds four business days after processing occurs and posts a tax return to the taxpayer's account. Paper checks take an additional two business days. For more information about the CADE 2 project, see the ITDashboard for CADE 2 at <http://www.itdashboard.gov/investment?buscid=506> (last visited Apr. 4, 2012).

241 Government Accountability Office, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 9-10 (Mar. 20, 2012).

242 GAO, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 9 (Mar. 20, 2012).

243 *Id.*

244 Modernized e-File (MeF) is a system for electronic filing of returns first used by the IRS in 2010. Improvements over the old legacy system include faster acknowledgements of accepted returns, clearer explanations of why returns are rejected, and the ability to receive supporting documentation electronically.

returns (seven million of which claimed a refund).<sup>245</sup> The IRS had to verify manually the data to process the affected returns, which held up some until as late as February 18. To minimize the number of returns affected, the IRS asked companies transmitting returns to switch to the older legacy e-file system until the IRS solved the problem.<sup>246</sup> That option may not be available if the problem recurs in the next filing season, since the IRS plans to retire the legacy system in October 2012.<sup>247</sup>

In the 2013 filing season, in addition to participating in the IRS's Filing Season Readiness initiative, TAS will remind and encourage our Local Taxpayer Advocates and Case Advocates to identify these types of problems through our Systemic Advocacy Management System (SAMS) so TAS can work immediately with the IRS to fix them.

### C. Adoption Credit Filing and Examination Procedures Placed Unnecessary Burdens on Taxpayers

The Patient Protection and Affordable Care Act increased the maximum adoption credit from \$12,150 to \$13,170 in 2010 and \$13,360 in 2011 (due to inflation adjustments) and made it fully refundable in the last two years.<sup>248</sup> The credit is complex with different eligibility rules for domestic, foreign, and special needs adoptions. In all three categories, taxpayers claiming the credit can no longer file returns electronically because the IRS requires paper documentation on Form 8839, *Qualified Adoption Expenses*.

The IRS scrutinizes these returns because the credit is large and, in the 2010 and 2011 tax years, is refundable. As it does in audits of other refundable credits, the IRS holds the adoption credit portion of the refund until it determines whether the taxpayer is eligible for the credit.<sup>249</sup> The average correspondence examination of the adoption credit takes 74 days.<sup>250</sup> During the 2012 filing season through April 19, 2012, the IRS received 33,538 adoption credit claims and selected 20,589 (61 percent) for examination; of the claims files, 17,895 (53 percent) had missing, invalid, or insufficient documentation.<sup>251</sup>

TAS identified the following concerns stemming from the IRS's administration of the credit:

245 GAO, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 10 (Mar. 20, 2012).

246 *Id.*

247 *Id.* at 5.

248 Pub. L. No. 111-148, § 10,909, 124 Stat. 119, 1021 (2010) (amending IRC § 23 and redesignating it as IRC § 36C). Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 101(b)(1), 124 Stat. 3296, 3298 (2010), the adoption credit becomes nonrefundable for tax years beginning after December 31, 2011, and reverts back to being IRC § 23.

249 IRM 21.5.10.4.1.2 (Mar. 16, 2011).

250 GAO, GAO-12-98, *Adoption Tax Credit – IRS Can Reduce Audits and Refund Delays* 10-11, available at <http://www.gao.gov/new.items/d1298.pdf> (Oct. 2011).

251 IRS Production Report, *Adoption Credit Compliance Filters Report through Cycle 2012-17*.

- Auditors asked taxpayers to provide documentation before reviewing the information the taxpayers included with their original returns, so taxpayers who already submitted documentation had to send it twice;
- The IRS did not inform taxpayers how long it would take to audit their returns and when they could expect a refund;
- Examiners were not knowledgeable about the expanded adoption credit under the Patient Protection and Affordable Care Act and how to handle the credit claimed for special needs children;
- When the IRS selected returns for both wage/withholding verification and adoption credit examination, the IRS failed to promptly release the portion of the refund attributable to verified withholding; and
- The hold on the adoption credit portion of the refund caused financial burden for some taxpayers.

During the first three weeks of the 2012 filing season, 95 percent of the returns claiming the refundable adoption credit tripped the filters that select those claims for examination, with the most common reason being “no documentation attached to the return.”<sup>252</sup> This is similar to the 99+ percent rate found during the first three weeks of the 2011 filing season (with the same top reason).<sup>253</sup>

As noted earlier, the adoption credit requires up-front substantiation attached to the tax return, in the form of an adoption order or decree and, in the case of a special needs child, a copy of the state’s determination of special needs.<sup>254</sup> In FY 2013, TAS will encourage the IRS to allow e-filing of adoption credit returns that include substantiation in an electronic format. Electronic filing will give IRS examiners immediate access to the documentation, eliminating requests for information that taxpayers have already submitted, and allow the IRS to identify problematic returns more easily. E-filing software will also require taxpayers to attach documentation electronically prior to transmission of the return, reducing the number of returns filed with no supporting documentation (and reducing the burden placed on taxpayers and the IRS by unproductive examinations).<sup>255</sup>

#### D. CADE 2 Implementation – Unintended Consequences

CADE 2 allows the IRS to issue notices earlier than previously possible. Generally, this will benefit taxpayers (*e.g.*, the IRS will notify taxpayers of a balance due sooner, resulting in

252 IRS, FY 2012 *IRS Adoption Credit Enforcement Report* (June 13, 2012).

253 IRS, FY 2011 *IRS Adoption Credit Enforcement Report* (Mar. 25, 2011).

254 Notice 2010-66, *Refundable Adoption Credit*, (Oct. 18, 2010) available at [http://www.irs.gov/irb/2010-42\\_IRB/ar09.html](http://www.irs.gov/irb/2010-42_IRB/ar09.html) (last visited May 30, 2012).

255 A GAO audit of adoption credit examinations completed in 2011 found the IRS disallowed all or part of the credit in only 17 percent of the examinations, compared to an 86 percent assessment rate for other examinations. GAO, GAO-12-98, *Congressional Requesters – Adoption Tax Credit – IRS Can Reduce Audits and Refund Delays*, 10 available at <http://www.gao.gov/new.items/d1298.pdf> (Oct. 2011).

lower penalty and interest charges if paid promptly). However, the IRS will also mail some notices of tax owed on unpaid balance due returns before the official assessment date.

If taxpayers do not receive a subsequent notice in the 60 days on or after the date of assessment, the IRS may not have satisfied the “notice and demand” requirement of IRC § 6303.<sup>256</sup> Under the normal balance due notice process, the IRS will mail a subsequent notice that will satisfy the notice and demand requirement, but various IRS procedures that suppress notices will lead to a few taxpayers not receiving notice and demand. Because of the small number of taxpayers expected to be affected, the IRS chose during CADE 2 development and implementation not to alter the date of assessment or the mailing date of the first notice so that it meets the notice and demand requirements of IRC § 6303.

In FY 2013, when we receive collection cases involving tax returns processed under CADE 2, TAS will identify how often the notice and demand issue under IRC § 6303 arises, and whether this practice results in problems for taxpayers.

## **E. CADE 2 Implementation Did Not Impede Offset Bypass Refunds to Relieve Hardship**

Taxpayers facing economic hardship who discover the IRS has offset their expected refund to pay an IRS debt from another tax period may ask TAS to reverse the offset and issue a refund to relieve their hardship.<sup>257</sup> If TAS confirms that the offset will create hardship, TAS advocates for relief to bypass the offset.<sup>258</sup> IRS policy requires TAS to take this action before the assessment date.<sup>259</sup>

CADE 2 did not accelerate the assessment date or offset credit transfer date, only the refund payment date. Therefore, TAS and the IRS still have adequate time to validate hardship and build the case for bypassing the offset to tax debts. TAS was proactive in identifying this as a potential issue and queried the programmers and policy analyst in March 2011 to verify that the transition to CADE 2 would not narrow the window where TAS can advocate for relief. In FY 2013, TAS will analyze its success in providing relief in these cases to determine if taxpayers would benefit from a longer period to bypass the debt.

256 IRC § 6303 provides that within 60 days after assessment the IRS “give notice to each person liable for the unpaid tax, stating the amount and demand thereof.” Treas. Reg. § 301.6303-1(a) provides, however, that failure to give notice and demand within 60 days does not invalidate the notice.

257 Generally, TAS works all timely telephonic requests for offset bypass refund relief; both IRS and TAS employees work written requests. When TAS or the IRS makes an economic hardship determination, the Local Taxpayer Advocate or IRS official uses their discretion whether to provide relief by authorizing a refund.

258 IRC § 6402(a) states the IRS “may” credit an overpayment against a liability owed by the same taxpayer for another internal revenue tax or tax period. That language permits the IRS to bypass the offset at its discretion.

259 IRM 21.4.6.5.12.1, *Offset Bypass Refund (OBR)* (Apr. 29, 2011).

## F. Taxpayer Assistance Centers Rejected Returns Filed by Practitioners

Taxpayer Assistance Centers began the filing season with a new policy of not accepting paper returns from tax preparers (except those with attached payments).<sup>260</sup> TACs directed the preparers or their agents to mail the returns themselves or file them electronically. The IRS did not consult with the tax preparer community, TAS, or its own Return Preparer Office (RPO) before announcing this new policy.

When TACs refused to accept returns, they provided the preparers information on becoming an IRS e-file provider and making payments with the Electronic Federal Tax Payment System (EFTPS). The IRS intended this policy change to boost the e-file rate for preparers and reduce the work in the TACs to adjust for lower staffing, but the change was overly broad, and had the potential to harm taxpayers. The new policy covered many returns that are not eligible for electronic filing:

- Amended returns;
- Prior year returns;
- Returns that require paper documentation not eligible for electronic filing (*e.g.*, adoption tax credit); and
- Returns with attached forms or schedules not supported by electronic filing.

Refusing to accept these returns at TACs does nothing to promote e-filing by preparers. Refusing to accept returns or claims for refund close to the refund statute expiration date (RSED) could harm the taxpayer by increasing the risk that the return would be filed after the RSED, when the taxpayer would be ineligible for a refund.

The new policy covers all preparers, including those filing ten or fewer returns with the TAC, yet the Internal Revenue Code does not require tax preparers who complete ten or fewer returns to participate in electronic filing.<sup>261</sup> Until the IRS campuses do a better job of recording the postmark date on multiple tax returns filed in a single package, from the preparer's perspective, it may make sense to file paper returns at a nearby TAC. The cost may be significantly less than mailing each return by certified mail.

TAS also pointed out that accepting tax returns and payments is a core function of tax administration and contributes to voluntary compliance. The IRS initially responded to TAS's concerns by drafting a Frequently Asked Questions (FAQ) document for its Field Assistance managers.<sup>262</sup> However, instead of creating clear exceptions to the new policy, it gave TAC managers discretion to accept returns on a case-by-case basis when it was in the best interest of the IRS or when failing to do so would create a taxpayer hardship. This approach lacked clarity and could have led to unequal treatment of preparers and taxpayers

260 Field Assistance Return Acceptance Policy Script (Jan. 20, 2012).

261 IRC § 6011(e)(3).

262 Draft Return Acceptance Policy FAQ for Managers (Feb. 6, 2012).

in different TAC offices. TAS advocated for a clear list of exceptions to the policy based on the concerns TAS elevated.

The second revision to the policy finally took a modified version of this approach.<sup>263</sup> The policy includes a clear list of exceptions where TACs will accept paper returns from preparers:

- Extension forms;
- Prior year returns;
- Imminent RSED returns; and
- Routine returns that the preparer has traveled a significant distance or waited a long time to file.

In FY 2013, TAS will continue to advocate that the IRS's return acceptance policy minimize burden to preparers and protect taxpayers from possible harm. TAS also will encourage the IRS to seek comments from the tax preparation community, the Return Preparer Office, and TAS before changing the policy again.

## **G. IRS ITIN Policies and Procedures Leave Hundreds of Thousands of Taxpayers Unable to Meet Their Filing Obligations**

### **1. The IRS Issues ITINs to Allow Taxpayers Without Social Security Numbers to Meet Their Federal Tax Filing Obligations**

Any individual who has a tax return filing obligation but is not eligible to obtain a Social Security number (SSN) must apply to the IRS for an Individual Taxpayer Identification Number (ITIN).<sup>264</sup> Since December 17, 2003, the IRS has required ITIN applicants with a filing requirement to attach a valid federal income tax return, unless they qualify for an enumerated exception.<sup>265</sup> In 2007, the IRS began permitting electronic filing for returns with a mismatch between the ITIN used on the return and the SSN appearing on Forms W-2.<sup>266</sup> The IRS recognized that many ITIN owners earn wages reported by employers under SSNs of other taxpayers, and did not want to keep these taxpayers from e-filing.

### **2. Since 2003, TAS Has Advocated for Changes in IRS ITIN Processes and Procedures That Continue to Strain Limited IRS Resources and Unduly Burden Taxpayers**

The National Taxpayer Advocate addressed problems with the processing of ITIN applications or associated tax returns in the 2003, 2004, 2008, 2009, and 2010 Annual Reports to

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263 IRM 21.3.4.8 (Mar. 2, 2012).

264 IRC § 6109; Treas. Reg. § 301.6109-1(d)(3).

265 See IRS News Release IR-2003-140, *IRS Announces Revisions to ITIN Applications* (Dec. 17, 2003). See also IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)* (Jan. 2012).

266 IRS, Individual Taxpayer Identification Number (ITIN) Reminders for Tax Professionals, at <http://www.irs.gov/individuals/article/0,,id=120580,00.html>. See also IRS Publication 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)*10 (Jan. 2012).

Congress.<sup>267</sup> The IRS policy of requiring ITIN applications to be filed only with paper tax returns creates a seasonal backlog of applications and returns, and unnecessarily delays processing of over one million tax returns and associated refunds annually.<sup>268</sup> In February 2009, the National Taxpayer Advocate issued a Taxpayer Advocate Directive<sup>269</sup> directing the IRS to develop a process that allows taxpayers to obtain ITINs during the year without an associated return, upon proof of employment and withholding (or self-employment).<sup>270</sup> The National Taxpayer Advocate also briefed the Commissioner regarding the changes mandated in the directive.<sup>271</sup>

In FY 2013, the National Taxpayer Advocate will continue advocating for regular, non-seasonal processing of ITIN applications, which would be less burdensome to taxpayers and more efficient for the IRS.<sup>272</sup> The IRS can achieve this by assigning ITINs throughout the year upon proof of employment or self-employment; and simultaneously developing a way to verify that previously issued ITINs have been used for tax administration purpose, and revoking unused numbers on a regular basis after notifying the ITIN holders. The National Taxpayer Advocate will continue to raise her concerns at the highest levels of IRS leadership, and report to Congress on the progress of this effort on a regular basis.<sup>273</sup>

### 3. A Recent ITIN Policy Change Caused a Sharp Increase in Rejected ITIN Applications and Tax Returns for Forms W-2 with Mismatched Names, Harming Hundreds of Thousands of Taxpayers

On December 8, 2011, the IRS changed its policy and began rejecting ITIN applications and the tax returns accompanying them if the returns reported only income from Forms W-2 with mismatched names.<sup>274</sup> The IRS later revised Internal Revenue Manual (IRM) 3.21.263.5.3.2, *General Application Procedures*.<sup>275</sup> Neither TAS nor the IRS Office of Chief Counsel had the opportunity to review or clear the IRM change or the new policy. In response to a TAS inquiry, the ITIN Program Office replied that “these changes [were made]

267 See National Taxpayer Advocate 2010 Annual Report to Congress 319-334; National Taxpayer Advocate 2009 Annual Report to Congress 520-522; National Taxpayer Advocate 2008 Annual Report to Congress 126-140; National Taxpayer Advocate 2004 Annual Report to Congress 143-162; National Taxpayer Advocate 2003 Annual Report to Congress 60-86. In 2003, 2004, and 2008, the National Taxpayer Advocate identified the IRS’s failure to timely process ITIN applications as a Most Serious Problem.

268 While the IRS denies electronic filing to one million ITIN returns annually, it touts that electronic filing is now preferred by 70 percent of individual filers. See IRS, *Nearly 70 Percent of Taxpayers Used IRS e-file in 2010*, IR-2010-112 (Nov. 10, 2010), at <http://www.irs.gov/newsroom/article/0,,id=231381,00.html>.

269 See TAD 2009-1, *Processing of Forms W-7/Filing of ITIN Applications and Associated Tax Returns* (Feb. 25, 2009). See also National Taxpayer Advocate 2010 Annual Report to Congress 335-338.

270 E.g., three consecutive pay stubs or other payment documentation, employment or independent contractor commitment letters or contracts, Forms 1099-MISC, *Miscellaneous Income*, etc.

271 TAD 2009-1, *Processing of Forms W-7/Filing of ITIN Applications and Associated Tax Returns*, (Feb. 25, 2009). See National Taxpayer Advocate 2010 Annual Report to Congress 335-338.

272 Because most ITIN applications are attached to tax returns, the IRS must process a 12-month ITIN workload in the four-month filing season.

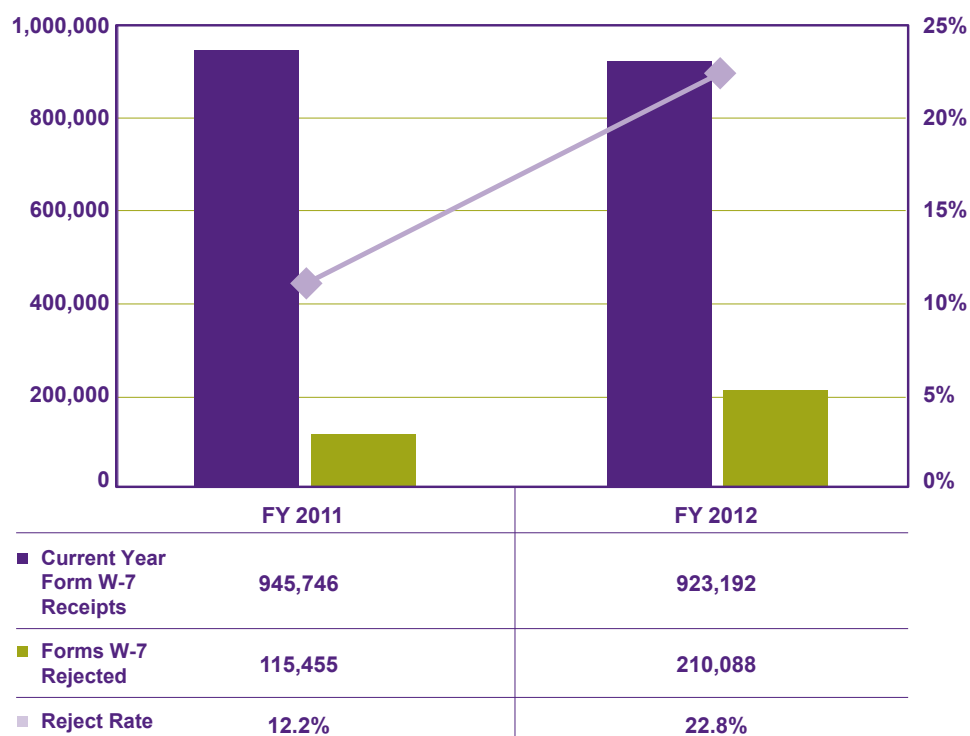
273 The National Taxpayer Advocate may consider issuing a new Taxpayer Advocate Directive on this matter in FY 2013.

274 See IPU 11U1922 (Dec. 8, 2011).

275 See SERP IRM 3.21.263.5.3.2 (Jan. 23, 2012).

as part of [the IRS’s] ongoing efforts to combat fraud in the ITIN program.”<sup>276</sup> The ITIN Program Office also stated that the change was based on an advice from W&I Division Counsel. However, a W&I Counsel email shared with TAS was redacted to exclude a key sentence which advised to establish a process for verifying “that the taxpayer listed on W-2 is the ITIN applicant.”<sup>277</sup>

**FIGURE III.7, ITIN APPLICATION (FORM W-7) RECEIPTS AND REJECTS, CALENDAR YEAR 2011 THROUGH APRIL 2, 2011 AND CALENDAR YEAR 2012 THROUGH MARCH 31, 2012<sup>278</sup>**



ITIN applicants often provide employers with SSNs that are not their own, and work under the names associated with those SSNs. The revised ITIN procedures were based on the assumption that if the sole income listed on a tax return is from a Form W-2 with a name other than that of the ITIN applicant, then the return is invalid, and therefore the applicant does not have a tax purpose for an ITIN. The IRS also did not process returns associated with such ITIN applications. To be valid, a return must satisfy the well-known four-part

276 Email from Sharon Davis, ITIN Program Office, to TAS (Jan. 31, 2012).

277 Unredacted email from Special Counsel to the Division Counsel (W&I) to Director, ITIN Program Office (Dec. 1, 2011).

278 IRS, *ITIN Production Reports* (Mar. 31, 2012, Apr. 2, 2011).



test set forth in *Beard v. Commissioner*.<sup>279</sup> If the ITIN applicant's tax return satisfies the *Beard* requirements, it is valid regardless of whether the Form W-2 is attached. While the IRS may have a valid reason to question withholding on Forms W-2 (if any), it cannot consider the return invalid and must process it.<sup>280</sup>

The IRS rejection policy was also inconsistent with electronic filing procedures. Since 2007, the IRS has accepted e-filed returns with mismatched Forms W-2, allowing a mismatch between identification numbers only or involving both names and identification numbers.<sup>281</sup>

#### 4. TAS's Immediate Intervention Reversed ITIN Application Rejection Policy and Helped Tens of Thousands of Taxpayers with Pending Applications<sup>282</sup>

In January 2012, TAS opened an Immediate Intervention Project after receiving a Systemic Advocacy Management System (SAMS) submission from a tax practitioner.<sup>283</sup> After TAS's intervention and discussions with the Special Counsel to the National Taxpayer Advocate and the Division Counsel (W&I), in early February 2012 the IRS agreed to stop rejecting ITIN applications with mismatched names on attached Forms W-2 (and associated returns), and begin holding them while seeking information from the applicants.<sup>284</sup> On March 20, 2012, the IRS revised the IRM allowing ITIN applicants the opportunity to verify the income on the name-mismatched W-2s.<sup>285</sup> The IRM also removed the instruction to employees to declare returns invalid and reject them.<sup>286</sup>

However, for the ITIN applications suspended by the IRS to corroborate the W-2 income, the IRS continues to record in the ITIN database "invalid return," which may confuse IRS employees. Although the IRS has agreed to reprogram the database to show the proper status, *i.e.*, that the ITIN application is suspended because of the lack of documentation, and

279 *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986). To satisfy the *Beard* test, the taxpayer must meet the following four requirements: (1) the information on the return must be sufficient for the IRS to calculate tax liability; (2) the filed document must purport to be a return; (3) the return must be an honest and reasonable attempt to comply with the tax laws; and (4) the taxpayer must execute the return under penalties of perjury.

280 The law requires taxpayers "having for the taxable year gross income which equals or exceeds the exemption amount" to file income tax returns. See IRC § 6012(a)(1)(A). Both U.S. and foreign persons are required to furnish a taxpayer identifying number in order to file a tax return. See *generally* IRC § 6109; Treas. Reg. § 301.6109-1(b).

281 IRS, *Fact Sheet* (Jan. 23, 2007), at [http://win.web.irs.gov/ITIN/e-file\\_ITIN-SSN\\_Mismatch\\_FactSheet\\_01-23-07.pdf](http://win.web.irs.gov/ITIN/e-file_ITIN-SSN_Mismatch_FactSheet_01-23-07.pdf) (last visited Feb. 23, 2012). See also IRS, *Questions and Answers* (Dec. 28, 2006), at [http://win.web.irs.gov/ITIN/e-file\\_ITIN-SSN\\_Mismatch\\_FAQ\\_01-10-07.pdf](http://win.web.irs.gov/ITIN/e-file_ITIN-SSN_Mismatch_FAQ_01-10-07.pdf) (last visited Feb. 23, 2012). The National Taxpayer Advocate discussed the inability to file returns with SSN/ITIN mismatches electronically in her 2003 Annual Report to Congress. See National Taxpayer Advocate 2003 Annual Report to Congress 76, n 60.

282 IRS, *ITIN Production Reports* (Feb. 4 and Mar. 3, 2012). By February 4, 2012, the IRS had rejected 57,655 of 198,501 receipts (29.0 percent); after TAS intervention, of the additional receipts of 367,242 through March 3, 2012, the IRS had rejected only 66,715 (18.2 percent).

283 SAMS Issue 23088 (Jan. 3, 2012).

284 Immediate Intervention Project 23341 (Feb. 1, 2012).

285 IRM 3.21.263.5.3.2, *General Application Requirements* (Mar. 20, 2012). See also SERP IPU 12U0705 (Mar. 20, 2012).

286 If the applicant responds with acceptable documentation, the IRS now assigns the ITIN and processes the tax return under the assigned ITIN. If the applicant does not respond, although the IRS does not assign an ITIN, the IRS no longer rejects the associated return. Instead, the IRS will process the tax return under an Internal Revenue Service Number (IRSN). See IRM 3.21.263.4.5, *IRS Temporary Numbers (IRSN)* (Jan. 1, 2011) and IRM Exhibit 3.21.263-45, *Letter 4939* (Mar. 20, 2012).

that the return is not invalid, these changes will not become effective until 2014.<sup>287</sup> Until the database is reprogrammed, other IRS employees trying to assist the taxpayers or practitioners inquiring on the status of an ITIN application will read that the return is “invalid” and misinterpret the reason the application was suspended. In addition, the IRS did not accept all TAS suggestions about “other corroborating documents” showing proof of income in IRM 3.21.263.<sup>288</sup> In FY 2013, TAS will continue working with the IRS on revising the list of acceptable documentation to verify that the income belongs to the ITIN applicant. We also have recommended that the IRS revisit all rejected ITIN applications between December 8, 2011 and February 2, 2012 (the date it began putting them in suspense), and ask affected taxpayers to resubmit their applications and returns for reconsideration under corrected procedures (because the IRS returned rejected applications by mail and did not retain copies). TAS insists that the IRS offer priority reconsideration of the applications under the March 20, 2012 procedures.

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287 IRS email from Chief, Specialty Programs Branch to TAS indicating the Unified Work Request (UWR) to make programming changes to the Request Tracking System (RTS) database to correct the mischaracterization of return validity will not be effective until 2014.

288 Essentially, TAS suggested to at least accept documentation listed in the Examination IRM 4.19.15.38.4 (Feb. 21, 2012) as a proof of wage income and tax filing need.

## IV. TAS Research Initiatives

The National Taxpayer Advocate is a strong proponent of the role of theoretical, cognitive, and applied research in effective tax administration. The Office of the Taxpayer Advocate is conducting and collaborating with the IRS on a number of research initiatives. A primary focus of these efforts is to determine how best to minimize taxpayer burden, while also supporting the IRS's efforts to increase voluntary compliance.

Following is a discussion of the research initiatives that TAS is conducting or participating in for the remainder of FY 2012 and in FY 2013.

### A. Evaluation and Ranking of Core Taxpayer Service Offerings

The IRS is under increased pressure to review funding for its taxpayer service activities. The National Taxpayer Advocate is concerned that the IRS could make critical funding decisions without thorough and balanced consideration of all of the important factors that relate to service delivery. She therefore proposed that TAS work with the IRS to develop a comprehensive method of evaluating its alternatives for delivering services to taxpayers. In response, the Wage and Investment Division has agreed to work with TAS to develop a framework for evaluating IRS service delivery alternatives, and together we have begun work on this initiative.

In initial discussions, W&I and TAS have agreed to base this framework on the concepts and principles the IRS developed to evaluate service delivery as part of its Taxpayer Assistance Blueprint (TAB) initiative.<sup>289</sup> Fundamental to this approach is the recognition that service delivery options should be evaluated from both the taxpayer and government perspectives, and decisions should be based on an appropriate balance of these perspectives.

The team is currently focused on the taxpayer perspective. The team is exploring whether the IRS can build on evaluation methods implemented in the W&I Taxpayer Choice Model (TCM) to develop an effective methodology for estimating the "taxpayer value" of a broad range of service delivery options. The TCM uses data from surveys that explored how taxpayer preferences change in response to changes in features of service delivery, such as the time needed to complete the service task, the extent to which the task has been resolved,

289 In response to a congressional mandate in 2005, the IRS developed a plan for determining how to provide services to taxpayers in the future. As part of this plan, known as the Taxpayer Assistance Blueprint (TAB), the IRS conducted a number of research studies to gain insight into taxpayers' preferences, use of IRS services, and willingness to use various IRS service channels to obtain information or resolve tax issues. The TAB included two phases. The phase 1 report, completed in April 2006, evaluated preliminary IRS research on taxpayer needs and preferences. It established a baseline of taxpayer services, examined and conducted leading practices research, and created strategic improvement themes. The phase 2 report, in April 2007, built upon the themes identified in Phase 1 and employed significant additional research and analysis to develop a five-year service delivery plan. IRS, *Annual Report to Congress, Progress on the Implementation of The Taxpayer Assistance Blueprint, October 2010 to September 2011* (Mar. 14, 2012) available at <http://irs.gov/pub/irs-pdf/p4701.pdf>.

and information required from the taxpayer to complete the task. The TCM computes a “taxpayer value” score for service delivery scenarios based on the values of these features.

This taxpayer value score could potentially serve as a raw score for a given service delivered at a certain level as described by its features: time, channel, issue resolution, etc. The initial score could then be adjusted to represent a final estimate of taxpayer value. Possible adjustments to the raw score include:

- Scaling this score by the estimated number of users, where some are weighted more than others based on their dependence on the IRS for the service in question, *e.g.*, low income taxpayers would be weighted more heavily.
- Multiplying the scaled score by a factor that represents the importance of this service relative to all others. This adjustment would allow services such as account-related services that address economic hardship issues to have more weight than other issues.

We anticipate that the team will begin work on developing a framework for the government perspective in the fourth quarter of FY 2012. In FY 2013 the team will work on integrating the taxpayer perspective and government perspective methodologies to produce a final score that can rank a given service delivery option against competing alternatives. With this information, the IRS can identify a set of core services that are fundamental to taxpayer compliance and can notify Congress when funding levels threaten the effective delivery of those services.

## **B. Earned Income Tax Credit (EITC) Examination Effectiveness**

Taxpayers working near or at minimum wage levels tend to have lower levels of education and financial literacy. They are also likely less skilled at dealing with the IRS on issues involving complicated matters of tax law and procedure. The law clearly places the burden of proof on the taxpayer, but if he or she does not have a good understanding of the applicable tax laws and cannot skillfully negotiate a challenging audit process, it can be difficult to reach the goal of a correct audit outcome. The National Taxpayer Advocate is concerned that various audit barriers may be preventing many taxpayers from receiving the EITC to which they are entitled. TAS is collaborating with the Wage and Investment Division, Small Business/Self-Employed Division, and National Office Research to test whether alternative approaches to EITC correspondence audits impact the audit change rate, suggesting that the IRS denies some taxpayers the EITC for which they qualify. This study was

initiated in response to recommendations TAS has made in past years.<sup>290</sup> Results will help guide recommendations for improvements to the audit process.

The first phase of the study began during the 2011 filing season and concluded in the second quarter of fiscal year (FY) 2012. A representative sample of taxpayers undergoing EITC correspondence audits was selected as a test group for an enhanced approach to communication during the audit. IRS correspondence examiners were instructed to place outbound calls to taxpayers in this test group at two points during the process: about ten days after the initial contact letter and just prior to issuing the Statutory Notice of Deficiency to taxpayers who had not responded.<sup>291</sup> During the calls, the IRS examiners explained the audit process to the taxpayers and answered their questions. TAS Research is collaborating with National Office Research to evaluate data on audit outcomes to determine if this change in procedures helped taxpayers overcome communication barriers. We expect to conclude this analysis by the end of the fourth quarter of FY 2012.

During the second study phase, which started in the second quarter of 2012, the IRS is referring taxpayers who did not retain all of their EITC and who did not agree to their audit outcomes to TAS. TAS Case Advocates then will attempt to contact these taxpayers to help them through the process of proving eligibility for the credit. TAS Research will analyze the final audit outcomes after this phase to determine whether TAS assistance impacted the results. Our goal is to complete this study by the end of December 2012.

### C. Estimating the Impact of Liens on Taxpayer Compliance Behavior

At the request of the National Taxpayer Advocate, TAS Research investigated the impact of Notices of Federal Tax Lien (NFTL) on the compliance behavior and income of delinquent taxpayers and published the results in the 2011 Annual Report. TAS Research is conducting additional research in this area.

TAS is analyzing the impact of lien filing on the subset of taxpayers included in the 2011 study whose accounts the IRS placed in currently not collectible (CNC) status due to economic hardship. TAS is focusing on this taxpayer segment because we believe that CNC taxpayers are most likely to be harmed financially by lien filing, which could affect their subsequent compliance behavior. TAS will use the same outcome measures used in the study published in the 2011 Annual Report:

290 See National Taxpayer Advocate 2003 Annual Report to Congress 28 (Most Serious Problem: *Earned Income Tax Credit Compliance Strategy*); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 43 (Research Study: *EITC Audit Reconsideration Study*); National Taxpayer Advocate 2005 Annual Report to Congress 15 (Most Serious Problem; *Trends in Taxpayer Service*); National Taxpayer Advocate 2005 Annual Report to Congress 113-114 (Most Serious Problem: *Earned Income Tax Credit Exam Issues*); National Taxpayer Advocate 2006 Annual Report to Congress 293-295 (Most Serious Problem: *Correspondence Examination*); National Taxpayer Advocate 2007 Annual Report to Congress 234, 238 (Most Serious Problem: *EITC Examinations and the Impact of Taxpayer Representation*); National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 96, 107, 116 (Research Study: *IRS Earned Income Credit Audits — A Challenge to Taxpayers*); National Taxpayer Advocate 2009 Annual Report to Congress 118-119, 129 (Most Serious Problem: *Beyond EITC: The Needs of Low Income Taxpayers Are Not Being Adequately Met*).

291 A taxpayer has 90 days (150 days if the notice is mailed to a person outside of the United States) from the date the notice of deficiency is issued to file a petition with the U.S. Tax Court for a redetermination of the deficiency. If no petition is filed within these time periods, the IRS may assess the tax. See IRC § 6213.

- Whether lien filing positively or negatively impacted taxpayers' *payment behavior* with respect to the original liabilities they incurred in 2002;<sup>292</sup>
- Whether lien filing positively or negatively impacted taxpayer *payment compliance* in subsequent periods;
- Whether lien filing positively or negatively impacted taxpayer *filing behavior* in subsequent periods; and
- Whether lien filing positively or negatively impacted taxpayer *income* in subsequent periods.

TAS will share results with the IRS for review and comment. TAS expects to complete this research by the end of FY 2012.

TAS will also monitor the impact of IRS changes to lien filing thresholds on lien filing patterns to evaluate whether to pursue additional research in other areas. These areas include investigating the interactions among the outcome measures TAS studied in 2011 (discussed above). For example, declines in taxpayers' incomes may affect their ability to pay down their tax liabilities. Conversely, lien filing may motivate taxpayers to stay current with new liabilities. More generally, existing liabilities may motivate both lien and non-lien taxpayers to become non-filers to avoid incurring additional liabilities, but may impact lien taxpayers more because they are less able to pay due to decreased incomes. TAS may also investigate whether lien filing is more effective for taxpayers who have significant assets.

Finally, TAS may build on previous research and further explore the extent to which payments credited to lien taxpayers were attributable to sources other than the lien.<sup>293</sup> TAS anticipates that any additional research activities would begin in the first quarter of FY 2013 and extend throughout 2013. TAS will invite the IRS to collaborate on this research.

#### D. Factors Impacting Taxpayer Compliance

TAS is pursuing a multi-year initiative to explore the factors that motivate taxpayer compliance behavior. Broadly speaking, these factors include not only the expected likelihood and cost of getting caught cheating (called "economic deterrence"), but other factors such as compliance norms, trust in the government and the tax administration process, complexity and the convenience of complying, and the influence of preparers.

For the first phase of the study, TAS contracted with a vendor to help design and conduct a telephone-based survey, which includes objectives such as identifying and quantifying the major factors that drive taxpayer compliance behavior. TAS is gauging the respondents'

292 All the taxpayers included in our 2011 study incurred unpaid individual tax liabilities in 2002 and had no such liabilities at the beginning of that year.

293 In prior research, TAS found that most payments credited to lien taxpayers were attributable to sources other than the lien, such as refund offsets. See National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 1-18 (*The IRS's Use of Notices of Federal Tax Lien*).

level of compliance by using the IRS's Discriminant Index Function (DIF), a mathematical technique used to score the audit potential of a tax return.<sup>294</sup>

In 2011, TAS completed the survey design, developed the sample, and obtained Office of Management & Budget (OMB) approval.<sup>295</sup> During the first half of 2012, the vendor administered the survey to two different groups of taxpayers with sole proprietor (*i.e.*, Schedule C, *Profit or Loss from Business (Sole Proprietorship)*) income: a representative national sample of taxpayers; and a sample of high and low-compliance communities. Inclusion of the community sample will enable TAS to better evaluate whether taxpayers' affiliations within their communities appear to influence compliance behavior.

In the second half of 2012, TAS and the vendor will analyze the survey results to determine whether there is a significant correlation between relevant taxpayer attitudes and beliefs and taxpayer compliance behavior. Our goal is to complete the analysis and publish our results by the end of December 2012. TAS anticipates that the research will identify factors besides economic deterrence that significantly influence taxpayer compliance behavior. In 2013, TAS will conduct additional research to better understand these factors and explore how they might help the IRS improve voluntary tax compliance.

### E. IRS Settlements of EITC Tax Court Cases

TAS is conducting a study to determine if Earned Income Tax Credit cases closed through a settlement after the taxpayer petitioned Tax Court could have been resolved administratively during the audit process, thereby reducing burden and expense for both the taxpayer and the IRS.

Decision documents for settled cases sometimes show there was no deficiency in tax — *i.e.*, that the IRS apparently conceded the case in full. The study focuses on these cases, specifically those in which disallowed EITC was an issue. This research seeks to answer why the IRS conceded the cases in full only after the taxpayer petitioned Tax Court. If these cases present common elements, the IRS may be able to adjust its procedures so it can make concessions, where appropriate, earlier (perhaps during the audit phase, or in any event, before the taxpayer files a Tax Court petition), which reduces taxpayer burden and conserves resources by reducing or eliminating Appeals or Chief Counsel involvement.

In the fall of 2011, TAS Research developed a representative sample of Tax Court EITC cases settled with no deficiency in tax. A TAS team headed by a staff attorney advisor reviewed the sample in the first half of 2012. This fall, Research will analyze the data collected during the sample review and provide findings to the team tasked with writing a final report. TAS anticipates completing this report in December 2012.

294 IRM 4.1.3.2 (Oct. 24, 2006). The DIF uses information obtained and periodically updated from the National Research Program (NRP) to create these mathematical formulas. Returns with high DIF scores generally have a higher probability of being adjusted on audit than other returns of the same type.

295 The Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that federal agencies receive OMB approval before certain information is collected from the public.

## F. TAS Underserved Study

TAS Research is working with other TAS functions and a vendor to analyze the results of a national mail survey. TAS and the vendor jointly developed the survey in the fall of 2011, and the vendor administered it during the spring of 2012. Objectives include identifying and characterizing the TAS underserved taxpayer population. TAS will use the results to develop an informative profile of the TAS underserved population, including attributes such as age, income, family size, preparer usage, attitudes about the IRS, awareness of TAS services, health care coverage, and Internet usage (among others). TAS's goal is to develop this profile by the end of December 2012.

TAS is also working with the vendor to develop a companion telephone-based survey targeting Spanish-speaking U.S. residents not included in the national survey. This will enable TAS to extend its profile coverage to this growing segment of the taxpayer population. TAS plans to complete the survey and profile by the end of April 2013.

## G. IRS Pre-Refund Wage and Withholding Verification

In FY 2011, the Accounts Management Taxpayer Assurance Program delayed nearly two million refund claims, identifying them as questionable or potentially fraudulent.<sup>296</sup> The Electronic Fraud Detection System selected over one million returns for screening, a 72 percent increase from the previous year.<sup>297</sup> In addition to these questionable refund claims selected by EFDS, AMTAP also identified over 893,000 returns as part of the Operation Mass Mail (OMM) scheme in calendar year (CY) 2011.<sup>298</sup>

While the number of returns screened by EFDS rose by 72 percent, AMTAP staffing grew by less than nine percent,<sup>299</sup> causing inventory to grow to 690,000 cases at one point during the 2011 filing season.<sup>300</sup> As inventory levels increase, so do the delays in responding to legitimate refund claims. TAS case receipts often reflect the effects of systemic problems within the IRS. In FY 2011, TAS received over 21,000 pre-refund cases, a 504 percent

296 The Electronic Fraud Detection System (EFDS) is one tool the IRS uses to select questionable returns for verification prior to releasing refunds. EFDS selected 1,054,704 questionable returns for screening in calendar year (CY) 2011. The IRS stopped an additional 893,267 potentially fraudulent returns as part of the Operation Mass Mail (OMM) program. See Wage and Investment (W&I) Division response to TAS information request (July 27, 2011, and updated Nov. 4, 2011). See also *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonable Delaying Legitimate Refund Claims, supra*.

297 The volume of returns selected to be screened rose from 611,845 in CY 2010 to 1,054,704 in CY 2011 (through Oct. 15, 2011), a 72 percent increase. See W&I response to TAS information request (July 27, 2011, and updated Nov. 4, 2011).

298 AMTAP identified 893,267 OMM returns through October 15, 2011. Email from AMTAP analyst (Nov. 4, 2011). Tax returns identified as being part of this scheme are not processed (*i.e.*, they are "auto-voided," in IRS parlance). The rules used to identify an OMM return are sweeping in their reach and have the potential to ensnare many legitimate taxpayers. The National Taxpayer Advocate is not at liberty to disclose these OMM criteria, but has expressed her concern to the highest levels of the IRS about the sweep of these rules and their underlying assumptions.

299 The AMTAP staff increased from 336 in FY 2010 to 366 in FY 2011, a gain of about nine percent. See W&I response to TAS information request (July 27, 2011).

300 TAS notes from IRS Decedent Schemes conference call (Apr. 25, 2011).



increase over cases received in FY 2010.<sup>301</sup> Taxpayers coming to TAS with pre-refund problems ultimately received relief 75 percent of the time.<sup>302</sup>

During 2012, TAS Research will collaborate with other TAS functions to monitor and analyze the pre-refund wage and withholding verification process and the resulting TAS caseload. TAS will focus on statistics that highlight the impact of this process on taxpayers, such as the number of taxpayers ultimately receiving refunds that the IRS subjected to holds and the length of the holds. TAS's goal is to complete these analyses in time for inclusion in the 2012 Annual Report to Congress.

TAS will also analyze a representative sample of its "held refund" cases to identify and quantify the main reasons the cases came to TAS. TAS Research will summarize the important findings from this analysis and identify the "highest risk" TAS cases, *i.e.*, the types of refund hold issues most likely to come to TAS. The report will include recommendations for how the IRS can more effectively handle these case types. TAS anticipates completing this report by the end of July 2013.

#### H. 2012 Survey of Taxpayer Assistance Customers

The National Taxpayer Advocate oversees the Taxpayer Advocacy Panel, a federal advisory committee consisting of citizen volunteers who work to improve IRS services by providing the taxpayer's perspective to various IRS operations. One of the group's efforts is to improve in-person interactions at IRS Taxpayer Assistance Centers.

Early in FY 2012, the National Taxpayer Advocate suggested that TAP members, assisted by TAS Research and Systemic Advocacy, develop a survey and work with TAS and the Wage and Investment Field Assistance organization to administer the survey to customers waiting for service at a TAC. The volunteers visited 37 TAC offices across the country, within driving distance of the members' homes, during the week of April 9. The questions were designed to give the IRS a better understanding of customers' reasons for visiting a TAC:

- What services are taxpayers seeking?
- What other IRS service channels do taxpayers use before visiting a TAC?
- Do TAC users have Internet access at home?
- What kind of computer skills do taxpayers visiting a TAC possess?
- How long does it take customers to get to TAC offices?
- Are customers willing to interact with IRS using technology rather than visiting a TAC?
- What are the characteristics of TAC users?

301 See also *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonable Delaying Legitimate Refund Claims*, *supra*.

302 Data obtained from TAMIS (Oct. 1, 2011).

Volunteers returned 664 completed surveys.<sup>303</sup> While these results are not statistically representative of all TAC visitors, they represent the needs and activities of a sizable number of customers during one week in the tax filing season. TAS Research analyzed the information and obtained the following preliminary results:

The main reasons customers expressed for visiting the TAC office included (could give more than one answer):

- Get an answer to a tax question (20.5 percent<sup>304</sup>);
- Obtain tax forms, instructions, or publications (19.0 percent);
- Resolve an IRS notice or letter-related issue (17.2 percent);
- File a tax return or form (12.7 percent);
- Make a payment (11.6 percent); and
- Have a current-year return prepared (10.2 percent)

Most respondents tried to use some other IRS service before going to the TAC (only 35.5 percent did not). About one of every three people, or 34 percent, visited the IRS.gov and one of every four, or 25 percent, called the IRS before visiting the TAC.

When asked why they visited the TAC office rather than using some other IRS service, about 33 percent said they had visited a TAC before, nearly 30 percent indicated they wanted to talk face-to-face with an IRS representative, 20.5 percent stated the office was close to home, and nearly 15 percent said the issue was time-sensitive or urgent.

About one of every three people said they would be willing to interact with IRS virtually (using something similar to Skype). Another 26 percent did not reject the idea, but were not sure if it would work for them.

While a number of participants responded positively to the idea of using technology to communicate with the IRS, more than one of four respondents indicated they do not have Internet access at home and rated their computer or Internet skills as “limited” or below.

Participants also had the opportunity to provide comments or suggestions for improving IRS services. The largest group of these comments pertained to the TACs’ lack of staffing, long wait times, and limited hours of operation. Others complimented the TAC staff and the service provided. The disparity indicates that service and expectations can vary noticeably from one TAC to another.

303 The response rate for the survey was approximately 66 percent. The survey was only available in English, so if we exclude one office whose clientele primarily spoke and read Spanish only, the response rate rises to about 70 percent.

304 Percentages shown are out of all 664 respondents. Some respondents did not answer all questions.

This preliminary review provides some interesting insights into the needs and activities of taxpayers who visited a TAC during the last week of the 2012 filing season. Additional analyses will focus on the issues, needs, and preferences of different segments of customers. In FY 2013, TAS will deliver a more detailed report in the Annual Report to Congress.

## V. Case Advocacy

The role of TAS as an independent organization within the IRS has continued to evolve since the enactment of the IRS Restructuring and Reform Act of 1998, which created TAS in its current form.<sup>305</sup> Congress designed TAS to be a “safety net” for taxpayers who are experiencing problems with the IRS, and gave TAS the discretion to establish its case-acceptance criteria. Taxpayers come to TAS when:

- They have experienced a tax problem that causes financial difficulty;
- They have encountered problems trying to resolve their issues directly with the IRS; or
- An IRS action or inaction has caused or will cause them to suffer a long-term adverse impact, including a violation of their rights.<sup>306</sup>

The last taxpayer survey TAS commissioned found that, at any given time, between 5.9 million and 12.6 million taxpayers have problems that fit within TAS’s case-acceptance criteria.<sup>307</sup> TAS cannot possibly help that many taxpayers. Fortunately, Congress gave TAS discretion to establish its criteria, so we can set priorities based on where the National Taxpayer Advocate believes TAS best helps taxpayers. There are at least four categories of cases where TAS adds significant value:

1. Where a taxpayer is experiencing some kind of financial difficulty, emergency, or hardship, and the IRS needs to move much faster than it usually does under its normal procedures. In those cases, time is of the essence. If the IRS does not act quickly (*e.g.*, to remove a levy or release a lien), the taxpayer will experience even more financial harm.
2. Where there are many different IRS functions and steps involved, and a “coordinator” or “traffic cop” is needed to make sure all functions do their part. TAS plays that role.
3. Where the taxpayer has tried to resolve a problem through normal IRS channels but those channels have broken down.
4. Where the taxpayer is presenting unique facts or unique issues (including legal issues), and the IRS is applying a “one size fits all” approach, or is not listening to or disagrees with the taxpayer, or is not recognizing that we need to develop new guidance to address that taxpayer’s circumstances appropriately.

In FY 2011, TAS assessed where its efforts have the greatest impact, and identified four categories of return processing issues in which the IRS, left to its own devices, seemed to

305 See Appendix I: *Evolution of the Office of the Taxpayer Advocate, infra*.

306 For a detailed list of TAS’s case acceptance criteria, see Appendix II, *infra*.

307 Russell Research, *Report of Findings from 2007 Market Research for the Taxpayer Advocate Service 8* (Sept. 6, 2007).

get the right answer, albeit slowly. Those cases involve processing original tax returns, amended returns, rejected and unpostable returns,<sup>308</sup> and injured spouse claims.<sup>309</sup>

When it comes to pure processing issues, the IRS is simply backed up. In the overwhelming majority of these cases, the IRS places the taxpayer's submission in the queue and processes it in the order received. TAS found that by the time such a case was transferred to TAS, assigned to a case advocate, and the employee made the initial contacts with the taxpayer and the IRS, the IRS had often already done what the taxpayer wanted. TAS really made no difference in those cases. For that reason, the National Taxpayer Advocate determined that TAS generally will not accept cases involving these four categories of pure processing issues so it can focus its resources on higher impact problems.

However, there are significant exceptions to this policy. In cases involving the four categories enumerated above, TAS will still take the case if the taxpayer:

- Is suffering an economic burden;
- Has related issues (*e.g.*, an amended return needs to be processed quickly because the IRS has created a substitute for return and is trying to collect, and the amended return will eliminate or minimize the tax liability);<sup>310</sup>
- Is referred by a congressional office; or
- Specifically requests TAS assistance.

TAS announced this policy as temporary and will continue to monitor how it is working in FY 2012.<sup>311</sup> Through April 30, 2012, TAS has experienced a decrease of 19,325 related case receipts in these four categories from FY 2011, giving case advocates more time to work the issues where TAS brings the most value.<sup>312</sup>

308 An unpostable return is a return that does not pass all of the required computer checks to complete processing and update a taxpayer's account. These returns require intervention by an IRS employee in order to resolve the problem that prevented the return from being processed.

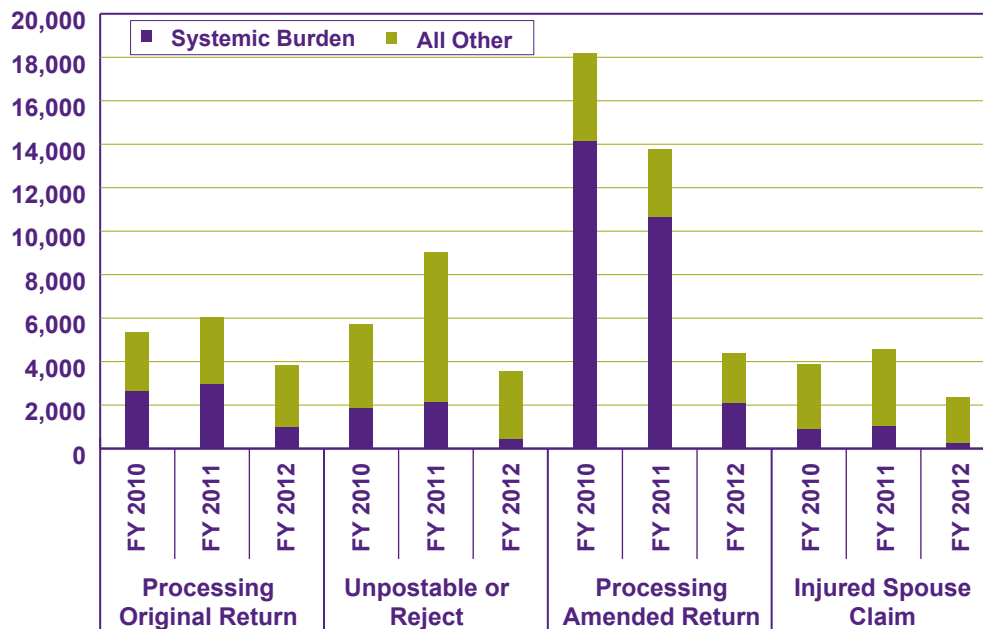
309 An injured spouse claim is filed on Form 8379, *Injured Spouse Allocation*, by one spouse (the injured spouse) on a jointly filed tax return when the joint overpayment was (or is expected to be) applied (offset) to a past-due obligation of the other spouse. By filing Form 8379, the injured spouse may be able to get back his or her share of the joint refund.

310 A substitute for return is a tax return prepared by the IRS for a taxpayer when the agency has no record of receiving a return and has not been able to obtain one from someone who was expected to file.

311 See TAS Interim Guidance Memorandum TAS-13.1.7-0911-014, *Interim Guidance on Changes to Case-Acceptance Criteria* (Sept. 1, 2011), available at [http://www.irs.gov/pub/foia/ig/tas/tas\\_13.1.7-0911-014.pdf](http://www.irs.gov/pub/foia/ig/tas/tas_13.1.7-0911-014.pdf).

312 Data obtained from TAMIS (May 1, 2011; May 1, 2012).

**FIGURE V.1, CASE RECEIPT DATA FOR ISSUES SUBJECT TO THE NARROWING OF TAS CASE ACCEPTANCE CRITERIA, CUMULATIVE THROUGH APRIL FOR FY 2010, FY 2011 AND FY 2012<sup>313</sup>**



In FY 2013, TAS will analyze the case issues that were temporarily not accepted under the policy change to determine if the taxpayers received the service they needed from the IRS. We will look at TAS economic burden cases with these issues present to determine if a lack of service by the IRS resulted in the burden and referral or acceptance in TAS, and will sample accounts from the IRS population for these issues to determine if taxpayers were served effectively.

**A. Although TAS Fiscal Year 2012 Case Receipts Have Decreased, Their Urgency, Complexity, and Difficulty Have Increased**

Overall, TAS case receipts have decreased by 27 percent through the first seven months of FY 2012 compared to the same period in FY 2011.<sup>314</sup> Most of this decrease is a result of the narrowing of TAS’s case acceptance criteria, as discussed above, and of a decline in receipts related to the First-Time Homebuyer Credit. Through April FY 2012, TAS received

313 Data obtained from TAMIS (May 1, 2010; May 1, 2011; and May 1, 2012).

314 Data obtained from TAMIS (May 1, 2012; May 1, 2011). TAS received 118,025 cases through April 30, 2012 and 161,274 cases through April 30, 2011.

2,220 FTHBC cases as compared to 22,874 cases during the same period in FY 2011.<sup>315</sup> Through April 30, TAS has received 118,025 cases in FY 2012, closed 128,599, and provided relief to taxpayers in 76.7 percent of the cases closed.<sup>316</sup> Figure V.2 shows TAS FY 2012 receipts, closures, and relief rates by case category through the end of April.

**FIGURE V.2, TAS CASE RECEIPTS, CLOSURES, AND RELIEF RATES, FY 2012 CUMULATIVE THROUGH APRIL<sup>317</sup>**

	Receipts	Closures	Relief Rate
Economic Burden	71,283	62,944	73.2%
Systemic Burden	45,893	65,277	80.1%
Equitable Treatment or Taxpayer Rights Issues	109	134	74.6%
Public Policy	740	244	47.5%
Total Cases	118,025	128,599	76.7%

### 1. Economic Burden Case Trends

As reflected in Figure V.2 above, the bulk of TAS's cases involve economic or systemic burden. While TAS strives to expeditiously resolve all cases meeting criteria, it places special emphasis on helping taxpayers experiencing financial difficulty. In these instances, TAS requires case advocates to take specific actions to expedite initial case processing, and to contact the taxpayer to communicate these actions and request additional information (if needed) within three workdays of when TAS received the case.<sup>318</sup> As shown in Figure V.3, TAS's economic burden receipts have risen consistently since FY 2008. In fact, for the first time in TAS's history, the percentage of economic burden case receipts is larger than the percentage of systemic burden case receipts.<sup>319</sup>

315 Data obtained from TAMIS (May 1, 2012; May 1, 2011). The FTHBC was generally available to taxpayers who entered into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010 and who purchased such residence before October 1, 2010. TAS expects case receipts to continue to decline. IRC § 36(h)(1) and (2). For additional discussion of the FTHBC, see National Taxpayer Advocate 2009 Annual Report to Congress 506-509; National Taxpayer Advocate 2010 Annual Report to Congress 15-27, 513-515 (Most Serious Problem: *The IRS Mission Statement Does Not Reflect the Agency's Increasing Responsibilities for Administering Social Benefits Programs*) (Case Advocacy: *TAS Assists the IRS with the Administration of the First-Time Homebuyer Credit*); National Taxpayer Advocate FY 2011 Objectives Report to Congress 37-43; National Taxpayer Advocate FY 2012 Objectives Report to Congress 28-32; *Hearing on Tax Filing Season Update: Current IRS Issues, Before the S. Comm. on Finance, 111th Cong.* (statement of Nina E. Olson, National Taxpayer Advocate) (Apr. 15, 2010); *Hearing on Complexity and the Tax Gap: Making Tax Compliance Easier and Collecting What's Due*, Hearing Before the S. Comm. on Finance, 112th Cong. (statement of Nina E. Olson, National Taxpayer Advocate) (June 28, 2011); National Taxpayer Advocate FY 2011 Annual Report to Congress 687-689 (Case Advocacy: *Policymakers Can Learn from the Implementation of the FTHBC*).

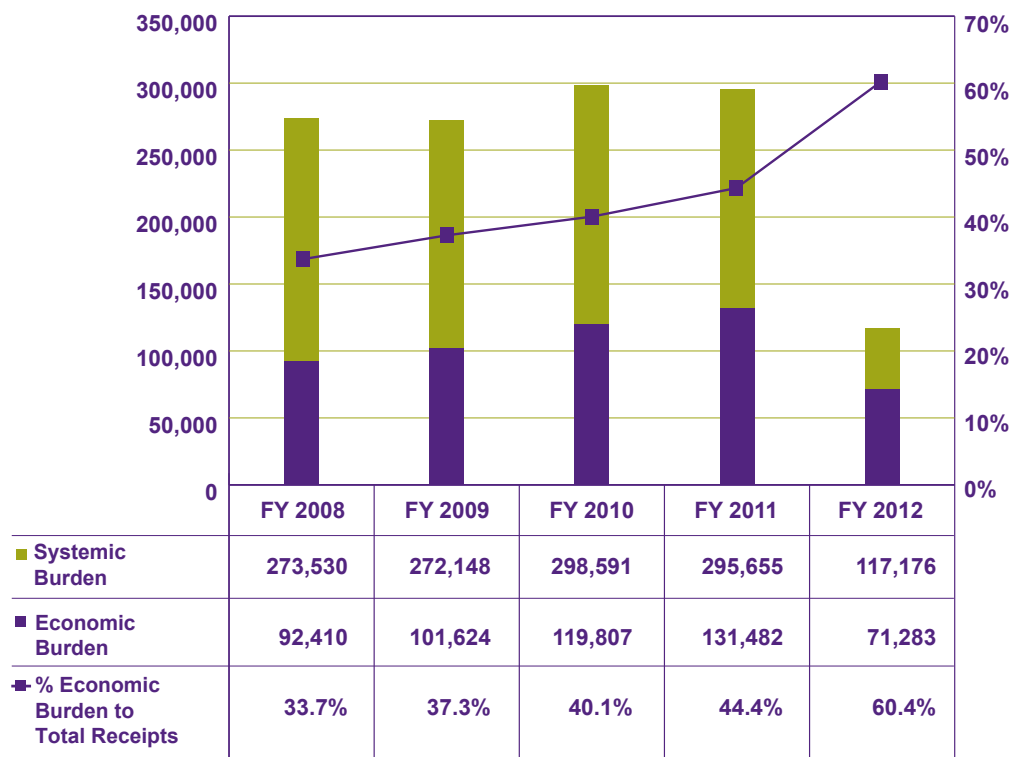
316 TAS determines relief rates based upon whether TAS is able to provide full or partial relief or assistance on the issue initially identified by the taxpayer. Because TAS frequently provides relief on issues that differ from the ones the taxpayer initially identified, the relief rate, as calculated, is understated. Data obtained from TAMIS (May 1, 2012). TAS uses TAMIS to record, control, and process taxpayer cases, as well as to analyze the issues that bring taxpayers to TAS.

317 Data obtained from TAMIS. TAS tracks resolution of taxpayer issues through codes entered at the time of closing on TAMIS and requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. See IRM 13.1.21.1.2.1.2 (Mar. 31, 2011). The codes reflect full relief, partial relief, or assistance provided. The relief rate is determined by dividing the total number of cases closed with full relief, partial relief, or assistance by the total number of closures.

318 IRM 13.1.18.2(1) (Feb. 1, 2011).

319 Data obtained from TAMIS.

**FIGURE 5.3, TAS ECONOMIC BURDEN AND SYSTEMIC BURDEN RECEIPTS, AND PERCENTAGE OF ECONOMIC BURDEN TO TOTAL RECEIPTS, FY 2008 THROUGH FY 2011 AND FY 2012 (CUMULATIVE THROUGH APRIL)<sup>320</sup>**



With unemployment rates hovering around 8.2 percent, and 42.8 percent of the jobless out of work for 27 weeks or more, it is hardly surprising that taxpayers experiencing economic burden are coming to TAS for help.<sup>321</sup> However, to identify the immediate causes of increasing economic burden receipts, TAS tracks the underlying tax issues. Figure V.4 lists the top five economic burden issues so far in FY 2012.

320 Data obtained from TAMIS. TAS retrieved the data on the first day of the month following the end of each fiscal year for FY 2008 through FY 2012 and first day of the month following the end of the April for FY 2012.

321 Bureau of Labor Statistics (BLS), *The Employment Situation* – May 2012 (Jun. 1, 2012).



**FIGURE V.4, TOP FIVE ECONOMIC BURDEN CASE ISSUES FOR FY 2012 THROUGH APRIL, COMPARED TO FY 2010 AND FY 2011<sup>322</sup>**

Rank	Issue Description	FY 2010	FY 2011	Percentage Change	FY 2011 Cumulative through April	FY 2012 Cumulative through April	Percentage Change
1	Identity Theft	7,655	21,500	180.9%	8,678	16,325	88.1%
2	Pre-Refund Wage Verification Hold	1,210	8,616	554.6% <sup>301</sup>	2,749	6,430	133.9%
3	Levies (including Federal Payment Levy Program) <sup>302</sup>	15,263	13,299	-12.9%	7,856	6,387	-18.7%
4	IRS Offset	5,318	5,617	5.6%	4,888	4,000	-18.2%
5	Expedite Refund Request	8,073	6,408	-20.6%	5,075	3,555	-30.0%

Identity theft (IDT)<sup>325</sup> is the number one issue in economic burden case receipts and, as shown in the next section, is the leading overall reason taxpayers seek TAS assistance.<sup>326</sup> Through April, FY 2012 identity theft cases have increased almost 62 percent over FY 2011.<sup>327</sup> Of the 21,743 taxpayers who came to TAS with this issue through April of FY 2012, 16,325 — or 75 percent — were experiencing economic burden.<sup>328</sup>

Levy issues are third on the list of economic burden case issues. As shown above, however, economic burden levy receipts have decreased almost 19 percent from FY 2011 (through April 2011) compared to the same period in FY 2012. Economic burden collection receipts in general have fallen by more than 14 percent in FY 2012 (through April) compared to

322 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; May 1, 2011; and May 1, 2012). TAS computed the top five economic burden cases using only Primary Issue Codes (PIC). Often TAS cases involve more than one issue and TAS tracks this data, however these are not included within this computation to avoid counting a case more than once.

323 Because TAS did not use PIC 045 until March 24, 2010, a more appropriate comparison would be between the economic burden PIC 045 receipts from the last two quarters of FY 2011 (6,913 cases) and the last two quarter of FY 2010 (1,056 cases), which represents a 554.6 percent increase. The 8,616 economic burden pre-refund wage verification (PIC 045) cases actually represent a 612 percent increase over the 1,210 PIC 045 cases received in FY 2010. For more information about pre-refund wage verification holds, see *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, *supra*.

324 The Federal Payment Levy Program (FPLP) is an automated levy program authorized by IRC § 6331(h). It allows the IRS to levy on certain federal payments disbursed by the Treasury's Financial Management Service (FMS) to taxpayers with an outstanding tax liability. IRM 5.11.7.2 (Aug. 12, 2011). Each week, the IRS creates a file of certain balance due accounts and transmits the file to FMS's Treasury Offset Program. FMS transmits a weekly file back to the IRS listing those that matched. FPLP will subsequently transmit levies on matching accounts. For additional information concerning the FPLP program, see <http://www.irs.gov/individuals/article/0,,id=100551,00.html>.

325 Identity theft occurs when someone uses your personally identifying information, like your name, Social Security number, or credit card number, without your permission, to commit fraud or other crimes. The Federal Trade Commission estimates that as many as nine million Americans have their identities stolen each year. <http://www.ftc.gov/bcp/edu/microsites/idtheft//consumers/about-identity-theft.html> (last visited Feb. 23, 2012).

326 For a more detailed discussion of identity theft issues, see the National Taxpayer Advocate's Congressional Testimony Before the Senate Committee on Finance, Subcommittee on Fiscal Responsibility and Economic Growth, *Tax Fraud by Identity Theft, Part 2: Status, Progress, and Potential Solutions* (Mar. 20, 2012), National Taxpayer Advocate 2011 Annual Report Congress 48-73 (Most Serious Problem: *Tax-Related Identity Theft continues to Impose significant Burdens on Taxpayers and the IRS*) and see *The IRS's Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight*, *supra*.

327 See *Top 15 Issues for Cases Received in TAS, FY 2010 through 2011 and FY 2011 and FY 2012 (Cumulative through April)*, *infra*.

328 Data obtained from TAMIS (May 1, 2012). See *The IRS's Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight*, *supra*, and *Tax-Related Identity Theft Work Continues to Increase within TAS*, *infra*.

the same period in FY 2011.<sup>329</sup> This decrease may be attributable in part to a number of taxpayer-favorable collection policy changes in the IRS “Fresh Start” initiative.<sup>330</sup>

Pre-Refund Wage Verification Hold (PRWVH) case receipts are second on the list, and represent the fastest-growing type of economic burden case, with an increase of nearly 134 percent through April of FY 2012 compared to the same period in FY 2011. With respect to TAS’s overall case receipts, PRWVH cases have increased over 68 percent through April of FY 2012 compared to FY 2011.<sup>331</sup> The increase continues a trend that began in FY 2011, marking the reappearance of questionable refund cases in TAS’s inventory.<sup>332</sup>

## **B. TAS Case Receipts Are Growing More Complex and Involve Multiple Issues**

Multiple issues often indicate a complex case that may require TAS to work with several IRS functions through the Operations Assistance Request (OAR) process.<sup>333</sup> In FY 2012, nearly 50 percent of all closed cases had one or more issue, see Figure V.5 below.<sup>334</sup>

329 Data obtained from TAMIS (May 1, 2011; May 1, 2012). TAS received 13,979 economic burden collection case receipts through April, FY 2011 compared to 11,964 cases for the same period in FY 2012.

330 For a detailed discussion of IRS collection policy changes, see *Collection Update: “Fresh Start” Initiatives – Significant Changes Have Been Made, but Further Improvements Are Needed*, *supra*.

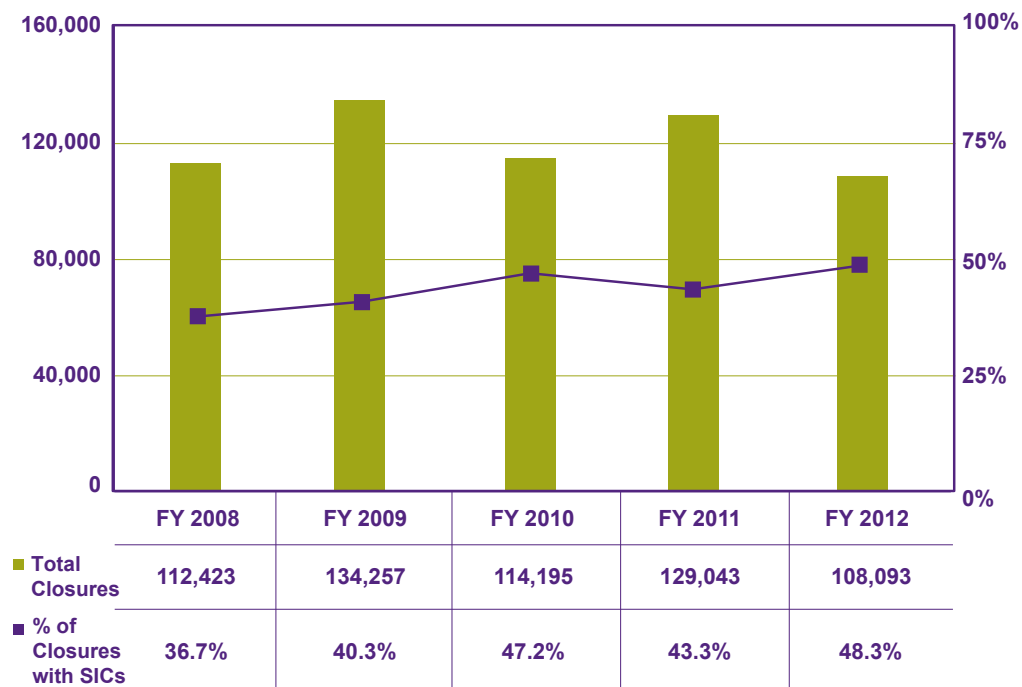
331 Data obtained from TAMIS (May 1, 2012; May 1, 2011).

332 See *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, *supra*; *The Questionable Refund Program Results in Significant Delays in Processing Tax Refunds*, *infra*.

333 TAS employees use the OAR process to request the IRS to complete an action on a TAS case when TAS lacks the authority to take that action.

334 Data obtained from TAMIS (Apr.1, 2012; Apr. 9, 2012). The data on the number of cases with multiple issues exclude reopened cases.

**FIGURE V.5, TAS CLOSED CASES WITH SECONDARY ISSUE CODES (SIC), CUMULATIVE THROUGH MARCH 31, FY 2008 TO FY 2012<sup>335</sup>**



As discussed in the previous section, TAS is redirecting its case acceptance criteria so we receive those cases that most need our help, which by definition are more complex and require multiple contacts with the taxpayer and the IRS functions.<sup>336</sup> Accordingly, the raw number of case receipts does not reflect the actual work involved in resolving taxpayer problems.

### C. Significant Trends in TAS Case Receipts Help Identify Systemic Problems in Tax Administration

By analyzing the underlying issues in individual casework, TAS identifies trends that also affect larger groups of taxpayers and uses that information to work with the IRS to resolve the broader issues.<sup>337</sup> Figure V.6 lists the top 15 issues facing taxpayers.

<sup>335</sup> Data obtained from TAMIS (Apr. 1, 2008; Apr. 1, 2009; Apr. 1, 2010; Apr. 1, 2011; Apr. 1, 2012).

<sup>336</sup> Some of these case categories are discussed in the following section.

<sup>337</sup> TAS also asks its employees to submit systemic issues they find in TAS cases to the Systemic Advocacy Management System (SAMS). SAMS allows TAS to record and manage advocacy activities that benefit groups of taxpayers. See *Systemic Advocacy, infra*.

**FIGURE V.6, TOP 15 ISSUES FOR CASES RECEIVED IN TAS FOR FY 2012 CUMULATIVE THROUGH APRIL, FY 2010 THROUGH 2011<sup>338</sup>**

Rank	Issue Description	FY 2010	FY 2011	Percentage Change	FY 2011 Cumulative through April	FY 2012 Cumulative through April	Percentage Change
1	Identity Theft	17,291	34,006	96.7%	13,437	21,743	61.8%
2	Pre-Refund Wage Verification Hold	3,171	21,286	504.4% <sup>317</sup>	4,783	8,059	68.5%
3	Levies (including Federal Payment Levy Program)	18,015	15,466	-14.1%	9,139	7,179	-21.4%
4	Reconsideration of Audits <sup>318</sup> and Substitute for Return under IRC § 6020(b) <sup>319</sup>	12,843	11,902	-7.3%	6,838	5,337	-22.0%
5	Open Audit (Not Earned Income Tax Credit)	26,182	21,397	-18.3%	12,158	5,239	-56.9%
6	Earned Income Tax Credit	11,198	8,729	-22.0%	4,947	4,526	-8.5%
7	IRS Offset	6,865	6,995	1.9%	5,712	4,471	-21.7%
8	Processing Amended Return	30,891	22,743	-26.4%	13,767	4,393	-68.1%
9	Expedite Refund Request	11,755	9,386	-20.2%	6,795	4,344	-36.1%
10	Processing Original Return	11,997	11,578	-3.5%	6,035	3,822	-36.7%
11	Unpostables and Rejects	22,341	13,288	-40.5%	9,056	3,527	-61.1%
12	Installment Agreements	6,039	5,899	-2.3%	3,245	2,583	-20.4%
13	Injured Spouse Claims	7,777	8,295	6.7%	4,556	2,347	-48.5%
14	Closed Automated Underreporter <sup>320</sup>	6,137	5,151	-16.1%	3,194	2,147	-32.8%
15	Civil Penalties other than Trust Fund Recovery Penalties	5,544	5,301	-4.4%	3,042	2,115	-30.5%
Total TAS Receipts		298,933	295,904	-1.0%	161,274	118,025	-26.8%

As shown in Figure V.6 above, Identity Theft and PRWVH are the two issues with increased case receipts in FY 2012.

### 1. Tax-Related Identity Theft Work Continues to Increase Within TAS

The Identity Protection Specialized Unit, the centralized IRS organization established in 2008 to help identity theft victims, is experiencing unprecedented levels of case receipts.<sup>343</sup>

338 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; May 1, 2011; and May 1, 2012).

339 Because TAS did not use Primary Issue Code (PIC) 045 until March 24, 2010, a more appropriate comparison for FY 2010 and FY 2011 would be between PIC 045 case receipts from the last two quarters of FY 2011 (18,018 cases) and the last two quarters of FY 2010 (2,981 cases), which represents a 504.4 percent increase. The 21,286 pre-refund wage verification (PIC 045) cases actually represent a 571 percent increase over the 3,171 PIC 045 cases received in FY 2010. For more information about pre-refund wage verification holds, see *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, supra.

340 The IRS uses audit reconsideration to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid, or a tax credit was reversed. IRM 21.5.10.4.3 (Oct. 1, 2010).

341 IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on available information. The IRS, however, must issue a statutory notice of deficiency to the taxpayer prior to assessing the tax if the tax is a type subject to deficiency procedures. *Millsap v. Comm'r*, 91 T.C. 926, 931-932 (1988).

342 The Automated Underreporter program matches information returns reporting income and deductions submitted by third parties (e.g., Forms 1098, *Mortgage Interest Statement*, and 1099-MISC, *Miscellaneous Income*) against amounts reported on the taxpayer's return. IRM 4.19.3.1(1) (Aug. 16, 2011).

343 For additional information concerning identity theft, see *The IRS's Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight*, supra.

As shown in Figure V.7, through April of FY 2012, IPSU receipts have increased over 171 percent compared to FY 2011, while TAS cases have increased by nearly 62 percent.

**FIGURE V.7, COMPARISON OF IPSU AND TAS IDENTITY THEFT CASES, FY 2011 AND FY 2012 THROUGH APRIL<sup>344</sup>**

	FY 2011	FY 2012	Percent Increase
IPSU Identity Theft Receipts	89,848	244,037	171.6%
TAS Identity Theft Case Receipts	13,437	21,743	61.8%

In June 2010, the IPSU began working identity theft cases that did not involve economic burden and that TAS had previously accepted.<sup>345</sup> In FY 2010, the IPSU handled nearly 3,400 TAS systemic burden cases; in FY 2011, the number of cases increased more than sevenfold to nearly 26,700.<sup>346</sup> Despite the agreement that the IPSU would work non-economic burden identity theft cases, TAS still received 5,401 such cases in FY 2012 (through April), indicating that there may be an opportunity to increase awareness of case referrals to the IPSU.<sup>347</sup>

Since January 2012, TAS stolen identity cases are trending up from prior years. TAS typically sees the largest volume of stolen identity cases during May, June and July. Preliminary data for FY 2012 indicate significant increases may continue, as reflected in Figure V.8 below:

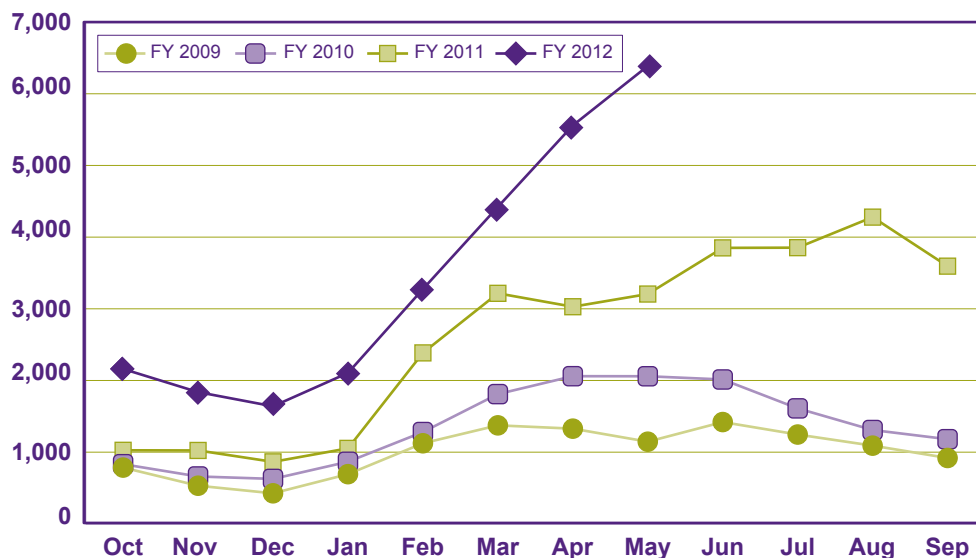
<sup>344</sup> IRS, *IPSU Identity Theft Report*, (Apr. 30, 2011; Apr. 28, 2012); and data obtained from TAMIS (May 1, 2011; May 1, 2012).

<sup>345</sup> See *Memorandum of Understanding Between the National Taxpayer Advocate and the Commissioner, W&I to Transition TAS Criteria 5-7 Identity Theft Cases to W&I IPSU* (Mar. 31, 2010), available at <http://www.irs.gov/advocate/article/0,,id=171162,00.html>. The following are examples of when TAS would continue to advocate for identity theft victims: (1) the taxpayer declines referral to the IPSU; (2) the IPSU has already tried to provide relief in the past, and has failed; (3) systemic burden cases that require advocacy which might lead to the issuance of a Taxpayer Assistance Order (TAO) on behalf of the taxpayer; (4) taxpayer cases added to TAMIS will remain in TAS and be resolved through the Operations Assistance Request process; (5) taxpayers not satisfied with the assistance provided through the IPSU; (6) taxpayers being assisted by the IPSU, who subsequently face economic burden while the IPSU is processing their request when the IPSU cannot provide relief within 24 hours; (7) congressional cases; and (8) any cases previously open in TAS. See also TAS Interim Guidance Memorandum TAS-13.1.16-1011-011, *Interim Guidance on Referring Identity Theft Criteria 5-7 Cases to the Identity Protection Specialized Unit (IPSU)* (Oct. 18, 2011), available at <http://www.irs.gov/pub/foia/ig/tas/tas-13.1.16-1011-011.pdf>.

<sup>346</sup> IRS, *IPSU Identity Theft Report* (Oct. 2, 2010); IRS, *IPSU Identity Theft Report* (Oct. 1, 2011).

<sup>347</sup> Data obtained from TAMIS (May 1, 2012).

**FIGURE V.8 IDENTITY THEFT RECEIPTS BY MONTH, FY 2009 – FY 2012<sup>348</sup>**



Although significant, TAS’s increased percentage of stolen identity cases pales in comparison to that facing the IRS. There is a continuing need for the IPSU to play a centralized role in managing identity theft cases. In addition, the IRS needs significantly more staffing to address these cases.<sup>349</sup>

In FY 2013 TAS will:

- Continue to work with the IRS on identity theft issues, recommending improvements and alternative approaches;<sup>350</sup>
- Elevate emerging identity theft schemes and processing issues identified in TAS case-work for collaborative solutions with the IRS;
- Develop IRM procedures for elevation of identify theft schemes within TAS;
- Analyze systemic identity theft receipts for appropriate referral to the IPSU; and
- Educate TAS and NTA toll-free employees on appropriate criteria for accepting and referring systemic stolen identity cases.

348 Data obtained from TAMIS.

349 *Identity Theft and Tax Fraud*, Hearing Before the Subcommittees on Oversight and Social Security Committee on Ways and Means U.S. House of Representatives 5 (May 8, 2012) (statement of Nina E. Olson, National Taxpayer Advocate).

350 For additional information concerning identity theft, see *The IRS’s Identity Theft Victim Assistance Strategy Requires Additional Improvements and Continued Oversight*, *supra*.

## 2. The Questionable Refund Program Results in Significant Delays in Processing Tax Refunds

The Questionable Refund Program (QRP) reappeared as a top issue in the form of Pre-Refund Wage Verification Hold cases in FY 2011 and is still a significant issue in FY 2012. Through April of FY 2012, TAS received 8,059 PRWVH cases and closed 8,438, providing some form of relief to taxpayers in 70.7 percent of the closed cases.<sup>351</sup>

The civil side of the QRP, previously administered by the IRS Campus Fraud Detection Centers, moved to the Wage & Investment (W&I) Division's Accounts Management Taxpayer Assurance Program (AMTAP) in October 2009. AMTAP's primary focus is revenue protection. To accomplish this, it selects questionable returns for screening through the Electronic Fraud Detection System (EFDS) to verify the accuracy of taxpayers' wages and withholding before releasing refunds.

As shown below, the number of returns meeting AMTAP criteria has increased 120 percent in FY 2012 (through May 10) over the same period in FY 2011.

**FIGURE V.9, NUMBER OF IRS RETURNS MEETING AMTAP CRITERIA AND TAS AMTAP CASE RECEIPTS, FY 2011 AND FY 2012**

	FY 2011	FY 2012	Percent Increase
Number of IRS returns meeting AMTAP criteria through May 10, 2012 <sup>350</sup>	572,881	1,260,550	120%
Number of TAS AMTAP Case Receipts, through April 30, 2012 <sup>351</sup>	4,783	8,059	68.5%

Although related TAS receipts have increased significantly, they have grown more slowly than IRS receipts. This would suggest the increase in TAS receipts is not solely attributable to problems with the IRS's handling of AMTAP cases, but may also reflect the reality of the IRS scrutinizing more wage data in an effort to reduce fraud.

In FY 2011, the IRS did not respond to thousands of TAS requests for AMTAP to release legitimate refunds. TAS issued 22,197 Operations Assistance Requests (OARs) to AMTAP in FY 2011 and 7,814 through April of FY 2012.<sup>354</sup> TAS also issued 210 Taxpayer Assistance

351 TAS determines relief based upon whether TAS is able to provide full or partial relief or assistance on the issue initially identified by the taxpayer. Data obtained from TAMIS (May 1, 2012).

352 Electronic Fraud Detection System Production Filing Season 2012 Statistics (May 10, 2012) – For Official Use Only.

353 TAMIS (May 1, 2012).

354 Data obtained from TAMIS (Oct. 1, 2011; May 1, 2012).

Orders (TAOs) to AMTAP in FY 2011 and 48 through May FY 2012.<sup>355</sup> Over 90 percent of the TAOs issued to AMTAP were for non-responsiveness to OARs.<sup>356</sup>

The problems with the AMTAP program are similar to those TAS identified when the IRS's Criminal Investigation (CI) unit administered the QRP.<sup>357</sup> The National Taxpayer Advocate is concerned that systemic QRP issues harm legitimate taxpayers, and she will continue to advocate for systemic change.<sup>358</sup> In the summer of 2011, the IRS convened a cross-functional team (including TAS) called the Accelerated Revenue Assurance Program (ARAP) to explore ways to effectively combat refund fraud.

In December 2011, the IRS moved the ARAP initiatives into the new Return Integrity and Correspondence Services organization. In addition to working AMTAP issues, the RICS will explore ways to combat pre-refund fraud in other areas such as EITC, the Health Care Tax Credit (HCTC), and the Office of Correspondence Services.

For the remainder of FY 2012 and in FY 2013, TAS will continue its role of ensuring that the IRS respects taxpayer rights while endeavoring to protect revenue by working with RICS organization. TAS will also work with RICS to assist taxpayers victimized by refund schemes who are suffering economic burdens or have not received relief from the IRS. In FY 2013, TAS will continue to advocate for the release of legitimate refunds delayed by AMTAP, and for timely action by the IRS to reduce taxpayer burden.

### 3. TAS Experiences an Increase in Applications for Exempt Status and Exempt Plan/Exempt Organization (EP/EO) Technical Cases

Prior to 2006, small exempt organizations (EOs) (those organizations with gross receipts normally of \$25,000 or less) did not have annual IRS reporting requirements, and some had never been required to seek initial recognition of their tax-exempt status.<sup>359</sup> In 2006, Congress passed Section 1223 of the Pension Protection Act of 2006 (PPA) which imposes an annual filing requirement on small EOs and provides that the exempt status of any EO failing to file for three consecutive years is automatically revoked. The statute does not specify how EOs should apply for reinstatement of exempt status following this

355 Data obtained from TAMIS (Oct. 1, 2011; May 1, 2012). See *The Taxpayer Assistance Order as an Advocacy Tool to Address Systemic Problems in Tax Administration*, *infra*.

356 When TAS lacks the statutory or delegated authority to directly resolve a taxpayer's problem, TAS interacts with the responsible IRS operating division or function to resolve the issue through a Form 12412, *Operations Assistance Request (OAR)*. The OAR transmits documentation and conveys a recommendation or requested action to resolve the taxpayer's issue by a given date. The OAR generally precedes a TAO and gives the IRS the opportunity to resolve the issue based on the documentation provided, but see IGM TAS-13-0512-017, *Interim Guidance for Preparing Taxpayer Assistance Orders (TAOs) Involving Return Preparer Fraud* (May 22, 2012), <http://www.irs.gov/pub/foia/ig/tas/tas-13-0512-017.pdf>.

357 See National Taxpayer Advocate 2005 Annual Report to Congress 25-54 (Most Serious Problem: *Criminal Investigation Refund Freezes*); National Taxpayer Advocate 2007 Annual Report to Congress 448-458 (Status Update: *Questionable Refund Program*).

358 See National Taxpayer Advocate 2011 Annual Report to Congress 28-47 (Most Serious Problem: *The IRS's Wage and Withholding Verification Procedures May Encroach on Taxpayer Rights and Delay Refund Processing*); *The IRS Should Take Steps to Limit Opportunities for Refund Fraud, While Not Unreasonably Delaying Legitimate Refund Claims*, *supra*.

359 See IRC 508(c)(1)(B), with respect to organizations otherwise exempt under IRC § 501(c)(3). The IRC § 508(a) requirement to seek formal recognition applies only to organizations seeking exemption under IRC § 501(c)(3); organizations specified in IRC § 501 other than under § 501(c)(3) are not required by IRC § 508(a) to seek formal recognition of exempt status.

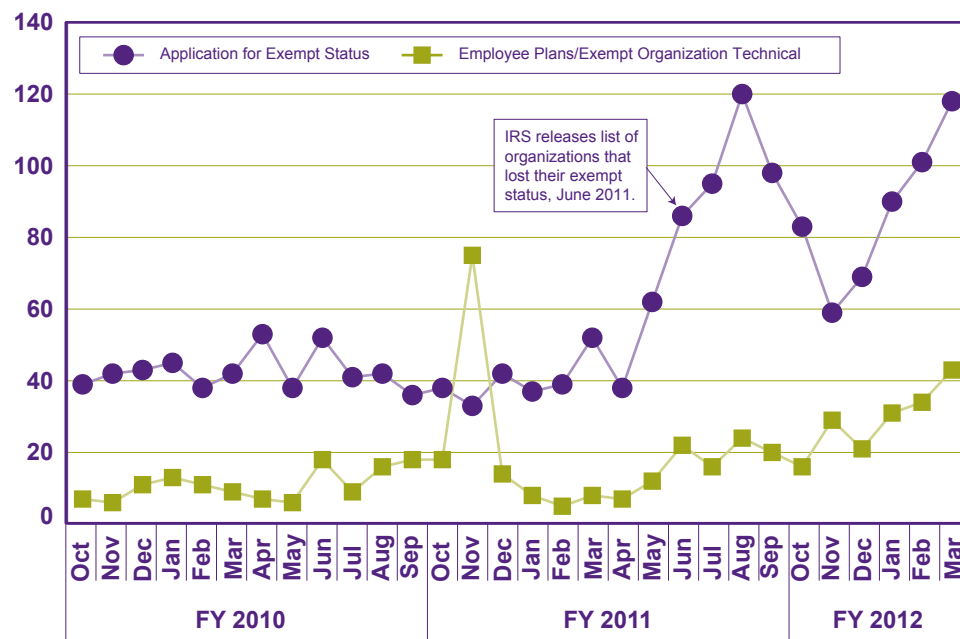


revocation.<sup>360</sup> In 2010, as many as 730,000 exempt organizations (EOs) had annual gross receipts that were normally \$25,000 or less.<sup>361</sup>

In accordance with the PPA, on June 8, 2011, the IRS notified approximately 275,000 EOs, most of which were public charities, that their tax-exempt status had been automatically revoked. On the same day, the IRS issued guidance on how to apply for reinstatement and provided transitional relief for small EOs.<sup>362</sup> While the National Taxpayer Advocate commends the IRS for providing meaningful transitional relief to these organizations, she believes the IRS makes it unnecessarily burdensome to obtain reinstatement.<sup>363</sup>

TAS anticipated an increase in receipts because of the revocations. After an initial surge when the IRS published the list of organizations that lost their exempt status, receipts began to decline. However, as shown in Figure V.10 below, they started to increase again in December 2011:

**FIGURE V.10, APPLICATIONS FOR EXEMPT STATUS AND EP/EO TECHNICAL ISSUE CASES BY MONTH, FY 2010 THROUGH FY 2012 (MARCH 31)**<sup>364</sup>



360 Pension Protection Act of 2006, Pub. L. No. 109-280 § 1223, 120 Stat. 780, 1090 (2006) (amending IRC § 6033).

361 IRS response to TAS information request (Aug. 17, 2010). The exact number is uncertain because the available data may not reflect current levels of gross receipts for all organizations. The term "exempt organization" encompasses organizations exempt from federal income tax pursuant to IRC § 501(a). Of all exempt organizations registered with the IRS as of 2005, almost 63 percent were public charities. See Amy Blackwood, Kennard T. Wing & Thomas H. Polak, *The Nonprofit Sector in Brief, Facts and Figures from the Nonprofit Almanac 2008: Public Charities, Giving, and Volunteering*, Urban Institute, available at [http://www.urban.org/UploadedPDF/411664\\_facts\\_and\\_figures.pdf](http://www.urban.org/UploadedPDF/411664_facts_and_figures.pdf).

362 See *IRS Identifies Organizations that Have Lost Tax Exempt Status; Announces Special Steps to Help Revoked Organizations* (June 8, 2011), available at <http://www.irs.gov/newsroom/article/0,,id=240239,00.html?portlet=7>.

363 See National Taxpayer Advocate's 2011 Annual Report to Congress, 437-450 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*).

364 Data obtained from TAMIS. The spike in November in Employee Plan/Exempt Organizational Technical cases may be due to initial coding errors and the actual number of cases now appears to be much smaller.

As of June 5, 2012, the Where Is My Exemption Application page on [www.irs.gov](http://www.irs.gov) reflects that the IRS is currently assigning applications received in October 2011 that require further development,<sup>365</sup> and the review process will take at least an additional 90 days. The IRS did not add any new staffing or plan effectively for the volume of applications requiring development. As a result, organizations applying for exempt status and those that had to reapply are likely waiting more than ten months for the IRS to determine their status.

#### **D. The Taxpayer Assistance Order as an Advocacy Tool to Address Systemic Problems in Tax Administration**

The Taxpayer Assistance Order (TAO) is a powerful tool that the National Taxpayer Advocate and Local Taxpayer Advocates (LTAs) can use to resolve their cases. An LTA should consider issuing a TAO in a well-developed case if the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered and the law and the facts support the relief.<sup>366</sup> The LTA may issue a TAO to order the IRS to take an action, cease an action, or refrain from taking an action.<sup>367</sup> For example, the LTA may issue a TAO to release a levy.<sup>368</sup> The LTA may also issue a TAO to order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level.<sup>369</sup>

The ability to issue a TAO ensures “that TAS can effectively resolve problems and protect taxpayer rights when the taxpayer has a significant hardship, even when the IRS disagrees or has other internal priorities.”<sup>370</sup> TAS employs various approaches to ensure that LTAs understand what types of cases require TAOs. The approaches include coordinated monthly discussions with all LTAs about case scenarios that may result in a TAO, inclusion of TAOs on the TAS leadership conference agenda, and use of case studies with TAOs in technical training that include the use of a TAO. These forums help LTAs share experiences, explore ways of using the TAO tool in advocacy, and provide guidance<sup>371</sup>.

365 See “Where is My Exemption?” available at: <http://www.irs.gov/charities/article/0,,id=156733,00.html> (last visited June 8, 2012).

366 Treas. Reg. § 301.7811-1(a) and (c), 76 Fed. Reg. 18,059 (Apr. 1, 2011). See also IRC § 7811(a)(1); IRM 13.1.20.1 (Dec. 15, 2007).

367 Treas. Reg. § 301.7811-1(c), 76 Fed. Reg. 18,059 (Apr. 1, 2011); IRM 13.1.20.3 (Dec. 15, 2007).

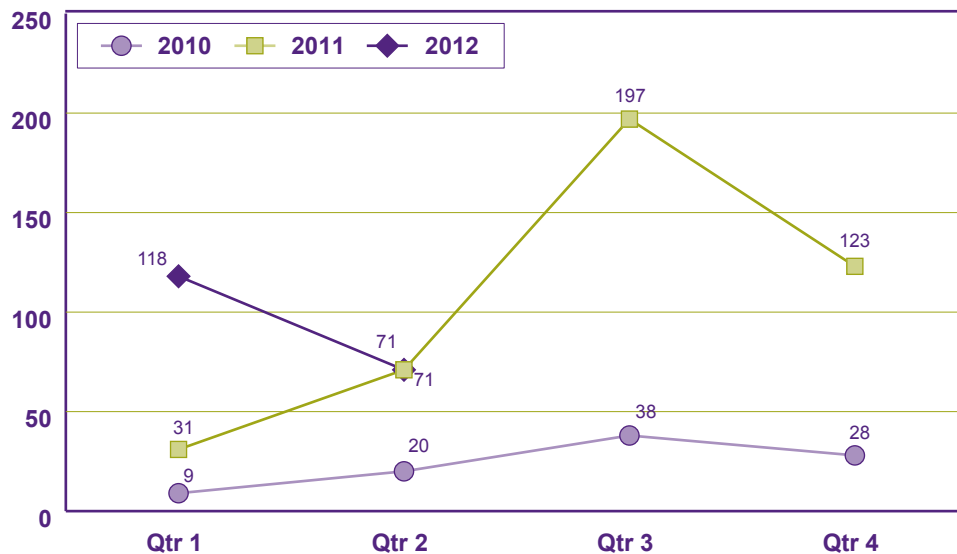
368 IRC § 7811(b)(1).

369 Treas. Reg. § 301.7811-1(c), 76 Fed. Reg. 18,059 (Apr. 1, 2011); IRM 13.1.20.3 (Dec. 15, 2007).

370 IRM 13.1.20.2(5) (Feb. 1, 2011).

371 The monthly sessions are called TAO Cafés. These discussions, which include moderators and a detailed agenda, allow LTAs to ask questions about TAO authority under different scenarios.

**FIGURE V.11, TAXPAYER ASSISTANCE ORDERS (TAOS) ISSUED BY QUARTER FY 2010 – SECOND QUARTER FY 2012<sup>372</sup>**



TAOs can also bring systemic problems to light and help drive systemic improvement in the IRS.<sup>373</sup> In FY 2012, TAS issued 251 TAOs to the IRS through May 31, 2012. Figure V.12 shows the issues that generated TAOs these orders.

<sup>372</sup> Data obtained from TAMIS. TAS retrieved the data on the first day of the month following the end of each quarter for FY 2010 through second quarter of FY 2012. FY 2012 data reflected in the chart is through March 31 (the end of the second quarter). TAS issued 189 TAOs through the second quarter of FY 2012 and issued 251 TAOs through May 31, 2012.

<sup>373</sup> For additional information on how TAS works systemic issues, see *Systemic Advocacy, infra*.

**FIGURE V.12, TAOs ISSUED THROUGH MAY 31 IN FY 2012<sup>374</sup>**

Issue	Number of TAOs
Entity Issues <sup>375</sup>	68
Refunds	59
Collection Issues	37
Audit Issues	30
Document Processing	21
Penalty Issues	13
Criminal Investigation	9
Appeals Issues	8
Other Issues	6
<b>Total</b>	<b>251</b>

Once TAS issues a TAO, the IRS can comply with the action requested or appeal the issue for discussion at higher levels.<sup>376</sup> TAS can also modify or rescind a TAO once issued.<sup>377</sup> As reflected in Figure V.13 below, TAS has successfully advocated by using TAOs.

**FIGURE V.13, FY 2012 ACTIONS TAKEN ON TAOs ISSUED (THROUGH MAY 31, 2012)<sup>378</sup>**

Action	Total
IRS Complied with TAO	189
IRS Complied after TAO Modified	9
TAS Rescinded TAO	16
TAO Pending - In Process	37
<b>Total</b>	<b>251</b>

During FY 2013, TAS will:

- Continue to hold formal and informal discussions on the appropriate use of the TAO in advocating for taxpayers;
- Promote the involvement of technical advisors and the appropriate use of TAS attorney advisors in the development of case issues leading to TAO recommendations; and
- Conduct targeted case reviews of issues in which the use of the TAO may be appropriate and update training and procedures based upon findings.

374 Data obtained from TAMIS (May 31, 2012).

375 Entity issues include any taxpayer identification information such as name, taxpayer identification number, filing status, address, etc. The issue having the most significant impact on this category in FY 2012 is identity theft with 62 of the 68 TAOs issued related to cases involving identity theft. Data obtained from TAMIS (May 31, 2012).

376 See IRM 13.1.20.5 (Dec. 15, 2007) for details regarding the TAO appeal process.

377 See IRC § 7811(c), IRM 13.1.20.2 (Feb. 1, 2011).

378 Status of TAOs as of June 5, 2012.

## VI. Systemic Advocacy

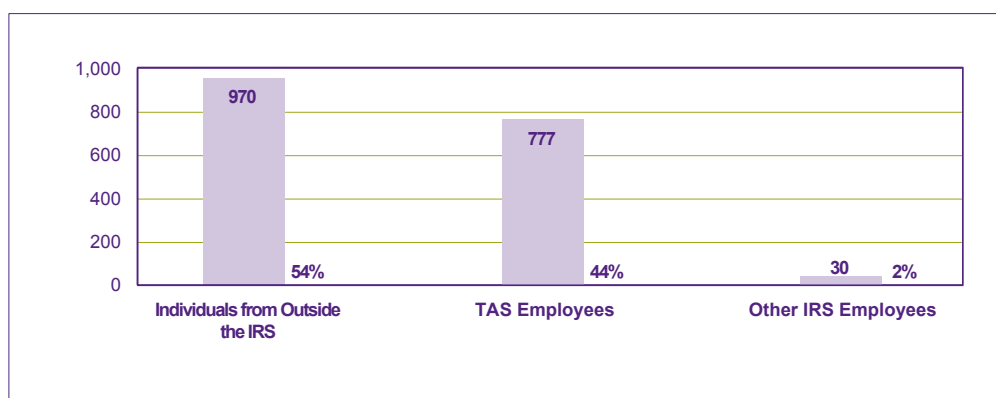
The Office of Systemic Advocacy (SA) provides oversight and focus for the identification and resolution of systemic problems within the IRS. Projects arise from several sources, including field offices within TAS, IRS employees in other functions, and external stakeholders (e.g., tax practitioners).

In FY 2012, the National Taxpayer Advocate issued a memorandum to senior staff outlining the TAS vision for systemic advocacy, including the overall approach for the organization. As a result of this new focus, SA expanded and enhanced the process of evaluation and review of all potential systemic issues submitted through the Systemic Advocacy Management Systems (SAMS); implemented an enhanced collaborative approach to resolving issues with the IRS; and realigned its staffing to focus on process improvements and data analysis.

### A. Enhanced Identification and Review of Potential Systemic Issues

Submissions to the SAMS systems generate the majority of SA's work.<sup>379</sup> Between May 1, 2011 and April 30, 2012, SAMS received 1,777 submissions, an increase of 30 percent over the same period last year. Taxpayers and practitioners are now TAS's largest source of submissions, accounting for 54 percent of the total. TAS employees accounted for 44 percent.<sup>380</sup> Figure VI.1 shows the breakdown of SAMS submissions by type of submitter.

**FIGURE VI.1, SAMS SUBMISSIONS BY SUBMITTER, MAY 1, 2011 THROUGH APRIL 30, 2012<sup>381</sup>**



The IRS program areas with the most SAMS submissions are Submission Processing, Document Processing, Individual Taxpayer Issues, Collection, Examination, and Accounts:

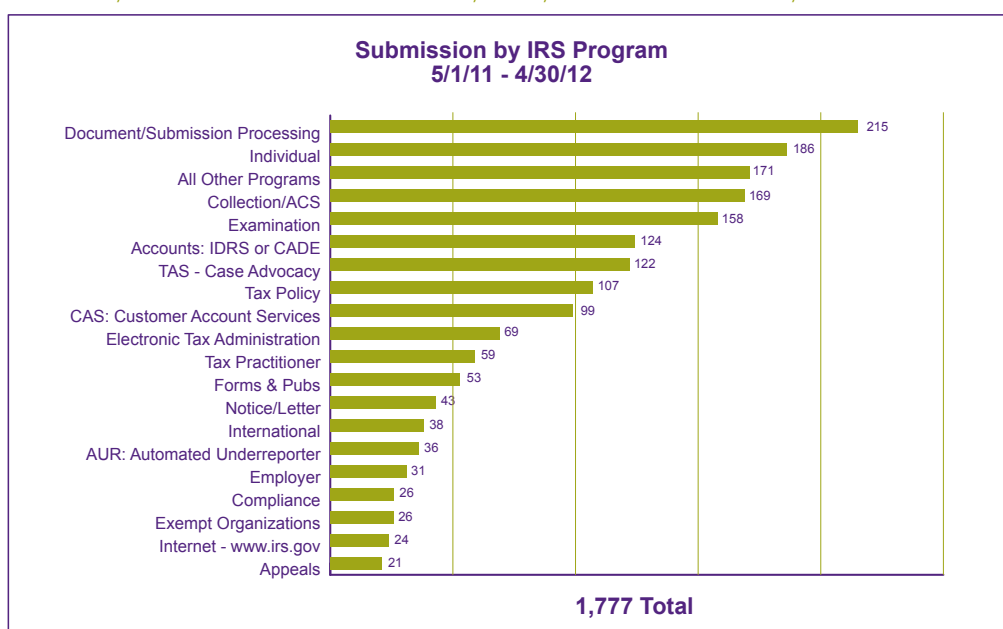
379 While SAMS is one of the major sources of TAS's systemic advocacy issues, issues are also elevated through informal channels, such as meetings, task force work, etc.

380 Data obtained from SAMS (May 31, 2012). From May 1, 2010 through April 30, 2011, TAS received 1,366 SAMS submissions.

381 Data obtained from SAMS (May 31, 2012).

IDRS or CADE. Individual taxpayer cases accounted for ten percent of all SAMS submissions. While SAMS is not the appropriate venue for these issues, SA has developed standard language for the submitters about contacting TAS for assistance with individual problems. SA has also implemented a new internal outreach effort to educate TAS employees on the proper ways to submit issues. Figure VI.2 shows a breakdown of the 1,777 SAMS submissions by issue area.

**FIGURE VI.2, SAMS SUBMISSIONS BY ISSUE AREA, MAY 1, 2011 THROUGH APRIL 30, 2012<sup>382</sup>**



SA has established a three-level review process for SAMS submissions to determine the most effective way to resolve the issue.<sup>383</sup> Level 1 involves detailed documentation and data-building to ensure SA has the information to determine whether a systemic issue exists. At Levels 2 and 3, teams of TAS employees review all issues and related research, score issues as to their scope and potential impact, and recommend how best to resolve each one. The new process incorporates the perspective of employees and managers throughout TAS. It uses their expertise and experience to help identify systemic problems earlier in the process and find the most effective ways to resolve them.

## B. Monitoring the Development of Potential Systemic Issues

In FY 2012, SA has increased its focus on Information Gathering Projects (IGPs) as a way to monitor the development of potential systemic issues. An IGP identifies emerging trends or issues generated by new legislation or significant IRS policy, process, or procedural

382 Data obtained from SAMS (May 31, 2012).

383 National Taxpayer Advocate Fiscal Year 2012 Objectives Report to Congress 51-53.

changes. An IGP allows SA to capture and track emerging issues for potential systemic problems. If SA identifies a systemic issue, it may reclassify an IGP as an Immediate Intervention, Advocacy Project, or other advocacy effort. Examples of open IGPs include health care initiatives, adoption credit issues, installment agreement account servicing, and revocations of tax-exempt status.

From April 1, 2011 through April 30, 2012, TAS opened 65 IGPs — an increase of 210 percent from the same time last year.<sup>384</sup> The majority of these IGPs (51 percent) relate to processing issues (*i.e.*, processing of forms submitted by taxpayers or claims for abatement or refund). Others involve deficiency assessments by the IRS, (17 percent), tax collection policy and procedures (26 percent), and taxpayer service problems (six percent).

Until FY 2012, TAS had no formal guidance for working IGPs and was essentially handling them like advocacy projects. In FY 2012, TAS developed guidance on how to work an IGP and when it is appropriate to close one or reclassify it as another type of advocacy effort (Immediate Intervention, Advocacy Project, etc.). SA has trained employees on the new guidance and is working on a formal memorandum with this information. In FY 2013, SA will incorporate this guidance into a revised Systemic Advocacy IRM 13.2.2.

### C. Collaborative Approaches to Resolving Systemic Issues

In the past, Systemic Advocacy typically addressed systemic problems through a formal advocacy project assigned to an analyst. While advocacy projects are still an important aspect of our work, SA is striving to address problems through the *best* approach. Some issues are best addressed at an executive level. Others may be best dealt with through ongoing advocacy work, such as a collaborative effort.

Collaborative efforts are those in which SA works to resolve systemic issues without the formal assignment of a project. TAS may assemble a group of employees to work on an issue within TAS or as part of a team with the IRS. Our collaboration on IRS teams may include an equal partnership with TAS and an operating division working together to solve a problem. Other examples include IRS initiatives in which TAS is invited to participate and provide input, but TAS does not control the outcome.

Examples of collaborative teams include:

- Identity Theft Technical Working Group — a group of TAS employees working with the IRS to identify and address systemic problems identified in TAS casework;
- Identify Theft Executive Steering Committee — IRS executives, including the National Taxpayer Advocate, addressing the tax administration challenges at a policy level;
- Return Preparer Strategy Executive Team — a cross-functional effort to implement the IRS Return Preparer Strategy; and

<sup>384</sup> Data obtained from SAMS (May 31, 2012). From April 1, 2010 through April 30, 2011, TAS opened 21 IGPs.

- Undelivered Mail Working Group — a cross-functional effort to address systemic issues stemming from undelivered IRS mail.

Many of these efforts, at least initially, are *ad hoc* in nature and lie outside the typical SA work processes. As a result, SA did not have requirements for conducting a collaborative effort or documenting progress and recording results in a unified manner. In FY 2012, SA created a SharePoint site to list and categorize all collaborative efforts by topic, and developed procedures and expectations for team members to update the site. This new process provides a consistent method and guidelines for documenting collaborative efforts with the IRS. It also accommodates updates of the team’s status, actions, and accomplishments.

SA has trained employees on the new collaborative efforts procedures and is working on developing an Interim Guidance Memorandum containing this information. In FY 2013, SA will incorporate these procedures into a revised SA IRM 13.2.2.

#### D. Tracking Recommendations Made in the National Taxpayer Advocate’s Annual Reports to Congress

Each year, the National Taxpayer Advocate puts forth numerous recommendations in the Annual Report to Congress to improve tax administration for taxpayers and the IRS. These recommendations play an important role in TAS’s efforts to resolve systemic problems. Our efforts do not end when we publish the Annual Report. In addition to TAS’s ongoing advocacy efforts, SA tracks TAS’s recommendations and the IRS’s subsequent actions, and for each Annual Report develops a “report card” of recommendations and responses. These report cards are an effective means of tracking TAS’s ability to effect change. Figure VI.3 details the status of the National Taxpayer Advocate’s Annual Report recommendations over the past four years.

**FIGURE VI.3, ANNUAL REPORT TO CONGRESS RECOMMENDATIONS AND ACCEPTANCE RATE**

ARC Recommendations <sup>383</sup>	2007	2008	2009	2010 <sup>384</sup>	2011 <sup>385</sup>
Total Number of Recommendations Made	205	67	92	92	120
Number of Recommendations Accepted or Acted Upon by IRS	123	36	56	47	60
Percentage of Recommendations Accepted or Acted Upon by IRS	60%	53%	61%	50%	50%

385 Data reported is on a calendar year basis. Years 2007, 2008, and 2011 each have one congressional recommendation, and 2010 has two congressional recommendations which are not included in the total number of recommendations made to the IRS.

386 TAS and the IRS are negotiating 2010 and 2011 recommendations; therefore, accepted recommendation data is not finalized but preliminary data is included.

387 TAS and the IRS are negotiating 2010 and 2011 recommendations; therefore, accepted recommendation data is not finalized but preliminary data is included.



After the publication of the ARC, the IRS operating divisions provide responses to the TAS recommendations intended to address the Most Serious Problems identified in the report. In FY 2012, SA developed an easily accessible and easily updated system to track actions relating to recommendations. SA plans to move everything prior to 2011 (2007 through 2010) from JAMES<sup>388</sup> to the new system by the end of FY 2012, to allow TAS to more easily track and follow up on outstanding recommendations. By the beginning of FY 2013, SA will develop a quarterly report that will allow the National Taxpayer Advocate and Executive Director, SA to monitor outstanding ARC recommendations and follow up with IRS executives to seek resolution.

<sup>388</sup> The JAMES is a Treasury-owned web portal used to track and report data from action plans resulting from Treasury Office of Inspector General (OIG), TIGTA and GAO audits. JAMES also tracks IRS planned corrective actions that address findings from internal management reviews, information on the Federal Managers' Financial Integrity Act (FMFIA), material weaknesses, significant deficiencies, Federal Financial Management Improvement Act (FFMIA) remediation plans, as well as IRS responses to recommendations by the National Taxpayer Advocate in the Annual Report to Congress.

## VII. Integrated TAS Technology: TESIS

### A. TAS Is Developing a New System that Will Modernize TAS's Advocacy Programs Through Updated Electronic and Online Resources

TAS's current systems have not kept pace with rapid innovations in technology and the explosion of online interaction capabilities for TAS employees and their customers. Linking all TAS applications within a single integrated system has been a part of TAS's plans for over a decade. Now, advancing technology and the obsolescence of TAS's primary system for tracking cases make system integration a necessity. The Taxpayer Advocate Service Integrated System (TESIS) is the prescribed solution. It will be the most significant technical innovation in the 30-year history of TAS and its predecessor, the Problem Resolution Program.

Current TAS and IRS systems, designed and developed as stand-alones, share little, if any, information electronically. TAS employees must manually cut and paste or re-type information from one system to another. Such repetitive actions can result in inaccuracies and prolong the time it takes to resolve cases. Intake Advocates, who take initial case-building actions, must painstakingly research information from several different systems to develop a clear and accurate picture of the issues or problems taxpayers are facing. Case Advocates, who are responsible for resolving taxpayer issues and problems, continually monitor multiple IRS systems to prevent additional problems, such as duplicate refunds or erroneous notices. TESIS will integrate the current TAS stand-alone systems into one and allow automatic sharing of information with other IRS systems.

TESIS will integrate the features of TAS's current system applications with new features to enhance the overall experience of employees and service to taxpayers. For the first time, one system will record a wide range of TAS activities that resolve or prevent problems. Tracking these activities in a single, integrated system will improve TAS's ability to apply consistent labels across all advocacy efforts, providing a new level of information for analysis and identifying the pattern of a problem more quickly. For example, solutions put in place in one part of the country may provide insight to help taxpayers in another area. A single-system approach also means that employees will have just one TAS system to learn and maintain, with associated cost savings.

Performance measures are fundamental to TESIS development. To improve employee satisfaction and efficiency as well as customer satisfaction, TAS turned to system users for their ideas on what aspects TESIS should include. TAS asked all of its employees to identify features that would contribute to the quality and efficiency of their work, as well as aspects of the current system that frustrate and hinder performance. Several hundred TAS employees provided suggestions for integrating data from other IRS systems to reduce repetitive research and transcription, and how reminders and prompts could help them manage customer commitments and provide quality service.

## B. TASIS Will Deliver Significant Benefits to Taxpayers, Employees, and Partners in Tax Administration

TASIS will automate work processes, eliminate manual and redundant steps, and allow TAS employees to spend more time on TAS's core mission of advocating for taxpayers. TASIS will allow TAS employees to obtain automated information from IRS systems, sparing them laborious hours of researching, updating, and monitoring taxpayer accounts and records. This automation of work processes will free Case Advocates and Intake Advocates to focus on direct interaction with taxpayers and resolution of taxpayer issues, thereby increasing employee engagement while satisfying customers.

TASIS will support interaction between TAS employees and external customers via email, text, and fax. TAS will ensure these interactions operate with guidelines that place the highest priority on the security of taxpayer data.

TASIS will both improve and provide new avenues for seeking assistance from TAS. Taxpayers will still have the current options of contacting TAS by phone, correspondence, and walk-in, with the added choice of seeking help via the Internet for the growing number who prefer to conduct business electronically. This option will allow for an initial interaction through a series of prompts that will help taxpayers identify issues, find options for self-help when appropriate, access IRS contact information, and request TAS assistance.

TASIS will support electronic collaboration between TAS employees and IRS operating divisions. The system will include a secure partitioned area for the operating divisions to electronically receive and respond to Operations Assistance Requests from TAS.<sup>389</sup> This will reduce the need to mail or fax such requests and provide an automated history of interactions on cases.

## C. TASIS Will Improve and Streamline the Acceptance and Assignment of Work

Taxpayers who seek help by phone or online will communicate directly with a TAS Intake Advocate, as opposed to the current paper referral process and subsequent callback once TAS assigns the issue to a Case Advocate. Intake Advocates will conduct a comprehensive interview with the taxpayer to identify underlying issues, share options for resolution, describe what to expect from TAS, build the case, and in some instances resolve the issue while talking to the taxpayer. TASIS will provide Intake Advocates with tools to conduct research, document the contact, and efficiently build the case during these initial interviews with taxpayers.

Once an Intake Advocate builds the case, TASIS will quickly match the taxpayer with a Case Advocate based on where the taxpayer lives (TAS will predominantly match taxpayers

<sup>389</sup> An OAR (Form 12412) is the form that TAS employees use when requesting that the IRS complete an action on a TAS case when TAS lacks the authority to take that action.

with Case Advocates in their home states), and the availability, skill, and workload of the advocate. The raw number of cases in the advocate's current inventory will no longer be the determinant of casework assignments. Instead, new assignments will consider complexity and the time and steps needed to resolve similar issues. TESIS will replace the existing manual assignment process that often involves interoffice transfers of cases with the attendant delays.

#### **D. TESIS Will Improve Online Document Collaboration and Storage**

In recommending an integrated design, systems analysts emphasized electronic document management, *i.e.*, storage within the system for case files, communications, and research findings. Paper records pose efficiency and reliability problems, including time-consuming file retrieval, opportunity for loss, and limited ability to share information between offices. Reliance on paper files and documents requires storage and handling of 50 to 60 documents per TAS case, totaling approximately 12.5 million documents each year. Some records are stored on local hard drives, and TAS incurs repeated copying and shipping costs for transfers, work reviews, and collaboration. The use of virtual documents will almost eliminate paper document handling and storage, allow immediate access for collaboration, and improve TAS's ability to reference the products or conduct research.

Moving toward a paperless environment, TESIS will offer document collaboration tools to gather and track edits, reviews, and approvals from remotely located users. It will also manage supporting documentation and reference materials associated with documents and offer access to earlier reports and research. Finally, TESIS will provide tools to map project delivery documents so that participants and oversight users can see upcoming deadlines, assignments, and progress on the delivery of a finished product. Document collaboration and a centralized document repository will make content searchable and improve its usefulness.

#### **E. Deployment Plan**

In FYs 2011 and 2012, TAS completed the first step in system creation by collaborating with the IRS's Modernization & Information Technology Services (MITS) organization to successfully document over 4,400 system requirements for TESIS (*i.e.*, statements that explain the desired functionality of the system). The requirements reflect the future state of how TAS will operate with the creation of TESIS. MITS extensively analyzed the most efficient way to build the foundation of TESIS to ensure the integrated system will meet TAS's needs.

MITS expects to deploy TESIS in several stages. The first release will include approximately 40 percent of our requested system requirements, focusing on Case Advocacy functions and including an intake process, partial automation of workload distribution, and support of virtual case resolution and storage.

Of the requirements highlighted and described above in sections B through E, the first release will contain the following:

- Intake Advocates will be able to conduct a comprehensive interview with the taxpayer. They will have the tools to perform research, document the contact, and efficiently build the case during these initial interviews.
- Once the case is built, TESIS will quickly match the taxpayer with a TAS office based on where the taxpayer lives. A manager will then manually assign the case based on availability, skill, and workload of the Case Advocate, all of which are details TESIS will provide. The full automation of workload routing and direct case assignment will be included in a future release.
- Case Advocates will have the ability to store electronic documents, *i.e.*, storage within the system for case files, communications, and research findings.
- The system will support electronic collaboration between TAS employees and IRS operating divisions.

TAS intends to begin testing components of the first release in the second quarter of FY 2013, with an expected delivery during that quarter. Future releases will incorporate the ability for taxpayers and their representatives to submit issues and request TAS assistance via the Internet. These releases will include other components of TAS's advocacy service, allowing employees to identify and refer systemic issues within an open case. Future releases will also allow real-time identification and analysis of systemic problems. It will take approximately 12 to 18 months to deploy the application and allow TAS employees and customers to reap the rewards of a fully integrated system.

## VIII. TAS Uses Innovative Solutions to Provide Service to Customers

### A. The National Taxpayer Advocate Has Recognized the Need for More Face-to-Face Interactions with Taxpayers

In her 2010 Annual Report to Congress, the National Taxpayer Advocate cited accessibility to IRS face-to-face assistance as a most serious problem.<sup>390</sup> Nationwide, TAS maintains 65 offices where our customers can meet with Case Advocates.<sup>391</sup> TAS is statutorily required to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have problems in dealing with the IRS and, to the extent possible, propose changes in the administrative practices of the IRS to mitigate the problems identified.<sup>392</sup> Additionally, TAS must also have an LTA available in every state.<sup>393</sup> To satisfy our statutory mission, TAS must find innovative approaches to expand our reach of coverage beyond existing “brick and mortar” offices. Without trying new solutions, taxpayers will continue to have limited access to face-to-face service.

### B. TAS Is Participating in the IRS’s Virtual Services Delivery (VSD) Pilot

Virtual Service Delivery (VSD) is a high-definition, two-way videoconferencing environment that provides a face-to-face experience and presents an opportunity for TAS to meet its statutory obligations without opening more offices. In FY 2012, the IRS piloted VSD in ten IRS offices and two partner sites.<sup>394</sup> TAS participated in this pilot, connecting its office in Jacksonville, Florida to an IRS Taxpayer Assistance Center in Tampa (where TAS has no physical presence), to provide service to taxpayers using VSD. Low Income Taxpayer Clinics in Washington State and Tennessee are also testing VSD to connect their clients with Appeals offices in the Fresno and Memphis campuses. Clinics, along with, or on the behalf of, their clients, will use VSD to conduct Collection Due Process and Offer in Compromise hearings with Appeals.

During FY 2013, the National Taxpayer Advocate will continue to pursue opportunities to increase face-to-face interactions with taxpayers by:

- Expanding VSD coverage to more TAS offices and connecting to more taxpayers nationwide;

390 National Taxpayer Advocate 2010 Annual Report to Congress 267-277 (Most Serious Problem: *The IRS Has Been Reluctant to Implement Alternative Service Methods that Would Improve Accessibility for Taxpayers Who Seek Face-to-Face Assistance*); See also National Taxpayer Advocate 2008 Annual Report to Congress 95-113 (Most Serious Problem: *Taxpayer Service: Bringing Service to the Taxpayer*); National Taxpayer Advocate 2011 Annual Report to Congress 137-150 (Most Serious Problem: *Foreign Taxpayers Face Challenges in Fulfilling U.S. Tax Obligations*); National Taxpayer Advocate 2011 Annual Report to Congress 151-165 (Most Serious Problem: *Individual U.S. Taxpayers Working, Living, or Doing Business Abroad Require Expanded Service Targeting Their Specific Needs and Preferences*).

391 TAS also has ten IRS campus operations but taxpayers generally cannot access those facilities due to physical security limitations.

392 IRC § 7803(c)(2)(A)(i) - (iii).

393 IRC § 7803(c)(2)(D)(i)(I) requires that at least one local taxpayer advocate be available to taxpayers in each state.

394 IRS News Release, IR-2012-1, *IRS Kicks Off 2012 Tax Season with Deadline Extended to April 17* (Jan. 4, 2012).

- Expanding VSD coverage to international locations to test cost-effective ways to provide service to U.S. taxpayers living abroad and foreign taxpayers who have a U.S. tax filing requirement; and
- Exploring new technologies, including web-based video-conferencing, to expand VSD to all taxpayers and practitioners.

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## Appendix I: Evolution of the Office of the Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).<sup>395</sup> In TBOR 1, Congress added IRC § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) when taxpayers were suffering or about to suffer significant hardships because of the way the Internal Revenue laws were being administered.<sup>396</sup> Further, this section directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an annual report to Congress about the quality of taxpayer services provided by the IRS. This report was to be delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.<sup>397</sup>

In 1996, Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.<sup>398</sup> The Joint Committee on Taxation set forth the following reasons for change:

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.<sup>399</sup>

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;
- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and

395 TAMRA, Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

396 *Id.*

397 *Id.* at 3737.

398 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).

399 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 20 (Dec. 18, 1996).

- To identify potential legislative changes which may be appropriate to mitigate such problems.<sup>400</sup>

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program (PRP), the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”<sup>401</sup>

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate.<sup>402</sup> The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year. The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a TAO, describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the Most Serious Problems (MSPs) which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional PROs participate in the selection and evaluation of local PROs, and include other such information as the Taxpayer Advocate may deem advisable. The stated objective of these reports is “for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.”<sup>403</sup>

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate with broader authority “to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws.”<sup>404</sup> For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or

400 Pub. L. No. 104-168, § 101(d)(2)(A), 110 Stat. 1452, 1453 (July 30, 1996).

401 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

402 Pub. L. No. 104-168, § 101(d)(2)(B), 110 Stat. 1452, 1454 (July 30, 1996).

403 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

404 *Id.* at 22.

rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.<sup>405</sup>

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the “voice of the taxpayer.” In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the national Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.<sup>406</sup>

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).<sup>407</sup>

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.<sup>408</sup> As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, fax, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that “the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.”<sup>409</sup> Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.<sup>410</sup>

The definition of “significant hardship” in IRC § 7811 was expanded in 1998 to include four specific circumstances: (1) an immediate threat of adverse action; (2) a delay of more than 30 days in resolving taxpayer account problems; (3) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or (4) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not

405 Pub. L. No. 104-168, § 102, 110 Stat. 1452, 1456 (July 30, 1996).

406 Report of the National Commission on Restructuring the Internal Revenue Service: *A Vision for a New IRS* 48 (June 25, 1997).

407 Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699 (July 22, 1998).

408 *Id.* at 701.

409 IRC § 7803(c)(4)(A)(iii).

410 IRC § 7803(c)(4)(A)(iv).

granted.<sup>411</sup> The Committee Reports make clear that this list is a non-exclusive list of what constitutes significant hardship.<sup>412</sup>

Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, the regulation contained a definition of “significant hardship” which did not take into account the expansion of the definition that occurred in 1998. In April 2011, the IRS published final regulations under IRC § 7811 so that the regulations now contain a definition of significant hardship consistent with existing law and practice.<sup>413</sup>

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411 IRC § 7811(a)(2).

412 See, e.g., H.R. Conf. Rep. No. 105-599, at 215 (1998).

413 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 FR 18,059 (Apr. 1, 2011).

## Appendix II: Taxpayer Advocate Service Case Acceptance Criteria

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As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.<sup>414</sup> TAS case acceptance criteria fall into four main categories:

### Economic Burden

Economic burden cases are those involving a financial difficulty to the taxpayer, *i.e.*, an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.

**Criteria 1:** The taxpayer is experiencing economic harm or is about to suffer economic harm.

**Criteria 2:** The taxpayer is facing an immediate threat of adverse action.

**Criteria 3:** The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).

**Criteria 4:** The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

### Systemic Burden

Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result, the IRS has failed to timely respond to or resolve a taxpayer issue.

**Criteria 5:** The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.

**Criteria 6:** The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.

**Criteria 7:** A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.

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414 IRC § 7803(c)(2)(C)(ii).

### Best Interest of the Taxpayer

TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.<sup>415</sup>

**Criteria 8:** The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights.

### Public Policy

Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.

**Criteria 9:** The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

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<sup>415</sup> TAS recently changed its criteria to temporarily stop accepting certain systemic burden issues. See TAS Interim Guidance Memorandum TAS-13.1.7-0911-014, *Interim Guidance on Changes to Case-Acceptance Criteria* (Sept. 1, 2011), available at [http://www.irs.gov/pub/foia/ig/tas/tas\\_13.1.7-0911-014.pdf](http://www.irs.gov/pub/foia/ig/tas/tas_13.1.7-0911-014.pdf).

### Appendix III: IRS and TAS Collaborative Efforts

Team Name	Objectives	Status Updates
1040 Redesign Team	The 1040 Redesign Team identified five redesign options that are currently under consideration. Efforts are underway to assess the feasibility of redesigning the Individual Income Tax Form product line (1040, 1040A, and 1040EZ) to minimize taxpayer burden and provide the IRS the data it needs as efficiently as possible.	In December 2011, the team briefed the Deputy Commissioner, Services and Enforcement, discussing the business needs to change the 1040 product line and obtaining directional guidance. A follow-up briefing with the Deputy Commissioner was held January 25, 2012. The next steps include the following pre-planning activities: 1) Profiling the 1040 paper filer demographics; 2) Analyzing the Error Resolution System (ERS) fallout for consolidated 1040 line items and write-ins; and 3) Brainstorming a strategy/approach for future discussions with stakeholders (who, when, message).
Accounts Management Taxpayer Assurance Program (AMTAP) Task Force	TAS established this task force to work with the AMTAP function to resolve systemic problems that are causing backlogs and delays in AMTAP casework.	TAS and AMTAP meet monthly. The group discusses current issues TAS identifies through casework and systemic advocacy, as well as procedural and IRM changes.
Appeals/TAS Advisory Board	The Board meets quarterly to discuss any Service Level Agreement issues as well as any other Appeals-related processing concerns.	TAS and Appeals are preparing training on the Appeals Operations Assistance Request (OAR) process. TAS is taking the lead. Appeals will measure the effectiveness of the training by a reduction in the OAR rejection rate.
Business Master File (BMF) Entity Fabrication	This new team will focus on BMF Entity Fabrication and the impact this activity has on other business operations. <sup>416</sup>	In fiscal year 2012 and 2013, the team will meet to provide the project overview, the charter, its scope, and preliminary data.
BMF Identity Theft	This is a new team set up to study BMF identity theft.	The team developed and administered a survey to find out if business taxpayers have encountered business-related identity theft.
Congressional Affairs Program (CAP) Council	The team is led by Legislative Affairs and includes IRS Governmental Liaisons. The council works issues specific to the Congressional Affairs Program and issues the <i>Congressional Update</i> Newsletter.	Legislative Affairs, Governmental Liaison, and TAS make up this team, which meets quarterly to discuss mutual issues related to the CAP. The newsletter team meets monthly to review, edit, and approve articles for the electronic newsletter to congressional offices. TAS articles appear in the newsletter as appropriate.
Collection Statute Expiration Date (CSED) Calculator Task Force	The team's mission is to develop a CSED calculator tool for all business units responsible for computing these dates.	At our initiation, TAS tested the calculator (CCalc), which resulted in some enhancements. The testers found the CCalc to be extremely user-friendly and accurate for even the most complex calculations. However, the testers remain concerned that some complex calculations require the user to be statute savvy. Therefore, in general, frontline employees would still need to refer CSED concerns to the appropriate units for concurrence, perhaps based upon criteria to be established. Although the testing phase is complete, TAS plans to review the CCalc user guide.

416 BMF Entity Fabrication is when thieves apply for, and obtain Tax Identification Numbers for “fake” business entities and use the numbers to file false information returns like a Form W-2, *Wage and Tax Statement*. Subsequently, the thieves use the false W-2s to file false tax returns to obtain fraudulent refunds.

Team Name	Objectives	Status Updates
Collection Statute Expiration Date Workgroup	The team identifies and reviews all accounts with a CSED extended 15 years beyond assessment. Members determine if the waiver is proper; report findings, propose resolutions (as appropriate), and implement approved account resolutions.	The group requested data from Research. Once received, the team reviewed a statistical sample of the cases and determined broader sample cases were necessary. Review of the data showed nearly 65 percent of these accounts were for deceased taxpayers or taxpayers who were unable to pay. The team is working on a proposed solution that would help these taxpayers.
Enterprise Wide Employment Tax Program	The Enterprise Wide Employment Tax Program (EWETP) team developed the Employment Tax Strategy to emphasize a collaborative and strategic approach for establishing priorities, goals, and measures for improving employment tax compliance. The team includes members from all IRS functions.	The EWETP team identifies issues and concerns for the IRS and taxpayers, then forms sub-teams to develop action plans. The servicewide team addresses a variety of employment tax issues. Recent topics have included: <ol style="list-style-type: none"> <li>1) The Voluntary Settlement Compliance Program;</li> <li>2) Worker classification; reporting in the context of the Section 530 safe harbor;</li> <li>3) Form 944 Program;</li> <li>4) Non-filers;</li> <li>5) Employment Tax return processing, Form 941 and Schedule B;</li> <li>6) Federal Unemployment Tax Act (FUTA) certification;</li> <li>7) Employment tax forms, publications and notices, Form 941 and Form 941-SS;</li> <li>8) Third party authorizations and taxpayer representation; and</li> <li>9) Employment tax adjustment causing incorrect Combined Annual Wage Reporting (CAWR) notices.</li> </ol>
Files and Records Coordination Team	The team's mission is to investigate options for securing expedited tax records, and possible implementation in TAS.	On March 30, 2012, the team presented to the Deputy National Taxpayer Advocate and Executive Directors, Case Advocacy (EDCAs) a process for securing tax records from Federal Records Centers in 24-48 hours. This process, which other business units use, may be an effective advocacy tool. The team presented a process as well as training materials. The EDCAs will review the process and decide whether to proceed.
First-Time Homebuyer Credit (FTHBC) Teams and Committees	TAS is an active participant in a number of collaborative efforts to implement, control, monitor, and manage FTHBC cases and inquiries. The FTHBC team supports TAS executives working on the FTHBC Executive Steering Committee by addressing concerns stemming from TAS casework. Through Systemic Advocacy Management System (SAMS) inquiries and case reviews, TAS identifies emerging issues and seeks systemic solutions.	<p>FTHBC Repayment Update</p> <p>The first payments for homes purchased in 2008 are being accepted and processed in 2012. The returns that are having issues are:</p> <ol style="list-style-type: none"> <li>(a) Returns with installment payments although no payment is required;</li> <li>(b) Returns where the repayment was insufficient;</li> <li>(c) Instances where the Social Security number (SSN) was not transcribed properly; and</li> <li>(d) Returns with conflicting purchase dates.</li> </ol> <p>The IRS deployed the FTHBC web lookup tool in February 2012. A taxpayer can use the tool to look up the balance owed and the repayment amount due. This application eliminates the need for the IRS to send notices.</p>



Team Name	Objectives	Status Updates
Form 944, <i>Employer's Annual Tax Return</i>	The IRS launched the Form 944, <i>Employer's Annual Tax Return</i> program as a customer-friendly initiative to reduce burden and simplify employment tax reporting, filing and payment requirements and to reduce administrative cost to the IRS. When the program started in 2006, it was mandatory. Taxpayers could only opt out if they e-filed or expected to have a payroll tax of more than \$1,000. <sup>417</sup>	<p>The National Taxpayer Advocate disagreed with the launch and recommended the IRS pilot the program first. Since implementation, the program has caused undue burden for taxpayers and wasted IRS resources mainly due to unpostable returns and payments. In December 2011, the IRS issued final regulations (T.D. 9566) under IRC §§ 6011 and 6302 on reporting and paying withheld income taxes and FICA taxes; the final regulations provide guidance on the look back periods and deposit requirements for employers who must file forms 941, <i>Employer's Quarterly Federal Tax Return</i>, and 944. The final regulations are effective as of December 14, 2011.<sup>418</sup></p> <p>The National Taxpayer Advocate agreed that TAS would work with the operating divisions to develop alternative filing options, such as quarterly Internet and telephone or smartphone methods, to replace the paper and e-file Form 944 program with these alternative burden reduction applications. The newer web-based applications would reduce or eliminate unpostable returns, as the returns could not be accepted if the customer selected an incorrect filing requirement. TAS continues to work with SB/SE division to draft updated language for the Form 944.</p>
Identity Theft Victim Assistance Technical Working Group (TWG)	The group develops recommendations for improving procedures for and reducing the burden facing identity theft victims. The group engages in cross-functional discussion, gathers identity theft case data, and analyzes the burden on taxpayers.	The group meets regularly to address specific technical issues identified by SAMS submissions and TAS casework. The team recently resumed work after being suspended since the summer of 2011.
Internal Management Documents (IMD) Council	This oversight council collaborates on and implements strategies related to all IMD activities. The Council supports the IRS goal of ensuring the Internal Revenue Manual (IRM) is the official source of all procedures, policy, directives, delegations, and guidelines. The continuing actions for TAS are: <ol style="list-style-type: none"> <li>1. Attend meetings.</li> <li>2. Raise issues that affect TAS.</li> <li>3. Establish a dialogue with other IMD coordinators.</li> <li>4. Discuss IMD process revisions, forms, and websites.</li> </ol>	TAS continued to raise concerns with Servicewide Policy, Directives and Electronic Research (SPDER) regarding clearance review of Servicewide Electronic Research Program (SERP) IRM Procedural Updates (IPUs) that meet Freedom of Information Act (FOIA) criteria. On March 6, 2012, an Alert was issued to the IMD Council reinforcing the requirements for evaluating interim guidance under FOIA and for clearing interim guidance. This Alert has helped TAS to properly clear interim guidance that affects the public. During this fiscal year, TAS plans to present concerns with establishing formal clearance procedures for other types of IMDs such as forms, pubs, letters, notices, etc. This has been a problem for TAS, as there are no definite procedures for clearing these documents.
IRM Lean Six Sigma Servicewide Project	The team is working a Lean Six Sigma project on the IRM process.	The team is looking for ways to improve the IRM development process for all IRS organizations. Appeals has the lead role.
IRS Communications Strategic Planning Team	This collaborative team provides planning, execution, and research support and tools for servicewide and major cross-functional communications. The team facilitates the integration of communications across all business units.	Team is on hold per instruction from the National Taxpayer Advocate.
IRS Style Guide Team	The team developed, maintains, and updates the style guide used by communicators in servicewide messages or products (and which is different from the TAS style guide).	The Style Guide is an active resource for IRS communicators. The team updates the guide as needed.
IRS Twitter Editorial Board	The goal is to move forward on Twitter, helping build IRS-wide communication content strategy and guidelines.	The group meets regularly sharing information and best practices.

417 See *Instructions for Form 944, Employer's Annual Federal Tax Return*, available at <http://www.irs.gov/pub/irs-pdf/i944.pdf>.

418 Treas. Reg. §§ 31.6011(a)-1; 31.6011(a)-4; 31.6302-1.

Team Name	Objectives	Status Updates
Manual Refund-Duplicate Refund Deficiencies	The Government Accountability Office (GAO) and the Treasury Inspector General for Tax Administration (TIGTA) reported a number of deficiencies in the IRS's internal control over processing manual tax refunds servicewide. These deficiencies continued during fiscal year 2010 when GAO also identified duplicate payments of claims associated with the First-Time Homebuyer Credit. Because of the persistent deficiencies in processing manual refunds, coupled with the duplicate payments associated with FTBHC claims, GAO declared a significant deficiency in IRS's internal control over tax refund disbursements. This significant deficiency increases the risk that IRS may pay out duplicate tax refunds and spend resources trying to recover them.	The servicewide corrective action plan will substantially strengthen existing controls designed to eliminate or reduce duplicate tax refunds, through increased monitoring, documentation, reviews, training, and automated controls.
Non-Filer Sub-Team (Executive Committee support)	This is a new TAS working group that supports the Executive Steering Committee on Non-Filers.	The team will develop non-filer issues from TAS data and work on solutions.
Offer in Compromise - Payment Alternatives	Determine if offer in compromise (OIC) policy and procedures are needlessly deterring taxpayers from submitting good offers (i.e., an offer representing a good faith attempt to resolve the tax debt).	This effort has made significant contributions to the "fresh start" OIC changes and overall improvements to the OIC program.
Printing and Postage Budget Reduction (PPBR)	Implement business decisions to reduce the printing and postage budget for FY 2011 and 2012.	The IRS implemented the PPBR team's recommendations during the 2011 filing season. However, TAS continues to monitor and report to the team lead regarding related issues that resulted in taxpayer burden. TAS monitors SAMS for reported PPBR-related issues, as well as issues reported through the Taxpayer Advocacy Panel (TAP). TAS also recommends steps that would save money and improve taxpayer service. Moreover, TAS continues to pursue the development of an online tax form decision tree to allow taxpayers to self-identify which forms and schedules they require.
Publication 1, <i>Your Rights as a Taxpayer</i>	Convened to review and revise Publication 1, outlining the rights of the taxpayer and the responsibilities of both the taxpayer and the IRS.	The team meets periodically and continues evaluating and improving the publication.
Return Integrity & Correspondence Services (RICS)	Return Integrity and Correspondence Services (RICS) was formed in October 2011 and brought under one organization Earned Income Tax Credit (EITC), AMTAP, Health Care Tax Credit (HCTC), and the Office of Correspondence Services. This effort succeeds the Accelerated Revenue Assurance Program (ARAP) that concluded in December 2011. Most of its products were placed in RICS, expanding RICS responsibility to all pre-refund revenue protection.	The team addresses pre-refund work, processing issues, pros and cons, mitigations, and possibilities for more effective methods. Seven sub-teams address a variety of pre-refund activities.

Team Name	Objectives	Status Updates
Return Review Program-Customer Requirement Board (CRB) Meeting	Modernize the IRS's ability to protect revenue from fraud and other forms of noncompliance at the front end, before the IRS releases a refund. This cross-functional team provides guidance for the direction of the project, as well as training, education, configuration control, enhancements definition, and modeling alignment.	Return Review Program (RRP) replaced the Electronic Fraud Detection System (EFDS) and provides new capabilities to: <ol style="list-style-type: none"> <li>1) Detect additional fraudulent returns and claims;</li> <li>2) Integrate legacy systems;</li> <li>3) Automate manual processes;</li> <li>4) Provide flexibility to support changing business needs;</li> <li>5) Select and use better issue processing based on available resources that will positively effect pre-refund compliance;</li> <li>7) Provide support of analysis and case processing needs of both civil and criminal investigation employees; and</li> <li>8) Reduce the percentage of non-fraudulent refund claims frozen by the IRS.</li> </ol> The team is investigating the causes and cures of refund fraud. The team has narrowed its focus to a small segment of the tax return preparer community that defrauds taxpayers and the IRS by inflating income, withholding, deductions, or credits, then directing refunds into a bank account under the preparer's control without the taxpayer's knowledge.
RICS - Bank Leads Sub-Team		The team meets regularly to discuss the establishment of new referral units. TAS continues to press for the development of guidance on how to address/resolve "list" information received in TAS. <sup>419</sup> Moreover, TAS leadership has continued to champion and facilitate efforts between the IRS and the Department of Justice to solicit the support of Criminal Investigation's Victims Assistance unit on identity theft matters.
RICS - Filters Sub-Team	By employing identity protection filters, the IRS does not process returns upon receipt if certain characteristics do not match historical data.	The team discusses updates and results from the new Taxpayer Protection Unit (TPU) database filters, as well as other possible filter expansions or improvements.
RICS Automated Questionable Credits	There has been discussion about Automated Questionable Credit (AQC) being made operational within RICS but no final decision has been made.	Previously, TAS elevated concerns regarding this initiative and the IRS's use of automation to prevent improper refunds of questionable withholding and refundable credits. Specific concerns with the AQC pilot included the ambiguity of a new letter, which the IRS uses to initiate the AQC process. The letter is confusing because it does not refer to the inquiry as an audit or examination.
RICS Information Returns Acceleration (IRA)	RICS will not implement any new IRA processes until after the 2012 filing season.	
Stakeholders Relationship Management Team	Arrange opportunities for exchange of information, ideas, and points of view between practitioners, small business organizations, and the appropriate IRS representatives.	
TAS Training for IRS Employees	The team's mission is to deliver an overview of TAS and case studies to IRS compliance employees (Collection, Appeals, and Large Business & International Division (LB & I)).	Continue to deliver TAS training to new LB&I employees as classes are scheduled.
IRS Nationwide Tax Forums	The annual Tax Forums for practitioners are a servicewide collaborative effort. The team works extensively with National Public Liaison to present seminars for practitioners.	As the "owner" of the Case Resolution Program, TAS administers and collaborates with SB/SE, Wage & Investment (W&I), Modernization & Information Technology Services (MITS), and Appeals to resolve practitioners' most difficult cases. TAS also staffs a booth in the exhibit hall to provide practitioners with information on TAS and holds focus groups to obtain practitioners' opinions on IRS practices and procedures.

419 TAS occasionally receives lists from third parties of potential identity theft victims whose personal information was compromised.

Team Name	Objectives	Status Updates
Third Party Contact (TPC) Program	<ul style="list-style-type: none"> <li>- Review current organizational and functional roles and responsibilities with respect to the TPC program.</li> <li>- Analyze organizational and functional roles and responsibilities in terms of:                             <ol style="list-style-type: none"> <li>1) Compliance with statutory requirements;</li> <li>2) Oversight, review and reporting provisions;</li> <li>3) The need for training; and</li> <li>4) Optimal use of available resources.</li> </ol> </li> <li>- Make recommendations to heads of office for changes that will ensure coherent and integrated operation of the TPC program.</li> <li>- Implement approved recommendations within each division, as appropriate.</li> </ul>	<p>Due to the very small number of TPC inputs by TAS, our role is advisory in the workgroup, to ensure that taxpayer rights are protected.</p> <p>Several conference calls have been held over past six months. Data has been secured, IRMs revised, and training material updated. There is still some uncertainty about the level of activity and IRS business operating division that should have responsibility for the program.</p> <p>The group is hoping to release the final report in the summer of 2012.</p>
Third Party Payers	<p>TAS is collaborating with SB/SE Collection Policy and SB/SE Employment Tax Policy to:</p> <ul style="list-style-type: none"> <li>· Address the effects of misappropriation of employment taxes by third party payers;</li> <li>· Improve IRS work processes to allow early interventions and notices to taxpayers about outstanding liabilities; and</li> <li>· Issue guidance on case resolution, collection alternatives, and relief available to victims of third party payer failures.</li> </ul>	<p>The team researched the viability of sending dual notices to a taxpayer's new address and former address in situations in which a third party changes the taxpayer's address to reflect the third party's address on Form 941. The team also considered targeted outreach to educate the taxpayers about the inherent risks in dealing with third party payroll providers. However, the IRS decided against the process. TAS objected to the IRS's decision and elevated the issue to the National Taxpayer Advocate. In May 2011, the National Taxpayer Advocate convinced the Chief, Employment Tax Policy, to reconsider the dual notice process as discussed in the 2007 and 2009 Annual Reports to Congress. The team has developed and prioritized options for notifying the affected taxpayers, and is weighing the pros and cons of each to balance the cost to the IRS and benefit to the taxpayers.</p>
Toll-Free Intake Line Team	<p>Develop and implement recommendations to enhance the current NTA toll-free intake line through direct transfers from W&amp;I assistants to TAS Intake Advocates when taxpayer inquiries are deemed appropriate for TAS.</p>	<p>The team is preparing to establish an agreement with the National Treasury Employees Union (NTEU). Once an agreement is in place, the team will work toward implementation.</p>
Undelivered Mail Project	<p>Have the Office of Taxpayer Correspondence (OTC) head up a servicewide study of which notices would benefit the most from enhanced Intelligent Mail barcodes. As a part of this study, OTC will analyze return on investment to determine the most effective use of the barcodes.</p>	<p>The IRS Mail Systems and Undelivered Mail Working Group held two face-to-face meetings during the second quarter of 2012.</p>
U.S. Postal Service Intercepted Mail	<p>W&amp;I has established a team to look at intercepted mail/refunds/debit cards from third parties, mainly by the U.S. Postal Service (USPS) and work on establishing a treatment stream.</p>	<p>This collaboration offers TAS, W&amp;I, and other business units an opportunity to work together to resolve problems affecting all of the IRS and taxpayers alike.</p>
Virtual Service Delivery Pilot	<p>TAS is working with W&amp;I and MITS to test the use of video communication as a service option to TAS customers who prefer face-to-face assistance.</p>	<p>The TAS Virtual Service Delivery (VSD) pilot began on December 21, 2011. TAS is working with the IRS VSD implementation team to recommend enhanced technology and identify additional locations for VSD expansion in FY 2013. The team is analyzing case receipts, population trends, and other census data to determine where to position additional units. The Jacksonville TAS office is serving Tampa-area taxpayers using the VSD video technology.</p>

## Appendix IV: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent low income taxpayers before the Internal Revenue Service and assist taxpayers in audits, appeals, and collection disputes. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low income taxpayer who needs assistance in resolving tax disputes with the IRS and you cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LITC that provides free or nominal cost assistance. Using poverty guidelines published annually by the Department of Health and Human Services (HHS), each clinic decides if you meet the income eligibility guidelines and other criteria before it agrees to represent you.<sup>420</sup> Eligible taxpayers must generally have incomes that do not exceed 250 percent of the poverty guidelines. The poverty guidelines can be found at <http://aspe.hhs.gov/poverty/index.shtml>.

Although LITCs receive partial funding from the IRS, LITCs, their employees, and their volunteers are completely independent of the federal government. Clinics receiving federal funding for the 2012 calendar year are listed below. These clinics are operated by nonprofit organizations or academic institutions.

In lieu of an LITC, low income taxpayers may be able to receive assistance from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization.

This publication is not a recommendation by the IRS that you retain a Low Income Taxpayer Clinic or other similar organization to represent you before the IRS. Contact information for clinics may change, so please check for the most recent information at <http://www.irs.gov/pub/irs-pdf/p4134.pdf>.

420 For the 2012 calendar year, the income ceilings for low income representation are as follows:

Income Ceiling (250% Of Poverty Guidelines)			
Size of Family Unit	48 Contiguous States, Puerto Rico, and D.C.	Alaska	Hawaii
1	\$27,925	\$34,925	\$32,150
2	\$37,825	\$47,300	\$43,525
3	\$47,725	\$59,675	\$54,900
4	\$57,625	\$72,050	\$66,275
5	\$67,525	\$84,425	\$77,650
6	\$77,425	\$96,800	\$89,025
7	\$87,325	\$109,175	\$100,400
8	\$97,225	\$121,550	\$111,775
For each additional person add	\$9,900	\$12,375	\$11,375

**Low Income Taxpayer Clinics**

**Type of Clinic: C = Controversy Clinic; E = ESL Clinic; and B = Both Controversy and ESL Clinic**

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center	1-800-478-3474 907-562-0335	B	Aleut, Cupik, Haida, Inupiat, North Athabaskan, Tlingit, Yupik
AL	Montgomery	Legal Services Alabama, Inc.	1-866-456-4995 334-329-0504	B	Spanish
AR	Fayetteville	Legal Aid of Arkansas, Inc.	1-800-952-9243 479-442-0600	B	Spanish, Marshallese
	Little Rock	University of Arkansas at Little Rock	501-324-9441	B	Spanish
	West Memphis	Delta Economic Education Resource Service	1-877-733-1704 870-733-1700	E	Spanish
AZ	Chinle	DNA-People's Legal Services, Inc.	1-800-789-7287 928-647-5242	B	Hopi, Spanish, Navajo
	Phoenix	Community Legal Services, Inc.	1-800-852-9075 602-258-3434	B	Spanish
	Tucson	Catholic Community Services of Southern Arizona	520-622-2801 x 127	B	Spanish, others through interpreter services.
CA	Fresno	Central California Legal Services, Inc.	1-800-675-8001 559-570-1200	B	Hmong, Lao, Spanish
	Los Angeles	HIV & AIDS Legal Services Alliance (HALSA)	213-637-1690	C	Spanish, American Sign Language
	Northridge	Bookstein Tax Clinic	818- 677-3600	B	Spanish
	Orange	Chapman University	714-628-2535	C	Spanish, Vietnamese, others through interpreter services.
	San Diego	Home Start, Inc.	619-229-3660	E	Arabic, Amharic, Bosnian, Chaldean, Spanish, Vietnamese
	San Diego	Legal Aid Society of San Diego, Inc.	1-877-534-2524	C	Spanish
	San Diego	University of San Diego	619-260-7470	B	Spanish
	San Francisco	Chinese Newcomers Service Center	415-421-2111	B	Chinese
	San Francisco	Homeless Prenatal Program	415-546-6756	B	Spanish
	San Francisco	Nihonmachi Legal Outreach	415-567-6255	B	Cantonese, Hindi, Japanese, Korean, Mandarin, Russian, Spanish, Tagalog, Vietnamese
	San Francisco	San Francisco Bar Association Volunteer Legal Services Program	415-989-1616	C	N/A
	San Jose	President and Board of Trustees of Santa Clara College	408-288-7030	C	Chinese, Spanish, Vietnamese, others through interpreter services.
	San Luis Obispo	California Polytechnic State University	1-877 318-6772 805-756-2951	B	Spanish, others through interpreter services.
Santa Ana	Legal Aid Society of Orange County	1-800-834-5001 714-571-5200	B	Farsi, Korean, Mandarin, Spanish, Vietnamese, others through interpreter services.	
CO	Denver	University of Denver	303-871-6331	C	Spanish
	San Luis	Land Rights Council, Inc.	1-866-607-8462 719-672-1002	B	Spanish
CT	Hamden	Quinnipiac University	203-582-3238	C	Spanish, others through interpreter services.
	Hartford	University of Connecticut	860-570-5165	C	French, Polish, Portuguese, Spanish, Vietnamese

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
DC	Washington	American University	202-274-4144	C	Spanish, others through interpreter services.
	Washington	Central American Resource Center	202-328-9799	E	Spanish
	Washington	University of the District Of Columbia	202-274-5263	B	All languages identified in DC Language Access Act.
DE	Wilmington	Delaware Community Reinvestment Action Council, Inc.	1-877-825-0750 302-654-5024 x 102	B	Spanish
FL	Jacksonville	Three Rivers Legal Services, Inc.	1-866-256-8091 904-394-7450	B	Bosnian, Spanish
	Miami	Haitian Neighborhood Center Sant La	305-573-4875	E	Creole, French, Spanish
	Miami	Legal Services of Greater Miami, Inc.	305-576-0080	B	Creole, Haitian, Spanish
	Orlando	Community Legal Services of Mid-Florida, Inc.	1-866-886-1799	B	Creole, Spanish, Vietnamese, others through interpreter services.
	Plant City	Bay Area Legal Services, Inc.	813-232-1343	B	Creole, Spanish, others through interpreter services.
	Plantation	Legal Aid Service of Broward County, Inc.	954-765-8950 954-736-2477	B	Creole, Spanish
	St. Petersburg	Gulfcoast Legal Services, Inc.	1-800-230-5920 727-821-0726	B	Creole, French, Spanish
	Tallahassee West Palm Beach	Legal Services of North Florida, Inc. Legal Aid Society of Palm Beach County, Inc.	850-385-9007 1-800-403-9353 561-655-8944	B B	Spanish Creole, Haitian, Spanish
GA	Atlanta	Georgia State University Foundation, Inc.	404-413-9230	C	Spanish
	Hinesville	JC Vision and Associates, Inc.	1-866-902-4266 912-877-4243	E	Spanish
HI	Honolulu	Legal Aid Society of Hawaii	1-800-499-4302 1-800-527-8050	B	Chinese, Filipino, Japanese, Spanish, Vietnamese
	Honolulu	Volunteer Legal Services Hawaii	1-800-839-5200 808-528-7059	B	Cantonese, Chuukese, Mandarin, Marshallese, Samoan, Tagalog
IA	Des Moines	Drake University	515-271-3851	B	Spanish, others through interpreter services.
	Des Moines	Iowa Legal Aid	1-800-532-1275	B	Spanish, others through interpreter services.
ID	Boise	Regents of the University of Idaho	1-877-200-4455 208-885-6541	C	Spanish
	Twin Falls	La Posada Tax Clinic	208-735-1189	B	Spanish
IL	Elgin	Administer Justice	847-844-1100 1-877-778-6006	B	Korean, Polish, Spanish, others through interpreter services.
	Chicago	Center for Economic Progress	312-252-0280	B	Spanish
	Chicago	Korean American Community Services	773-583-5501	E	Korean, Spanish
	Chicago	Loyola University Chicago School of Law	312-915-7176	C	N/A
	Wheaton	Prairie State Legal Services, Inc.	1-800-690-2130 630-690-2130	C	Spanish
IN	Bloomington	Indiana Legal Services, Inc.	1-800-822-4774 812-339-7668	C	All Languages through interpreter services.
	Indianapolis	Neighborhood Christian Legal Clinic	1-888-243-8808 317-429-4131	B	Burmese, Chinese, French, Karen, Spanish
	Valparaiso	The Lutheran University Association, Inc.	1-888-729-1064 219-465-7903	C	Chinese, Korean, Polish, Russian, Spanish

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
KS	Lawrence	The University of Kansas Center for Research	785-864-5665	B	All Languages through interpreter services.
	Wichita	Cerebral Palsy Research Foundation of Kansas, Inc.	1-800-550-5804 316-688-1888	C	Spanish
KY	Erlanger	Northern Kentucky University Research Foundation	859-572-5781	C	Spanish
	Louisville	Legal Aid Society, Inc.	1-800-292-1862 502-584-1254	C	All Languages through interpreter services.
	Richmond	AppalReD Legal Aid	1-800-477-1394 859-624-1394	C	All Languages through interpreter services.
LA	Baton Rouge	Southern University Law Center	225-771-3333	C	N/A
	New Orleans	Southeast Louisiana Legal Services, Corp.	1-877-521-6242 504-529-1000	C	Chinese, Polish, Spanish, Vietnamese
MA	Boston	Greater Boston Legal Services	1-800-323-3205 617-371-1234	B	All Languages through interpreter services.
	Springfield	Springfield Partners for Community Action	413-263-6500	B	Chinese, French, Portuguese, Russian, Somali, Spanish, Vietnamese
	Waltham	Bentley University	1-800-273-9494 781-891-2083	B	Chinese, Creole, Haitian, Portuguese, Russian, Spanish
MD	Baltimore	Maryland Volunteer Lawyers Service	1-800-510-0050 410-547-6537	C	Spanish
	Baltimore	University of Maryland, Baltimore	410-706-3295	C	All Languages through interpreter services.
	Hyattsville	CASA de Maryland, Inc.	301-431-4185	E	French, Spanish
ME	Bangor	Pine Tree Legal Assistance, Inc.	207-942-8241	B	All Languages through interpreter services.
MI	Ann Arbor	The Regents of the University of Michigan	734-936-3535	B	Chinese, Spanish, Ukrainian
	Detroit	Accounting Aid Society	1-866-673-0873 313-556-1920	B	Arabic, Spanish, others through interpreter services.
	East Lansing	Michigan State University College of Law	517-336-8088	B	All Languages through interpreter services.
MN	Minneapolis	Mid-Minneapolis Legal Assistance	1-800-292-4150 612-332-1441	B	Amharic, Arabic, Hmong, Oromo, Russian, Somali, Spanish, others through interpreter services.
	Minneapolis	University of Minnesota	612-625-5515	B	Hmong, Somali, Spanish
MO	Kansas City	Legal Aid of Western Missouri	1-800-990-2907 816-474-6750	B	All Languages through interpreter services.
	Kansas City	The UMKC Graduate Tax Law Foundation	816-235-6201	C	Russian, Spanish
	Springfield	Missouri State University	417-836-3007	B	Chinese, Korean, Spanish, others through interpreter services.
MS	Oxford	North Mississippi Rural Legal Services	1-888-808-8049	B	All Languages through interpreter services.
MT	Helena	Montana Legal Services Association	1-800-666-6899 406-442-9830	C	All Languages through interpreter services.
NC	Charlotte	Legal Services of Southern Piedmont, Inc.	1-800-438-1254 (E) 1-800-247-1931(SP) 704-376-1600	B	Spanish
	Durham	Community Reinvestment Association of North Carolina	919-667-1000	E	Arabic, Spanish
	Durham	North Carolina Central University School of Law	919-530-7166	C	Spanish
ND	New Town	Legal Services of North Dakota	1-877-639-8695 701-627-4719	B	Arabic Arikira, Bhutanese, Bosnian, Dakota Sioux, Hidatsa, Mandan, Somali, Swahili



State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
NE	Omaha	Legal Aid of Nebraska	1-888-991-9921 402-348-1069	B	Spanish
NH	Concord	NH Pro Bono Referral System	603-228-6028	C	All Languages through interpreter services.
	Concord	The Legal Advice and Referral System	1-800-639-5290 603-224-3333 x616	E	All Languages through interpreter services.
NJ	Edison	Legal Services of New Jersey	1-888-576-5529 732-572-9100	B	Arabic, Creole, French, Hindi, Italian, Spanish, others through interpreter services.
	Jersey City	Northeast New Jersey Legal Services	201-792-6363	B	Korean, Kurdu, Spanish
	Newark	Rutgers Law School	973-353-1685	C	Spanish
	Vineland	South Jersey Legal Services, Inc.	1-800-496-4570 856-691-0494	B	Spanish, others through interpreter services.
NM	Albuquerque	Regents of the University of New Mexico	505-277-5265	C	Spanish
NV	Las Vegas	Nevada Legal Services	702-386-0404	B	Spanish, Korean, others through interpreter services.
NY	Albany	Albany Law School	518-445-2328	C	All Languages through interpreter services.
	Bronx	Legal Services NYC-Bronx	718-928-3700	C	Spanish, others through interpreter services.
	Brooklyn	Bedford-Stuyvesant Community Legal Services Corp.	718-636-1155	C	African languages, Chinese, French, Spanish
	Brooklyn	South Brooklyn Legal Services, Inc.	718-237-5528	B	American Sign Language, Creole, Russian, Spanish
	Buffalo	Erie County Bar Association Volunteer Lawyers Project, Inc.	1-800-229-6198 716-847-0662	C	Spanish
	Elmsford	Westchester Community Opportunity Program, Inc.	914-592-5600	E	Spanish
	Jamaica	Queens Legal Services	347-592-2178	B	All Languages through interpreter services.
	New York	Fordham University	212-636-7353	C	Spanish
	New York	The Legal Aid Society	212-426-3013	B	Mandarin, Chinese, Spanish
	Rochester	Pathstone, Inc.	1-800-888-6770 585-340-3300	E	Spanish
	Rochester	Volunteer Legal Services Project of Monroe County, Inc.	585-232-3051	E	American Sign Language, Spanish
Syracuse	Syracuse University	1-888-797-5291 315-443-4582	C	Spanish, others through interpreter services.	

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
OH	Akron	Community Legal Aid Services, Inc.	1-800-998-9454 1-800-983-4191	B	Spanish, others through interpreter services.
	Cleveland	Friendship Foundation of American-Vietnamese, Inc.	216-961-6005	E	Arabic, Cambodian, Laotian, Spanish, Vietnamese
	Cleveland	The Legal Aid Society of Cleveland	1-888-873-9665 216-687-1900	C	All Languages through interpreter services.
	Columbus	Ohio State Legal Services Association	1-800-589-5888 614-221-7201	C	All Languages through interpreter services.
	Columbus	The Legal Aid Society of Columbus	1-877-224-8374 614-224-8374	C	American Sign Language, Russian, Somali, Spanish, others through interpreter services.
	Pikeon	The Community Action Committee of Pike County	1-866-820-1185 740-289-2371	C	N/A
	Toledo	Advocates for Basic Legal Equality, Inc.	1-800-837-0814 419-255-0814	B	All Languages through interpreter services.
	Toledo	Legal Aid of Western Ohio, Inc.	1-877-837-0814 419-724-0030	C	Spanish, others through interpreter services.
OK	Oklahoma City	Oklahoma Indian Legal Services, Inc.	1-800-658-1497 405-943-6457	B	Native-American Languages, Spanish
	Tulsa	Community Action Project of Tulsa County	918-382-3200	E	Asian languages, Russian, Spanish
OR	Gresham	Catholic Charities	503-489-6828	B	Spanish
	Portland	Legal Aid Services of Oregon	1-888-610-8764 503-224-4086	B	Cantonese, Spanish, others through interpreter services.
	Portland	Lewis & Clark College Legal Clinic	503-768-6500	C	All Languages through interpreter services.
PA	Lancaster	Central Pennsylvania Federal Tax Clinic	1-800-732-0018 717-299-7388 x3911	B	Spanish
	Philadelphia	Philadelphia Legal Assistance Center, Inc.	1-888-541-1544 215-981-3800	E	Spanish
	Philadelphia	Villanova University School of Law	1-866-829-2546 610-519-4123	C	All Languages through interpreter services.
	Pittsburgh	Jewish Family & Children's Services	412-422-7200	E	Arabic, Burmese, Chinese, French, Hebrew, Hindi, German, Korean, Portuguese, Russian, Spanish, Turkish, Vietnamese
	Pittsburgh	University of Pittsburgh	412-648-1300	C	Russian, Spanish, others through interpreter services.
	Scranton	United Way of Lackawanna and Wayne Counties	570-343-1267	B	Bhutanese, Spanish
PR	Ponce	PathStone Community Development Corporation of Puerto Rico	1-888-440-1716 787-812-4262	B	Spanish
RI	Providence	Rhode Island Legal Services, Inc.	401-274-2652	B	Portuguese, Spanish
	Providence	Rhode Island Tax Clinic, Inc.	401-421-1040	B	Creole, Portuguese, Spanish
SC	Columbia	South Carolina Association of Community Action Partnerships	1-888-722-4227 803-771-9404	E	Spanish
	Greenville	South Carolina Legal Services	1-888-346-5592 803-744-9430	B	All Languages through interpreter services.
SD	Spearfish	Black Hills State University Foundation	605-390-4391	C	Lakota, Spanish

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
TN	Memphis	Memphis Area Legal Services, Inc.	1-800-499-1602 901-523-8822	B	Spanish
	Nashville	Conexion Americas	615-320-5152	E	Spanish
	Oak Ridge	Legal Aid Society of Middle Tennessee and the Cumberlands	1-866-481-3669 1-800-238-1443 865-483-8457	B	Russian, Spanish, others through interpreter services.
TX	Austin	Texas Rio Grande Legal Aid, Inc.	210-212-3772	B	Spanish
	Bellaire	Neighborhood Centers, Inc.	713-669-5385	E	Spanish
	Bryan	Lone Star Legal Aid	1-800-570-4773 979-775-5050	B	Spanish, Vietnamese, others through interpreter services.
	El Paso	El Paso Affordable Housing Credit Union Service Organization	915-838-9608	E	Spanish
	Ft. Worth	Legal Aid of Northwest Texas	1-800-955-3959 817-336-3943	B	Spanish
	Houston	Houston Volunteer Lawyer's Program	713-228-0735	B	Mandarin, Spanish, Urdu, Vietnamese
	Lubbock	Texas Tech University School of Law LITC	1-800-742-8037 806-742-4312	B	Spanish
	Sugarland	Centro Familiar Cristiano, Inc.	281-340-2400	E	Spanish
UT	Provo	Centro Hispano	801-655-0258	B	American Sign Language, Spanish
	Sandy	University of Utah	1-888-361-5482 801-236-8052	B	Spanish
VA	Arlington	ECDC Enterprise Development Group	703-685-0510 x257	B	Amharic, Farsi, Spanish, Vietnamese
	Lexington	Washington & Lee University	540-458-8918	C	All Languages through interpreter services.
	Richmond	The Community Tax Law Project	804-353-6968 804-358-5855	B	Spanish
VT	Barre	Central Vermont Community Action Council, Inc.	802-477-5242	B	All Languages through interpreter services.
	Burlington	Vermont Legal Aid, Inc.	1-800-747-5022 802-863-5620	C	All Languages through interpreter services.
WA	Seattle	University Of Washington	1-866-866-0158 206-685-6805	B	French, Korean, Mandarin, Russian, Somali, Spanish, Vietnamese
	Spokane	Gonzaga University	1-800-793-1722 509-313-5791	B	Spanish
WI	Milwaukee	Legal Aid Society of Milwaukee, Inc.	414-727-5300	C	Spanish
	Milwaukee	University of Wisconsin-Milwaukee	1-866-896-5482 414-229-3232	C	Spanish
	Wausau	Wisconsin Judicare, Inc.	1-800-472-1638 715-842-1681	B	Hmong, Spanish
	Whitewater	University of Wisconsin-Whitewater Lubar School Of Business	1-877-899-5482 262-472-1293	B	Spanish
WV	Charleston	Legal Aid of West Virginia	1-866-255-4370 304-343-3013	B	Spanish
WY	Cheyenne	Legal Aid of Wyoming	1-877-432-9955 307-432-0807	B	Spanish
	Jackson	Latino Resource Center	1-888-310-6999 307-734-0333	E	Spanish

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## Appendix V: FY 2013 Taxpayer Advocate Service Operational Priorities

To meet its statutory mission as defined in Internal Revenue Code (IRC) §7803(c), the Taxpayer Advocate Service (TAS) developed three strategic goals and two strategic foundations to guide its leadership. TAS's three strategic goals are:

- Resolve Taxpayer Problems Accurately and Timely;
- Protect Taxpayer Rights and Reduce Taxpayer Burden; and
- Become a Known Taxpayer Advocacy Organization.

The two strategic foundations defined by TAS are:

- Enhance TAS Infrastructure to Improve Taxpayer Interaction; and
- Sustain and Support a Fully-Engaged and Diverse Workforce.

In support of these strategic goals and foundations, TAS identified fifteen (15) operational priorities. Operational priorities are short-term actions that aid the organization in achieving its mission.<sup>421</sup>

### Resolve Taxpayer Problems Accurately and Timely

*IRC § 7803(c)(2)(A)(i)*

*In general, It shall be the function of the Office of Taxpayer Advocate to-*

*(i) assist taxpayers in resolving problems with the Internal Revenue Service.*

*IRC § 7803(c)(2)(C)(ii)*

*The National Taxpayer Advocate shall —*

*(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates.*

- Operational Priority 2013-1 — In collaboration with the IRS, implement revised Operations Assistance Request (OAR) procedures in keeping with the Phase II OAR Study.
- Operational Priority 2013-2 — Define and develop alternative approaches to systemic burden casework acceptance and assignment to allow the IRS the opportunity to resolve issues first, so long as taxpayers are not harmed by the process.

<sup>421</sup> The TAS mission: As an independent organization within the IRS, we help taxpayers resolve problems with the IRS and recommend changes that will prevent the problems.

- Operational Priority 2013-3 — Implement a multi-modal Case Advocacy Customer Comment System to allow for more robust and timely customer responses and the sharing of best practices.
- Operational Priority 2013-4 — Provide new or updated advocacy tools and guidance to address emerging issues.
- Operational Priority 2013-5 — Develop, implement, and communicate TAS engagement activities, including new ways to communicate with the taxpayer (such as email to text, virtual services, traditional correspondence) and establish what customers can expect from TAS and what TAS expects from its customers when addressing tax issues with the IRS.

### Protect Taxpayer Rights and Reduce Burden

IRC § 7803(c)(2)(A)(ii)—(iv))

*In general, It shall be the function of the Office of Taxpayer Advocate to-*

*(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;*

*(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and*

*(iv) identify potential legislative changes which may be appropriate to mitigate such problems.*

- Operational Priority 2013-6 — Proactively identify issues that may negatively impact taxpayer rights or burden; then, using a tiered research approach, develop alternative advocacy approaches to address the external and internal impact of these issues (*e.g.*, research studies, advocacy projects, updated processing guidelines, etc.).
- Operational Priority 2013-7 — Strengthen taxpayers' understanding of their rights through the revision of Publication 1.

### Become a Known Taxpayer Advocacy Organization

IRC § 7803(c)(2)(C) (iii):

*The National Taxpayer Advocate shall —*

*(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office.*

- Operational Priority 2013-8 — Develop new tools and use new technology to conduct outreach, education, and research with the goal of expanding awareness of TAS services, with special emphasis on emerging issues and TAS's underserved population.

## Enhance TAS Infrastructure to Improve Taxpayer Interaction

*IRC § 7803(c)(4)(B)*

*Maintenance of independent communications. Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.*

*IRC § 7803(c)(4)(A)(iv)*

*In general, Each local taxpayer advocate —*

*(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.*

- Operational Priority 2013-9 — Support MITS and outside vendors in the development, testing and deployment of the Taxpayer Advocate Service Integrated System (TASIS), an efficient and integrated information technology system.
- Operational Priority 2013-10 — Collaborate with IRS to develop tools to help TAS employees advocate for taxpayers.
- Operational Priority 2013-11 — Establish TAS protocol and archival procedures for TAS projects, task forces, and studies, including the establishment of a naming convention hierarchy for an organizational keyword database.

## Sustain and Support a Fully-Engaged and Diverse Workforce

*IRC § 7803(c)(2)(C)(i) and (iv)*

*The National Taxpayer Advocate shall —*

*(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates; and*

*(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.*

- Operational Priority 2013-12 — Establish a succession plan for TAS that leverages diversity, and adequately meets the HR component of TAS's workload demands.
- Operational Priority 2013-13 — Develop and test a multi-year strategic training plan that allows the organization to forecast training needs and provides an opportunity for employees to reach their full potential.
- Operational Priority 2013-14 — Implement solutions identified in employee surveys and group meetings that improve the quality of its employees' worklife.
- Operational Priority 2013-15 — Define, develop, and test organizational measures or diagnostics for Systemic Advocacy, Case Advocacy, and TAP.

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## Appendix VI: TAS Performance Measures and Indicators

### RESOLVE TAXPAYER PROBLEMS ACCURATELY AND TIMELY

Measure	Description	FY 2012 Target	FY 2012 Actual
Error-Free Cases <sup>422</sup>	Percent of sampled closed cases with no errors on any of the quality attributes that comprise the TAS case quality index.	Indicator	9.7%
OAR Reject Rate	Percent of rejected requests for action to be taken by the IRS.	3.6%	3.7%
Customers Satisfied	Percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	88%	86%
Customers Dissatisfied	Percent of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	11%	11%
Solved Taxpayer Problem	Percent of taxpayers who indicate the Taxpayer Advocate employee did their best to solve their problems.	89%	87%
Relief Granted <sup>423</sup>	Percent of closed cases in which full or partial relief was provided.	Indicator	77.2%
Number of TAOs Issued	The number of Taxpayer Assistance Orders (TAOs) issued by TAS. <sup>424</sup>	Indicator	189
Median – Closed Case Cycle Time <sup>425</sup>	Median time taken to close TAS cases.	Indicator	70 days
Mean – Closed Case Cycle Time	Mean time taken to close TAS cases.	Indicator	97.7 days
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all hours reported to the Case Advocacy organization except Field Systemic Advocacy.)	155.0	120.8
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	355.0	303.3

422 Results for Error-Free cases are as of January 2012; updated results are not available at the time of printing this report.

423 TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing, and requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. See Internal Revenue Manual 13.1.21.1.2.1.2 (Mar. 31, 2011). The codes reflect full relief, partial relief, or assistance provided.

424 For additional information, see *Importance of the TAO*, *supra*.

425 This indicator does not include the number of days of reopened cases.

**PROTECT TAXPAYER RIGHTS AND REDUCE BURDEN**

Measure	Description	FY 2012 Target	FY 2012 Actual
Accuracy of Closed Advocacy Projects	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	96.0%	98.6%
Timeliness of Actions in Advocacy Projects	Percent of all projects with timely actions in accordance with IRM guidance, including contacting the submitter within three business days from assignment, issuing an action plan within 30 calendar days, and working the project with no unnecessary delays or periods of inactivity.	80.0%	73.3%
Quality of Communication on Advocacy Projects	Percent of projects where substantive updates were provided to the submitter on the initial contact and subsequent contacts, appropriate coordination, and communication took place with internal and external stakeholders, written communications follow established guidelines, and outreach and education actions taken when appropriate.	96.0%	97.6%
Accuracy of Closed Immediate Interventions	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	96.0%	100%
Timeliness of Actions on Immediate Interventions	Percent of all projects with timely actions in accordance with IRM guidance, including contacting the submitter within one business day, issuing an action plan within five business days, and working the Immediate Intervention with no unnecessary delays or periods of inactivity.	75.0%	0%
Quality of Communications on Immediate Interventions	Percent of projects where substantive updates were provided to the submitter on the initial contact and subsequent contacts, appropriate coordination and communication took place with internal and external stakeholders, written communications followed established guidelines, and outreach and education actions were taken when appropriate.	92.0%	N/A <sup>426</sup>
Related Issues Resolved	Percent of all projects where related issues were addressed.	95.0%	100%
Timeliness of ARC Deliverables <sup>427</sup>	Percent of milestones met on the National Taxpayer Advocate Annual Report to Congress (ARC).	Indicator	
Number of Policy Issues Influenced by IMD Reviews	Policy issues influenced by TAS's Internal Management Document (IMD) review and recommendations.	Indicator	396
Percent of Immediate Interventions Acted Upon by IRS within One Year	The percentage of immediate intervention recommendations acted upon by the IRS within one year of the immediate intervention closure date.	Indicator	50%
Percent of Advocacy Projects Addressed by IRS within Two Years	The percentage of advocacy project recommendations, (excluding issues also raised in the Annual Report to Congress) acted upon by the IRS within two years of the Advocacy Project closure date.	Indicator	70%

426 Immediate Intervention results based on one Immediate Intervention closed during period.

427 ARC measures will be available July 2012.

**SUSTAIN AND SUPPORT A FULLY-ENGAGED AND DIVERSE WORKFORCE**

Measure	Description	FY 2012 Target	FY 2012 Actual
Employee Satisfaction <sup>428</sup>	Percent of employees who are satisfied or very satisfied with their jobs.	79%	
Employee Participation	Percent of employees who take the questionnaire. <sup>429</sup>	88%	
Continuing Professional Education (CPE) Evaluation <sup>430</sup>	Percent of employees who are satisfied or very satisfied with annual CPE.	92%	97.5% (FY 2010)

428 The annual Workgroup Questionnaire measures both participation and satisfaction.

429 Results will not be available until the summer of 2012.

430 Due to budgetary constraints, TAS conducted its FY 2011 CPE virtually and is currently reviewing its CPE evaluation measures. Results are for 2011 were not available at the time this report was printed.

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## Appendix VII: List of Advocacy Portfolios

Portfolio	Local Taxpayer Advocate Name	State/Office	Phone Number
Abusive Schemes/Refund Fraud	Michael Kenyon	North Dakota	701-237-8299
Accessing Taxpayers' Files	Jeraldine Todd	Missouri-Kansas City Campus	816-291-9019
Adoption Credit	Stephen Halker	Florida-Jacksonville	904-665-0523
Amended Returns	Gilbert Martinez	Texas-Dallas	214-413-6520
Accounts Management Taxpayer Assurance Program (AMTAP) Pre-Refund Program	Donna Wess	Tennessee-Memphis Campus	901-395-1700
Appeals - Examination Based Issues	Daniel Maiuro	California-Sacramento	916-974-5191
Appeals - Collection Based Issues	James Leith	Maryland	410-962-8120
Audit Reconsiderations	Ann Brunetti	Utah-Ogden Campus	801-620-3000
Automated Collection System (ACS)	Lois Lombardo	Pennsylvania-Philadelphia	215-861-1237
Bankruptcy	Andrew Mettlen	Pennsylvania-Pittsburgh	412-395-6423
BMF Information Reporting and Document Matching (IRDM/BMF) merged (CAWR/FUTA)	Chris Morell	New York-Brookhaven Campus	631-654-6687
Customer Account Data Engine (CADE)	Ann Logan	Utah-Salt Lake City	801-799-6962
Collection/Allowable Living Expenses	James Spisak	New York- Manhattan	212-436-1010
Compliance Withholding	Mary Murphy	Arizona	602-636-9503
Correspondence Examination	Fred Blinn	Indiana	317-685-7799
Collection Statute Expiration Dates (CSEDs)	Gerard Pieger	District of Columbia	202-874-4280
Designated Federal Official (DFO) Taxpayer Advocacy Panel (TAP) Brooklyn	Bernardita Tehrani	New York-Brooklyn	718-488-3501
DFO TAP North Carolina	Tina Junciewicz	North Carolina	336-574-6213
DFO TAP Atlanta	Lacrisa McClendon	Georgia-Atlanta Campus	770-936-4543
DFO TAP Memphis	Donna Wess	Tennessee-Memphis Campus	901-395-1700
DFO TAP Arkansas	Bill Wilde	Arkansas	501-396-5820
DFO TAP Salt Lake City	Ann Logan	Utah-Salt Lake City	801-799-6962
DFO TAP Los Angeles	Dorothea Curran	California-Los Angeles	213-576-3016
DFO TAP Vermont	Robert Fett	Vermont	802-859-1056
Disaster Response & Recovery	Janice Washington	Mississippi	601-292-4810
Domestic Violence Related Tax Issues	Suzanne Davis	Ohio-Cleveland	216-522-8241
Earned Income Tax Credit (EITC) Compliance	Marcie Harrison	New Jersey	973-921-4376
EITC Outreach	Rose Browne	Georgia-Atlanta	404-338-8085
Electronic Tax Administration	Betty Martin	Tennessee-Nashville	615-250-6015
Employment Tax Policy	Wayne Garvin	Delaware	302-286-1545
e-Services	Tiffney Todaro	California-Oakland	510-637-3079
Examination Strategy	Dorothea Curran	California-Los Angeles	213-576-3016
Exempt Organization Outreach	Peggy Guinn	Missouri-St. Louis	314-612-4371
Exempt Organizations [Application Approval Processing]	Nancy Eyman	Ohio-Cincinnati	513-263-3249

Portfolio	Local Taxpayer Advocate Name	State/Office	Phone Number
Farm Income & Taxation	Lorelei Gilchrist	South Dakota	605-377-1606
Federal Levy Payment Program (FPLP)	Kristy Moquin	Connecticut	860-756-4550
Federal Tax Liens (Including Centralized Liens)	Tom Sherwood	Colorado	303-603-4601
Financially Distressed Taxpayers	Delphine Hensley	Oklahoma	405-297-4139
First-Time Homebuyer Credit	Delia Lucas	Texas-Houston	713-209-4781
Fraud/Victim Assistance	Chastity Swantz	Nebraska	602-636-9503
Health Care I (Individual)	Desiree Frierson	Kansas	316-352-7505
Health Care II (Business)	Selma Taylor	Illinois-Chicago	312-566-3801
Health Care Outreach	Patricia DeTimmerman	Iowa	515-564-6880
Identity Theft	Deana Johnson	Kentucky-Covington Campus	859-669-4013
Individual Master File (IMF) Information Reporting & Document Matching (Automated Underreporter)	Lacrisa McClendon	Georgia-Atlanta Campus	770-936-4543
Indian Tribal Governments	Bill Wirth	New York-Buffalo	716-916-5393
Injured Spouse	Marsha Morgan	Kentucky-Louisville	502-572-2201
Innocent Spouse	Jane Knowles	Idaho	208-387-2827 ext 272
Installment Agreement Processing	Connie Hough	Wyoming	307-633-0881
Interest Computation Issues	Teresa Thompson	Montana	406-441-1044
International Taxpayers	Cynthia Vargas	Puerto Rico	787-622-8950
Identity Protection Specialized Unit (IPSU) -Identity Theft	Fred Benoit	Massachusetts-Andover Campus	978-247-9020
IRS Policy and Procedures on Accepting Electronic Taxpayer Records	Ardis Agosto	Louisiana	504-558-3003
IRS Training on Taxpayer Rights	Joe Zarrella	Massachusetts-Boston	617-316-2625
Individual Taxpayer Identification Number (ITIN) Outreach	Pamara Blount	Michigan	313-628-3664
ITIN Processing	Nancy Farthing	Texas-Austin Campus	512-460-4652
Levies	Bill Wilde	Arkansas	501-396-5820
Liens and CSEDs	Gerard Pieger	District of Columbia	202-874-4280
Low Income Taxpayer Clinics	Katrina Leifield	Maine	207-622-8577
Math Error	Gwen Sonier	South Carolina	803-765-7842
Military Taxation Issues	Kristia Douts	Alaska	907-271-6297
Multilingual Initiatives	Juan Rolon	Texas-Austin	512-499-5970
Nonfiler Strategy	Joe Warren	Minnesota	651-312-7874
Offer in Compromise	Bernardita Tehrani	New York-Brooklyn	718-488-3501
Office of Professional Responsibility	Victor Juarez	Pennsylvania-Philadelphia Campus	267-941-2357
Penalty Administration	Pam Bates	Illinois-Springfield	217-862-6348
Powers of Attorney	Deborah Hawkins	Alabama	205-912-5634
Practitioner Priority Services	Lisa Szargowicz	Rhode island	401-528-1916
Processing Payments	Shelley Ashurex	Oregon	503-415-7030
Return Preparer Penalties	Sharen Greene	New York-Albany	518-427-5412
Returned/Stopped Refunds	Barbara Johnson	Wisconsin	414-231-2391

Portfolio	Local Taxpayer Advocate Name	State/Office	Phone Number
Seizure and Sales	Terri Crook	Florida-Ft. Lauderdale	954-423-7676
Taxpayer Assistance Centers	Bill Mezger	Washington	206-220-5704
TAS Confidentiality (IRC § 7803(c)(4)(A)(iv)) and IRC § 6103	Joceline Champagne	New Hampshire	603-433-0571
Tax Exempt Entity Issues	Tina Juncewicz	North Carolina	336-574-6213
Tax Forum Case Resolution Room	Connie Adams	California-Laguna Niguel	949-389-4790
Tax Forum Case Resolution Room	Moana Sawyer	California-Fresno Campus	559-442-6419
Taxpayer Compliance Behavior	Stephen Halker	Florida-Jacksonville	904-665-0523
Tip Reporting and Compliance	Karen Alvear	Nevada	702-868-5180
Trust Fund Recovery Penalty	Mark Campbell	Virginia	804-916-3500
U.S. Territories & Possessions	Gayvial James	Hawaii	808-566-2927
Undelivered Mail	Jeraldine Todd	Missouri-Kansas City Campus	816-291-9019

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## Appendix VIII: Taxpayer Advocate Directive 2012-3



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

Response Due:  
January 27, 2012

January 12, 2012

MEMORANDUM FOR STEVEN T. MILLER, DEPUTY COMMISSIONER  
SERVICES AND ENFORCEMENT  
BETH TUCKER, DEPUTY COMMISSIONER  
OPERATIONS SUPPORT  
WILLIAM J. WILKINS, CHIEF COUNSEL

FROM: Nina E. Olson   
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2012-3 (*Review IRS Priorities in the Examination Process to Protect Taxpayer Rights, Improve Taxpayer Service, and Further Compliance*).

### TAXPAYER ADVOCATE DIRECTIVE

I am issuing this Taxpayer Advocate Directive (TAD) to direct that within **30 business days** the Deputy Commissioner, Services and Enforcement, the Deputy Commissioner, Operations Support, and Chief Counsel take the actions described in the numbered sections below. Within **10 business days** please also provide me with a written response to this TAD discussing the action(s) you plan to take and whether you plan to appeal.<sup>1</sup>

1. Convene a high-level cross-functional team, including the National Taxpayer Advocate, to review the Service's priorities in the examination process, particularly with respect to correspondence examination, to determine how we can better protect taxpayer rights, improve taxpayer service, and further compliance. This review should address the issues

<sup>1</sup> See IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

raised by the National Taxpayer Advocate 2011 Annual Report to Congress Volume II Study: *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights* (the "Exam Report," attached) including the recommendations to:

- a. Reverse the erosion of the taxpayer's right to avoid right to avoid unnecessary and repetitive examinations of the same return that has occurred as the IRS has increased its use of automated processes in lieu of examinations;<sup>2</sup>
- b. Update obsolete Treas. Reg. § 301.7605-1, *Time and Place of Examination*, which still reference the now-extinct district structure and does not mention correspondence audit or discuss when a transfer would be appropriate;
- c. Ensure that taxpayers who are subject to examinations have direct contact information for the assigned examiner, and that this same examiner will work the case to resolution; and
- d. Expand the use of "Virtual Service Delivery" methods and other technologies that will allow better communication with and service to taxpayers who are under audit or similar automated adjustment process.

#### I. Authority

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a TAD to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) "when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers."

In the 2008 Annual Report to Congress, the National Taxpayer Advocate raised concerns about whether centralized audit results reflect a correct determination of tax or a taxpayer's inability to navigate the system.<sup>4</sup> Perhaps because the centralized examination procedures do not foster communication with taxpayers, more than 25 percent of the EITC taxpayers surveyed for a TAS Research study were not even aware the IRS had audited their returns.<sup>5</sup> As described in the

<sup>2</sup> See IRC § 7605(b); Policy Statement 4-3 (Dec. 21, 1984), *reprinted at* IRM 1.2.13.1.1 (Aug. 31, 2007); 26 C.F.R. § 601.105(j)(statement of procedural rules).

<sup>3</sup> Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). See also IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

<sup>4</sup> National Taxpayer Advocate 2008 Annual Report to Congress 227-242.

<sup>5</sup> National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 103.

Exam Report, the IRS has not adequately addressed the National Taxpayer Advocate's concerns. Therefore, the procedural requirements for issuing this TAD are satisfied.<sup>6</sup>

## II. Overview

As described in the Exam Report and Revenue Protection Intro, the IRS increasingly relies on unexplained data mismatches to make automated adjustments to a person's liability and to deny or delay refunds. Mismatches between returns and third party data can result even if the return is accurate. Third-party data are not always accurate and some mismatches will remain unexplained as a result of communication difficulties. As summarized in the Revenue Protection Introduction, IRS correspondence does not always reach the taxpayer. When it does it is often confusing. When a taxpayer calls for clarification the IRS does not always answer the phone, and if the taxpayer reaches an IRS employee, the employee is often unable to resolve the inquiry.

Increasing reliance on automation can produce similar communication problems in connection with correspondence examinations. For example, the IRS conducts most (60 percent) EITC audits by correspondence before issuing refunds and paying the credit.<sup>7</sup> Almost 70 percent of these taxpayers do not respond to the audit inquiry letters from the IRS,<sup>8</sup> which then denies the EITC. A 2004 TAS Research study found that in these "no response" cases that qualified for an audit reconsideration, 43 percent obtained additional EITC and on average received 94 percent of the EITC amount claimed on their original returns.<sup>9</sup> Thus, in the IRS's adjustment will be inaccurate in many cases and taxpayers will be harmed.

In addition, by defining most automated procedures as "not an examination," without explaining what they are and what taxpayer rights apply, the IRS abridges longstanding taxpayer rights. For example, the right to avoid unnecessary and repetitive examinations of the same return does not apply. Similarly, when the IRS uses streamlined assessment procedures to make "math error" adjustments, the taxpayer is required to respond more quickly or risk losing the right to appeal the adjustment to the Tax Court.

In fiscal year (FY) 2010, the IRS made over 15 million contacts that taxpayers might regard as examinations, but treated only about ten percent (1.6 million) as

<sup>6</sup> IRM 13.2.1.6.1 (July 16, 2009).

<sup>7</sup> TIGTA, Ref. No.2011-40-023, *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Payments Each Year* 29 (Feb. 7, 2011).

<sup>8</sup> IRS AIMS FY 2010 (Oct. 2011) (ranging from 63 to 73 percent).

<sup>9</sup> See National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, i (*EITC Reconsideration Study*).

"real" examinations – and it conducted about 78 percent of these by correspondence in a highly-automated campus setting.<sup>10</sup> The IRS is likely to expand its reliance on automation as it receives, and attempts to process and use, more third-party data. For example, credit card issuers will soon be required to report the charges they process for businesses.

Moreover, low income taxpayers are often subject to these automated adjustments. Pursuant to new Accounts Management Taxpayer Assurance Program (AMTAP) and math error procedures, the IRS plans to check more returns from low income taxpayers where the amounts at issue are "below tolerance" (i.e., not considered significant enough to warrant a "real" examination) – precisely the taxpayers who are most likely to have difficulty communicating with the IRS.

#### Attachments

1. National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*; and
2. National Taxpayer Advocate 2011 Annual Report to Congress, *Introduction to Revenue Protection Issues: As the IRS Steps up Enforcement Using Automation, There Is an Increased Risk that It Will Assume Incorrectly that Taxpayers are Cheating, Confuse Them About Their Rights, and Sidestep Longstanding Taxpayer Protections*.

cc: Douglas Shulman, Commissioner of Internal Revenue  
Judy Wall, Special Counsel to the National Taxpayer Advocate

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<sup>10</sup> IRS Pub. 55B, Data Book, Table 9a, *Examination Coverage* (2010) (reflecting 1,581,394 examinations of individuals in FY 2010, including 1,238,632 by correspondence from an IRS campus and 342,762 in the field or from a field office).

## Appendix IX: IRS Response to Taxpayer Advocate Directive 2012-3





DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

January 27, 2012

MEMORANDUM FOR NINA E. OLSON  
NATIONAL TAXPAYER ADVOCATE

FROM:   
Steven T. Miller  
Deputy Commissioner for Services and Enforcement

  
Beth Tucker  
Deputy Commissioner for Operations Support

SUBJECT: Taxpayer Advocate Directive 2012-3

Pursuant to Delegation Order No. 13-3, which grants the Deputy Commissioner the authority to modify or rescind any form of Taxpayer Advocate Directive, this memorandum sets forth the modifications of Taxpayer Advocate Directive (TAD) 2012-3.<sup>1</sup>

### Issuance of TAD 2012-3

On January 12, 2012, the National Taxpayer Advocate issued TAD 2012-3 to the Deputy Commissioner for Services and Enforcement, Deputy Commissioner for Operations Support, and the Chief Counsel.

Taxpayer Advocate Directive 2012-3 was issued to direct the following:

1. Convene a high-level cross-functional team, including the National Taxpayer Advocate, to review the Service's priorities in the examination process, particularly with respect to correspondence examination, to determine how we can better protect taxpayer rights, improve taxpayer service, and further compliance. The review should address the issues raised by the National Taxpayer Advocate 2011 Annual Report to Congress Volume II Study: *An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights* including specific recommendations to (a) Reverse the erosion of the taxpayer's right to avoid unnecessary and repetitive examinations of the same returns that has occurred

<sup>1</sup> See Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev.1), *Authority to Issue Taxpayer Directives* (Jan. 17, 2001). See also IRM 13.2.1.6.2 *Tax Appeal Process*. We also note that because TAD 2012-3 was issued directly to the Deputy Commissioner Services and Enforcement, this response serves as the decision on appeal.

as the IRS has increased its use of automated processes; (b) Update Treas. Reg. section 301.7605-1; (c) Ensure that taxpayers who are subject to examinations have direct contact information for the assigned examiner, and that this same examiner will work the case to resolution; and (d) Expand the use of virtual service delivery methods and other technologies that will allow better communication with and service to taxpayers who are under audit or similar automated adjustment process.

#### **Modification of Taxpayer Advocate Directive 2012-3**

The IRS takes very seriously the protection of taxpayer rights and in ensuring that its procedures adhere to all legal requirements relating to due process for each taxpayer. The IRS appreciates the views and concerns expressed by the Office of the National Taxpayer Advocate, but strongly disagrees with the assertion that there has been an erosion of taxpayer rights in the examination process. The IRS remains committed to running a balanced and fair system that provides services for taxpayers trying to comply with the tax law, and runs compliance programs that detect and deter non-compliance in a way that fundamentally respects taxpayer rights. Taxpayer rights form the central foundation that our tax administration efforts are built upon and we respect this in enforcement actions.

Taxpayer Advocate Directive 2012-3 is modified as follows:

The issues raised in the original TAD will be considered during the next regularly scheduled IRS Enforcement Committee meeting. The Enforcement Committee is the high-level cross-functional team that guides the development and implementation of Service-wide enforcement strategies. This Committee is the appropriate forum to address the issues subject to the original TAD. This modification will allow all offices with enforcement responsibilities to provide input as to the issues raised by the Office of the National Taxpayer Advocate. The Office of the National Taxpayer Advocate is represented on the IRS Enforcement Committee and is encouraged to discuss views related to the original TAD with the Committee.

#### **Procedural issues**

Notwithstanding the above modification of TAD 2012-3, it is our view that the requirements under IRM 13.2.1.6.1.3 for issuance of the TAD without the intervening step of a proposed TAD have not been satisfied in this case. The IRM, which contains the procedural limitations imposed on the authority delegated in Delegation Order No. 13-3, does not contemplate that the inclusion of an issue in the National Taxpayer Advocate Annual Report to Congress serves as a proposed TAD.

3

We have consulted with the Office of Chief Counsel and concluded that the National Taxpayer Advocate has no authority to issue a TAD to the Chief Counsel. Moreover, the procedures governing the issuance of TADs provide that a TAD may not be issued to interpret the law, and that procedural limitation remains in effect today. The Chief Counsel concurs with our interpretation regarding the limitations on the issuance of TADs.

Accordingly, as to the Chief Counsel, TAD 2012-3 is rescinded as beyond the scope of Delegation Order 13-3. As to any other issues, not specifically addressed in the above modification, TAD 2012-3 is rescinded.

cc: Bill Wilkins, Chief Counsel

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## Appendix X: Taxpayer Advocacy Panel Survey of IRS Customers

### 2012 Taxpayer Advocacy Panel Survey of IRS Customers

**1. Why did you visit the IRS Walk-in office today?** (Mark all that apply)

- |   |                          |   |                          |
|---|--------------------------|---|--------------------------|
| a. Resolve an IRS notice or letter related issue  | <input type="checkbox"/> | i. File a tax return or form                            | <input type="checkbox"/> |
| b. Get an answer to a tax question                | <input type="checkbox"/> | j. Verify that a completed return is correct            | <input type="checkbox"/> |
| c. Obtain tax forms/publications/instructions     | <input type="checkbox"/> | k. Apply for an identification number (EIN, ITIN, etc.) | <input type="checkbox"/> |
| d. Have a <b>current</b> year tax return prepared | <input type="checkbox"/> | l. Obtain income information (W-2, 1099, etc.)          | <input type="checkbox"/> |
| e. Have a <b>prior</b> year tax return prepared   | <input type="checkbox"/> | m. Get a copy of prior year return                      | <input type="checkbox"/> |
| f. Find out about a tax refund                    | <input type="checkbox"/> | n. Resolve an electronic rejected return                | <input type="checkbox"/> |
| g. Get a lien or levy released                    | <input type="checkbox"/> | o. Set up a payment agreement                           | <input type="checkbox"/> |
| h. Make a payment                                 | <input type="checkbox"/> | p. Other (tell us): _____                               |                          |

**2. Did you try to use another IRS service to resolve your issue before coming to the IRS office today? If so, which service?** (Mark all that apply)

- |                                    |                          |   |                          |
|------------------------------------|--------------------------|---|--------------------------|
| a. Visited the IRS website         | <input type="checkbox"/> | c. I did not use another IRS service for this issue | <input type="checkbox"/> |
| b. Called the IRS toll-free number | <input type="checkbox"/> | d. Other (tell us) _____                            |                          |

**3. Why did you visit the IRS Office today instead of using some other IRS Service?** (Mark all that apply)

- |   |                          |   |                          |
|---|--------------------------|---|--------------------------|
| a. Used the walk-in service before                                  | <input type="checkbox"/> | h. Wanted to show someone the papers that I received / was working on | <input type="checkbox"/> |
| b. Location close to home   | <input type="checkbox"/> | i. Wanted to talk face-to-face with an IRS representative             | <input type="checkbox"/> |
| c. Location close to work   | <input type="checkbox"/> | j. Did not think I could get the information from another source      | <input type="checkbox"/> |
| d. Question very complicated  | <input type="checkbox"/> | k. Needed language assistance   | <input type="checkbox"/> |
| e. Question was urgent / time sensitive                             | <input type="checkbox"/> | l. I don't have a computer at home                                    | <input type="checkbox"/> |
| f. I <b>visited</b> the IRS website but it did not resolve my issue | <input type="checkbox"/> | m. Other (tell us) _____  |                          |
| g. I <b>called</b> the IRS but it did not resolve my issue          | <input type="checkbox"/> |   |                          |

**4. How long did it take you to get to the IRS Walk-in Office today?** (Mark one)

- |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Less than 10 minutes     | 10-19 minutes            | 20-29 minutes            | 30 – 39 minutes          | 40-49 minutes            | 50 or more minutes       |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**5. Did you have to take time off work to visit the IRS Walk-in Office today?** (Mark one)

- |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Yes                      | No, used lunch break     | No, used work break      | No, self-employed        | No, I don't work         | No, other                |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**6. Would you be willing to interact with an IRS representative virtually, using a computer screen (similar to Skype), instead of in person?** (Mark one)

- |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|
| Yes                      | No                       | Not sure                 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**7. Which of these electronic devices would you be willing to use to interact with the IRS?** (Mark all that apply)

- |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Smartphone               | Desktop computer         | iPad or Tablet           | Laptop computer          | Other                    | Not Sure                 | None                     |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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## Glossary of Acronyms

Acronym	Definition
<b>- A -</b>	
ACA	American Citizens Abroad
ACA	Affordable Care Act
ACS	Automated Collection System
AM	Accounts Management
AMT	Alternative Minimum Tax
AMTAP	Accounts Management Taxpayer Assurance Program
AOIC	Automated Offer in Compromise
AQC	Automated Questionable Credit or Refund
ARAP	Accelerated Revenue Assurance Program
ARC	Annual Report to Congress
ASA	Average Speed of Answer
ASFR	Automated Substitute for Return
AUR	Automated Underreporter
<b>- B -</b>	
BLS	Bureau of Labor Statistics
BMF	Business Master File
BOD	Business Operating Division
BPMS	Business Performance Measurement System
<b>- C -</b>	
CA	Case Advocate
CADE 2	Customer Account Data Engine 2
CAP	Congressional Affairs Program
CAS	Customer Account Services
CAWR	Combined Annual Wage Reporting
CCalc	Collection Statute Expiration Date Calculator
CDP	Collection Due Process
CIS	Correspondence Imaging System
CNC	Currently Not Collectible
CPE	Continuing Professional Education
CRB	Customer Requirement Board
CSED	Collection Statute Expiration Date
CSR	Customer Service Representative
CY	Calendar Year

Acronym	Definition
<b>- D -</b>	
DDIA	Direct Deposit Installment Agreement
DIF	Discriminant Function
DFO	Designated Federal Official
DMF	Death Master File
DRP-FRN	Disaster Recovery Plan – FISMA Non-Reportable
DRTA	Disaster Recovery Technical Assessment
<b>- E -</b>	
EDCA	Executive Director Case Advocacy
EFDS	Electronic Fraud Detection System
EFTPS	Electronic Federal Tax Payment System
EGTRRA	Economic Growth and Tax Relief Reconciliation Act of 2001
EITC	Earned Income Tax Credit
EO	Exempt Organization
EP/EO	Exempt Plan/Exempt Organization
ERS	Error Resolution System
ESL	English as a Second Language
EWETP	Enterprise Wide Employment Tax Program
<b>- F -</b>	
FAQ	Frequently Asked Question
FATCA	Foreign Account Tax Compliance Act
FAWCO	Federation of American Women's Clubs Overseas
FBAR	Report of Foreign Bank and Financial Accounts
FFI	Foreign Financial Institution
FICA	Federal Insurance Contributions Act
FISMA	Federal Information Security Management Act of 2002
FMS	Financial Management Service
FOIA	Freedom of Information Act
FPLP	Federal Payment Levy Program
FS-IMb	Full Service Intelligent Mail Barcode
FTE	Full Time Equivalent
FTHBC	First-Time Homebuyer Credit
FUTA	Federal Unemployment Tax Act
FY	Fiscal Year
<b>- G -</b>	
GAO	Government Accountability Office
<b>- H -</b>	
HCTC	Health Coverage Tax Credit
HHS	Department of Health and Human Services

Acronym	Definition
- I -	
IA	Installment Agreement or Intake Advocate
IAT	Integrated Automation Technologies
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IDT	Identity Theft
IGM	Interim Guidance Memoranda
IGP	Information Gathering Project
IMD	Internal Management Document
IMF	Individual Master File
IPSU	Identity Protection Specialized Unit
IPU	IRM Procedural Update
IRA	Information Returns Acceleration
IRC	Internal Revenue Code
IRDM	Information Reporting and Document Matching
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRSN	Internal Revenue Service Number
IT	Information Technology
ITAAG	Identity Theft Assessment and Action Group
ITIN	Individual Taxpayer Identification Number
- J -	
JAMES	Joint Audit Management Enterprise System
JGTRRA	Jobs and Growth Tax Relief Reconciliation Act of 2003
- L -	
LB&I	Large Business & International
LCA	Lead Case Advocate
LCCI	Last Chance Compliance Initiative
LITC	Low Income Taxpayer Clinic
LOS	Level of Service
LTA	Local Taxpayer Advocate
- M -	
MeF	Modernized e-File
MFJ	Married Filing Joint
MFS	Married Filing Separate
MITS	Modernization & Information Technology Services
MSP	Most Serious Problem

Acronym	Definition
<b>- N -</b>	
N/A	Not Applicable
NFTL	Notice of Federal Tax Lien
NRP	National Research Program
NTA	National Taxpayer Advocate
NTEU	National Treasury Employees Union
<b>- O -</b>	
OAR	Operations Assistance Request
OBR	Offset Bypass Refund
OD	Operating Division
OIC	Offer in Compromise
OMB	Office of Management & Budget
OMM	Operation Mass Mail
OTC	Office of Taxpayer Correspondence
OVDI	Offshore Voluntary Disclosure Initiative
OVDP	Offshore Voluntary Disclosure Program
<b>- P -</b>	
PCG	Pacific Consulting Group
PEP	Personal Exemption Phase-Outs
PIC	Primary Issue Code
PMTA	Program Manager Technical Advice
PO	Post Office
POA	Power of Attorney
POP	Phone Optimization Project
PPA	Pension Protection Act of 2006
PPBR	Printing and Postage Budget Reduction Task Group
PPIA	Partial Payment Installment Agreement
PPS	Practitioner Priority Service
PRO	Problem Resolution Officer
PRP	Problem Resolution Program
PRWH	Pre-Refund Wage Verification Hold
Pub. L. No.	Public Law Number
<b>- Q -</b>	
Q&A	Question & Answer
QRDB	Quality Review Database
QRP	Questionable Refund Program
Qtr	Quarter

Acronym	Definition
<b>- R -</b>	
Rev. Proc.	Revenue Procedure
RGS	Report Generating System
RICS	Return Integrity and Correspondence Services
RO	Revenue Officer
RPO	Return Preparer Office
RRA 98	IRS Restructuring and Reform Act of 1998
RRD	Return Request Display
RRP	Return Review Program
RSED	Refund Statute Expiration Date
<b>- S -</b>	
S. Comm.	Senate Committee
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SE	Self Employed
SERP	Servicewide Electronic Research Program
SET	Self Employment Tax
SOI	Statistics of Income
SPDER	Servicewide Policy, Directives, and Electronic Research
SPEC	Stakeholder, Partnerships, Education, and Communication
SPOC	Single Point of Contact
SSA	Social Security Administration
SSN	Social Security Number
Stat.	Statute
<b>- T -</b>	
TAB	Taxpayer Assistance Blueprint
TAC	Taxpayer Assistance Center
TACT	Taxpayer Communications Taskgroup
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBD	To Be Determined
TBOR 1	Taxpayer Bill of Rights

Acronym	Definition
TBOR 2	Taxpayer Bill of Rights 2
TCE	Tax Counseling for the Elderly
TCIS	Treasure Check Information System
TFRP	Trust Fund Recovery Penalty
TIGTA	Treasury Inspector General for Tax Administration
TPC	Third Party Contact Program
TPU	Taxpayer Protection Unit
Treas. Reg.	Treasury Regulation
TRIS	Taxpayer Rights Impact Statement
TRUIRCA	Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010
TSCC	Toolkit Suite Command Center
TY	Tax Year
TTY	Text Telephone
TWG	Technical Working Group
<b>- U -</b>	
UCR	Universal Call Routing
U.S.	United States
USDA	United States Department of Agriculture
USPS	U.S. Postal Service
USTC	United States Tax Court
<b>- V -</b>	
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
<b>- W -</b>	
W&I	Wage & Investment
WFTRA	Working Families Tax Relief Act of 2004
WIRA	Wage & Investment Research & Analysis





