

Case Advocacy

Activities of the Office of the Taxpayer Advocate

Under Internal Revenue Code (IRC) § 7803(c), the Office of the Taxpayer Advocate has four principal functions:

- Assist taxpayers in resolving problems with the IRS;
- Identify areas in which taxpayers are experiencing problems with the IRS;
- Propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- Identify potential legislative changes that may be appropriate to mitigate such problems.

Taxpayer Advocate Service (TAS) employees assist taxpayers whose tax problems are causing financial difficulty, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe an IRS system or procedure is not working as it should. While all IRS personnel must consider and protect taxpayer rights, TAS employees have a special responsibility for ensuring the IRS treats all taxpayers fairly.

In addition to helping taxpayers resolve specific cases and individual problems, TAS employees advocate for taxpayers by identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden and recommending solutions to the IRS to improve tax administration. TAS serves as the voice of the taxpayer within the IRS by providing the taxpayer's viewpoint when the IRS is considering new policies, procedures, or programs. Additionally, TAS administers the Low Income Taxpayer Clinic (LITC) grant program¹ and oversees the Taxpayer Advocacy Panel (TAP).²

TAS Analyzes Economic and Systemic Burden Case Receipts for Process Improvements.

Taxpayers seek TAS assistance with specific issues when:

- They have experienced a tax problem that causes financial difficulty;
- They have been unable 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 taxpayer rights.

¹ The LITC program provides matching grants to qualifying organizations to operate clinics that represent low income taxpayers in disputes with the IRS, or educate taxpayers for whom English is a second language about their rights and responsibilities as U.S. taxpayers. LITCs provide services to eligible taxpayers for free or for no more than a nominal fee. See IRC § 7526.

² TAP is a Federal Advisory Committee established by the Department of the Treasury to provide a taxpayer perspective on improving IRS service to taxpayers. TAS provides oversight and support to the TAP program. The Federal Advisory Committee Act (5 U.S.C. Appendix) prescribes standards for establishing advisory committees when those committees will furnish advice, ideas, and opinions to the federal government. See *also* 41 C.F.R. Part 102-3.

TAS generally accepts cases in four categories:

- Economic Burden – Cases in which a taxpayer is experiencing financial difficulty;
- Systemic Burden – Cases 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’s issue;
- Equitable Treatment or Taxpayer Rights Issues – Cases accepted to ensure taxpayers receive fair and equitable treatment and taxpayers’ rights are protected; and
- Public Policy – Cases accepted when the National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.³

In fiscal year (FY) 2012, TAS received 219,666 cases of all types, a 26 percent decrease from FY 2011, and provided relief to taxpayers in 76.9 percent of cases closed.⁴ Figure 4.1 shows FY 2012 receipts and closures by case category.

FIGURE 4.1, FY 2012 TAS Case Receipts, Closures, and Relief Rates⁵

	FY 2012 Receipts	FY 2012 Closures	Relief Rate
Economic Burden	133,082	127,135	74.6%
Systemic Burden	85,671	104,412	80.1%
Equitable Treatment or Taxpayer Rights Issues	167	218	75.7%
Public Policy	746	743	29.2%
Total Cases	219,666	232,508	76.9%

Case receipts declined primarily for two reasons. At the start of FY 2012, TAS modified its case acceptance criteria to exclude systemic burden inquiries involving *only* the processing of original returns, amended tax returns, unpostable and rejected returns, and injured

³ TAS Interim Guidance Memorandum (IGM) TAS-13.1.7-0112-005, *Interim Guidance on Accepting Cases under TAS Case Criteria 9, Public Policy* (Jan. 9, 2012), available at http://www.irs.gov/file_source/pub/foia/ig/tas/tas-13-7-0112-005.pdf. Issues identified as meeting public policy criteria include: Ponzi or other failed investment scheme claims, organizations where the IRS automatically revoked their tax-exempt status because the organization did not file an annual return or notice for three consecutive years, and Earned Income Tax Credit (EITC) audits referred to TAS as part of the Correspondence Examination Enhanced Communication Study. For an in-depth discussion of the EITC study, see *EITC Communication Study, infra*.

⁴ TAS determines relief based upon whether TAS can provide full or partial relief or assistance on the issue initially identified by the taxpayer. Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2012). TAS uses TAMIS to record, control, and process taxpayer cases, as well as to analyze the issues that bring taxpayers to TAS.

⁵ 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 provide to the taxpayer. See Internal Revenue Manual (IRM) 13.1.21.1.2.1.2 (Feb. 1, 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.

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spouse claims.⁶ These cases typically arise due to processing delays caused by seasonal spikes in IRS workload or because of systemic processing glitches. TAS's role in these cases was typically limited to asking the appropriate IRS function to resolve the problem, updating the taxpayer, and identifying systemic problems. TAS chose to no longer accept these four categories of cases to focus its limited resources on economic burden cases and on systemic burden cases where TAS plays a more direct role in advocating for relief or changing IRS policy and procedures. However, TAS will still accept cases involving the four issues described above, as follows:

- All inquiries where the taxpayer is experiencing economic burden, or the issue involves equitable treatment or taxpayer rights;
- All congressional office case referrals; and
- Systemic burden inquiries involving these four issues that also include other related issues where TAS can advocate, such as an open audit or collection action.

TAS received 76 percent fewer systemic burden case receipts for these four issues in FY 2012 than in FY 2011.⁷

TAS FY 2012 receipts also declined because of an 88 percent reduction in cases involving the First-Time Homebuyer Credit (FTHBC).⁸ TAS received large volumes of cases involving FTHBC audits when this credit was available, and additional cases due to IRS problems in computing repayment of the credit when applicable. TAS received 29,777 FTHBC cases in FY 2011, but only 3,477 in FY 2012, as the IRS completed most of the audits and fixed many of the glitches involving repayment.⁹ Figure 4.2 shows the number of TAS cases involving various temporary refundable credit (*e.g.*, FTHBC) and payment programs the IRS administered in recent years.

⁶ TAS IGM, TAS-13.1.7-0911-014, *Interim Guidance on Changes to Case-Acceptance Criteria*, (signed Sept. 1, 2011 and effective Oct. 1, 2011). Unpostable and rejected returns include those with missing information, forms, schedules, or errors that require correction prior to processing. Injured spouse claims are associated with joint returns where one spouse does not want his or her portion of the refund applied to a debt owed by the other spouse. TAS extended the changes through Sept. 24, 2013 with TAS-13-0912-019, *Reissuance of Interim Guidance on Changes to Case-Acceptance Criteria* (Sept. 25, 2012), available at <http://www.irs.gov/pub/foia/ig/spder/TAS-13-0912-019.pdf>.

⁷ TAS received 30,868 FY 2011 and 7,276 FY 2012 systemic burden cases where the primary issue was processing original, amended, or unpostable and reject returns, and injured spouse claims. Data obtained from TAMIS, Oct. 1, 2012 (FY 2012), Oct. 1, 2011 (FY 2011).

⁸ The FTHBC is a refundable tax credit that applied to qualified home purchases in 2008, 2009, and part of 2010, and included numerous eligibility rules based on adjusted gross income, age limits, home purchase price limits, and related-party rules. The \$7,500 FTHBC allowed under the Housing and Economic Recovery Act of 2008 required repayment of the credit over 15 years. Pub. L. No. 110-289, § 3011, 122 Stat. 2654, 2888 (July 30, 2008). The FTHBC allowed under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, § 1006, 123 Stat. 115, 316 (Feb. 17, 2009)) and continued under the Worker, Homeownership, and Business Assistance Act of 2009 (Pub. L. No. 111-92, § 11, 123 Stat. 2984, 2989 (Nov. 6, 2009)), increased the credit to \$8,000 and eliminated the repayment requirement.

⁹ Data obtained from TAMIS, Oct. 1, 2012 (FY 2012), Oct. 18, 2011 (FY 2011).

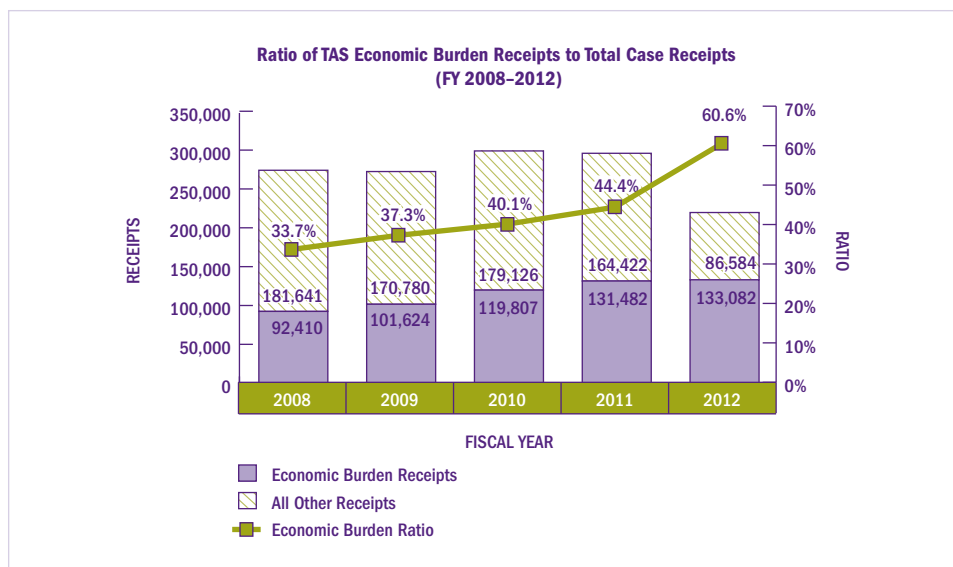
FIGURE 4.2, TAS Case Receipts Involving Temporary Refundable Credits And Payments, FY 2008-2012¹⁰

Program	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Economic Stimulus Payment	27,015	15,536			
First-Time Homebuyer Credit		4,622	43,520	29,777	3,477
Adoption Credit				5,572	3,770

In FY 2012, More Than Half of TAS Case Receipts Involved Economic Burden.

For the first time since TAS began its work in FY 2000, more than half of TAS case receipts involved taxpayers experiencing economic burden because of IRS issues.

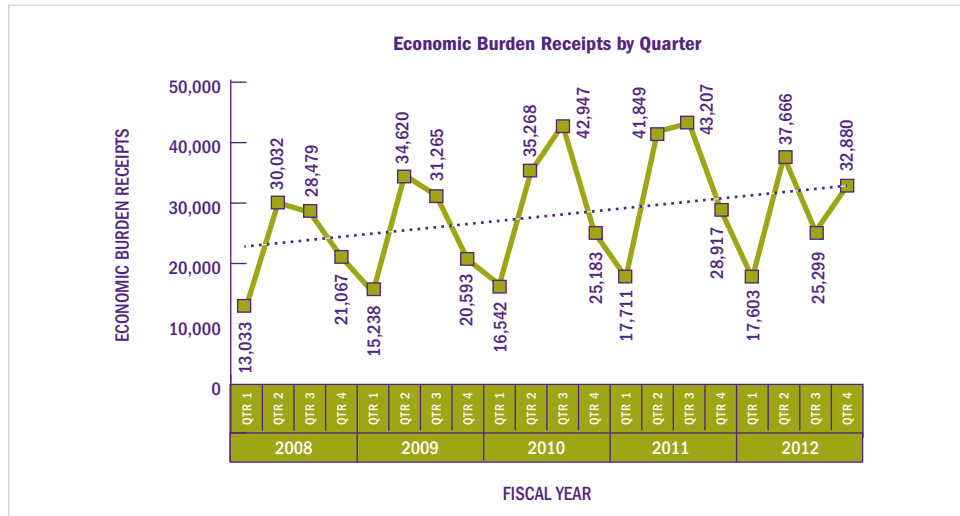
FIGURE 4.3, Ratio of TAS Economic Burden Receipts to Total Case Receipts, FY 2008-2012¹¹



TAS received 44 percent more economic burden cases in FY 2012 than in FY 2008.

¹⁰ Data obtained from TAMIS. Economic Stimulus Payment data Oct. 7, 2010. FTHBC data Oct. 7, 2010 (FY 2009), Oct. 18, 2011 (FY 2011), Oct. 1, 2012 (FY 2012). Adoption credit data Oct. 3, 2011 (FY 2011), Oct. 5, 2012 (FY 2012).

¹¹ Data obtained from TAMIS, Oct. 1, 2012 (FY 2012), Oct. 1, 2011 (FY 2011), Oct. 1, 2010 (FY 2010), Oct. 1, 2009 (FY 2009), Oct. 1, 2008 (FY 2008).

FIGURE 4.4, TAS Economic Burden Receipts by Quarter, FY 2008–2012¹²

TAS tracks underlying issues to identify the reasons taxpayers seek economic burden relief. Figure 4.5 lists the top five economic burden issues in FY 2012.

FIGURE 4.5, Top Five Economic Burden Case Issues, FY 2011 and FY 2012¹³

Rank	Issue Description	FY 2011	FY 2012	Percent Change
1	Stolen Identity	21,500	42,300	96.7%
2	Pre-Refund Wage Verification Hold ¹⁴	8,616	12,649	46.8%
3	Levies (including Federal Payment Levy Program) ¹⁵	13,299	10,174	-23.5%
4	EITC	4,928	4,915	-0.3%
5	Processing Amended Returns	5,872	4,862	-17.2%

¹² Data obtained from TAMIS (FY 2012) (Oct. 1, 2012).

¹³ Data obtained from TAMIS, Oct. 1, 2012 (FY 2012), Oct. 1, 2011 (FY 2011). TAS computed the top five economic burden cases using only Primary Issue Codes (PIC). TAS cases often involve more than one issue and TAS tracks this data. However, these cases are not included in this computation to avoid counting a case more than once.

¹⁴ For further discussion of the National Taxpayer Advocate's concerns about pre-refund wage verification holds, see Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers by Unreasonably Delaying Processing of Refunds that Trigger Systemic Filters*, *supra*.

¹⁵ The Federal Payment Levy Program (FPLP) is a systemic collection enforcement tool authorized by IRC § 6331(h). It allows the IRS to levy on federal payments disbursed by the Treasury's Financial Management Service (FMS) to taxpayers with an outstanding tax liability. 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.

Identity theft is the number one issue in economic burden case receipts and is currently the leading reason that taxpayers seek TAS assistance.¹⁶ In FY 2012, economic burden identity theft receipts rose almost 97 percent compared to FY 2011. During FY 2012, about 42,000 of nearly 55,000 taxpayers (77 percent) who came to TAS with this issue experienced economic burden.¹⁷

Pre-refund wage verification holds are second on the list of economic burden case issues, increasing nearly 47 percent from FY 2011 to FY 2012.

Collection Issues Continue to Contribute Significantly to TAS Economic Burden Receipts.

In FY 2012, collection issues accounted for 15 percent of all economic burden receipts and just over 13 percent of TAS's total caseload. TAS provided relief for 68 percent of the taxpayers in collection cases closed.¹⁸ In addition, in FY 2012 TAS issued 52 Taxpayer Assistance Orders (TAOs) in collection cases where the IRS did not agree with TAS's case-specific recommendations, of which the IRS complied with 44 (including three where TAS modified the TAO), TAS rescinded two, and six are still in process.¹⁹

As shown in Figure 4.6, while economic burden cases overall have increased 44 percent from FY 2008 to FY 2012, economic burden receipts resulting from collection issues dropped 19 percent. However, collection issues are common secondary issues in TAS cases. Eight percent of TAS FY 2012 receipts include secondary collection issues.²⁰

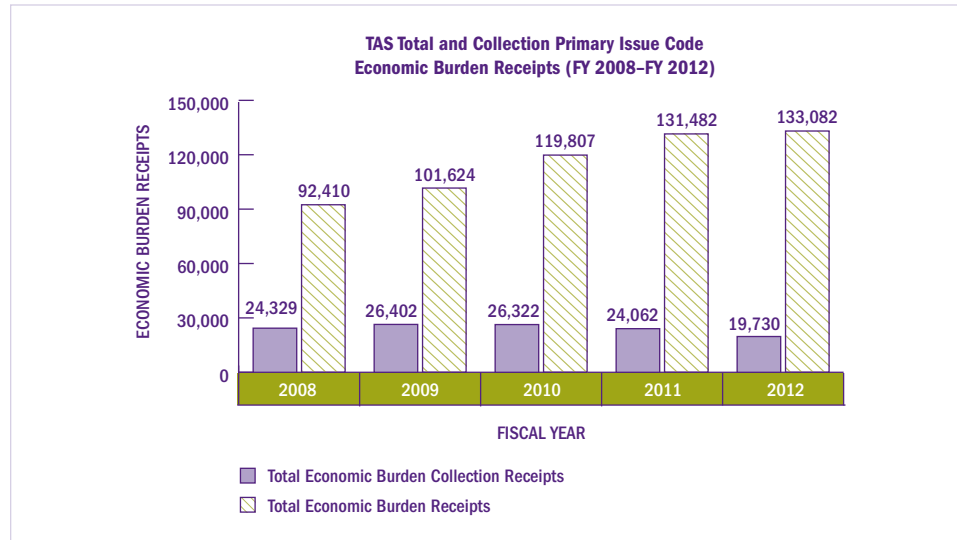
¹⁶ For further discussion of the National Taxpayer Advocate's concerns about identity theft issues, see Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft Cases*, *supra*.

¹⁷ Data obtained from TAMIS (Oct. 1, 2011).

¹⁸ Data obtained from TAMIS (Oct. 1, 2012).

¹⁹ For a detailed discussion of TAOs, see *TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases*, *infra*. TAO compliance data is as of Oct. 26, 2012.

²⁰ Data obtained from TAMIS (Oct. 29, 2012).

FIGURE 4.6, TAS Total and Collection Primary Issue Code Economic Burden Receipts, FY 2008–FY 2012²¹

While collection issues are still a significant source of TAS economic burden receipts, in FY 2012 these cases have declined by 18 percent from FY 2011, from about 24,000 to just under 20,000.²²

The National Taxpayer Advocate has repeatedly expressed concern about the adverse impact of IRS lien filing and other collection policies on taxpayers and future compliance.²³ The National Taxpayer Advocate has proposed several administrative and legislative steps to improve these policies and procedures, and to grant relief to taxpayers harmed by automatic Notice of Federal Tax Lien (NFTL) filings.²⁴ As discussed elsewhere in this report, partly in response to these proposals, the IRS announced a “Fresh Start” initiative in 2011 to help financially struggling taxpayers, which included several positive changes in how the

²¹ Data obtained from TAMIS computed using only Primary Issue Codes, Oct. 1, 2008 (FY 2008), Oct. 1, 2009 (FY 2009), Oct. 1, 2010 (FY 2010), Oct. 1, 2011 (FY 2011), and Oct. 1, 2012 (FY 2012).

²² Data obtained from TAMIS, Oct. 1, 2010 (FY 2010) and Oct. 1, 2011 (FY 2011).

²³ See Most Serious Problem: *Although the IRS “Fresh Start” Initiative Has Reduced the Number of Lien Notices Filed, the IRS Has Failed to Determine if Its Lien-Filing Policies Are Clearly Supported by Either Increased Taxpayer Compliance or Revenue*, supra, Most Serious Problem Introduction: *Taxpayer Service Within Collection*, supra, Most Serious Problem: *The Automated Collection System Must Emphasize Taxpayer Service Initiatives in Order to More Effectively Resolve Collection Workload*, supra, and Most Serious Problem: *Early Intervention, Offers in Compromise, and Proactive Outreach Can Help Victims of Failed Payroll Service Providers and Increase Employment Tax Compliance*, supra. See also National Taxpayer Advocate FY 2012 Objectives Report to Congress 12-13; National Taxpayer Advocate 2010 Annual Report to Congress 302-310; National Taxpayer Advocate 2009 Annual Report to Congress 17-40; National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 1-18, and National Taxpayer Advocate 2009 Annual Report to Congress 357-364.

²⁴ See Taxpayer Advocate Directive (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>.

IRS files and withdraws NFTLs.²⁵ Yet, problems remain in this and other collection areas. Thus, in FY 2012, the National Taxpayer Advocate helped develop and taught a course for her employees on effectively advocating in collection cases.²⁶

TAS Identifies Problems and Trends That Negatively Impact Taxpayers, and Advocates to Resolve These Issues.

By analyzing the underlying issues in individual casework, TAS identifies trends that affect larger groups of taxpayers and uses that information to work with the IRS to resolve the broader issues.²⁷ Figure 4.7 lists the top 15 issues facing taxpayers.

FIGURE 4.7, Top 15 Issues Received In TAS in FY 2012²⁸

Rank	Issue Description	FY 2011	FY 2012	Percent Change
1	Stolen Identity	34,006	54,748	61.0%
2	Pre-Refund Wage Verification Hold	21,286	18,012	-15.4%
3	Levies (Including Federal Payment Levy Program)	15,466	11,419	-26.2%
4	Reconsideration of Audits ²⁹ and Substitute for Return under IRC § 6020(b) ³⁰	11,902	9,344	-21.5%
5	Open Audit (Not Earned Income Tax Credit)	21,397	8,885	-58.5%
6	Processing Amended Returns	22,743	8,783	-61.4%
7	Earned Income Tax Credit	8,729	7,441	-14.8%
8	Processing Original Returns	11,578	6,250	-46.0%
9	Expedite Refund Request	9,386	5,726	-39.0%
10	IRS Offset	6,995	5,298	-22.0%
11	Unpostable and Rejected Returns	13,288	5,286	-60.2%
12	Installment Agreements	5,899	4,449	-24.6%
13	Injured Spouse Claim	8,295	4,115	-50.4%
14	Reconsideration of Automated Underreporter	5,151	3,696	-28.2%
15	Other Refund Inquiries/Issues	6,135	3,572	-41.8%
Total TAS Receipts		295,904	219,666	-25.8%

²⁵ IRS Announcement IR-2011-20, *IRS Announces New Effort to Help Struggling Taxpayers Get a Fresh Start; Major Changes to Lien Process* (Feb. 24, 2011) available at <http://www.irs.gov/uac/IRS-Announces-New-Effort-to-Help-Struggling-Taxpayers-Get-a-Fresh-Start;Major-Changes-Made-to-Lien-Process>.

²⁶ Course 50517, *Roadmap to a Tax Controversy Level Two – Collections* (Aug. 2012).

²⁷ TAS uses a variety of sources to identify systemic problems, including TAS employees, other IRS employees, tax practitioners, members of Congress, LITCs, TAP and the public. These stakeholders submit systemic issues to TAS through a variety of channels, including the Systemic Advocacy Management System (SAMS) on the IRS employee intranet and the TAS site on IRS.gov (<http://www.irs.gov/uac/Taxpayer-Advocate-Service-6>).

²⁸ Data obtained from TAMIS, Oct. 1, 2011 (FY 2011), Oct. 1, 2012 (FY 2012). TAS computed the top 15 issues using only Primary Issue Codes. 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. Data reflect only the top 15 issues, not all TAS receipts for the FY.

²⁹ 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 4.13.1.2 (Oct. 1, 2006).

³⁰ IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on available information, and assess the tax after providing a statutory notice deficiency to the taxpayer.

The most significant trend is the connection between the top two issues. Refund-related identity theft and attempts to claim false wage withholding or credits have a common theme: the perpetrators are abusing the tax system to receive improper refunds.³¹ Another common thread in both areas is tax preparer refund fraud, in which unscrupulous preparers alter taxpayers' returns by inflating income, deductions, credits, or withholding without their clients' knowledge or consent, and take the increased refunds for themselves. Discussion of each of these issues appears below.

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

Tax-related identity theft (IDT) continues to present challenges to the IRS.³² News outlets report organized groups are engaged in tax-related IDT, including "classes" where perpetrators teach others how to file tax returns with stolen identities.³³ The National Taxpayer Advocate testified five times before Congress in 2012 on IRS challenges in dealing with identity theft perpetrators and victims, and has discussed IDT issues in numerous Reports to Congress.³⁴

In June 2010, W&I's Identity Protection Specialized Unit (IPSU) began working non-economic burden IDT cases.³⁵ The IPSU is a centralized IRS organization within Accounts Management that assists taxpayers that are, or may become, victims of IDT. In FY 2012,

³¹ Employment-related identity theft also exists, but the IRS has procedures in place to minimize the harm to the victim in those cases. In employment-related identity theft, the individual files a tax return (typically using an Individual Taxpayer Identification Number (ITIN) assigned by the IRS), but uses another individual's Social Security number (SSN) to work, and the employer reports the wages to the IRS under the SSN.

³² For a more detailed discussion of identity theft issues and the National Taxpayer Advocate's concerns about IRS implementation of this program, see Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft, supra*.

³³ Tampa Bay Times, *49 Accused of Tax Fraud and Identity Theft*, (Sept. 2, 2011), available at <http://www.tampabay.com/news/publicsafety/crime/40-accused-of-tax-fraud-and-identity-theft/1189406>; Tampa Bay Online, *Police: Tampa Street Criminals Steal Millions Filing Fraudulent Tax Returns*, (Sept. 1, 2011), available at <http://www2.tbo.com/news/politics/2011/sep/01/11/police-tampa-street-criminals-steal-millions-filin-ar-254724/>.

³⁴ *Identity Theft-Related Tax Fraud*, Hearing Before H. Subcomm. On Government Organization, Efficiency, and Financial Management, Comm. On Oversight and Government Reform, 112th Congress (statement of Nina E. Olson, National Taxpayer Advocate) (Nov. 29, 2012); *Identity Theft and Income Tax Preparation Fraud*, Hearing Before H. Subcomm. on Crime, Terrorism, and Homeland Security, Comm. On the Judiciary, 112th Congress (statement of Nina E. Olson, National Taxpayer Advocate) (June 28, 2012); *Identity Theft and Tax Fraud*, Hearing Before H. Subcomm. On Oversight and Social Security, Comm. On Ways and Means, 112th Congress (statement of Nina E. Olson, National Taxpayer Advocate) (May 8, 2012); *Tax Compliance and Tax-Fraud Prevention*, Hearing Before H. Subcomm. On Government Organization, Efficiency, and Financial Management, Comm. On Oversight and Government Reform, 112th Congress (statement of Nina Olson, National Taxpayer Advocate) (Apr. 19, 2012); and *Tax Fraud by Identity Theft, Part 2: Status, Progress, and Potential Solutions*, Hearing Before S. Subcomm. On Fiscal Responsibility and Economic Growth, Comm. On Finance, 112th Congress (statement of Nina E. Olson, National Taxpayer Advocate) (Mar. 20, 2012). See also National Taxpayer Advocate 2005 Annual Report to Congress 180-191 (Most Serious Problem: *Identity Theft*); National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (Most Serious Problem: *Identity Theft Procedures*); 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 2009 Annual Report to Congress 307-317 (Status Update: *IRS's Identity Theft Procedures Require Fine Tuning*); National Taxpayer Advocate FY 2012 Objectives Report to Congress 14-18 (Areas of Focus: *The IRS Needs to Improve Its Identity Theft Victim Assistance Strategy*); and 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*).

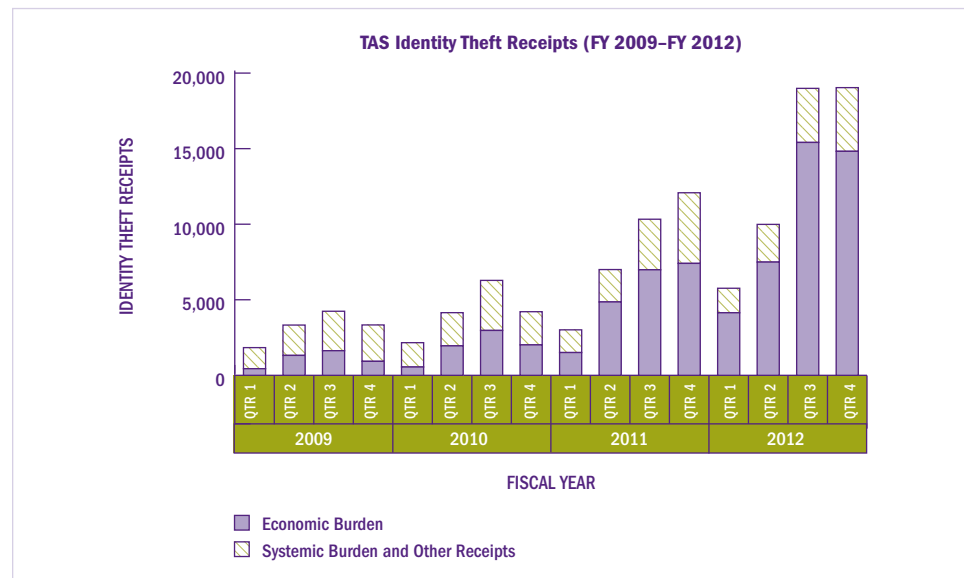
³⁵ Memorandum of Understanding Between the National Taxpayer Advocate and the Commissioner, *W&I to Transition TAS Criteria 5-7 Identity Theft Cases to W&I IPSU* (Mar. 31, 2010).

IPSU receipts totaled nearly 450,000.³⁶ Taxpayers reported almost 155,000 tax-related identity theft incidents to the IRS in the first nine months of calendar year 2012.³⁷ The IRS internally identified over 920,000 additional identity theft incidents in the first nine months of calendar year 2012.³⁸

In 2010, TAS and IPSU entered into a Memorandum of Understanding to transition some systemic burden TAS IDT cases to the IPSU.³⁹ In FY 2010, the IPSU handled nearly 3,400 cases that TAS would otherwise have received. In FY 2011, this number increased to nearly 26,700, and in FY 2012 it was over 44,000.⁴⁰

Despite IPSU taking on some systemic burden IDT cases, identity theft still ranked as the number one reason taxpayers came to TAS in FY 2012. TAS IDT receipts continued to increase substantially in FY 2012, as reflected in Figure 4.8 below.

FIGURE 4.8, TAS Identity Theft Receipts, FY 2009–FY 2012, Economic And Systemic Burden⁴¹



³⁶ IRS, *IPSU Paper Inventory Report* (Sept. 29, 2012).

³⁷ IRS, *Identity Protection Incident Tracking Statistics Report* (Jan. 1, 2012 – Sept. 29, 2012).

³⁸ *Id.*

³⁹ 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). 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 TAO on behalf of the taxpayer; (4) taxpayer cases added to TAMIS will remain in TAS and be resolved through the Operations Assistance Request (OAR) 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, will come to TAS for assistance, when the IPSU cannot provide relief within 24 hours; (7) congressional cases; and (8) any cases previously open in TAS. Available at: http://www.irs.gov/pub/irs-utl/wi_tas_ipsu_mou_signed_03-31-2010.pdf. See also IRM 13.1.16.9.7 (June 22, 2012).

⁴⁰ IRS, *IPSU Identity Theft Report* (Oct. 1, 2011); IRS, *IPSU Identity Theft Report* (Sept. 29, 2012).

⁴¹ Data obtained from TAMIS. TAS captured the data on the first day of the month following the end of each quarter for FY 2008 through FY 2012.

TAS continues to search for ways to improve the IRS's ability to assist victims of identity theft and participates on numerous servicewide identity theft teams to address identity theft challenges. Such challenges include:

- Keeping pace with a growing, increasingly complex caseload;
- Implementing consistent identity theft procedures across multiple IRS organizations; and
- Improving taxpayer service and identity theft case processing efficiency while managing the complex case resolution process.

The Questionable Refund Program Remains a Top Issue in TAS Case Receipts.

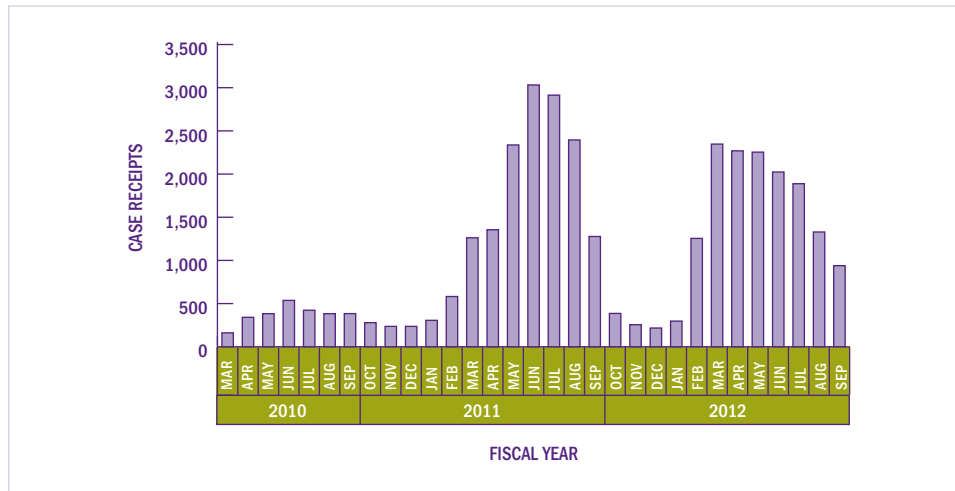
The Questionable Refund Program (QRP) has resurfaced in the past two years as a top issue in TAS casework in the form of Pre-Refund Wage Verification Hold (PRWVH) receipts.⁴² In FY 2012, TAS received 18,012 PRWVH cases, providing some form of relief in 70 percent of cases closed.⁴³ Figure 4.9 shows the monthly increase in these cases once the civil side of this work shifted from the Criminal Investigation Division to W&I.⁴⁴

⁴² See Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers By Unreasonably Delaying Processing of Refunds That Trigger Systemic Filters*, *supra*; National Taxpayer Advocate 2007 Annual Report to Congress 448-458 (Status Update: *Questionable Refund Program*); National Taxpayer Advocate 2006 Annual Report to Congress 408-421 (Status Update: *Major Improvements in the Questionable Refund Program and Some Continuing Concerns*); National Taxpayer Advocate 2005 Annual Report to Congress 25-54 (Most Serious Problem: *Criminal Investigation Refund Freezes*); National Taxpayer Advocate 2003 Annual Report to Congress 175-181 (Most Serious Problem: *Criminal Investigation Freezes*).

⁴³ Data obtained from TAMIS. 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.

⁴⁴ W&I began working the civil side of the QRP on October 11, 2009. TAS began tracking its W&I QRP cases in March 2010.

FIGURE 4.9, TAS Monthly Pre-Refund Wage Verification Hold Receipts, March 2010 Through September 2012⁴⁵



The IRS administers the civil side of the QRP through the office of Refund Integrity and Correspondence Services (RICS). RICS includes the Accounts Management Taxpayer Assurance Program (AMTAP) to review returns with questionable wages and withholding and a Taxpayer Protection Unit (TPU) that reviews tax returns the IRS suspects claim questionable credits or were filed by identity thieves.⁴⁶ To accomplish its primary goal of revenue protection, the IRS selects questionable returns using the Electronic Fraud Detection System (EFDS) before releasing refunds and screens them electronically to verify the accuracy of the taxpayers' wages, withholding, and taxpayer identity. For returns with wage and withholding issues, if this initial review cannot confirm the amounts, AMTAP employees begin a manual verification process that can take up to 11 weeks or more, and can create financial hardship for taxpayers who are awaiting legitimate refunds.⁴⁷

The IRS schedules an automatic release of the hold placed on the taxpayer's refund when the review period expires. However, if the IRS cannot verify the accuracy of the return in this time due to workload backlogs, it places a "hard freeze" on the account that does not expire automatically. AMTAP cases with this hard freeze may become a low priority for resolution as AMTAP focuses on cases that have a looming automatic release date. This

⁴⁵ Data obtained from TAMIS. TAS captures data on the first day following the end of each month, *i.e.*, Oct. 1, 2011 for September 2011; for March 2010 through September 2012. TAS computed the receipts included in this table using the primary issue for the case. 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.

⁴⁶ See IRM 21.9.1.13 (May 25, 2012).

⁴⁷ The manual verification process for wages and withholding 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. See IRM 21.9.1.2 (May 4, 2012).

causes the hard freeze cases to sit unworked for months, which leads more taxpayers to TAS for help.⁴⁸

For returns that the IRS suspects were filed by identity thieves, the TPU sends a letter requesting taxpayer contact to verify identity. If the taxpayer does not pass the verification process, TPU employees void the tax return. The TPU also sends letters to certain taxpayers who filed returns with questionable refundable credits. If those taxpayers fail the verification process, another component of RICS (Automated Questionable Credits or AQC) sends a proposed disallowance letter.⁴⁹

While the IRS has improved its ability to detect and prevent refund fraud, its fraud filters inevitably catch some taxpayers eligible for legitimate refunds, and IRS procedures currently impose unacceptable burden on these legitimate taxpayers.⁵⁰ TAS has issued 48 TAOs to RICS during FY 2012 to help taxpayers receive legitimate refunds, of which the IRS complied with 44.⁵¹

IRS Procedural Gaps Make it Difficult to Assist Taxpayers Victimized by Return Preparer Fraud.

TAS identified an increasing number of taxpayers defrauded by tax return preparers, who sometimes alter returns without taxpayers' consent or knowledge to obtain an inflated refund.⁵² One example of how a return preparer could commit refund fraud follows:

- The preparer gives a copy of the legitimate tax return to the taxpayer;
- Without the taxpayer's knowledge or consent, the preparer alters the return to inflate or add withholding, credits, and deductions, resulting in a higher refund;
- The preparer files the altered return with the IRS; and
- The preparer directs the IRS to split the refund between two bank accounts, with the correct refund going to the taxpayer and the fraudulent portion going to the preparer.

Since the taxpayer receives the refund expected, often the taxpayer has no reason to suspect fraud. The taxpayer only learns of the fraud when the IRS tries to recover the fraudulent refund or the taxpayer requests a transcript of the account to apply for a loan or

⁴⁸ For an example of how "questionable" refunds can languish in a "hard freeze" state for months and even years, see National Taxpayer Advocate 2005 Annual Report to Congress 25 (Most Serious Problem: *Criminal Investigation Refund Freezes*) and National Taxpayer Advocate 2005 Annual Report to Congress vol. 2 (*Criminal Investigation Refund Freeze Study*). See also National Taxpayer Advocate 2006 Annual Report to Congress 408 (Status Update: *Major Improvements in the Questionable Refund Program and Some Continuing Concerns*). TAS conducted a research study that found that 80 percent of taxpayers in a statistically representative sample of TAS QRP cases had received at least a partial refund (66 percent had received a full refund) and that taxpayers had to wait about nine months, on average, to receive these refunds.

⁴⁹ See IRM 21.9.1.13.3 (May 25, 2012).

⁵⁰ For a full discussion of IRS procedures and the taxpayer burden they create, see Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers by Unreasonably Delaying Processing of Refunds That Trigger Systemic Filters*, *supra*.

⁵¹ Data obtained from TAMIS. TAO compliance is as of Oct. 26, 2012. For a detailed discussion of TAOs, see *TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases*, *infra*.

⁵² TAS received 385 return preparer fraud cases in FY 2012. Data obtained from TAMIS (Oct. 29, 2012).

student financial aid and discovers the discrepancy between the tax return received from the preparer and IRS records.⁵³

The National Taxpayer Advocate issued guidance to TAS employees to help them identify preparer refund fraud and advocate for taxpayers.⁵⁴ However, in spite of a 2003 Chief Counsel opinion that provides the IRS a roadmap for correcting accounts, the IRS failed to timely issue procedures to its employees to reverse the harm done to taxpayers.⁵⁵ On May 23, 2012, the National Taxpayer Advocate issued additional guidance to TAS employees, temporarily suspending normal case processing procedures for return preparer fraud cases.⁵⁶ Ordinarily, TAS would issue an Operations Assistance Request (OAR) and allow time for the IRS to respond to the OAR before elevating disagreements or inaction to the Local Taxpayer Advocate (LTA) for consideration of a TAO. In return preparer fraud cases, Case Advocates immediately elevate the case so LTAs can issue a TAO without first issuing an OAR.

In FY 2012, TAS issued 58 TAOs related to preparer refund fraud, of which 53 percent have been appealed to the National Taxpayer Advocate.⁵⁷ TAS issued the majority of these TAOs to assist taxpayers whose preparers stole their refunds by changing information on the return (without the taxpayer's knowledge) and misappropriating the refund. When a fraudulent return is filed by someone other than the taxpayer, the taxpayer's account is corrupted by the false information. The IRS should remove the fraudulent information as it does in identity theft cases; however, to date the IRS has refused to do so. The IRS continues to stand by its position that because it paid out the refund according to the instructions it received, it is not required to remove the fraudulent information from the victim's account or issue a replacement refund. The IRS's position is that the taxpayer's sole recourse is to pursue the matter in a civil lawsuit against the return preparer.

In addition to advocating case by case for individual taxpayers, on January 12, 2012, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the W&I and SB/SE Commissioners, ordering the IRS to issue guidance to correct all victims' accounts. After the Operating Division Commissioners appealed the TAD, the National Taxpayer Advocate elevated it to the Deputy Commissioner for Services and Enforcement on March

⁵³ For a detailed discussion of return preparer refund fraud, see Most Serious Problem: *The IRS Harms Victims of Return Preparer Misconduct by Failing to Fully Resolve Their Accounts*, *supra*.

⁵⁴ TAS IGM, 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>.

⁵⁵ IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003), available at <http://www.irs.gov/pub/lanoa/pmta-2011-013.pdf>.

⁵⁶ TAS IGM, 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>.

⁵⁷ Data obtained from TAMIS. Appeal data is as of Oct. 26, 2012. Thirty-one of the 58 TAOs issued were appealed to the National Taxpayer Advocate.

16, 2012.⁵⁸ Although the IRS eventually issued interim guidance to its employees on June 26, 2012 and expanded the guidance in September 2012, it remains incomplete and leaves some affected taxpayers in limbo pending additional advice from the Office of Chief Counsel.⁵⁹

A high-profile instance of preparer refund fraud came to light when the Illinois Attorney General's office sued the return preparation firm Mo' Money Taxes on March 14, 2012, accusing the company of filing unauthorized federal income tax returns and charging its clients undisclosed and exorbitant fees.⁶⁰ A representative from the Attorney General's office inquired if TAS could assist the alleged victims. TAS sent the Attorney General's office information about seeking TAS assistance, and informed the IRS that these taxpayers require assistance (including collection holds while their accounts were corrected). In FY 2012, TAS received and accepted 83 cases related to Mo' Money actions, providing at least some relief in 59 percent of the 71 cases closed.⁶¹

Delays in Processing Claims for the Adoption Credit Are Caused by Up-Front Documentation Requirements.

The Patient Protection and Affordable Care Act increased the maximum adoption credit to \$13,360 for 2011, and made the credit fully refundable.⁶² The eligibility rules vary for domestic, foreign, and special needs child adoptions. However, in all three categories, taxpayers claiming the credit can no longer file returns electronically because the IRS requires paper documentation with Form 8839, *Qualified Adoption Expenses*.⁶³

The IRS scrutinizes these returns because the credit is large and refundable. As in audits of other refundable credits, the IRS holds the adoption credit portion of the refund until the audit determines whether the taxpayer is eligible for the credit.⁶⁴ The Treasury Inspector General for Tax Administration (TIGTA) reported that through December 23, 2011, the IRS received more than 101,000 claims for over \$1.2 billion in adoption credits for tax year 2010. Of these, the IRS selected over 43,000 (43 percent) for audit because the claim had

⁵⁸ TAS, TAD 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). Memorandum to the Deputy Commissioner for Services and Enforcement (Mar. 16, 2012).

⁵⁹ Servicewide Electronic Research Program (SERP) Alert 12A0417, *Memphis AM ONLY – Return Preparer Misconduct Interim Guidance* (June 26, 2012), *superseded by* IRS IGM WI-21-0812-02 (Sept. 6, 2012), *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, available at <http://www.irs.gov/pub/foia/ig/spder/WI-21-0812-02.pdf>.

⁶⁰ 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.

⁶¹ Data obtained from TAMIS (Oct. 30, 2012).

⁶² Pub. L. No. 111-148, § 10,909, 124 Stat. 119, 1021 (Mar. 23, 2010) (*amending* IRC § 23 and redesignating it as IRC § 36C. Rev. Proc. 2010-40, 2010-46 I.R.B. 663.

⁶³ For more information and further discussion of the adoption credit, see Most Serious Problem: *The IRS's Compliance Strategy for the Expanded Adoption Credit Has Resulted in Excessive Delays to Taxpayers and Increased Costs for the IRS and Does Not Bode Well for Future Credit Administration*, *supra*.

⁶⁴ IRM 21.5.10.4.1.2, *Examination Refund Hold Projects*, (Mar. 16, 2011).

invalid or insufficient documentation, or none at all.⁶⁵ However, when the Government Accountability Office (GAO) reviewed approximately 35,000 closed adoption credit audits, it found the IRS disallowed all or part of the credit only 17 percent of the time.⁶⁶ This means the IRS closed 83 percent of these audits without changing the taxpayers' refunds or balances owed, a far higher "no change" rate than the 14 percent for all other correspondence audits.⁶⁷ E-filing returns and electronic documentation for this credit would benefit both taxpayers and the IRS:

- IRS examiners could access documentation submitted immediately, eliminating requests for information taxpayers already submitted;
- E-filing software would alert taxpayers (or their tax preparers) of the documentation requirements, and could reject transmission of returns with none attached; and
- By reducing adoption credit returns received with no documentation, the IRS would reduce the burden and cost of an audit on taxpayers and the IRS, thus freeing up IRS compliance resources for more productive audits in other areas.

In FY 2012, TAS has received over 3,700 adoption credit cases and provided relief in 84 percent of the 4,847 cases closed.⁶⁸

TAS Assists Taxpayers Impacted by the Closing of Tax Dispute Resolution Firms.

In March 2012, TaxMasters, Inc. filed for Chapter 11 bankruptcy protection (modified to Chapter 7 liquidation in May 2012) and a jury returned a \$195 million verdict against the firm in a lawsuit filed by the Texas Attorney General.⁶⁹ TaxMasters provided tax-related representation and services to about 4,000 clients nationwide.⁷⁰ The Texas Attorney General's office and the bankruptcy trustee contacted TAS in April 2012 to see if TAS could assist TaxMasters clients. TAS took the following actions:

- The National Taxpayer Advocate sent all TaxMasters clients a letter that gave them an overview of their options, and encouraged those facing immediate adverse collection actions to contact TAS.
- The letter included an attachment explaining the collection process and collection alternatives such as installment agreements, currently not collectible status, and offers in compromise.

⁶⁵ TIGTA, Ref. No. 2012-40-065, *Processes to Address Erroneous Adoption Credits Result in Increased Taxpayer Burden and Credits Allowed to Nonqualifying Individuals 2* (June 13, 2012).

⁶⁶ GAO, GAO-12-098, *Adoption Tax Credit – IRS Can Reduce Audits and Refund Delays 10* (Oct. 20, 2011).

⁶⁷ *Id.*

⁶⁸ Data obtained from TAMIS (Oct. 5, 2012 and Oct 29, 2012).

⁶⁹ Attorney General of Texas News Release, *Houston-Based TaxMasters and Founder Patrick Cox Ordered to Pay Over \$195 Million For Defrauding Customers in Texas and Nationwide* (Mar. 30, 2012) available at <https://www.oag.state.tx.us/oagnews/release.php?id=4020>.

⁷⁰ TAS, *TAS Letter to TaxMasters Clients* (July 11, 2012) available at http://www.taxpayeradvocate.irs.gov/userfiles/file/TaxMasters_letter.pdf.

- The letter also included a Frequently Asked Questions (FAQ) document discussing issues related to representation, including Low Income Taxpayer Clinics available to assist eligible individuals.⁷¹

TAS is tracking TaxMasters cases to determine what types of relief clients sought (payment plans, levy release, offer in compromise, etc.), and how often TAS could advocate for relief. In FY 2012, TAS received 24 cases and provided relief in 64 percent of the 14 cases closed.⁷²

TAS Uses Taxpayer Assistance Orders to Advocate Effectively.

The TAO is a powerful tool for LTAs to use to resolve their cases. An LTA should consider issuing a TAO when the taxpayer is suffering or about to suffer a significant hardship because of the manner in which the internal revenue laws are administered, and the law and the facts support the relief.⁷³ The LTA may issue a TAO to order the IRS to take an action, cease an action, or refrain from taking an action;⁷⁴ for example, to release a levy.⁷⁵ 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.⁷⁶

TAOs can also bring systemic problems to light and help drive systemic improvement in the IRS. For example, in FY 2012 the IRS Accounts Management (AM) division in the Atlanta Campus experienced a backlog and was unable to timely work TAS identity theft OARs. Since most TAS IDT cases involve taxpayers experiencing an economic burden, the lack of timely response was unacceptable.⁷⁷ Therefore, TAS issued 128 TAOs to AM, ordering the unit to complete the actions originally requested on the OAR.

Because of the number of TAOs issued (nearly 30 percent of all TAOs issued by TAS in FY 2012), the AM division reevaluated the way it was addressing its backlog. On July 23, 2012, AM instructed TAS and AM employees to send OARs where taxpayers are experiencing an economic burden to the Austin AM division for expedite processing.⁷⁸ Redistributing the work allowed AM to address the backlog of work in Atlanta and facilitated relief to taxpayers by providing resources to handle TAS cases requiring immediate attention.

⁷¹ TAS, *Frequently Asked Questions for Taxmasters Clients* (July 10, 2012) available at http://www.taxpayeradvocate.irs.gov/userfiles/file/taxmasters_faq.pdf. LITCs are independent from the IRS. Controversy clinics serve individuals whose income is below a certain level and who need to resolve a tax problem. These clinics provide professional representation before the IRS or courts in audits, appeals, tax collection disputes, and other issues for free or for a small fee. English as a second language (ESL) clinics provide information about taxpayer rights and responsibilities in many different languages. Some clinics provide both services.

⁷² Data obtained from TAMIS (Oct. 30, 2012).

⁷³ Treas. Reg. § 301.7811-1(a), 76 Fed. Reg. 18,059 (Apr. 1, 2011). See also IRC § 7811(a)(1).

⁷⁴ IRC § 7811(b)(2).

⁷⁵ IRC § 7811(b)(1).

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

⁷⁷ Over 75 percent (38,747 of 51,302) of IDT OARs are from TAS economic burden cases. Data obtained from TAMIS (Oct. 1, 2012).

⁷⁸ See IRM 21.6.2.4.2.8 (July 23, 2012).

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.”⁷⁹ TAS has implemented various approaches to ensure that LTAs understand the types of cases that require TAOs. One approach involves coordinated discussions with all LTAs about case scenarios that may result in a TAO. These discussions help LTAs share experiences and learn more about what is necessary to resolve cases.⁸⁰ Heightened awareness of the importance of the TAO as an advocacy tool has increased the use of TAOs over the past four fiscal years, as shown in figure 4.10.

FIGURE 4.10, Number Of Taxpayer Assistance Orders Issued, FY 2009–2012⁸¹

Fiscal Year	Number of TAOs Issued
2009	45
2010	95
2011	422
2012	434

Of the 434 TAOs issued in FY 2012, 378 have been resolved.⁸² The IRS complied with 348 of the resolved TAOs, a 92 percent compliance rate.⁸³ Figure 4.11 shows the areas that generated TAOs in FY 2012 and how they were resolved.

⁷⁹ IRM 13.1.20.2(5) (Feb. 1, 2011).

⁸⁰ The sessions are called *TAO Cafés*. These discussions, involving moderators and a detailed agenda, allow LTAs to ask questions about TAO authority under different scenarios.

⁸¹ Data obtained from TAMIS (Oct. 26, 2012).

⁸² *Id.* TAOs resolved includes TAOs that the IRS fully complied with, TAOs that were modified and the IRS complied with, and TAOs that TAS rescinded.

⁸³ *Id.* TAOs complied with includes TAOs that the IRS fully complied with and TAOs that were modified and the IRS complied with.

FIGURE 4.11, Taxpayer Assistance Orders Issued in FY 2012⁸⁴

Type of Issue	Number of TAOs Issued	Resolution			
		IRS Complied	TAO Modified & IRS Complied	TAS Rescinded	In Process
Entity ⁸⁵	151	139	2	9	1
Refund	65	62	0	3	0
Criminal Investigation	55	13	1	4	37
Collection	52	41	3	2	6
Audit	43	34	2	3	4
Document Processing	27	20	2	3	2
Penalty	16	10	0	2	4
Appeals	13	10	1	1	1
Other	8	5	0	2	1
Interest	4	3	0	1	0
Total	434	337	11	30	56

Of the 56 remaining FY 2012 TAOs in process, 39 involve return preparer fraud cases that the IRS has appealed and elevated.⁸⁶ The IRS has suspended its decision on whether to comply with these 39 TAOs pending further discussion. Other unresolved TAOs involve a variety of issues where the IRS disagrees with TAS's position, appealing the TAO to a higher level. Some of the issues include disagreements over:

- The return of levy proceeds;
- Withdrawal of the filing of a Notice of Federal Tax Lien;
- IRS's calculation of the value of a taxpayer's assets or ability to pay in an Offer in Compromise evaluation;⁸⁷
- Abatement of various penalties; and
- Reconsideration of a claim for refund.

These types of issues often involve an application and interpretation of law, or subjective analysis of facts, and the TAO appeal process provides for vigorous discussion and a thorough review of the facts, engaging IRS and TAS leadership in reaching a conclusion.

⁸⁴ Data obtained from TAMIS (Oct. 26, 2012).

⁸⁵ 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 143 of the 151 TAOs issued related to cases involving identity theft. Data obtained from TAMIS (Oct. 1, 2012).

⁸⁶ See *IRS Procedural Gaps Make it Difficult to Assist Taxpayers Victimized by Return Preparer Fraud*, *supra*.

⁸⁷ When taxpayers submit an Offer in Compromise based on Doubt as to Collectability, the IRS generally will not accept the offer unless the amount offered exceeds an amount it believes represents the reasonable collection potential, based on evaluation of equity in assets and the taxpayer's ability to make payments over time. See IRM 5.8.4, *Investigation*.

Congressional Case Trends

TAS is responsible for responding to certain tax account inquiries sent to the IRS by members of Congress. As shown in Figure 4.11, entity, audit, and collection-related issues made up the top three categories of congressional inquiries in FY 2012.

FIGURE 4.12, Issues In Congressional Cases, FY 2011–FY 2012⁸⁸

Issue Category	FY 2011	FY 2012	Percent Change
Entity Issues	1,625	5,251	223.1%
Audit Issues	3,111	2,573	-17.3%
Collection Issues	2,779	2,424	-12.8%
Document Processing Issues	2,623	2,048	-21.9%
Refund Issues	1,568	2,033	29.7%
Technical, Procedural, or Statute Issues	1,101	1,348	22.4%
Penalty Issues	1,145	1,053	-8.0%
Payment or Credit Issues	397	359	-9.6%
Appeals Issues	267	278	4.1%
Interest Issues	84	65	-22.6%
Other Issues	45	29	-35.6%
Criminal Investigation Issues	16	9	-43.8%
Total Congressional Issues	14,761	17,470	18.4%

The growth in congressional inquiries involving entity issues comes from two sources. The largest proportion is from stolen identity issues, and matches the growth seen in all TAS case receipts. The other source involves applications for exempt status.⁸⁹ Historically, a high proportion of inquiries from organizations seeking exempt status from the IRS come to TAS through congressional offices.⁹⁰ A review of a statistically valid sample of the 793 congressional exempt status application inquiries found that 33 percent are from organizations that lost their exempt status by failing to file three consecutive years of information

⁸⁸ Data obtained from TAMIS, Oct. 1, 2011 (FY 2011) and Oct. 1, 2012 (FY 2012).

⁸⁹ Organizations can seek recognition of exemption from federal income tax under IRC § 501(a) by filing the proper application with the IRS as described in Rev. Proc. 2012-9, § 3, 2012-2 I.R.B. 261.

⁹⁰ In FY 2012, 66 percent of inquiries involving application for exempt status TAS received from congressional offices. In FY 2011, it was 49 percent.

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returns or notices with the IRS.⁹¹ These organizations contact their congressional representatives seeking to:

- Re-apply for exempt status;
- Dispute the automatic revocation; or
- Receive an explanation of the revocation and their options.

From FY 2008 through FY 2011, congressional inquiries declined, but they increased in FY 2012. As shown in Figure 4.12, issues relating to the FTHBC and adoption credit have contributed significantly to TAS congressional receipts in recent years.

FIGURE 4.13, TAS Congressional Receipts, FY 2008-FY 2012⁹²

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Congressional Receipts	22,097	17,603	15,711	14,761	17,470
Total Case Receipts	274,051	272,404	298,933	295,904	219,666
% of Total Receipts	8.1%	6.5%	5.3%	5.0%	8.0%
Congressional Receipts Related to the Economic Stimulus Payment (ESP) ⁹³	10,320	4,264	127	22	
Congressional Receipts Related to FTHBC			3,243	2,018	399
Congressional Receipts Related to Adoption Credit				496	476

⁹¹ The Pension Protection Act of 2006, Pub. L. No. 109-280, § 1223, 120 Stat. 780, 1090 (Aug. 17, 2006), required most tax-exempt organizations to file an annual return or notice with the IRS, and the Act automatically revoked tax-exempt status for organizations that failed to file for three consecutive years. Generally, the Act imposed the filing requirement starting with tax year 2007, so the first organizations subject to automatic revocation failed to file 2007, 2008, and 2009 returns. TAS reviewed 259 of the 793 cases, for a 95 percent confidence level at plus or minus 5. For more information on this topic, see Most Serious Problem: *Overextended IRS Resources and IRS Errors in the Automatic Revocation and Reinstatement Process Are Burdening Tax Exempt Organizations*, *supra*.

⁹² Data obtained from TAMIS. TAS obtains the data on the first day following the end of the FY for FY 2008 through FY 2012.

⁹³ See IRC § 6428.