



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

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MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: /s/ Nina E. Olson
National Taxpayer Advocate

SUBJECT: Interim Guidance on Advocating for Taxpayers
Adversely Impacted by Government Shutdown

The purpose of this memorandum is to provide TAS employees with information about advocating for taxpayers adversely impacted by the recent government shutdown, which began October 1, 2013 and ended October 16, 2013 due to the lapse in appropriations for the Fiscal Year 2014 federal budget (Shutdown). Notwithstanding objections from TAS leadership, no TAS employees were excepted employees under the IRS's FY 2014 Shutdown Plan even though taxpayers continued to be impacted by IRS actions taken prior to and during the Shutdown. TAS will encounter taxpayers who have experienced significant hardship because they were unable to reach the IRS or TAS. In those instances, where TAS has substantiated that taxpayers experienced significant economic or irreparable harm during the Shutdown, TAS will ensure that the IRS acts with great speed to resolve the taxpayer's problem and alleviate the harm, to the extent that it is possible. It is vital that TAS offices look for these situations in open inventories, rather than waiting for taxpayers to make a Shutdown-specific complaint. Area Directors should discuss this IGM with their LTAS, and LTAs should discuss this IGM all of the staff in the office.

Using a Taxpayer Assistance Order to Advocate

Accordingly, with respect to currently open TAS cases or cases received in TAS post-Shutdown, Case Advocates should determine whether significant economic or irreparable harm occurred during the Shutdown because:

- The IRS or TAS was unavailable during the Shutdown, and the harm could have been avoided if the taxpayer had been able to make contact with the IRS or TAS;
- The timeframes for the exercise of important taxpayer rights (such as exercising appeal rights, responding to a proposed adjustment or to a penalty notice) lapsed during the Shutdown or timeframes lapsed immediately after the Shutdown;
- There are now short timeframes for obtaining relief because of the Shutdown; and
- Other situations which are substantially similar to the examples provided below.

If a case falls into these categories, Case Advocates should determine what relief is necessary to resolve the taxpayer's issue to the fullest extent possible permitted under the internal revenue laws. In these cases, instead of issuing an OAR under [IRM 13.1.19.1](#), *TAS OAR Process*, Case Advocates should elevate the case to the Local Taxpayer Advocate (LTA) for issuance of a Taxpayer Assistance Order (TAO), in accordance with IRC § 7811 and [IRM 13.1.20.2\(5\)](#), *Determining When to Issue a Taxpayer Assistance Order*.

The TAO should be accompanied by all materials and instructions that would normally be included in an OAR pursuant to [IRM 13.1.19.4](#), *Operations Assistance Request (OAR) – Preparation*. The TAO should include the following language:

Because of the IRS's unavailability to resolve the taxpayer's problem as a result of the federal government's shutdown, the taxpayer has experienced significant economic or irreparable harm. Therefore, because time is of the essence in obtaining relief, at the instructions of the National Taxpayer Advocate I am issuing this Taxpayer Assistance Order in lieu of issuing an Operations Assistance Request.

The TAO should provide for very abbreviated response times. Since time is of the essence in many of these cases, a 24-hour response time may be appropriate. In other instances, a slightly longer time frame may be required to actually execute the requested relief, but the TAO should generally require a 24-hour response as to whether the IRS agrees to

undertake the required relief. If the IRS fails to meet the deadlines set in the TAO, and the LTA determines it is inappropriate or harmful to modify those timeframes, the LTA should immediately elevate the TAO to his or her Area Director.

Determining Significant Economic Hardship or Irreparable Harm

To determine the types of cases in which taxpayers may have experienced significant economic or irreparable harm as a result of the IRS Shutdown, review the following scenarios. The scenarios are intended only as examples to assist TAS employees in assessing whether a TAO should be issued and are not intended to define the only instances where a TAO should be issued.

Scenario 1

Did the IRS issue a notice of levy in the weeks prior to the Shutdown that took effect during the Shutdown? For example, did the IRS issue a notice of levy to a bank dated September 21, 2013? Under section 6332(c), a bank must wait 21 calendar days after a levy is served before sending payment to the IRS. During the holding period, the IRS might decide to release the levy. If the bank receives no release within the 21 day period; however, it must send the levy payment to the IRS.

In this instance, the taxpayer would have been unable to request that the IRS release the levy because the government was shutdown for most of the holding period. If the taxpayer is able to show the levy causes economic hardship under IRC § 6343(b), TAS should issue a TAO with the supporting documentation proving economic hardship and ordering the IRS to release the levy and return all levy proceeds received as a result of the levy.

Scenario 2

Did the taxpayer receive an examination notice requiring a response within 30 days in order to request an appeal? If the 30 day time period expired during or immediately after the Shutdown, ensure that the taxpayer has the opportunity to request an appeal hearing now, and if necessary issue a TAO ordering the IRS to grant such hearing. While the hearing itself generally can occur during normal timeframes, the TAO should require the IRS to respond within 24 hours as to whether it will grant the appeals hearing. Case Advocates should keep the case open and remain involved in the case to ensure that the taxpayer's issues are thoroughly reviewed during the appeals hearing.

Scenario 3

Did the taxpayer receive a Statutory Notice of Deficiency (SNOD) in the weeks before or during the Shutdown? Recall that the SNOD provides the taxpayer with the right to challenge the IRS's proposed assessment of additional tax *without first paying the tax in full*. By statute, the taxpayer must petition the Tax Court within 90 days. *This 90 day period cannot be extended, even when the government is shutdown.*

Taxpayers often come to TAS after the SNOD is issued but before the 90 days has run in order to resolve the matter with the IRS so they don't have to go to Tax Court. Because of the Shutdown, taxpayers may not have sufficient time to receive an answer from the IRS and will need to petition the Tax Court to preserve their right to judicial review.

Case Advocates should review their open and new cases for this fact pattern. If the taxpayer has 45 days left on the 90-day period, case advocates should consider issuing a TAO on the case with the necessary documentation and requiring a response and action granting relief within 5 business days. In certain cases, requiring the IRS to rescind the SNOD to provide time for further development of the case at the examination or appeals functions might be another advocacy option. However, in order to rescind a number of specific requirements must be met (see [IRM 4.8.9.28](#), *Rescinding Notices of Deficiency*, with regard to those rules.) In any case, case advocates should also advise the taxpayer to be prepared to petition the Tax Court.

Where there are 30 days or less remaining on the 90-day period, Case Advocates should discuss with the taxpayer their right to petition the Tax Court, encourage them to visit the U.S. Tax Court's website (www.ustaxcourt.gov) where there is a video about the process, and fill-in Petition form. If the taxpayer is low income, encourage the taxpayer to seek the assistance of a Low Income Taxpayer Clinic and provide the taxpayer with any or all of the following information:

1. The names and phone numbers of the LITCs serving the taxpayer's geographic area;
2. The webpage for the LTC program on the [TAS website](#); and
3. [Publication 4134](#), *Low Income Taxpayer Clinic List*.

Scenario 4

Did the taxpayer receive a Collection Due Process notice, such as an LT 11, [Letter 1058](#), or [Letter 3172](#) in the weeks before or during the Shutdown? The CDP hearing notice provides the taxpayer 30 days in which to request a CDP hearing before an independent appeals officer to

challenge the appropriateness of the proposed collection action (lien or levy) or, in some circumstances, the underlying tax liability. *This 30-day period is statutory and cannot be extended.*

If the taxpayer's 30 day period is still open, encourage the taxpayer to request the hearing and raise any collection alternatives in that request that may be available to the taxpayer (e.g., installment agreement or offer in compromise). Keep the case open and remain actively involved in the case during the conduct of the hearing to ensure that all collection alternatives are properly considered and the correct amount of tax is assessed.

If the taxpayer's 30 day period expired during the shutdown, encourage the taxpayer to request an "equivalent hearing" (refer to [TAS Roadmap to a Tax Controversy](#), [IRM 5.1.9.2](#), *Informing Taxpayers of Their Appeal Rights*, and [IRM 8.22.1.1.1.2.2](#), *Equivalent Hearing - A Late Request*, for more information) and keep the case open and remain actively involved during the conduct of the hearing to ensure that all collection alternatives are properly considered and the correct amount of tax is assessed.

Remember that in any such hearing, before issuing a Notice of Determination, pursuant to our Service Level Agreement with Appeals, the Appeals Officer must share with the case advocate his or her decision and rationale 5 days prior to communicating it with the taxpayer. This allows the Case Advocate to discuss the matter with the taxpayer and come back to Appeals with additional information on behalf of the taxpayer (or to raise the matter to the LTA, Technical Advisors, Counsel, or attorney advisors).

If the taxpayer has received a "Notice of Determination" such as a [Letter 3193](#), providing the taxpayer 30 days to appeal the Appeals Officer's determination to the U.S. Tax Court, encourage the taxpayer to visit the U.S. Tax Court's website (www.ustaxcourt.gov), where there is a video about the process and a fill-in Petition form. If the taxpayer has limited financial resources, encourage the taxpayer to seek the assistance of a Low Income Taxpayer Clinic and provide the taxpayer with any or all of the following information: the names and phone numbers of the LITCs serving the taxpayer's geographic area; the webpage for the LITC program on [TAS website](#); and the [Publication 4134](#) (listing all LITCs for the current calendar year).

Case advocates should take special care in documenting TAMIS histories in CDP cases because the Tax Court will be relying on the administrative record in reviewing the taxpayer's case. Thus, case advocates should be careful to notate all issues raised to Appeals in the hearing and all collection alternatives discussed, including whether the taxpayer was experiencing economic hardship.

Other Possible Scenarios

There are many other fact scenarios where the taxpayer may be experiencing or be about to experience significant harm as a result of the IRS Shutdown. To name just a few:

- Inability to order a transcript of return in time to refinance a loan;
- Lien filings and the resulting need for lien releases and withdrawals;
- Collection holds expired during the Shutdown, resulting in collection activity after the Shutdown;
- Penalty assessments and requests for abatements;
- Inaccurate application of payments made during the Shutdown;
- Requests for installment agreements that are not timely entered and thus result in collection activity; and
- Correspondence that includes substantiation not timely associated with cases before enforcement action occurred.

In each of these instances and many others, Case advocates should review the facts of each case in the light most favorable to the taxpayer and determine what relief is available to the taxpayer under law, obtain the documentation and legal authority that supports your position, and elevate this material for issuance of a TAO, as outlined above.

Identifying TAS Taxpayers Adversely Impacted by the Government Shutdown

It is vitally important for TAS to capture impact of the Shutdown on taxpayers, so we can include this information in our many discussions with the IRS as part of our advocacy and collaborative improvement efforts. As you work through your existing cases and new receipts, be on the lookout for examples of Shutdown impact and opportunities to advocate.

To identify cases on TAMIS that involve scenarios like the ones discussed in this memorandum, use the **Systemic Advocacy Use Field** on TAMIS (located on Taxpayer Screen 5). Use one of the following 5-character literals to identify the case and the issue category that best describes how the taxpayer was impacted:

FCOLL – impact involving a collection issue (levy, lien, collection hold, etc.)

FOTHR – impact involving an issue other than collection.

Note: Do not use the **Systemic Advocacy Use Field** to identify cases where the only impact to the taxpayer was a 2-week delay. The impact must be greater than just a delay and involve an economic burden or irreparable harm.

To ensure TAS is able to accurately identify taxpayer impact, please update the **Systemic Advocacy Use Field** as soon as the Shutdown impact is identified, per [IRM 13.1.18.2.1\(1\)](#), *Review TAMIS Information*. Do not wait until closing the case to update the Taxpayer Screen. Assess not only new cases received, but also cases received before the shutdown to determine adverse impact. Accurate TAMIS coding will help us identify and report on significant issues.

Identifying Systemic Issues

As you proceed with your casework, you may identify systemic problems impacting multiple taxpayers as the result of how the IRS is handling certain inquiries or outcomes from the shutdown. Elevate these issues to your LTA and load them on the [Systemic Advocacy Management System](#) (SAMS), as appropriate. (See [IRM 13.1.21.1.2.1.5.1](#), *Systemic Issue*.) Be sure to provide TAMIS case file numbers, but do not include specific details or taxpayer information in the SAMS submission.

Effect on other documents

TAS will incorporate this guidance into the next revision of IRM 13.1.24, *Advocating for Case Resolution*.

Contact

If you have any questions, please contact Laura L. Clifford, Chief, Policy and Guidance, at (207) 622-8333.