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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
Impacted by Return Preparer Misconduct

The purpose of this memorandum is to provide guidance to Case Advocates on how to recognize instances of Return Preparer Misconduct, and the steps to take to advocate for impacted taxpayers. This memorandum updates and replaces TAS-13-0212-008, *Interim Guidance on Advocating for Taxpayers When a Return Preparer Appears to Have Committed Fraud*, TAS-13-0512-017, *Interim Guidance for Preparing Taxpayer Assistance Orders (TAOs) to Accounts Management Involving Return Preparer Fraud*, and TAS-13-0712-015, *Reissuance of Interim Guidance on Recognizing and Assisting Victims of Return Preparer Refund Theft*.

Background

There are tax return preparers who defraud taxpayers and the United States Treasury by inflating income, deductions, credits, or withholding without the taxpayer's knowledge, with the goal of increasing the overall amount of the taxpayer's refund and diverting all or a portion of the refund to an account or debit card under the preparer's control. Other preparers only alter the direct deposit information.

All TAS employees engaged in Case Advocacy should read the [Most Serious Problem # 5: The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully](#) for an updated

description of the background of this problem, the National Taxpayer Advocate's advocacy on the issue, and the IRS's response to date.¹

While the IRS has established some procedures for handling accounts involving Return Preparer Misconduct, those procedures do not adequately cover or provide full relief for taxpayers in all situations. Therefore, in order to advocate effectively, you will need to review the facts in each case closely to determine the appropriate legal analysis.

In May 2012, the IRS revised [Form 14157](#), *Complaint: Tax Return Preparer*, and [Form 14157-A](#), *Tax Return Preparer Fraud or Misconduct Affidavit*, to provide taxpayers with a means to report incidents of Return Preparer Misconduct. [Form 14157-A](#) offers the following list of potential scenarios for taxpayers to report misconduct:

- A Tax Return Preparer filed a tax return using my name and/or Social Security Number without my knowledge or consent;
- A Tax Return Preparer promised me a refund but gave me a check that "bounced";
- A Tax Return Preparer promised me a refund but I received a refund for a different amount and the IRS did not contact me about the refund;
- A Tax Return Preparer promised me a refund that I never received and the IRS did not contact me about the refund;
- A Tax Return Preparer had my refund or a portion of my refund direct deposited into an account that was not mine;
- A Tax Return Preparer received all or a portion of my refund without my knowledge or consent;
- A Tax Return Preparer provided me with a copy of my tax return which is different from what was filed with the IRS; or
- A Tax Return Preparer altered my tax return without my knowledge or consent.

In August 2013, the Wage and Investment Division (W&I) re-issued [Interim Guidance](#) for a specialized unit established in Accounts Management (AM) to handle accounts involving Return Preparer Misconduct. These procedures identify multiple scenarios or fact patterns, where AM will not take action and will instead suspend the case pending additional guidance.

For TAS cases meeting the scenarios or fact patterns identified by AM as accounts to be suspended, TAS will issue Taxpayer Assistance Orders (TAOs) to facilitate relief for the taxpayer. TAS provided a TAO Template to aid Local Taxpayer Advocates (LTAs) in creating these TAOs. LTAs

¹ National Taxpayer Advocate 2012 Annual Report to Congress 68.

should modify and customize the template to reflect the unique facts and circumstances of each individual case.

The *Beard* Test

In order to be valid, a return must satisfy the well-known four-part test set forth in *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986). The *Beard* test is as follows:

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.

For additional discussion of the *Beard* test, see PMTA 2011-13, [Horse's Tax Service \(May 12, 2003\)](#).

The requirement to sign a return under penalties of perjury derives from [IRC § 6065](#), which states that generally a “return, declaration, statement, other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.” A return that does not comply with IRC § 6065 fails the fourth prong of the *Beard* test. Signing the jurat included on Form 1040, *U.S. Individual Income Tax Return*, (or Form 8879, *IRS e-file Signature Authorization*, for an electronically filed return) satisfies the requirement that a return is executed under penalties of perjury. However, in cases in which the taxpayer has reviewed a copy of the return and signed the jurat and the tax return preparer subsequently altered the return, the taxpayer has not executed his return under penalties of perjury; what the preparer submitted to the IRS is not the document signed and approved by the taxpayer for filing with the IRS. Thus, the return altered by the tax return preparer does not meet the *Beard* test and is therefore invalid.

In cases where the return filed by the preparer fails to meet the Beard test due to the preparer's misconduct, the taxpayer will need to file a new original return (not an amended return) with the IRS. If the taxpayer already filed an amended return prior to coming to TAS, TAS will not burden the taxpayer further by requiring the taxpayer to complete Form 1040 in its entirety; however, the penalties of perjury statement on the amended return is not truthful because the taxpayer has not filed an original Form 1040. Consequently, the taxpayer should:

- 1) Fill out the top of Form 1040 (name, address, taxpayer identifying number),

- 2) Write "See attached Form 1040X previously filed" on the top of the Form 1040,
- 3) Sign the Form 1040 under penalties of perjury; and
- 4) If the taxpayer wants to receive the refund via direct deposit, he or she should also provide bank routing and account number information on the Form 1040.

The taxpayer must then attach a copy of the Form 1040X to the Form 1040.² TAS should clearly explain on the Operations Assistance Request (OAR) or TAO that the return information reflected on the amended return represents the correct return information as if the taxpayer had filed a correct, original return (*i.e.*, ask the IRS to treat the amended return as the original return).

Caution: If the taxpayer has already filed an amended return, be sure that the OAR (or TAO) requests that the IRS issue a paper check to the taxpayer, rather than a direct deposit. [Form 1040X](#) does not contain any place where the taxpayer can provide direct deposit information. It is possible that the IRS, when processing the Form 1040X, will release the refund to the bank account specified on the original (fraudulent) return filed by the preparer. Monitor the account closely to ensure the IRS issues a paper check to the correct address. The IRS can accomplish this by inputting a Transaction Code (TC) 971 Action Code (AC) 850 to flip the generated refund to a paper check or work with AM to generate the refund manually.

Advocating for Victims of Return Preparer Misconduct

Four primary fact patterns appear in TAS cases involving Return Preparer Misconduct. In all the scenarios, the purpose of much of the case building is to establish that the return filed by the return preparer is an invalid return under the *Beard* test discussed above. Generally, the IRS has developed sound procedures to correct the taxpayer's account Scenarios 1 and 2 below. If TAS can gather sufficient documentation that the taxpayer and return preparer were not acting in collusion, TAS can advocate through the OAR process for relief. IRS procedures Scenarios 3 and 4 below are either on hold pending additional guidance or fail to correct the taxpayer's account fully, so TAS will often use a TAO to advocate.

² The key reason the return filed by the preparer is not a valid return is because the taxpayer did not execute that return under penalties of perjury. While it may seem unnecessary to have the taxpayer file a Form 1040 when the taxpayer has already filed an amended return which contains the correct items of income, deductions, credits, etc., it is imperative that the taxpayer's correct return contain a truthful penalties of perjury statement.

Scenario 1: Unauthorized Filing. In this situation, a taxpayer communicates with a return preparer, but for some reason decides not to use this preparer and never authorizes a return filing. Later, the taxpayer attempts to electronically file a return (on his or her own, or through a different preparer), but the IRS rejects the e-filed return. The taxpayer then learns the IRS has already processed a return submitted by the first preparer, who directed the refund to an account not belonging to or under the control of the taxpayer.

The IRS Has Agreed to Correct These Accounts and to Issue a Correct Refund in these Cases. You Can Advocate for Taxpayers in Scenario 1 by Taking the Following Steps:

- Secure the information the taxpayer gave to the preparer, for either the current or the prior year as applicable. Although it is difficult to prove a negative, secure any information the preparer gave the taxpayer that might support the taxpayer's contention that he or she did not authorize the preparer to file a return.
- Secure the IRS administrative file (command code TRPRT return summary if filed electronically).
- Secure Forms 14157 and 14157-A from the taxpayer. Form 14157-A must be signed under penalties of perjury. (If the taxpayer did not contact the preparer in relation to the tax year for which the preparer filed, secure authentication of the taxpayer's identity and [Form 14039](#), *Identity Theft Affidavit*, instead of Form 14157-A. This type of case will not be worked by AM as a return preparer fraud case, but will instead be worked as an identity theft case. Send Form 14039 to the appropriate AM Identity Theft Unit, based on state mapping. Send Form 14157 to the Return Preparer Office (RPO)).
- Request the taxpayer complete a [Form 3911](#), *Taxpayer Statement Regarding Refund*, and trace the destination of the refund.
- Verify the Form 14157 includes a statement that:
 - the bank account to which the refund was deposited does not belong to the taxpayer; and
 - the taxpayer did not authorize the preparer to file the return.
- Conduct research to support the refund trace and the taxpayer's affidavit. Compare the address or direct deposit information used by the preparer to receive the refund to that used by the taxpayer in previous tax years. If they match, ask the taxpayer for an explanation and ask for additional documentation to support the affidavit, such as a letter from the bank stating the taxpayer is not an owner of that account.
- Ask the taxpayer to submit a signed copy of his or her true original return, Form 1040 series, to the proper filing location, and provide you with a copy. If the taxpayer does not have a copy of the the

true original return and is unable to reconstruct the return, assist the taxpayer by providing income statements retrieved from IDRS using Command Code (CC) IRPTRO.

- NOTE: Ask the taxpayer to submit a new original return, not an amended return.
- Monitor the taxpayer's IDRS account for the taxpayer's true return to post. When the second return posts to IDRS it will appear as TC 976 creating an -A freeze on the account.
- Refer the case on TAMIS to a Campus Technical Advisor (CTA) for guidance, indicating this is a "Return Preparer Misconduct" case, and be sure to use special case code "PF" on TAMIS.
- Issue an OAR for the IRS to adjust the taxpayer's account to reflect the correct information as shown on the correct original return.
- Send the OAR per W&I's Interim Guidance to Memphis Accounts Management (AM).
 - Cite the scenario in W&I's Interim Guidance that most closely resembles the facts and circumstances of the case.
 - Suggested wording for the OAR could include: *I have reviewed the facts and law pertaining to this case, and concluded the taxpayer did not authorize the return filed. It is TAS's position the IRS adjust the taxpayer's Master File account to reflect the correct information for tax year 20XX per the original return filed by the taxpayer on {date}. Based on a Beard analysis, I request you treat the tax return filed by the tax return preparer as invalid and adjust the account to remove all entries attributable to the altered or fraudulent return, including moving the refund.*
- If the Operating Division/function refuses to take actions to correct the account, or takes actions that do not relieve the taxpayer from adverse action or liability, elevate the case to the LTA for consideration of issuing a TAO.

Example 1a

Ms. Kent filed her 2010 return through a return preparer without incident, but used another preparer for 2011. The new preparer discovered someone had already filed a 2011 tax return electronically, so Ms. Kent filed her correct refund return to the IRS by mail. Ms. Kent filed an identity theft affidavit and documentation with the IRS, but sought TAS assistance to expedite the process due to economic burden. After verifying her identity as the "good" taxpayer through the identity theft case building procedures, the Case Advocate discovered the income reported on the first 2011 return is identical to the 2010 income, and the PTIN, name of the preparer, and routing and bank account numbers also match. Ms. Kent did not ask her 2010 return preparer to file her 2011 return. She

does not recognize the direct deposit information. In 2010, the preparer received the refund and wrote her a check for the refund amount less return preparation fees. The OAR in this example would follow stolen identity procedures, and TAS sends Forms 14157 directly to the RPO via Form 3210, *Document Transmittal*, to allow the RPO to investigate the complaint against the preparer. The IRS should remove the incorrect information attributable to the preparer misconduct and issue the correct refund to the taxpayer.

Example 1b

Mr. Drexel went to a tax preparation service with his tax information. The preparer entered the information into the computer software and told Mr. Drexel that he was eligible for a \$1,500 refund. The preparer said he would take a \$300 return preparation fee from his refund. Mr. Drexel decided not to have the return filed by that company. Mr. Drexel went to the local library and used the Free File website to file his own return. The IRS notified Mr. Drexel he could not file his return electronically since the IRS already processed a return under his Social Security number (SSN). The OAR in this example would go to W&I Memphis AM. The IRS should remove the incorrect information attributable to the preparer misconduct and issue the correct refund to the taxpayer.

Scenario 2: Altered Return Information – No Additional Refund is Due to Taxpayer. The taxpayer visits a preparer and authorizes him or her to file a return. The taxpayer reviews and approves for filing a copy of the “final return,” but the preparer later alters it to increase the refund. The taxpayer receives the refund expected, while the preparer direct deposits the excess (fraudulent) refund to a different bank account under the preparer’s control. The taxpayer later learns of the return preparer fraud and files a correct original return, but account issues remain. This scenario also applies when the IRS freezes the original return refund.

The IRS Has Agreed to Correct These Accounts When No Additional Refund Is Due the Taxpayer. You Can Advocate for Taxpayers in Scenario 2 by Taking the Following Steps:

- Secure a copy of the return the preparer gave the taxpayer or other documentation showing what the taxpayer approved for filing.
- Secure the IRS administrative file (command code TRPRT return summary if filed electronically).
- Verify the Forms 14157 and 14157-A include a statement that:
 - He or she does not own or control the bank account where the IRS deposited some or all of the refund;
 - He or she had no knowledge the preparer deposited some or all of the refund into that account; and
 - He or she had no knowledge the preparer filed a different return with the IRS.

- Be sure the Form 14157-A is signed by the taxpayer under penalties of perjury.
- Request the taxpayer complete a [Form 3911](#), *Taxpayer Statement Regarding Refund*, and trace the destination of the refund.
- Conduct research to support the refund trace and the taxpayer's affidavit. Compare the direct deposit information used by the preparer to receive the refund to that used by the taxpayer in previous tax years. If they match, ask the taxpayer for an explanation and ask for additional documentation to support the affidavit, such as a letter from the bank stating the taxpayer is not an owner of that account.
- Ask the taxpayer to submit a signed copy of his or her true original return, Form 1040 series, to the proper filing location, and provide you with a copy. If the taxpayer does not have a copy of the filed return and is unable to reconstruct the return; assist the taxpayer by providing income statements retrieved from IDRS using CC IRPTRO.
 - NOTE: Ask the taxpayer to submit a new original return, not an amended return. Explain that we need this original return so we can eliminate the preparer's return from the taxpayer's account.
- Monitor the taxpayer's IDRS account for the taxpayer's true return to post. When the second return posts to IDRS it will appear as TC 976 creating an -A freeze on the account.
- Refer the case on TAMIS to a CTA for guidance, indicating this is a "Return Preparer Misconduct" case, and be sure to use special case code "PF" on TAMIS.
- Issue an OAR for the IRS to adjust the taxpayer's account to reflect the correct information as shown on the correct original return. The OAR will go to the Memphis AM unless there is compliance function involvement (see page 2 of W&I's Interim Guidance to Memphis AM).
 - Cite the scenario in W&I's Interim Guidance that most closely resembles the facts and circumstances of the case.
 - Suggested wording for the OAR could include: *I have reviewed the facts and law pertaining to this case, and concluded the taxpayer did not authorize the return filed. It is TAS's position the IRS adjust the taxpayer's Master File account to reflect the correct information for tax year 20XX per the original return filed by the taxpayer on {date}. Based on a Beard analysis, I request you treat the tax return filed by the tax return preparer as invalid and adjust the account to remove all entries attributable to the altered or fraudulent return, including moving the refund.*

- If the Operating Division/function refuses to take actions to correct the account, or takes actions that do not relieve the taxpayer from adverse action or liability, elevate the case to the LTA for consideration of a TAO.

Example 2a

Mr. Yale provided his Form W-2 and relevant information to a tax return preparer. The return preparer completed the return and told Mr. Yale his refund would be \$800. The preparer provided Mr. Yale with a copy of that return but filed a different electronic return with the IRS.

The preparer added additional credits to the return, increasing the refund amount to \$3,800. The preparer split the refund into two bank accounts. The taxpayer received the correct refund of \$800 and the additional \$3,000 was deposited into the preparer's own account.

The return is now under a post refund audit at a campus. Per IDRS, the account has an -L freeze and is currently in AIMS Status 22. Examination issued a letter to the taxpayer requesting the verification to support the credits taken on the return. The OAR in this example would go to Examination due to the open audit. The IRS should take the actions necessary to correct the information on the taxpayer's account attributable to the preparer's misconduct.

Example 2b

A tax return preparer completed a return for Miss Butler showing a \$550 tax liability and \$1,000 in federal tax withholding. When the preparer submitted the return to the IRS, he changed the federal tax withholding to \$3,000.

Ms. Butler received a letter from the Integrity & Verification Operation (IVO) requesting verification of the additional withholding. She called the IRS and the Customer Service Representative (CSR) told her to file an amended return. IVO has frozen the entire refund. The OAR in this example would go to IVO due to their freeze. The OAR would explain that the IRS incorrectly told the taxpayer to file an amended return (posted as a TC 977), and as a result, the taxpayer is now filing a Form 1040 (only partially filled out) with the penalties of perjury statement signed and a copy of the amended return attached. The OAR must ask the IRS to treat the amended return as the taxpayer's original return. Because the entire refund was frozen, there was no loss of revenue. The IRS should adjust the account and issue the correct amount of the refund to the taxpayer.

Example 2c

A tax return preparer completed a tax return for Mr. and Mrs. Xavier, showing a refund of \$900. When the preparer submitted the return to the IRS, he added credits and deductions to increase the refund to \$4,500. When the IRS direct deposited the \$4,500 refund into a bank account under the tax preparer's control, he issued a check to the Xaviers for \$900 (less their return preparation fees). The Xaviers learned of the altered return when they received a return transcript they requested to apply for a loan.

The OAR in this example would go to Memphis AM. Also, the Case Advocate reviewed the direct deposit information from other recent returns the taxpayers filed and noticed the IRS direct deposited their previous year's refund into the same bank account that received the \$4,500. The Case Advocate reviewed the previous return, and did not see similar inflations of deductions or credits. The Case Advocate asked Mr. and Mrs. Xavier about this and sought additional documentation. They stated the preparer allows them to pay return preparation fees from their refund. They supply a bank statement from a year earlier that shows they deposited a check from the preparer for the full amount of that year's refund less return preparation fees. No additional refund is due, so the IRS should agree to adjust the taxpayer's account to remove the elements attributable to preparer misconduct.

Scenario 3 – Altered Return Information – Additional Refund Due to Taxpayer. This scenario is similar to Scenario 2; however, here the taxpayer only receives a portion (or none) of the correct refund he or she expected. While the National Taxpayer Advocate continues to advocate the IRS should not treat these taxpayers differently than identity theft victims and they should be made whole, the IRS has not yet agreed to issue an additional refund to the victim. TAS will continue to use TAOs in these cases.

The IRS Has Not Yet Agreed to Make These Victims Whole. You Can Advocate for Taxpayers in Scenario 3 by Taking the Following Steps:

- Secure a copy of the return the preparer gave the taxpayer or other documentation showing what the taxpayer approved for filing.
- Secure the IRS administrative file (command code TRPRT return summary if filed electronically).
- Verify the Forms 14157 and 14157-A include a statement that:
 - He or she does not own or control the bank account where the IRS deposited some or all of the refund;

- He or she had no knowledge the preparer deposited some or all of the refund into that account; and
- He or she had no knowledge the preparer filed a different return with the IRS.
- Be sure the Form 14157-A is signed by the taxpayer under penalties of perjury.
- Request the taxpayer complete a [Form 3911](#), *Taxpayer Statement Regarding Refund*, and trace the destination of the refund.
- Conduct research to support the refund trace and the taxpayer's affidavit. Compare the direct deposit information used by the preparer to receive the refund to that used by the taxpayer in previous tax years. If they match, there may (but not necessarily) be collusion between the preparer and the taxpayer. Ask the taxpayer for an explanation and ask for additional documentation to support the affidavit, such as a letter from the bank stating the taxpayer is not an owner of that account, to help determine whether the taxpayer was involved in the scheme to defraud the government.
- Ask the taxpayer to submit a signed copy of his or her true original return, Form 1040 series, to the proper filing location, and provide you with a copy. If the taxpayer does not have a copy of the filed return and is unable to reconstruct the return; assist the taxpayer by providing income statements retrieved from IDRS using CC IRPTRO.
 - NOTE: Ask the taxpayer to submit a new original return, not an amended return.
- Monitor the taxpayer's IDRS account for the taxpayer's true return to post. When the second return posts to IDRS it will appear as TC 976 creating an -A freeze on the account.
- Refer the case on TAMIS to a CTA for guidance, indicating this is a "Return Preparer Misconduct" case, and be sure to use special case code "PF" on TAMIS.
- If there is compliance function involvement (see page 2 of W&I's [Interim Guidance](#) to Memphis AM), issue an OAR to the proper compliance function.
 - Suggested wording for the OAR could include: *I have reviewed the facts and law pertaining to this case, and concluded the taxpayer did not authorize the return filed. It is TAS's position the IRS adjust the taxpayer's Master File account to reflect the correct information for tax year 20XX per the original return filed by the taxpayer on {date}. Based on a Beard analysis, I request you treat the tax return filed by the tax return preparer as invalid and adjust the account to remove all entries attributable to the altered or fraudulent return, including moving the refund.*

- If the Operating Division/function refuses to take actions to correct the account, or takes actions that do not relieve the taxpayer from adverse action or liability, elevate the case to the LTA for consideration of a TAO.
- If there is no compliance function involvement, elevate the case to the LTA for issuance of a TAO to Memphis AM using the Return Preparer Misconduct TAO template.
- Provide copies of Counsel opinions PMTA 2011-13, [Horse's Tax Service \(May 12, 2003\)](#) and [Field Service Advice 200038005 \(Sep. 22, 2000\)](#) as supporting documentation for the OAR or TAO.

Example 3

Mr. Carroll had his tax return prepared, showing a refund of \$1,200. He authorized the preparer to file the return electronically with a direct deposit into the taxpayer's bank account, and received a copy of the tax return from the return preparer showing the correct direct deposit account information. Prior to filing the return, the preparer changed the taxpayer's address shown on the return to a post office box controlled by the preparer, added additional itemized deductions and credits, increasing the refund to \$4,200, and changed the direct deposit information to a debit card to be mailed to the changed address. In this example, TAS would issue a TAO to Memphis AM for correction of the taxpayer's account and issuance of the correct refund to the taxpayer.

Scenario 4: Misrouted Direct Deposit. The taxpayer visits a preparer and authorizes a return filing. The taxpayer reviews and approves for filing a copy of the "final" return, but subsequently, the preparer alters the direct deposit information to route the refund to an account or debit card under the preparer's control; the return is otherwise accurate. The taxpayer never receives a refund, and learns the return filed by the preparer contained altered bank routing and account numbers. While the National Taxpayer Advocate continues to advocate that tax returns with bank account routing numbers altered by preparers or others without the permission of the taxpayer fail the *Beard* test, the IRS has not yet agreed. The National Taxpayer Advocate believes the IRS should not treat these taxpayers differently than identity theft victims and they should be made whole. TAS will continue to use TAOs in these cases.

The IRS Has Not Yet Agreed to Make These Victims Whole. You Can Advocate for Taxpayers in Scenario 4 by Taking the Following Steps:

- Secure a copy of the return the preparer gave the taxpayer or other documentation showing what the taxpayer approved for filing, along with any additional information received related to routing/payment of the direct deposit refund.

- Secure the IRS administrative file (command code TRPRT return summary if filed electronically).
- Verify the Forms 14157 and 14157-A include a statement that:
 - He or she does not own or control the bank account where the IRS deposited some or all of the refund;
 - He or she had no knowledge the preparer deposited some or all of the refund into that account; and
 - He or she had no knowledge the preparer filed a different return with the IRS.
- Be sure the Form 14157-A is signed by the taxpayer under penalties of perjury.
- Request the taxpayer complete a [Form 3911](#), *Taxpayer Statement Regarding Refund*, and trace the destination of the refund.
- Conduct research to support the refund trace and the taxpayer's affidavit. Compare the direct deposit information used by the preparer to receive the refund to that used by the taxpayer in previous tax years. If they match, ask the taxpayer for an explanation and ask for additional documentation to support the affidavit, such as a letter from the bank stating the taxpayer is not an owner of that account.
- Ask the taxpayer to submit a signed copy of his or her true original return, Form 1040 series, to the proper filing location, and provide you with a copy. In scenario 4, the only difference between the returns will normally be the direct deposit information.
 - NOTE: Ask the taxpayer to submit a new original return, not an amended return.
- Monitor the taxpayer's IDRS account for the taxpayer's true return to post. When the second return posts to IDRS it will appear as TC 976 creating an -A freeze on the account.
- Refer the case on TAMIS to a CTA for guidance, indicating this is a "Return Preparer Misconduct" case, and be sure to use special case code "PF" on TAMIS.
- If there is compliance function involvement (see page 2 of W&I's [Interim Guidance](#) to Memphis AM), issue an OAR to the proper compliance function.
 - Suggested wording for the OAR could include: *I have reviewed the facts and law pertaining to this case, and concluded the taxpayer did not authorize the return filed. It is TAS's position the IRS adjust the taxpayer's Master File account to reflect the correct information for tax year 20XX, including issuing the refund per the information on the original return filed by the taxpayer on {date}. The alteration of the direct deposit information causes the return filed by the preparer to fail the Beard test. I request you treat the tax return filed by the tax return preparer as invalid and adjust*

the account to remove the misrouted direct deposit refund attributable to the invalid return.

- If the Operating Division/function refuses to take actions to correct the account, or takes actions that do not relieve the taxpayer from adverse action or liability, elevate the case to the LTA for consideration of a TAO.
- If there is no compliance function involvement, issue a TAO to Memphis AM using the Return Preparer Misconduct TAO template.
- Provide copies of Counsel opinions PMTA 2011-13, [Horse's Tax Service \(May 12, 2003\)](#) and [Field Service Advice 200038005 \(Sep. 22, 2000\)](#) as supporting documentation for the OAR or TAO.

Example 4a

Mr. Princeton takes his Form W-2 to a tax return preparer. The preparer completes the return and tells him he will receive a \$450 refund. The taxpayer signs a Form 8879, *IRS e-file Signature Authorization*. The preparer changes the direct deposit information on the return to his own bank account before transmitting the return. The return filed by the preparer is otherwise accurate. Mr. Princeton never received any part of the refund. In this example, because the IRS has not yet agreed that altered direct deposit information alone invalidates the return under the *Beard* test, TAS would issue a TAO to Memphis AM directing that the correct refund be issued to the taxpayer.

Example 4b

Ms. Temple's neighbor prepared her tax return. The neighbor is not in the tax preparation business but offered to help Ms. Temple complete the return. The neighbor completed the return and told Ms. Temple that she would receive a \$350 refund. The neighbor changed the direct deposit information to his own checking account prior to transmitting the return to the IRS. Ms. Temple did not receive any part of the refund. The neighbor used web-based software intended for taxpayer use to prepare and electronically file the return. Based on the review of page 8 of W&I's [Interim Guidance](#) to Memphis Accounts Management, W&I is not suspending these cases pending additional guidance; W&I does not consider this to be Return Preparer Misconduct, but TAS does. In this example, TAS would issue a TAO to Memphis AM directing that the correct refund be issued to the taxpayer.

Other Scenarios. Even if you cannot prove the return filed by the tax return preparer is invalid under the *Beard* test, you may be able to advocate for the taxpayer on other issues.

Other Example

Mr. Young is under 21 years old, has only had a filing requirement and filed returns for two years, and is inexperienced in financial matters. He

supplied his Forms W-2 to a tax return preparer he met through his church. The preparer proposed that he could add a “special credit” (the American Opportunity credit) to boost his refund, but only if Mr. Young would share half of it with him. The preparer explained the credit is available for all low to moderate-income taxpayers. The preparer also encouraged Mr. Young to claim his nephew as a dependent and for the refundable child tax credit, since no one else would be claiming him. Mr. Young did not attend or pay for any post-secondary education, and does not support or provide a home for the nephew at his residence. Convinced by the preparer, Mr. Young agreed to the arrangement and authorized the preparer to file the return electronically. The preparer received a \$2,800 direct deposit refund into an account under his control and paid Mr. Young \$2,000 in cash (holding back \$500 of the American Opportunity Credit and \$300 in return preparation fees).

Later, the IRS conducted a post refund audit, proposing to reverse both credits, the dependency exemption, and change his filing status from head of household to single. The IRS also proposed a 20 percent accuracy-related penalty.

- The Case Advocate asked Mr. Young about the issues under audit, and his responses led the Case Advocate to determine all the changes the IRS proposed to deductions and credits were correct.
- The Case Advocate asked questions related to reasonable cause and learned about the preparer’s actions and his arrangement with Mr. Young.
- After consulting with a CTA about the Return Preparer Misconduct, the Case Advocate secured Form 14157 (but not Form 14157-A), a copy of Mr. Young’s bank statement showing the cash he deposited, and the return preparer’s flyer circulated at Mr. Young’s church that advertised the preparer’s ability to claim a “special credit.”
- With the assistance of the CTA, the Case Advocate’s OAR recommended the campus examiner not assess the accuracy-related penalty because the taxpayer had relied on bad return preparer advice. The Case Advocate supported the recommendation by pointing out Mr. Young’s lack of tax knowledge. Mr. Young is under 21 years old, has only had a filing requirement and filed returns for two years, and is inexperienced in financial matters.
- The Case Advocate sent Form 14157 with a Form 3210 directly to the RPO for complaint investigation.
- The Case Advocate advised Mr. Young that he would still have a balance due from the changes to deductions and credits, including repaying to the IRS the \$500 the return preparer kept from the American Opportunity Credit. The Case Advocate addressed

payment options, and explained that recovery of the \$500 from the return preparer would be a civil matter between Mr. Young and the preparer.

TAMIS Coding

Select **Special Case Code “PF”** to identify cases involving Return Preparer Misconduct. Do not remove the Special Case Code in instances where the taxpayer does not respond to requests for supporting documentation.

If the taxpayer did not substantiate the preparer misconduct or did not respond to requests for documentation, mark the **Local Office Use Field 2** on TAMIS Taxpayer Screen 5 with the literal “NoTAO” to identify cases where a TAO was not pursued because the taxpayer did not provide adequate supporting documentation necessary to advocate for relief. Use this same literal to mark cases where a TAO was not needed to provide relief because the OAR process resulted in the IRS taking all necessary actions to resolve the account. Using this literal will assist offices in responding to Area inquiries about Return Preparer Misconduct case activity.

Effect on other documents

TAS will incorporate this guidance into a new IRM Section 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.

cc. irs.gov