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MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

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

SUBJECT: Interim Guidance on Accepting Cases Under Taxpayer Advocate Service (TAS) Case Criteria 8, Best Interest of the Taxpayer

The purpose of this memo is to provide guidance for TAS employees on when to accept a case into TAS using Case Criteria 8, Best Interest of Taxpayer. [IRM 13.1.7.2.3](#), *TAS Case Criteria 8, Best Interest of the Taxpayer*, provides that cases may be accepted into TAS under Case Criteria 8, Best Interest of Taxpayer, if "the manner in which the tax laws are being administered raises considerations of equity or has impaired or will impair the taxpayer's rights." Although many TAS cases generally speaking may involve equity considerations or impair taxpayer rights, Case Criteria 8 should only be used if the case does not fit into any other TAS case criteria.

[IRM 13.1.7.2](#), *TAS Case Criteria*, sets forth TAS case criteria:

Type	TAS Criteria	Description
Economic Burden	1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Economic Burden	2	The taxpayer is facing an immediate threat of adverse action.
Economic	3	The taxpayer will incur significant costs if relief is

Type	TAS Criteria	Description
Burden		not granted (including fees for professional representation).
Economic Burden	4	The taxpayer will suffer irreparable injury or long term adverse impact if relief is not granted.
Systemic Burden	5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Systemic Burden	6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Systemic Burden	7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	8	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair taxpayers' rights.
Public Policy	9	The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers.

Thus, if a case can be accepted into any other case category (1 – 7 or 9), the case should not be accepted under Case Criteria 8.

For example, suppose a taxpayer seeks TAS assistance because a levy was issued prior to the taxpayer getting collection due process (CDP) rights and the taxpayer wants TAS assistance in getting the levy released because the taxpayer cannot pay for her basic living expenses with the levy in place. The case could be accepted under Criteria 8 because the taxpayer's rights have been impaired. However, because the taxpayer also meets the requirements for Criteria 1 (the taxpayer is experiencing economic harm), it should be accepted under Criteria 1. In this situation, TAS should, of course, ensure the IRS provides the taxpayer with her CDP rights.

If a case does not fall within any of the other case criteria, it is then appropriate to consider whether the case meets Case Criteria 8. Looking at the significant hardship requirement in Internal Revenue Code (IRC) § 7811 may be useful in making a Criteria 8 determination. Section 7811 provides “the National Taxpayer Advocate may issue a Taxpayer Assistance Order if the National

Taxpayer Advocate determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary. “Treas. Reg. § 301.7811-1(a)(4), further explains that significant hardship means “a serious privation is caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS.” Thus, if a taxpayer is experiencing or about to experience a serious privation of taxpayer rights, then the case meets Criteria 8.

In considering whether a taxpayer is experiencing or about to experience a serious privation of taxpayer rights, consider whether any of the taxpayer’s rights have been impaired. These rights include:

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS’s Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals’ decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

If any of these rights have been impaired and no other case criteria fit, it would be appropriate to accept the case under Criteria 8. If no rights have been impaired, next consider the equities. If the action the IRS is taking not equitable, a case can also be classified as Criteria 8.

Effect on Other Documents: This guidance will be incorporated into [IRM 13.1.7](#), *TAS Case Criteria*.