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MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

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National Taxpayer Advocate

SUBJECT: Interim Guidance on Advocating for Taxpayers through
the Operations Assistance Request (OAR) Process

This memorandum is part of a series designed to help Taxpayer Advocate Service (TAS) employees think through how they should advocate on behalf of taxpayers to facilitate relief and resolve taxpayer issues. When TAS does not have delegated authority to take actions necessary to resolve taxpayer issues, TAS must use the OAR process to request actions from IRS Operating Divisions or functions. As such, the OAR becomes a critical tool for obtaining relief and appropriate resolution on behalf of the taxpayer. Presenting a detailed, well-developed OAR, supported by facts, research, and necessary documentation, aids the Operating Division or function in understanding TAS's position. When TAS prepares OARs that are detailed, clear, and specific, TAS can more effectively communicate a compelling argument justifying the requested actions. This memorandum clarifies current guidance in the Internal Revenue Manual (IRM), Service Level Agreements (SLAs), and Delegation Orders, and provides examples of how to advocate effectively for taxpayers using OARs. When developing OARs, TAS employees should ask themselves:

- What does the Operating Division or function need to know about the taxpayer in order to provide the relief?
- What facts and supporting documentation can TAS provide to support the actions necessary for relief?
- How can I best present these facts, so that the OD/function will clearly understand TAS's position?

Depending on the complexity of the issue and the processes involved, some OARs will require more details, supporting facts, and documentation than others. While the examples included in this memorandum only cover a few of the wide range of issues TAS sees every day in casework, you can apply these recommendations and suggested language to other processes and situations. The important concept to take away is that the OAR is a powerful tool to advocate for taxpayers.

SLAs and IRM Requirements for TAS

The information provided in this section is taken directly from the currently published [SLAs](#) and [IRM 13.1.19](#). The [SLAs](#) and [IRM 13.1.19](#), *TAS Operations Assistance Request (OAR) Process*, provide guidance on using the OAR process when TAS does not have the statutory or delegated authority to complete case actions and obtain relief for taxpayers. A key component in OAR development is making a recommendation. In general, the SLAs state that TAS is responsible for:

- Building the case prior to its delivery to the Operating Division (OD);
- Conducting all appropriate research on Integrated Data Retrieval System (IDRS), other systems, and the IRM;
- Identifying the issue(s) based on case analysis;
- Securing all pertinent and current documents, *e.g.*, copies of returns, audit reports, adjustment documents, etc;
- Requesting documentation from the taxpayer relevant to the issue;
- Making a recommendation, where appropriate, based upon the technical knowledge of the case advocate, to the OD/function as to the appropriate course of action. This recommendation should be supported by justification, *i.e.*, a complete statement of facts providing reasons, addressing responsibility, willfulness, and any basis (IRM or Internal Revenue Code), for considering or reconsidering the request; and
- TAS will also outline the account adjustments needed to implement TAS's recommended actions.¹

[IRM 13.1.19.4](#), *Operations Assistance Request (OAR) – Preparation*, states the case advocate (CA) will:

- Conduct all appropriate IDRS research and identify the issues based on case analysis;
- Request all pertinent internal and external documents; and
- Make a recommendation, and where appropriate, outline the account adjustments that need to be effected to implement TAS's

¹ This last requirement is not contained in Large Business & International or Criminal Investigation SLAs.

recommendation. Do not provide a breakdown of adjustments with transaction codes and dollar amounts.

NOTE: TAS should not complete source documents (*i.e.*, Form 3870, *Request for Adjustment*) as supporting documentation, as those documents must be completed by the OD/function responsible for making the determination and taking the action.

EXAMPLE: Include statements similar to "If, after your review, you determine the taxpayer is entitled to these adjustments, please prepare the documentation to input the adjustments to 1) adjust the tax liability, 2) adjust the penalty and interest accordingly, 3) remove any freeze codes or audit indicators, and 4) return the completed documentation to TAS."

Clarifying and Understanding the Language Used in the Current SLAs and IRM

TAS did not intend [IRM 13.1.19.4](#) to encourage vague or neutral language or prohibit inclusion of dollar amounts in all OARs. Instead, TAS added the guidance to prevent a past practice where case advocates (CA) attached a completed [Form 3870](#), *Request for Adjustment*, or [Form 12249](#), *Adjustment Document*, with specific transaction codes and amounts.

Case advocates should present TAS's position and explain the facts and circumstances that justify the recommendation in the *Description of Recommended Actions* section of the OAR. This section of the OAR, combined with clear and concise supporting documentation, is the vehicle for TAS to advocate for the taxpayer.

There will be times that TAS will need to include specific dollar amounts for OAR actions that are not considered substantive tax determinations or account adjustments requiring specific transaction codes. These instances would include specifying a dollar amount for an installment agreement, or for correcting a clear administrative error. For example, [IRM 13.1.19.4](#) does not prohibit an advocate from recommending a specific dollar amount for an installment agreement (IA) because it is NOT a dollar amount for an account adjustment or transaction code. If TAS does not provide a specific dollar amount, TAS is allowing the OD/function to determine the amount of the payment plan, which may not be in the best interest of the taxpayer as determined by TAS's financial analysis. If the OD/function disagrees with TAS's analysis, it can notify TAS in its OAR response.

Example 1

A taxpayer owes \$30,000 (tax, penalty, and interest). His Collection Information Statement (CIS) reflects that he can afford \$750 per month, but the taxpayer, requests an installment agreement (IA) for \$500 per month because he needs \$250 per month to pay medical expenses for his elderly parent. If the CA does not advocate on the OAR for the \$500 IA, the OD will set the amount at \$750.

The CA should advocate through the OAR for the \$500, since it will full pay the balance within 60 months and before the collection statute expires.²

Suggested OAR Language for Example 1

Taxpayer has provided a completed CIS, and has requested an installment agreement for \$500 a month. This amount will full pay the balance owed within the Collection Statute Expiration Date (CSED) and the 60-month period. It is TAS's position that the installment agreement should be allowed as requested by the taxpayer. The taxpayer has additional expenses not normally considered on a CIS through the Account Management System (AMS). The taxpayer is responsible for certain medical expenses incurred by his elderly parent and has provided receipts for the monthly prescription expenses. Please consider this situation when making the IA determination of \$500. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three working days to review your response and provide additional information. Please return the completed OAR to TAS documenting all actions taken.

Example 2

A taxpayer is disputing a balance due from an audit. The CA notices that the audit report reflects an increase of \$750 in tax. An IDRS review shows an assessment input by the Centralized Case Processing Unit (CCP) of \$850 in tax, overstating the liability by \$100. The CA issues an OAR to remove the \$100 erroneous assessment to correct the account.

Suggested OAR Language for Example 2

I am attaching the signed/agreed audit report TAS secured through Files, outlining the tax increase of \$750. As indicated on IDRS, the account reflects a tax increase of \$850. It is TAS's position that an error occurred in adjusting the taxpayer's account. Please reduce the tax assessment by \$100, adjust the penalty and interest accordingly, remove any freeze codes, and return the completed OAR to TAS documenting the actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

Recommendation versus Determination

The SLAs and the IRM both require TAS to recommend actions to the operating divisions. TAS's goal is to provide a clear recommendation of the actions requested through the OAR process. IRM [13.1.4.2.3.4](#), *Recommendations vs. Determinations*, states a recommendation is not a determination, but a request for an action supported by the facts presented by the taxpayer, law, and

² TAS previously contacted the OD/function or issued an OAR as an initial action requesting suspension of collection action, so the suggested OAR language for Example 1 does not include these actions. The Example addresses only the installment agreement request. See Wednesday Weekly Article (February 9, 2011): [Suspending Collection Action](#), for additional information.

procedures. TAS should clearly explain the account adjustments, and outline the decisions that the OD/function must make for a determination based on TAS's analysis of the facts, law, and taxpayer's position.

Using the statement "It is TAS's position" conveys an assertive stance, to ensure the operating division clearly understands the taxpayers' circumstances, and to advocate effectively on the taxpayer's behalf.

The following definitions should help you distinguish a recommendation from a determination:

*A **recommendation** is a suggestion to another person regarding your desired outcome or resolution.*

*A **determination** is a decisive conclusion, to give direction authoritatively, a firm resolution.*

Note: Remember that TAS does not have the authority to make a determination.

Example 3

Determination OAR (Incorrect)	Recommendation OAR (Correct)
<p>I have prepared and attached Form 12249, <i>Adjustment Document</i>, outlining the required adjustment decrease using transaction code (TC) 301 of \$1,128; reference # 886 of \$7,524. Additionally please also remove the penalty assessment of \$282 and interest of \$84. Remove freeze code conditions A and G and return the completed OAR to TAS. I have reviewed the documentation submitted by the taxpayer supporting this determination.</p>	<p>I am attaching receipts documenting medical expenses paid during [insert tax year] by the taxpayer and total \$7,524 as claimed by the taxpayer. The IRS denied the medical expenses as an itemized deduction during an audit of the taxpayer's return. It is TAS's position that the IRS should reconsider allowance of the medical expenses. Please adjust the tax liability and associated penalty and interest, remove any freeze codes or audit indicators, and return the completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.</p>

Under Developed OARs vs. Fully Developed OARs

A fully developed OAR includes the following information in the *Description of Recommended Actions* section of the OAR:

- Specific actions TAS is asking the OD/function to take or consider;
- Reason(s) supporting TAS's request;

- Description of the documentation attached to the OAR, and how it supports the recommendation; and
- Cites to applicable law (e.g., code section, regulation, court case, revenue ruling, or revenue procedure) where warranted. (Attach Counsel Memorandum or Technical Advisors' advice, if appropriate.)

Example 4

Issue	Under Developed OAR	Fully Developed OAR
First Time-HomeBuyer Credit (FTHBC) Audit Reconsideration	Attached is the Form 5405 provided by the taxpayer. Please allow FTHBC. Let me know if additional information is needed.	I am attaching the HUD -1, <i>Settlement Statement</i> , showing the taxpayer purchased the home on June 1, 2009. Prior to purchasing the home, the taxpayer rented the same home, as shown on the attached lease agreement. This fact justifies a legitimate reason for not having an address change, so the taxpayer qualifies for the credit. It is TAS's position that the taxpayer qualifies for the \$8,000 FTHBC under IRC § 36 (a). Please input the adjustment to allow the credit, adjust any related penalties, release freeze codes (as appropriate), and return the completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

Example 5

Issue	Under Developed OAR	Fully Developed OAR
Substitute for Return (SFR) Reconsideration	Taxpayer filed his original return as indicated on IDRS TC976. Please adjust account based on return and let me know when refund will be issued. If you need any other information, let me know.	I am attaching the signed copy of Form 1040, and schedules. IDRS shows the IRS received this return on 10/12/2010, as indicated by TC976 and the date stamp. Based on this information, it is TAS's position that: 1. The taxpayer is entitled to a reduction of the Adjusted Gross

Issue	Under Developed OAR	Fully Developed OAR
		<p>Income (AGI), Taxable Income (TXI), and tax.</p> <p>2. The taxpayer is also entitled to three additional exemptions.</p> <p>3. ENMOD should be updated to reflect joint filing status, and the current address, as indicated on the return.</p> <p>4. Input all necessary adjustments to reflect the taxpayer's correct amount of tax, adjust any related penalties and interest, release freeze codes (as appropriate), and return completed OAR to TAS documenting all actions taken.</p> <p>Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.</p>

Example 6

Issue	Under Developed OAR	Fully Developed OAR
Installment Agreement	Taxpayer is requesting an installment agreement. Form 433-F, <i>Collection Information Statement</i> , is attached for your review. If you need anything else, please contact me.	Taxpayer is requesting an IA for \$350 per month. Attached is taxpayer's Form 433-F and the AMS financial analysis supporting the taxpayer's ability to pay \$350 a month. It is TAS's position IRS should accept the \$350 per month proposed payment agreement. Please establish an IA and return completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

Example 7

Issue	Under Developed OAR	Fully Developed OAR
Currently Not Collectible (CNC)	I have attached the taxpayers' statement indicating they are unable to pay at this time. Place the account in CNC status.	I am attaching documentation submitted by the taxpayers showing their income has changed due to a change in employment. Based on the attached financial statement, it is TAS's position the taxpayers should be placed in CNC status, closing code 26. Please input the necessary transactions, release the levy, and return the completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

Example 8

Issue	Under Developed OAR	Fully Developed OAR
Form 8379, <i>Injured Spouse Claim</i>	Please review the attached Form 8379 and issue refund to taxpayer. Per IDRS, account is controlled by XX00000000.	I am attaching Form 8379 and supporting documentation provided by the taxpayer. Per IDRS, the account is controlled by XX00000000. I am also attaching the AMS Injured Spouse Worksheet Computation. Because the taxpayer resides in a community property state, the amount of the refund is calculated based on the rules specific to [insert name of state]. It is TAS's position the wife is entitled to a refund of \$1,243. Please issue refund to wife only, input the necessary transactions, release freeze codes (as appropriate), and return completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

Example 9

Issue	Under Developed OAR	Fully Developed OAR
Form 1040X, Amended U.S. Individual Income Tax Return	Please locate taxpayer's Form 1040X and process. Please return copy of 1040X with OAR.	I am attaching a copy of the Form 1040X the taxpayer submitted to report an additional Form W-2 received after filing his original return. The IRS received the amended return on June 30, 2010. IDRS reflects no actions taken to correct the account. It is TAS's position the IRS should input the adjustment to increase the AGI, TXI, tax, and withholding and issue refund of \$572. Please input the necessary transactions, release freeze codes (as appropriate), and return completed OAR to TAS documenting all actions taken. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me, at least, three workdays to review your response and provide additional information.

OARs Requiring Neutral Language

TAS employees may find themselves in a situation where they are unable to advocate for the taxpayer because the law prevents relief or the IRM allows for OD/function employees to make a determination based on the facts presented, e.g., penalty abatement requests. In these situations, TAS must issue an OAR so that the taxpayers are afforded their appeal rights. There are times when employees will need to prepare OARs using neutral or non-specific language.

Example 10

The taxpayer owes \$10,000 in income tax, penalty, and interest for 2009. The compliance history shows the taxpayer has been compliant in recent years and promptly resolved any past delinquencies. The IRS filed a Notice of Federal Tax Lien on the unpaid balance before the taxpayer came to TAS, and the taxpayer says he is not concerned about the lien issue. A review of the taxpayer's CIS shows that he can afford \$150 per month. It will take the taxpayer over 60 months to pay the full balance, but the debt will be paid before the CSED expires. The CIS shows the taxpayer has equity of \$100,000 in his primary residence, a Roth IRA valued at \$250,000, and a Certificate of Deposit (CD) with his bank valued at \$20,000; therefore, the taxpayer has sufficient equity and liquid assets available to full pay his liability. TAS should educate the taxpayer about the impact of the lien on the taxpayer's credit report, explaining that full payment of the liability would provide for release of the lien. However, the taxpayer does not want to liquidate the CD, or draw from the IRA, and he also does not want to borrow against the house. He is requesting a non-streamlined IA to pay in full.

Although the taxpayer owes less than \$25,000, the agreement will not be paid within 60 months. In these circumstances, the government's interests may outweigh the harm to the taxpayer who refuses to borrow against property or use liquid assets to pay the tax liability. Thus, you conclude based upon evaluation of all the facts and circumstances that you cannot advocate for the IRS to approve the proposed IA amount because it goes against procedures and requirements in [IRM 5.19.1.6.3](#), *Financial Statement Processing and Asset/Income/Expense Verification* and there are no extenuating circumstances. However, the taxpayer has proposed an IA, and is entitled to independent review and appeal rights before the IRS denies it, so TAS should still forward the IA request on an OAR for a determination by the OD/function.

Suggested OAR Language for Example 10

I am attaching a completed CIS provided by the taxpayer showing the ability to pay \$150 a month. This amount will full pay the balance owed within the CSED. If, after your review, you determine the taxpayer is entitled to the proposed IA, please input the IA, and return the completed OAR to TAS documenting all actions taken. If you determine the taxpayer is not entitled to the proposed IA, please refer the taxpayer's request to independent review and provide any appropriate appeal rights. Please return the completed OAR to TAS documenting all actions taken.

Example 11

The taxpayer calls TAS to ask for help in obtaining the FTHBC for a house he and his wife purchased in 2009. The IRS denied the credit using math error procedures because the taxpayer filed a return with a different spouse in 2007, deducting mortgage interest for a personal residence. IRC § 36(c)(1) defines a first-time homebuyer as "any individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the three-year period ending on the date of the purchase of the principal residence to which this section applies." In this circumstance, the taxpayer is not eligible for the credit under the law. TAS would not forward an OAR asking that the IRS review its decision, when it is clear that the taxpayer is not entitled to relief, including the reason for denial. Instead, TAS would explain to the taxpayer that the IRS appropriately denied the relief. If the taxpayer understands and agrees with the explanation, TAS would then close the case.

Example 12

Same facts as Example 11, above, except the taxpayer submits Form 1040X, *Amended U.S Individual Income Tax Return*, disagreeing with the disallowance. In this situation, TAS would send the claim, through the OAR process, for a determination and formal disallowance.

Suggested OAR Language for Example 12

The taxpayer disagrees with the disallowance. I am attaching a copy of the Form 1040X secured through AMS. Please review the taxpayer's claim and make a

determination, providing the appropriate appeal rights, if the claim is denied. Please return the completed OAR to TAS documenting all actions taken.

Summary

An OAR is necessary when an action to resolve the taxpayer's issue is beyond the statutory or delegated authority of TAS. The request must be complete, clear, and concise. The completed OAR needs to include sufficient detail to ensure the OD/function employee fully understands all requested actions, the issues involved, and the documentation provided to support each issue.

This guidance should improve advocacy, facilitate case processing, and improve case resolution time. Providing clear directions and justification for the recommended actions on the OAR will also assist other TAS employees who may have to follow up on the OAR with understanding the basis for the requested actions.

Effect on Other Documents

This guidance will be incorporated into [IRM 13.1.19](#), *TAS Operations Assistance Request (OAR) Process*.

Contact

If you have any questions, please contact Mara Christian, Chief, Policy Group, Technical Analysis and Guidance at (505) 837-5707.