



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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September 25, 2012

Control No.: TAS-13-0912-019  
Expiration Date: 09/24/2013  
Impacted IRM(s): IRM 13.1.7

## MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

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

SUBJECT: Reissuance of Interim Guidance on Changes to  
Case-Acceptance Criteria

This memorandum reissues guidance from interim guidance memorandum TAS-13.1.7-0911-014, signed September 1, 2011. The purpose of this memorandum is to reiterate the changes to TAS's case-acceptance criteria for certain categories of Systemic Burden cases, to provide guidance to TAS employees on handling taxpayer inquiries and referrals from Operating Divisions (ODs)/functions that TAS will no longer accept, and to provide clarifying examples of Systemic Burden inquiries that meet TAS acceptance criteria.

As you know, TAS's case receipts have been growing substantially since FY 2004, and in the current federal budget environment, it has become clear that TAS will not have the resources to continue to handle its current inventory levels without adverse impact on its ability to provide effective and timely service. For that reason, we have been considering how to prioritize cases to ensure we can provide effective service to taxpayers who most need our assistance or whom TAS is best suited to assist.

Most TAS cases fall into one of two general categories: (1) Economic Burden cases (TAS Criteria 1-4)<sup>1</sup> and (2) Systemic Burden cases (TAS Criteria 5-7).<sup>2</sup>

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<sup>1</sup> Criteria 1 – The taxpayer is experiencing economic harm or is about to suffer economic harm; Criteria 2 – The taxpayer is facing an immediate threat of adverse action; Criteria 3 – The taxpayer will incur significant costs if relief is not granted (including fees for professional representation); and Criteria 4 – The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

<sup>2</sup> Criteria 5 – The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem; Criteria 6 – The taxpayer has not received a response or resolution to the problem or inquiry by the date promised; and Criteria 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.

TAS will continue to accept all Economic Burden cases. Effective October 1, 2011, however, TAS generally will not accept the following types of inquiries that fall within Systemic Burden Criteria 5-7:

- Processing of Original Returns;
- Unpostable/Rejected Returns;
- Processing of Amended Returns; and
- Injured Spouse Claims.

In these four categories of cases, processing delays typically arise either because the affected functions are overloaded with work or because of systemic processing glitches. Assuming these processing delays do not create an economic burden, TAS's role is typically limited to issuing an Operations Assistance Request (OAR) to the appropriate function to advocate for resolution of the taxpayer's problem, providing updates to taxpayers, and looking for patterns of delay to identify systemic problems. TAS will no longer accept these four categories of cases, at least temporarily, so we can focus our limited resources on Economic Burden cases and on Systemic Burden cases where we play a more direct role in affecting the outcome.

There are two notable exceptions under which TAS will continue to accept Systemic Burden cases involving the four processing issues identified above:

- TAS will continue to accept all cases referred by congressional offices.
- TAS will continue to accept all cases involving the issues listed above when the taxpayer's inquiry is related to other issues for which TAS may advocate, such as an open examination or collection action that a refund from, or the processing of, the amended or original return or claim would resolve.

The following five examples illustrate some exceptions under which TAS will continue to accept Systemic Burden cases.

**Example 1:**

A congressional office contacts TAS regarding a constituent's [Form 1040X](#), *Amended U.S. Individual Income Tax Return*. The taxpayer filed 2010 Form 1040X more than four months ago expecting a refund and has no other outstanding issues with examination or collection.

In this situation because it is a congressional contact, TAS will accept the inquiry.

Note: TAS accepts ALL congressional inquiries.

**EXAMPLE 2:**

The taxpayer filed an original return 12 weeks ago claiming the adoption credit, requiring supporting documentation. Because the taxpayer has experienced a delay beyond 30 days of normal processing time, the taxpayer meets TAS criteria, except that the issue involves the processing of an original return. Review of AMS indicates the taxpayer has previously contacted IRS in response to correspondence received regarding his adoption credit, providing additional documentation.

In this situation, the IRS has already had the opportunity to review the claim and make a determination, but, for whatever reason, required more information from the taxpayer. The taxpayer's effort to comply with IRS's request has not resolved the issue. This case should come to TAS because the case meets TAS systemic burden criteria, and it involves another issue (the adoption credit.)

**EXAMPLE 3:**

The taxpayer filed an amended return claiming the First Time Homebuyer Credit (FTHBC) and the account indicates the IRS denied the credit under math error authority. The taxpayer stated the IRS denied the credit because he filed a return the previous year using the same address. The taxpayer was renting the property in 2007, and purchased it from his landlord in 2008, making him eligible for the FTHBC. The taxpayer took steps to protest the math error, submitting an explanation and additional documentation months ago, but has yet to receive a response from IRS.

This case should come to TAS because the taxpayer's true issue is not the processing of his amended return, but the unresolved math error. The case meets TAS criteria because of non-response and a delay of more than 30 days to resolve the issue.

**EXAMPLE 4:**

The taxpayer filed an amended return claiming a Net Operating Loss Carryback from her business after a tornado damaged the building. The account has a freeze indicating taxpayer resides in a Presidentially declared disaster area. The taxpayer has waited more than four months for the IRS to assign her claim to an examiner, and the tornado destroyed many of her business records, so she will have to substantiate her claim.

This case should come to TAS because the true unresolved issue for this account is the review of the Net Operating Loss Carryback, not routine processing of an amended return. The case meets TAS criteria because of the delay in assigning the claim and resolving the claim.

**EXAMPLE 5:**

IRS filters stopped a refund because information indicated the taxpayer was incarcerated. The account indicates AMTAP involvement. The taxpayer states he

was released early for good behavior and earned wages for the last four months of 2011 working on his uncle's cattle ranch. The taxpayer received a letter requesting more information, but he has been unable to get through on the toll-free line provided in the IRS correspondence. He has made numerous attempts without success. He does not have access to a phone during business hours because that is when he is moving cattle and can only attempt calls in the evenings.

This case should come to TAS because his unresolved issue is more than just routine processing of an original return. The true problem is the pre-refund wage verification hold. The case meets TAS criteria because the system established for taxpayers to reach the IRS unit handling the account has failed.

### **Handling inquiries that do not meet TAS case criteria:**

- Be as helpful and compassionate as possible to taxpayers whose facts and circumstances do not meet the revised guidelines;
- Explain that TAS will refer the taxpayer's issue to the appropriate OD/function, allowing him or her to work directly with the IRS unit that specializes in resolving return processing issues;
- Remind taxpayers that they should contact TAS directly through the ASK TAS1 toll-free number, 1-877-275-8271 (1-877-ASK-TAS1) or their local TAS office if their circumstances change and they face an economic burden;
- Prepare [Form 4442](#), *Inquiry Referral*, and send it to the appropriate OD/function within one workday of receipt of the inquiry; and
- Follow local procedures if the taxpayer asks to speak with a TAS manager.

### **Handling referrals that do not meet TAS case criteria:**

TAS will follow procedures as outlined in [IRM 13.1.16.8.1](#), *Contacts Not Meeting TAS Criteria (Nonfrivolous Inquiries)* (02/01/11) when TAS receives inappropriate referrals.

**Effect on Other Documents:** This guidance is temporary and will not be incorporated into [IRM 13.1.7](#), *TAS Case Criteria*, at this time. Guidance will be issued to all the ODs/functions to inform them of this temporary change to the criteria for referring cases to TAS.

**Contact:** Please contact Laura Clifford, Chief, Policy Group, at (207) 622-8333 if you have any questions.

cc: [www.irs.gov](http://www.irs.gov)