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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 TAS employees on how to resolve open Return Preparer Misconduct cases with elevated TAOs.

Near the start of 2016, the IRS issued guidance to IRS employees that resolves all the pending policy decisions that delayed resolution of taxpayer Return Preparer Misconduct complaints, protecting taxpayer rights to:

- Pay no more than the correct amount of tax;
- A fair and just tax system; and
- Finality.

The IRS now has multiple guidance sources for Return Preparer Misconduct:

- [Policy Statement P 25-2](#), *Return Preparer Misconduct*;
- [IRM 25.24](#), *Return Preparer Misconduct Program* (applies only to cases not covered by the interim guidance below);
- [WI-25-1215-004](#), *Interim Guidance on Allegations of Return Preparer Misconduct for IDTVA RPM Accounts Management (AM) ONLY for Cases Tax Year 2013 (and prior) Received On or Before 12/31/2015*; and
- [WI-25-1215-003](#), *Interim Guidance on Allegations of Return Preparer Misconduct for the Identity Theft Victim Assistance – Compliance (IDTVA-C) Only for Tax Year 2013 and Prior (Suspended Cases Only)*.

## Update Existing Return Preparer Misconduct Cases

- TAS Deputy Executive Directors for Case Advocacy will cascade a list of open TAOs to their Local Taxpayer Advocates (LTAs) to assist them in identifying cases to update and review.
- On all open Return Preparer Misconduct cases with open TAOs, document a chronology of the National Taxpayer Advocate's advocacy efforts on TAMIS. For example:
  - *In December 2013, the Deputy Commissioner for Services and Enforcement rescinded 25 Category 3 and 4 Return Preparer Misconduct TAOs elevated by the National Taxpayer Advocate to the Commissioner (or Acting Commissioner) level. The principal basis given was a concern that taxpayers and preparers may be colluding to defraud the government and obtain an additional refund.*
  - *The National Taxpayer Advocate pursued additional meetings with Commissioner Koskinen to fully brief him on the Return Preparer Misconduct issue, and to alleviate any concerns about taxpayers colluding with preparers to defraud the government. In most of the 25 TAOs elevated, the taxpayer had filed a report with a law enforcement agency (e.g., police report) against the preparer, a clear indication that there was no collusion between these parties. In some cases, there was evidence that the preparer was criminally prosecuted.*
  - *In March 2014, the IRS Commissioner determined that concerns with respect to collusion can be addressed where the taxpayer has filed a report with a law enforcement agency (e.g., police report) identifying the return preparer and can provide a copy of that report signed by an officer or otherwise shown to be accepted by the law enforcement agency.*
  - *On December 31, 2015 and January 1, 2016, the IRS published interim and IRM guidance to implement the IRS Commissioner's decision.*
- On all open Return Preparer Misconduct cases where IRS guidance requires a report from a law enforcement agency (e.g., police report), and the taxpayer has not yet secured such a report:
  - Inform the taxpayer of the law enforcement agency report requirement;
  - Ask the taxpayer to file a report with a law enforcement agency (e.g., police department, state Attorney General's office, IRS Criminal Investigation, Treasury Inspector General for Tax Administration (TIGTA)) identifying the return preparer and give a copy signed by an officer or

otherwise shown to be accepted by the law enforcement agency to TAS;

- Some law enforcement agencies may charge a fee for a copy of the report, or may be reluctant to issue a report on preparer misconduct complaints. Advocate for the taxpayer by contacting the agency on the taxpayer's behalf requesting a waiver of the fee or to explain why the report is necessary and how it will make the difference between the taxpayer receiving their federal refund or not receiving it. Some agencies may also waive the fee by sending the report electronically. If there is a language barrier or the taxpayer meets the income requirements, TAS may suggest that the taxpayer contact a low income taxpayer clinic (LITC) to assist in the process of filing a report;<sup>1</sup> and
- In TAS cases where the taxpayer is unable to obtain a signed report from a law enforcement agency (e.g., police report), review the Return Preparer Misconduct TAO Checklist exhibit at the end of this memorandum and the new IRS guidance to determine if the IRS will accept alternate documentation from TAS.

#### ***Case Adjudication When Report Required But Not Secured***

If IRS guidance requires a report from a law enforcement agency (e.g., police report) and the:

- Taxpayer is unable (or unresponsive to TAS requests) to secure a report from a law enforcement agency; and
- TAS is unable to satisfy the alternate documentation requirements in Law Enforcement Agency Report Verification section of an applicable interim guidance memorandum (or there is no alternate documentation option because the IRS will work the complaint per IRM 25.24); then

This precludes TAS from continuing to effectively advocate on the taxpayer's behalf. Advise the taxpayer recovery of any refund the preparer stole is a civil matter between the taxpayer and the preparer. LTAs should **rescind** any related TAOs and **close** the case.

- Notify #xxxx# IDTVA of the rescission by secure email.
  - Cc the email to the #xxxx# mailbox and the assigned case advocate; and
  - The email subject line will be "TAS Case xxxxxxx RPM TAO Rescinded".

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<sup>1</sup> TAS employees may not refer a taxpayer to a specific LITC. See 5 C.F.R. §§ 2635.702(c)(1) and 2635.101(b)(8). Instead, TAS employees should provide the taxpayer with a copy of [Publication 4134](#), *Low Income Taxpayer Clinic List*.

## Re-Assemble Appealed Return Preparer Misconduct TAOs and Re-Issue to the Current IRS Responsible Official

Some Return Preparer Misconduct TAOs in the TAO appeal process are very old. IRS Responsible Officials change, and IRS functions undergo reorganizations (e.g., Identity Theft Victim Assistance), so the TAO may no longer be in possession of the IRS function and manager now responsible for considering the complaint.

For all open appealed Return Preparer Misconduct TAOs, LTAs will re-issue the modified TAO to #xxxx# IDTVA **by secure email**.

- Cc the email to the #xxxx# mailbox and the assigned case advocate.
- The email subject line will be "TAS Case xxxxxxx RPM TAO".
- The first sentence of the body of the email will be "TAS originally issued this Taxpayer Assistance Order (TAO) related to Return Preparer Misconduct on MM/DD/YYYY, and the IRS appealed it based on previous IRS guidance (or lack thereof)."
- Set a new TAO decision date and TAO required action dates for the current IRS Responsible Official.
- The email will include the following attachments:
  - Form 9102, *Taxpayer Assistance Order*, as modified by TAS during the appeal process or due to additional case building in light of the new IRS guidance;
  - Completed Return Preparer Misconduct TAO Checklist (see exhibit at the bottom of this memorandum); and
  - Any new documentation secured not part of the original TAO package.
  - **Do not include any of the documentation originally submitted with the TAO unless IDTVA informed TAS it destroyed the original TAO package because TAS closed its IDRS control base.**
  - **Do not include any past memorandums of appeal or TAS decisions to sustain the TAO. Give the IRS a fresh opportunity to consider the modified TAO under their new guidance.**
- Attempt to resolve disagreements about whether the documentation supports relief at the LTA level before sustaining a TAO appeal to the next level.
- When the IRS adjusts the taxpayer's account, the IRS will notify the LTA by secure email. The LTA will update TAMIS to reflect the IRS complied with the modified TAO and notify the #xxxx# mailbox of the actions taken.

## Update Return Preparer Misconduct Cases Where the Taxpayer Has LITC Representation

In December 2014, the National Taxpayer Advocate sent a letter to 117 taxpayers with open TAOs elevated to the NTA level. The letter described TAS advocacy efforts in raising this issue to senior IRS leadership. The letter provided information about LITCs and how LITCs may provide free or low cost representation if the taxpayer wished to consider filing suit for a refund.

If a taxpayer enters into a representation agreement with an LITC, the representative may seek information from TAS related to the return preparer misconduct. TAS may share with the representative all of the following:

- Copies of falsified return(s);
- Copy of correct return(s) as intended to be filed by the taxpayer;
- Form 14157, *Return Preparer Complaint*;
- Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*, and other taxpayer statements;
- Report from a law enforcement agency (e.g., police department, TIGTA, IRS Criminal Investigation, or state Attorney General's office), or statements in lieu of a law enforcement report for complaints filed on or before December 31, 2015 involving tax periods 2013 and prior;
- [Form 3911](#), *Taxpayer Statement Regarding Refund*, and information about the results of the refund trace;
- Information collected to show the preparer was in the business of preparing returns (website, flyer, business card, etc.). Redact any information about the preparer protected under IRC § 6103, such as information TAS acquired from IDRS research of the preparer;
- Link to [Return Preparer Fraud: A Sad Story](#) in the FY 2015 Objectives Report to Congress;
- December 2014 letter from the National Taxpayer Advocate;
- Citations to relevant publicly available Chief Counsel opinions;
- Relevant excerpts of TAMIS history; and
  - The National Taxpayer Advocate generally approves release to taxpayers (or their authorized representatives) TAOs and attachments to TAOs without requiring a Freedom of Information Act (FOIA) request, if the taxpayer (or authorized representative) notifies TAS that the taxpayer will be pursuing litigation against the IRS to resolve the Return Preparer Misconduct case. The National Taxpayer Advocate will generally not approve release of the IRS response to a TAO. TAS employees must carefully review the documents to identify any information that should be redacted or withheld.

For questions about whether information should be redacted, there are a variety of resources available to TAS employees. [IRM 11.3.13](#), *Freedom of Information Act*, contains guidance on the types of information that is exempt from public disclosure. TAS employees may also contact the Disclosure help desk by email at [#xxxx#](#), or by phone at [#xxxx#](#).

### **Case Adjudication Upon Filing of a Refund Suit**

Even if the taxpayer seeks LITC representation, TAS will keep its case **open** and continue to advocate for the taxpayer until the problem is completely resolved or the LITC actually files a refund suit on behalf of the taxpayer in a U.S. district court or the U.S. Court of Federal Claims. If the LITC files a refund suit on behalf of the taxpayer, seek management approval to close the case (as no relief) because jurisdiction over the case rests with the Department of Justice and TAS no longer has a role in the litigation. See [IRM 13.1.21.1.1](#) (3), *Introduction*, and [IRM 13.1.10.10.1](#), *Request for Assistance in Which Counsel or the Department of Justice has Jurisdiction*, for further information. **Rescind** any open TAOs once the LITC files a refund suit on behalf of the taxpayer.

### **Verify TAMIS Coding Accuracy**

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.

If the return preparer misconduct case includes a TAO appealed to the National Taxpayer Advocate level, check the **No Customer Survey Contact** box.

Use the appropriate TAO relief code (07 through 10) to reflect the final disposition of the TAO.

**Effect on other documents**

This memorandum is temporary guidance needed to resolve open return preparer misconduct cases with appealed TAOs. TAS will not incorporate this guidance into IRM 13.

**Contact**

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

Attachment

## Return Preparer Misconduct TAO Checklist

Only use this checklist for open appealed Return Preparer Misconduct TAOs. Do not send a modified TAO to the IRS until you can check all eight boxes on the left side of this checklist. *Check the second checkbox if documentation was part of the original TAO.*

### General Requirements

- The complaint is truly Return Preparer Misconduct. [IRM 25.24.2.3.3](#), *Return Preparer Misconduct (RPM) Criteria Not Met*, describes examples of complaints not worked under Return Preparer Misconduct guidance.
- The taxpayer's correct current address appears on IDRS.

### #xxxx# Documentation Requirements

- [Form 14157](#), *Complaint: Tax Return Preparer*, completed by the taxpayer, or other documentation containing the required information. Part of original TAO package?
- [Form 14157-A](#), *Tax Return Preparer Fraud or Misconduct Affidavit*, completed and signed by the taxpayer (at least one taxpayer if married filing joint), or a taxpayer explanation signed under penalties of perjury. Part of original TAO package?
- The return preparer first name, last name, and address.
- Tax return as intended to be filed signed by the taxpayer.
- The return preparer identified in the complaint (see [IRM 25.24.2.3.6](#), *Verification of the Preparer*): Part of original TAO package? 
  - Signed the return as the preparer (for paper returns);
  - Can be determined from the transmission information (for e-file returns); or
  - The preparer is a ghost preparer and the complaint includes:
    - Documentation showing 3rd party presented him/herself as preparer; and
    - Documentation showing interaction between the taxpayer and the preparer.
- The complaint meets one of the three situations described below: Part of original TAO package? 
  - The taxpayer filed a Category 1 or Category 2 complaint;
  - The taxpayer filed a Category 3 or Category 4 complaint that includes a law enforcement agency report meeting ALL the criteria below:
    - Signed or otherwise accepted by the agency;
    - Identifies the tax year(s) involved;
    - Identifies the return preparer's first and last name and address; and
    - Describes the return preparer misconduct and theft of refund.
  - The taxpayer filed a Category 3 or Category 4 complaint:
    - Suspended on or before 12/31/2015;
    - Involving only tax periods 2013 or prior; and
    - The complaint includes both of the following:
      - A statement documenting the taxpayer's attempt to secure a law enforcement agency report signed under penalties of perjury; and
      - A statement from TAS documenting our assistance/attempt in obtaining a report, if the taxpayer is unable to submit an official report from a law enforcement agency.