



IRM PROCEDURAL UPDATE

DATE: 08/21/2023

NUMBER: tas-13-0823-0904

SUBJECT: Guidance for Cases Involving Potential Schemes

AFFECTED IRM(s)/SUBSECTION(s): 13.1.24

CHANGE(s):

IRM 13.1.24.6.4 Added new subsection, Guidance for Cases Involving Potential Schemes.

(1) The purpose of this section is to provide guidance to TAS case advocacy employees about how to identify potential schemes and how discovery of potential schemes affects TAS case processing.

IRM 13.1.24.6.4.1 Added new subsection. Introduction.

(1) It can be difficult to fulfill our role as advocates when we suspect a scheme. Worse, our experience in one potential scheme case can affect how we advocate in other cases. We need to find a way to use our common sense and good judgment to ensure we remain aware of potential schemes without losing our advocacy mindset. Keep these points in mind when reading the remainder of this chapter and working TAS cases.

(2) TAS employees are not experts on schemes and working these cases does not require you to be. Our primary focus is on a simple question, can the taxpayer obtain adequate documentation to support the position taken on their return?

- If so, advocate for the taxpayer's position.
- If not, advocate for the taxpayer by encouraging them to file an amended return removing the items they cannot support.
- If the taxpayer is unable to support what is on their return and unwilling to amend, close the case using the second request process in IRM 13.1.18.8.1, Reviewing and Requesting Information from Taxpayers.
- Throughout these contacts, be alert to indications of return preparer or promoter misconduct.

Note: Remember, advocacy does not mean always advocating for the taxpayer's position. See IRM 13.1.1.3, Philosophy of Advocacy. Advocating for an unsupported position could subject the taxpayer to significant penalties. Sometimes the best advocacy is to explain why the taxpayer's position is not supported and frankly discuss their options. Like any other case, if the taxpayer is unable or unwilling to provide what we need to advocate for them, close the case as no response using the process in IRM 13.1.18.8.1.

(3) When a case involves a potential scheme, normal case advocacy procedures can be different depending on the nature of the scheme. The following subsections explain the general strategy for these cases:

- IRM 13.1.24.6.4.4, TAS Case Acceptance Criteria for Inquiries Involving a Potential Scheme
- IRM 13.1.24.6.4.5, Discuss the Research Results with the Taxpayer
- IRM 13.1.24.6.4.6, Decide How to Advocate
- IRM 13.1.24.6.4.7, Whether to Issue OARs or TAOs

IRM 13.1.24.6.4.2 Added new subsection, Identifying Cases or Requests for TAS Assistance Involving Potential Schemes.

(1) TAS employees will identify cases or requests for TAS assistance involving potential schemes either by external indicators (IDRS codes added by various IRS functions) or internal indicators within TAS.

(2) External indicators include, but are not limited to:

- Presence of a **TC 810 responsibility code 4** on the taxpayer's account, which indicates an IRS function is reviewing the return or submission to determine if it is frivolous. See IRM 21.5.6.4.10, -E Freeze.
- Unprocessed original returns with account indicators described at IRM 25.25.6.3(13) box 8, Taxpayer Protection Program (TPP) Basic Authentication and Research.
- Other indicators of frivolous return or frivolous submission review, such as Error Resolution System (ERS) status 300 series. See IRM 3.12.10-4, ERS Action Codes, for a complete list and description of these ERS action codes.
- An IRS Servicewide Electronic Research Program (SERP) Alert describing the elements of a scheme matching the fact pattern of the case or request for TAS assistance.
- The return or claim matches one of the schemes identified on the RICS Fraud Refund Scheme Listing, IRM 25.25.10-1, Frivolous Arguments, or the irs.gov Dirty Dozen page, which describes the most common schemes for each year.

Example: Fuel Tax Credit schemes using Form 4136, Credit for Federal Tax Paid on Fuels. Fuel Tax credits claimed appear as TC 766 Credit Reference Number (CRN) 450.

- Indicators of IRS Criminal Investigation involvement.

Caution: Additional guidance and limitations on case actions exist for these cases. See IRM 13.1.10.9, Inquiries on Open Cases with Criminal Investigation Involvement, and IRM 25.30.4, Service Level Agreement between the Criminal Investigation Division and the Taxpayer Advocate Service.

(3) Identifying potential schemes described in SERP Alerts and the Dirty Dozen can be more difficult when the taxpayer's claim is on an amended return, since the credit often does not appear on the account when TAS receives the request for assistance. Review the amended return for the source of the overpayment as follows:

- If the IRS scanned the amended return, use the Correspondence Imaging Inventory (CII).
- If the taxpayer filed the amended return electronically, view it through the Employee User Portal (EUP).
- If the taxpayer filed the amended return on paper and the IRS hasn't scanned it yet, ask the taxpayer to explain the adjustments requested and provide a copy to TAS.

(4) TAS internal indicators include, but are not limited to:

- Mass receipt of Forms 911 or requests for TAS assistance from a single POA or third party with the same issue description that involves help with seeking a refund.
- Mass receipt of Forms 911 or requests for TAS assistance supposedly from different taxpayers, but all with the same issue description, same phone number, same handwriting, or other similarities indicating origination from a single person.
- TAS data analytics identifies similar mass submissions.

(5) Upon identifying such mass TAS submissions, the discovery is elevated to the Local Taxpayer Advocate (LTA) and Deputy Executive Director Case Advocacy (DEDCA) per IRM 13.1.16.15.3, Bulk Receipts. If deemed a potential scheme case, a TAMIS history entry specific to that potential scheme may be added to TAS cases to help case advocates identify them in their inventory. TAS managers or Welcome Screen articles will explain the meaning and purpose of these history entries to TAS employees. Per IRM 13.1.16.15.3, "BULK" will also be added to the TAMIS Local Use 2 field.

IRM 13.1.24.6.4.3 Added new subsection, Reporting Emerging Schemes.

(1) Remember, in most TAS cases the IRS is aware of the potential scheme and has already stopped the taxpayer's refund. **The reporting methods described below are for the situations where the IRS might not be aware of the scheme.**

- TAS employees who identify an emerging refund scheme **affecting multiple taxpayers** will use the Systemic Advocacy Management System (SAMS) to report the issue. See IRM 13.1.5.3(4)(f), Other Federal Laws or Policies Relevant to TAS's Disclosure of Taxpayer's Information When Working a TAS Case. If the RICS referrals team requests specific case examples from TAS, Systemic Advocacy will follow the guidance in IRM 13.1.5.8.3.2, Disclosure to Address a Systemic Problem.

Caution: Do not use SAMS to report compromised or potentially compromised Centralized Authorization File (CAF) numbers. TAS employees use IRM

21.3.7.5.5.3, How To Report a Compromised or Potentially Compromised CAF Number. IRM 21.3.7.5.5, Suspicious Forms Log and the “Potential Fraud” Authorization Referral Process, can help identify potentially compromised CAF numbers.

- If the taxpayer indicates a return preparer, promoter, or representative advised them to claim the credit and they did not realize they are not entitled to the credit, see IRM 13.1.5.12, Disclosure Regarding Practitioner or Preparer Misconduct, and IRM 13.1.23.5, Taxpayer Complaints About Representatives.
- Internal Revenue Code (IRC) 7214(a)(8) creates some obligations to report potential schemes. It requires all Federal employees acting in connection with any revenue law that have knowledge or information of criminal violations of Internal Revenue laws, or of fraud committed under Internal Revenue laws, to report such violations in writing. See IRM 13.1.5.3.

Note: TAS responsibilities become more complicated when we gain the information or knowledge from TAS communications with the taxpayer or representative. See IRM 13.1.5.3(4)(b). If you need assistance related to IRC 7214(a)(8), ask your manager to contact the TAS attorney advisor group manager to identify the current attorney advisor for TAS Confidentiality matters.

(2) The reporting method below informs **TAS employees** that may work the TAS case of the scheme.

- IRM 13.1.16.15.3, Bulk Receipts, explains how TAS flags applicable TAS contact records and TAS cases involving potential schemes so other TAS employees are aware of the potential scheme. This can include a TAMIS history entry to associate the case with a specific group of bulk receipts.

IRM 13.1.24.6.4.4 Added new subsection, TAS Case Acceptance Criteria for Inquiries Involving a Potential Scheme.

(1) When TAS receives an inquiry involving a potential refund scheme, TAS will determine if the taxpayer's issue meets TAS case acceptance criteria per IRM 13.1.7.3, TAS Case Criteria, and if it does, the case will be accepted. TAS will not exclude taxpayers unless it is determined the taxpayer's complaint or inquiry only questions the constitutionality of the tax system, or when the focus of the taxpayer's inquiry solely involves frivolous tax strategies intended to avoid or delay the filing or paying of federal taxes. See IRM 13.1.7.4(2) and (3), Exceptions to Taxpayer Advocate Service Criteria. TAS inquiries related to the returns filed with positions taken as described in IRM 25.25.10-1, Frivolous Arguments, (except a few near the bottom) would not be accepted as cases under the IRM 13.1.7.4(2) and (3) exceptions, as they are not valid attempts to file a true tax return; the sole basis of the return filing is the frivolous tax strategy.

(2) Often potential scheme inquiries seek TAS assistance with receiving a refund based on the filing of an original or amended tax return. Third parties misled many of these impacted taxpayers: a practitioner, scheme promoter, a friend or family member, and these taxpayers are unaware that they claimed credits for which they are not eligible under the law. TAS's role is to help the taxpayer move forward, even if they weren't a clean actor.

(3) These cases give TAS employees the opportunity to protect the taxpayer's right to:

- Be Informed (by educating them about the tax law and their filing and payment obligations)
- Quality Service (by providing clear complete explanations of the issue and their options)
- A Fair and Just Tax System (by accepting their case in TAS and making every effort to ensure fair treatment).

(4) TAS has an opportunity to help these taxpayers by educating them about the proper method for calculating credits and the eligibility requirements, and assisting them in bringing their account current and into compliance.

IRM 13.1.24.6.4.5 Added new subsection, Discuss the Research Results with the Taxpayer.

(1) IRM 13.1.24.6.4.2 explains how research in IRS systems and TAMIS will identify TAS cases involving potential schemes. Based on your research, educate the taxpayer, representative, or congressional aide about the eligibility requirements and proper method for calculating credits.

(2) If a power of attorney exists for the module, contact the representative for this discussion. See IRM 13.1.23.2(3), Taxpayer's Right to Retain Representation. However, see IRM 13.1.23.5, Taxpayer Complaints About Representatives, if the taxpayer contacts TAS with complaints about the POA. Also see IRM 13.1.23.7, Power of Attorney Bypass, which describes situations when TAS may seek LTA and DEDCA approval to bypass the POA.

(3) TAS's ability to communicate and empathize with the taxpayer or representative is key. First and foremost, the taxpayer's rights to be informed and to receive quality service must be protected and clearly demonstrated. TAS will discuss the questionable return item(s) and educate the taxpayer or representative about why the IRS is reviewing the return, and the potential consequences if the IRS determines the return is not accurate (i.e., refund delays, deficiency notice, civil penalties).

(4) Whenever the taxpayer's account includes an indication that a Frivolous Return Program referral is being considered or it has already occurred, include a discussion of the Frivolous Return or Frivolous Submission penalties as appropriate. See IRM 20.1.10.12, IRC 6702 - Frivolous Tax Submissions, and IRM 25.25.10.11, Frivolous Return Penalties Overview. Failure to substantiate the claim or amend/withdraw the questionable credit can result in the IRS assessing a \$5,000 penalty on each return or submission.

(5) If the taxpayer indicates a return preparer, promoter, or representative advised them to claim the credit and they did not realize they are not entitled to the credit, see IRM 13.1.5.12, Disclosure Regarding Practitioner or Preparer Misconduct, and IRM 13.1.23.5, Taxpayer Complaints About Representatives.

- If there are indications of preparer misconduct, discuss Form 14157 and Form 14157-A.

- If there are no indications of preparer misconduct, encourage the taxpayer to file an amended return to the IRS (not TAS).

(6) The example below show how TAS can help the taxpayer or representative understand the issue and what they can do to resolve it.

Example: Original returns with fuel tax credits claimed on Form 4136: TAS explains that Form 4136 is used to claim reimbursement of federal fuel excise taxes when the fuel purchaser uses fuel (on which they have paid the tax) for a non-taxable use. Normal vehicle fuel use does not qualify for reimbursement. TAS explains an example of non-taxable use is farmers who buy taxed fuel, but use the fuel in vehicles operated off road, such as a tractor used in the farmer's fields. TAS asks the taxpayer if they have documentation to support such non-taxable use. If so, TAS asks for the information to support the credit claimed. If not, TAS asks if the taxpayer made an error claiming the credit and listens carefully for any indications the taxpayer is a victim of preparer misconduct.

IRM 13.1.24.6.4.6 Added new subsection, Decide How to Advocate.

(1) After your discussion with the taxpayer or representative, you will have explained the taxpayer's problem and what is needed to resolve it. The taxpayer may wish to withdraw their case from TAS. The taxpayer may plan to provide documents to substantiate what is on their return, or may plan to file an amended return to remove the disputed credit. The taxpayer might indicate they are the victim of a promoter. Based on the taxpayer's response, work potential scheme cases in one of the four ways described below:

(2) If the taxpayer decides to withdraw the request for TAS assistance, close the case as a withdrawal (relief code 54). See IRM 13.1.21.2.1.1, Relief Codes.

(3) If the taxpayer agrees to provide documentation to support the credits or file an amended return to remove the credits, keep the case open until TAS can review the documents or amended return.

- If the documentation supports the credits claimed, advocate per normal TAS case processing procedures.
- If the taxpayer or representative sends information that does not support the taxpayer's position, send a second request letter explaining what we need. If we do not receive sufficient information to advocate the taxpayer is eligible for the credits in question, close the case as no response per IRM 13.1.18.8.1, Reviewing and Requesting Information from Taxpayers. **Do not issue an OAR**, even though the IRS might still have a freeze on the account.
- If the amended return the taxpayer sent to the IRS removes the questionable credits, advocate per normal TAS case processing procedures.
- If the taxpayer files an amended return, but the return does not remove the questionable position, send a second request letter explaining what we need. If the taxpayer does not file an amended return that removes the questionable credits, close the case as no response per IRM 13.1.18.8.1. **Do not issue an OAR**, even though the IRS might still have a freeze on the account and the subsequent amended return remains unprocessed.

Note: If the action needed by the taxpayer involves the filing of an amended return, and the taxpayer inquires after TAS closes the case as “No Response”, explain that TAS can reopen the case once the Where’s My Amended Return (WMAR) tool shows receipt of an amended return correcting the issue.

(4) If the taxpayer indicates they are the victim of a return preparer or promoter, direct the taxpayer to file Form 14157, Return Preparer Complaint and Form 14157-A, Tax Return Preparer Fraud or Misconduct Affidavit. See IRM 13.1.23.5, Taxpayer Complaints About Representatives.

(5) For anything else, use the second request process to explain what we need to keep advocating. If the taxpayer’s response to the second request letter is not sufficient for TAS to advocate for the IRS to accept the original or amended return, close the case as no response per IRM 13.1.18.8.1.

Example: The taxpayer’s response is “I want to think it over.”

(6) In the second response letters referenced above, reiterate the importance of filing an accurate, valid return, and the possible consequences if they fail to do so. Taxpayers determined to have filed a frivolous claim for refund may be subject to a civil penalty of \$5,000 and may also face additional penalties for each subsequent frivolous return filed. The penalty is not based on tax liability, so a tax return with no tax due can still be subject to the penalty. If the taxpayers file a frivolous Married Filing Jointly tax return, the IRS can assess the penalty to each spouse individually. See IRM 20.1.10.12, IRC 6702 - Frivolous Tax Submissions, and IRM 25.25.10.11, Frivolous Return Penalties Overview.

IRM 13.1.24.6.4.7 Added new subsection, Whether to Issue OARs or TAOs.

(1) TAS will never send neutral language OARs in these cases. See IRM 13.1.19.5(8), OAR – Preparation. Sending an OAR when a taxpayer has failed to support credits claimed on their return or failed to correct an inappropriately claimed credit will subject the taxpayer to significant penalties. If you have any doubts about whether the taxpayer has justified their position, make a referral to ITAP.

(2) If the taxpayer agrees to file an amended return removing inappropriately claimed credits, monitor for IRS receipt of the amended return. Once the amended return is present on IDRS and CII or EUP research confirms the taxpayer removed the questionable credit, you can issue an Operations Assistance Request (OAR) to recommend the controlling function process the amended return to remove the credits. See IRM 13.1.19.5 (8).

Caution: Do not issue an OAR at all if the amended return **does not** remove the questionable credits or adds additional unsupported credits. Instead, send a second request letter and follow the process in IRM 13.1.24.6.4.6. IRM 13.1.24.6.4.6 (6) includes suggested second request letter language about possible penalties.

(3) If the taxpayer provides TAS documentation that supports the claiming of the credit under review, send an OAR to the controlling function recommending they allow the credit amount supported and release any freeze related to review of that credit. Similarly, if the

taxpayer files an amended return removing all questionable credits, send an OAR to the controlling function recommending they accept the amended return removing the credits. See IRM 13.1.19.5.

(4) If the taxpayer neither amends nor provides documentation to support the credits claimed, do not issue an OAR. even though the IRS might still have a freeze on the account or returns remain unprocessed. If you have any doubts about whether the taxpayer has adequately supported the credits claimed, make a referral to ITAP.

(5) If the function delays or refuses to take the recommended action because the function lacks procedures to do so, despite TAS providing taxpayer documentation that supports allowing the claim, the LTA will issue a TAO. See IRM 13.1.20, TAS TAO Process. If unsure whether the documentation supports issuing a TAO, make a referral to ITAP.