



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

13.1.24

OCTOBER 31, 2022

EFFECTIVE DATE

(10-31-2022)

PURPOSE

- (1) This transmits revised IRM 13.1.24, Taxpayer Advocate Service, Taxpayer Advocate Case Procedures, Advocating for Case Resolution. The IRM section applies advocacy techniques for different types of TAS cases and explains how to think with an advocacy focus to facilitate relief and resolve taxpayer issues.

MATERIAL CHANGES

- (1) IRM 13.1.24.2(2) Taxpayer Bill of Rights (TBOR) content updated based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
- (2) IRM 13.1.24.3.4 Updated to include link to Low Income Taxpayer Clinic locations for the United States now available on SERP. IPU 20U0925 issued 08-19-2020
- (3) IRM 13.1.24.4.1.1 Updated with taxpayer self-help resources and links.
- (4) IRM 13.1.24.4.1.3 Reworded for clarity.
- (5) IRM 13.1.24.4.1.4 Reorganized example for clarity.
- (6) IRM 13.1.24.4.1.5 Added language advising TAS employees to incorporate impacted TBOR into OAR language.
- (7) IRM 13.1.24.5 Added new paragraph (3) moved from IRM 13.1.24.5.3.1.4. Added new paragraph (4) moved from IRM 13.1.24.5.3.1.5.
- (8) IRM 13.1.24.5.1.1 Updated to remove discussion of TAS delegated authority to grant installment agreements.
- (9) IRM 13.1.24.5.1.3 Updated to remove the idea TAS would grant an installment agreement requiring a NFTL determination.
- (10) IRM 13.1.24.5.2 Added new paragraph (2) to discuss educating taxpayers eligible to request both CDP and CAP hearings.
- (11) IRM 13.1.24.5.2.1 Updated paragraph (5) to add citation to IRM 5.1.9.4.4.
- (12) IRM 13.1.24.5.3 Added citation to IRM 5.1.12.18 in paragraph (1). Added new paragraph (2) to explain how to identify modules assigned to PCAs. Moved the paragraph (1) of IRM 13.1.24.5.3.1 to this section as new paragraph (3).
- (13) IRM 13.1.24.5.3.1 Moved paragraph (1) to IRM 13.1.24.5.3. Deleted remaining paragraphs, causing all its subsections to be renumbered to IRM 13.1.24.5.3.2 through IRM 13.1.24.5.3.6.
- (14) IRM 13.1.24.5.3.1.2 Renumbered to IRM 13.1.24.5.3.2. Updated link to latest interim guidance memorandum.
- (15) IRM 13.1.24.5.3.1.6 Renumbered to IRM 13.1.24.5.3.5. Updated to add link to irs.gov page with 250 percent poverty guidelines.

- (16) IRM 13.1.24.5.3.6(2) Clarified TAS authority to issue taxpayer assistance orders to private collection agencies.
- (17) IRM 13.1.24.5.4(3) Updated to reflect IRM 5.1.24 now discusses CPEOs.
- (18) IRM 13.1.24.5.4.3(1) Updated phrase for Systemic Advocacy Management System (SAMS) description to remove Task Force 33726 and replace with PSP Failure. IPU 20U0925 issued 08-19-2020
- (19) IRM 13.1.24.5.5 Added new subsection, Advocating for Taxpayers in Retirement Asset Levy Cases, to provide guidance for TAS employees in advocating for taxpayers when the IRS has levied or warned the taxpayer of a possible future levy of the taxpayer's retirement account assets.
- (20) IRM 13.1.24.6.1.1.2(2) Updated to no longer imply requests for FTA penalty relief require a signed statement under penalties of perjury.
- (21) IRM 13.1.24.6.1.2.1 Updated to discuss penalty relief related to not receiving notices in a format readable by the taxpayer.
- (22) IRM 13.1.24.6.1.3.1(1)(a) Example updated to request the RCA determination and information input into RCA when the IRS disagrees with the TAS recommendation to abate a penalty.
- (23) IRM 13.1.24.6.1.7 Incorporated portion of TAS-13-0821-0004, Interim Guidance on Procedures for Assisting Taxpayers Who Need Documents in an Alternative Media Format, by adding a new section on penalty relief based on inaccessible notices.
- (24) IRM 13.1.24.6.2.3(4) Added new paragraph to clarify that Accounting will accept a TRDBV print for TAS direct deposit manual refunds into RAC/RAL accounts. IPU 20U0947 issued 08-26-2020
- (25) IRM 13.1.24.6.2.5 Clarified the meaning of clerical error.
- (26) IRM 13.1.24.6.2.5.1 Added additional examples of what is a clerical error and updated language in previous examples.
- (27) IRM 13.1.24.6.2.5.2 Added new subsection titled, "Examples of Errors in Judgment/Substantive Errors", to provide examples of what is not a clerical error.
- (28) IRM 13.1.24.6.3 Added new section and incorporated advocacy sections of TAS-13-1119-0011, Interim Guidance on advocating in cases involving Amish, Mennonite, religious or conscience-based objectors to obtaining an SSN and were denied Child Tax Credit. IPU 21U1267 issued 11-17-2021.
- (29) IRM 13.1.24.7.3 Added discussion of Virtual Service Delivery (VSD) teleconference appeal hearings to paragraph (8).
- (30) IRM 13.1.24.7.4 Clarified in paragraph 4 how TAS has an opportunity to advocate before Appeals issues its determination letter.
- (31) IRM 13.1.24.8 Updated to change all IRM 5 references throughout this section to references in the new IRM 5.19.25, Passport Program.
- (32) IRM 13.1.24.8.1 Updated to indicate the TAS IDRS Marker changed to TC 971 AC 517 on 1/1/2021.
- (33) IRM 13.1.24.8.2 Deleted paragraph (6) that explained when SB/SE began certifying seriously delinquent tax debt.
- (34) IRM 13.1.24.8.4(6) Updated email address.

- (35) IRM 13.1.24.8.6 Updated email address and removed reference to TAS seeking a direct contact with the Department of State.
- (36) IRM 13.1.24.8.8 Updated the disaster freeze exclusion information to align with IRM 5.19.25.5(1)(h).
- (37) IRM 13.1.24.10.2 Added new section related to TAS receipt of taxpayer payments/remittances.
- (38) IRM 13.1.24-1 Updated information to align with IRM 4.19.14.6.1 and IRM 4.19.14.1.
- (39) Exhibit 13.1.24-6 Added RAC/RAL to Acronyms exhibit. IPU 20U0947 issued 08-26-2020
- (40) Exhibit 13.1.24-7 Updated IRM references.
- (41) Various grammatical or editorial changes, and corrections to links made throughout.

EFFECT ON OTHER DOCUMENTS

IRM 13.1.24 dated February 4, 2020, is superseded. The following IRM Procedural Updates (IPUs), issued from August 19, 2020, through November 17, 2021 have been incorporated into this IRM: 20U0925, 20U0947, 21U1267.

AUDIENCE

Taxpayer Advocate Service employees.

Sean O'Reilly
Executive Director Case Advocacy,
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13.1.24

Advocating for Case Resolution

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13.1.24.1
(05-11-2018)
Program Scope and Objectives

- (1) *Purpose:* The section provides guidance and helps Taxpayer Advocate Service (TAS) employees use critical thinking skills to better advocate on behalf of taxpayers to facilitate relief and resolve taxpayer issues. It encourages TAS employees to consider the issues from the taxpayer's perspective and act with empathy as they work to resolve the taxpayer's case.
- (2) *Audience:* These procedures apply to TAS Case Advocacy employees working TAS cases.
- (3) *Policy Owner:* The Executive Director Case Advocacy, Intake and Technical Support (EDCA-ITS), who reports to the Deputy National Taxpayer Advocate (DNTA).
- (4) *Program Owner:* The Director, Technical Analysis and Guidance (TAG), who reports to the EDCA-ITS.

13.1.24.1.1
(05-11-2018)
Background

- (1) This IRM discusses ways to advocate on specific issues. It contains examples and suggested Operations Assistance Request (OAR) and Taxpayer Assistance Order (TAO) language to present the taxpayer's position and show the facts, supporting documentation, and procedures or tax law supporting that position. TAS employees can apply the tips, techniques, and principles to many other types of issues in resolving cases.
- (2) Effective TAS advocacy includes:
 - Knowing the facts – What exactly is the taxpayer asking TAS to do?
 - Using the facts – What do the Internal Revenue Code (IRC), IRMs, and procedures allow?
 - Delivering a clear message – Problem – Facts – Resolution.
 - Utilizing existing resources and procedures – OARs and TAOs.
 - Acting with empathy for the taxpayer by considering how the issue impacts the taxpayer's everyday life and why this issue is important to the taxpayer.

13.1.24.1.2
(05-11-2018)
Responsibilities

- (1) All TAS employees are responsible for following the procedures set forth in this IRM when determining how to best advocate for taxpayers to facilitate relief and resolve taxpayer issues and acting with empathy when advocating for the taxpayer.

13.1.24.1.3
(05-11-2018)
Authority

- (1) Pursuant to IRC 7803(c), the Office of the Taxpayer Advocate (known as the Taxpayer Advocate Service (TAS)) assists taxpayers to resolve problems with the IRS.

13.1.24.1.4
(02-04-2020)
Program Reports

- (1) Reports to monitor the quality of TAS cases are derived from the Taxpayer Advocate Management Information System (TAMIS) and the TAS Case Quality Review System (CQRS).
 - The CQRS generates monthly and fiscal year cumulative reports as well as specific queries for data analysis.
- (2) TAS conducts managerial reviews, as described in IRM 1.4.13.9, Managerial Reviews. Many of these reviews are designed to ensure TAS employees are taking actions with advocacy efforts to facilitate case resolution.

13.1.24.1.5
(05-11-2018)

Terms

- (1) Exhibit 13.1.24-5 contains a list of terms used throughout this IRM.

13.1.24.1.6
(05-11-2018)

Acronyms

- (1) Exhibit 13.1.24-6 contains a list of acronyms and their definitions used throughout this IRM.

13.1.24.1.7
(05-11-2018)

Related Resources

- (1) Exhibit 13.1.24-7 contains a list of relevant IRMs TAS case advocacy employees will use in conjunction with this IRM.

13.1.24.2
(10-31-2022)

**Advocacy Using the
Taxpayer Bill of Rights
(TBOR)**

- (1) The IRS adopted the *Taxpayer Bill of Rights (TBOR)* in June 2014.

The Taxpayer Bill of Rights:

1. The Right to Be Informed
2. The Right to Quality Service
3. The Right to Pay No More than the Correct Amount of Tax
4. The Right to Challenge the IRS's Position and Be Heard
5. The Right to Appeal an IRS Decision in an Independent Forum
6. The Right to Finality
7. The Right to Privacy
8. The Right to Confidentiality
9. The Right to Retain Representation
10. The Right to a Fair and Just Tax System

- (2) TBOR lists rights that already exist in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3) , Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (3) When appropriate, TAS should reference these rights when advocating through Operations Assistance Requests (OARs) and Taxpayer Assistance Orders (TAOs).
- (4) For more information on how these rights might apply to specific situations see What This Means for You at <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>.

13.1.24.3
(10-31-2022)
**Advocacy Through Case
Research on Internal
Systems**

- (1) TAS employees should secure all required documentation to support case resolution. The IRS Operating Division (OD)/Functional Unit or TAS may require this documentation to take an action (e.g., issuing manual refunds) per IRM or other procedural guidance.
- (2) TAS employees have tools that can provide information to assist with advocating on behalf of taxpayers. Excessive documentation requests to taxpayers can be unnecessarily burdensome, cause delays or cause taxpayers to not respond to our communications. Therefore, it is important to understand what aspects of the taxpayer's issues are in question, as well as what documents the IRS might already possess.

(3) Some of the internal tools available to TAS employees are:

- Integrated Data Retrieval System (IDRS) (e.g., ESTAB, RTVUE)
- Accurint
- Accounts Management System (AMS)
- Report Generation Software (RGS)
- Correspondence Examination Automation Support (CEAS)
- Westlaw
- Integrated Collection System (ICS)
- Automated Collection System (ACS)
- Remittance Transaction Research (RTR) System

Note: Many county and state records are available online, such as property assessments and deeds.

13.1.24.3.1 (10-31-2022) **Advocating Through Person to Person Contact**

- (1) Initial and subsequent contacts by phone allow for more opportunities to understand the taxpayer's situation, explain the importance of providing documentation, develop a rapport, and gain a commitment from the taxpayer to provide documents to advocate on their behalf. Phone contact will eliminate barriers in written communication (e.g., it allows TAS employees to ask follow-up questions, gather facts about the taxpayer's situation, or identify sources of taxpayer confusion).
- (2) To increase the likelihood of reaching a taxpayer by telephone, consider taking the following actions:
 - a. On the first contact, explain the importance of phone interaction and obtain any alternate numbers, such as cell phones, and ideal times of the day to call;
 - b. Make more than one attempt to contact the taxpayer by phone;
 - c. Call at various times of the day;
 - d. When leaving a message, indicate the best time to return the call and commit to being available at that time;
 - e. If the taxpayer gives you permission to leave a voice message, be specific in any requests for information; and
 - f. If the taxpayer leaves a voicemail message, attempt to call back before sending a letter.

13.1.24.3.2 (05-11-2018) **Advocating through Enhanced Communication and Rapport with the Taxpayer**

- (1) Once you reach the taxpayer, take advantage of the opportunity to display exceptional service through consistent and clear communications. In most cases, TAS can only discern the specific details of the taxpayer's situation by listening to the taxpayer and asking thoughtful and appropriate questions. Try to engage the taxpayer in a conversation. Discuss the documents previously provided and the type of additional records that will help support the taxpayer's particular circumstances. Maintain an open dialogue and communicate TAS's commitment to help resolve the issue. Be compassionate, and if the taxpayer grows frustrated with the discussion, gently remind the taxpayer that you understand their frustration, but you are trying to obtain the information necessary to address the tax issue and help the taxpayer.

Note: Refer to IRM 13.1.6, Casework Communications and IRM 13.1.5, Taxpayer Advocate Service (TAS) Confidentiality.

- (2) The following are some suggested actions that may help taxpayers provide the appropriate information you need to effectively advocate on their behalf:
- Agree on a due date by discussing the amount of time the taxpayer reasonably needs to obtain the information and why it is important to provide the documents by that date;
 - Commit to a time and place that the taxpayer will deliver the documents;
 - Emphasize the need for the taxpayer to contact you timely in case of any trouble in obtaining the documents;
 - Agree on a reasonable date and time to make subsequent contacts;
 - Ask the taxpayer to explain in their own words what you have agreed upon and gently correct or restate any misunderstandings or confusion;
 - Consider following up with a letter confirming the request for specific documents including the due date and time of the next contact; and
 - If you send a follow-up letter, provide a return envelope big enough to fit the volume of records mailed by the taxpayer.

13.1.24.3.3
(10-31-2022)
**Advocating Through
TAS's Internal Technical
Advisor Program (ITAP)**

- (1) ITAP Technical Advisors assist TAS employees in resolving technically or procedurally complex or sensitive issues using effective research, communication, coordination, and negotiating skills.
- (2) Upon request, ITAP advisors will review case files, case related documents, and technical research material to provide timely, thorough, and technically accurate advice about proper case development and resolution. This advice may be requested at any stage of case handling.
- (3) When appropriate, TAS employees should use the ITAP Technical Advisors to assist in developing clear, concise and well developed advocacy action plans, OARs or TAOs. See IRM 13.1.12, Internal Technical Advisor Program, for additional information.

13.1.24.3.4
(10-31-2022)
**Advocating Through
Low Income Taxpayer
Clinics**

- (1) Sometimes a taxpayer may be unable to effectively comprehend or complete the steps necessary to resolve the tax issues, especially when the issues are complex, nonstandard, or novel. A taxpayer may need to obtain a representative and file a Form 2848, Power of Attorney and Declaration of Representative. The representative (e.g., attorney, CPA, or enrolled agent) may be able to assist the taxpayer work more effectively with TAS.
- (2) Discuss with the taxpayer the availability of free or nominal fee representation from Low Income Taxpayer Clinics (LITCs) and suggest that they may be greatly helped by contacting a local LITC and seeking assistance. Reassure the taxpayer that TAS will continue to work with the taxpayer and the LITC representative on the case. Provide the taxpayer with the contact information for all of the LITCs listed for the taxpayer's geographic area in Pub 4134, Low Income Taxpayer Clinic List, by mailing the taxpayer a copy of that publication or directing the taxpayer to the LITC webpage at <https://www.irs.gov/advocate/low-income-taxpayer-clinics> if they has internet access.
- (3) If the taxpayer is interested in obtaining representation, agree on a reasonable date and time for the taxpayer to follow up with TAS about whether the taxpayer has obtained representation from an LITC.
- (4) Section 1402 of the Taxpayer First Act (Pub. L. No. 116-25 (2019)) amended IRC Section 7526(c) by adding that IRS employees may advise taxpayers of

the availability of, and eligibility requirements for receiving advice and assistance from one or more specific LITCs, and provide information regarding the location and contact information for such clinics. This change in law now allows employees to refer taxpayers to a particular LTC or practitioner affiliated with an LTC without violating the applicable standards of ethical conduct.

Note: IRS employees are no longer prohibited from directing a taxpayer to a particular LTC and should do so whenever it appears a taxpayer might be eligible and in need of LTC assistance.

- (5) If, during your conversations with the taxpayer, the taxpayer indicates they are interested in seeking LTC representation, but is reluctant to make the contact, you may set up a conference call for you and the taxpayer to contact the clinic together.
- (6) If the taxpayer names a particular clinic for you to contact, you may proceed with contacting the clinic. The purpose of your call is simply to assist the taxpayer in scheduling an appointment to meet with the clinic.

Note: If you are contacting a clinic, you must document that contact in your case.

13.1.24.4 (10-31-2022) Introduction to Examination Issues

- (1) Examination's mission is to support the Service by conducting timely and quality examinations of taxpayers while encouraging compliance with the tax laws. Examinations can be done in person, through correspondence, and on the phone.
- (2) TAS's role is two-fold, to ensure examinations were conducted in accordance with established laws, policy and procedures, and to actively advocate for the taxpayer when errors or oversights were made.

13.1.24.4.1 (10-31-2022) Advocating for Taxpayers Claiming the Earned Income Credit (EITC)

- (1) The EITC is a refundable credit available to individual taxpayers who have one or more qualifying children or any individual who does not have a qualifying child and meets the following conditions set forth in IRC 32 and IRC 152 :
 - a. Any child for whom the credit is claimed must meet basic eligibility tests for a qualifying child as described in IRC 32(c) (including the Relationship Test, Residency Test, and Age Test);
 - b. The taxpayer must have earned income with an adjusted gross income below a certain dollar amount, based on inflation adjustments for the taxable year in which the credit is claimed;
 - c. The taxpayer cannot have investment income that exceeds a certain dollar amount, based on inflation adjustments for the taxable year in which the credit is claimed;
 - d. The taxpayer cannot take an exclusion under IRC 911 (relating to citizens or residents of the United States living abroad) for foreign earned income or the housing cost amount;
 - e. The taxpayer must be a U.S. citizen or resident alien with a valid Social Security number. Qualifying child must live in the same home as the taxpayer in the U.S. for more than half the year and have a valid Social Security number.

Note: Pursuant to the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), the taxpayer and qualifying child must have a Social

13.1 Taxpayer Advocate Case Procedures

Security number valid for employment issued on or before the due date for filing the return for the taxable year in the case of any return filed after Dec. 18, 2015.

- f. The taxpayer cannot claim married filing separate filing status (MFS); and

Exception: For tax year 2021, certain MFS taxpayers may still be eligible; See IRM 4.19.14.2.7.3, Earned Income Credit (EITC).

- g. The taxable year does not fall under a disallowance period (the 2-year ban where there is a final determination that the taxpayer's disallowed EITC claim was due to reckless or intentional disregard of the tax law and regulations or the 10-year ban where there has been a final determination that the disallowed EITC claim was due to fraud) as described in IRC 32(k)(1).

- (2) If you determine that the taxpayer is subject to the 2-year ban, investigate the circumstances behind the reckless or intentional disregard determination. IRM 4.19.14.7.1, 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET), lists various indicators of reckless or intentional disregard. Some of these indicators standing alone may be insufficient evidence to warrant imposition of the ban such as: lack of acceptable records or that the taxpayer agreed with the assessment and denial of EITC in the previous tax year. If the basis for the 2 year ban is unsupported, advocate for the removal of the ban.

13.1.24.4.1.1
(10-31-2022)

Challenges for Low Income Taxpayers Claiming EITC

- (1) The EITC is a refundable credit administered by the IRS and designed to assist working taxpayers in lower income brackets.
- (2) EITC cases can present unique challenges due to the complexity of the IRC provisions and the varying circumstances of qualifying taxpayers. EITC taxpayers must frequently overcome numerous obstacles to obtain the credit, including limited education, communication and language barriers, difficulty documenting non-traditional family relationships or housing arrangements, and understanding the complexity of the EITC tax law.
- (3) Low-income taxpayers may not have bank accounts and conduct financial transactions using cash, limiting their ability to document expenditures. For this reason, low-income, self-employed taxpayers may have difficulty substantiating both income and support. Receiving IRS correspondence listing "acceptable" forms of traditional documentation can be daunting to taxpayers who know they cannot obtain the kinds of documents appearing on the IRS list. However, these taxpayers can use alternative documentation to prove both the Relationship Test and the Residency Test. See Exhibit 13.1.24-1, List of Traditional and Alternative Documents for Qualifying Child (also see IRM 4.19.14.6.5, EITC-Personal Exemptions and Dependents, listing the traditional documentation to substantiate a qualifying child, this list is not all-inclusive).
- (4) The IRS implemented interactive calculators and online self-help resources to assist taxpayers in determining eligibility for EITC. Self-help resources include:
 - *EITC Central* (<http://www.eitc.irs.gov>): This centralized platform provides information relative to the EITC, Child Tax Credit/Additional Child Tax Credit/Credit for Other Dependents, American Opportunity Tax Credit and Head of Household filing status.

- *EITC Assistant* (<http://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant>): This automated tool assists taxpayer with determining EITC eligibility and amount.
- *Who Qualifies for the Earned Income Tax Credit (EITC) Page* (<http://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/who-qualifies-for-the-earned-income-tax-credit-eitc>): This resource provides taxpayers with information pertaining to basic qualifying rules, special qualifying rules and more.

Reminder: Many low-income taxpayers do not have access to computers and may not be aware of or able to use these self-help resources.

13.1.24.4.1.2
(10-31-2022)

Initial Case Action for Taxpayers Claiming EITC

- (1) Research the taxpayer's account using IDRS command codes (cc) (i.e., RTVUE, INOLE, and DDBKD) to identify certain information about the qualifying child (e.g., name, date of birth, citizenship code, birth parent's name, custodial data, etc.). See IRM 4.19.13.4, Researching Cases, for a list of other IDRS command codes and research tools.
- (2) Research the taxpayer's account using IDRS cc TXMOD and request the following to obtain the examination history and explanation for denying the EITC:
 - a. In Field Examination cases (TC 420 with EGC 1XXX or 2XXX), request the administrative file using cc ESTAB (definer DV) or, if unavailable, secure the file from the Campus Examination Automated System (CEAS)-Field application; or
 - b. In campus correspondence audits (TC 420 with EGC 5XXX), request the CEAS file or the administrative file using cc ESTABDV if the CEAS file is not available.
- (3) Review the available documentation to identify what the taxpayer previously submitted.
- (4) Determine if the IRS properly considered the taxpayer's documents.
- (5) If warranted, determine the type of additional documents (traditional vs. alternative) required to establish EITC eligibility.

13.1.24.4.1.3
(10-31-2022)

Advocacy through Securing Taxpayer Documentation to Prove EITC Eligibility

- (1) Taxpayers generally need to only disclose personal information to the extent that it is relevant and necessary to taxpayer's case. If the taxpayer is concerned that the documents that prove EITC eligibility may indicate the taxpayer is in violation of a state or local law or other rules, explain that the circumstances under which information can be shared with other agencies is significantly limited by IRC 6103.

Example: The taxpayer used a relative's address to enroll the child in a better school district.

- (2) Sharing or providing traditional documentation may be challenging for certain segments of the taxpayer public when they have been or are victims of domestic violence, abuse, poverty, and other situations that hinder their ability to provide specific information. Many such taxpayers have had to flee their homes without any records and seek housing in temporary shelter. It may be

virtually impossible for them to prove EITC eligibility requirements through traditional documentation, and we must work with the taxpayers creatively to construct the best case possible.

- (3) Since Exam generally does not accept oral testimony from the taxpayer to prove that the child meets Relationship or Residency Tests, TAS employees must assist taxpayers in securing records not previously submitted to support EITC eligibility. Obtaining vital records, such as birth certificates to satisfy the Relationship Test, may be difficult for taxpayers in non-traditional relationships. However, these taxpayers can use alternative documentation to prove both the Relationship Test and the Residency Test. See Exhibit 13.1.24-1, Alternative Documents for Qualifying Child (also see IRM 4.19.14.6.5, EITC-Personal Exemptions and Dependents, listing the traditional documentation to substantiate a qualifying child, this list is not all-inclusive).
- (4) Help the taxpayer identify acceptable documentation and:
 - a. Obtain information from the taxpayer about the qualifying child, such as relationship, age, and residency. If the child is not the taxpayer's biological child, obtain a history of how the child became their qualifying child;
 - b. Clearly explain the reason why the documents are needed (e.g., "We need to demonstrate to the IRS that your child lived with you for more than half the year.");
 - c. Confirm the type of records the taxpayer possesses that could corroborate the information about the child;
 - d. Offer suggestions on alternative documentation when traditional records are not available (See Exhibit 13.1.24-1, Alternative Documents for Qualifying Child); and
 - e. Confirm with the taxpayer that the documents cover the tax year(s) in question.
- (5) A certain document alone may not support relationship, residency, or support, but in combination with other records may assist in advocating for the taxpayer. See Exhibit 13.1.24-1 for examples of various types of documentation and Exhibit 13.1.24-2, Case Scenarios Identifying Alternative Documentation.

Reminder: When necessary, consult a Revenue Agent Technical Advisor (RATA) to assist with identifying acceptable alternative documents.

- (6) In any case, listen to the taxpayer and attempt to identify any challenges the taxpayer may encounter with obtaining documentation. Explain in plain language what specific eligibility requirement is at issue and suggest some ways the taxpayer can support their position. Listen for hesitation and try to determine if the hesitation is because the taxpayer doesn't understand the requirement, is concerned about the difficulty of getting a particular document, or because they may not be eligible for the credit. To ensure that the taxpayer understands the requirements, ask the taxpayer to repeat back to you what they have agreed to provide.

13.1.24.4.1.4
(10-31-2022)
**Securing Documentation
for Self-Employed EITC
Taxpayers**

- (1) Self-employed low-income taxpayers may not have bank accounts and may not use computer software programs or prepare invoices or contracts for services performed. However, these earnings are still taxable and count towards earned income which should be included for the taxpayer to prove eligibility for the EITC.

- (2) If the taxpayer is self-employed and proof of earnings is an issue, ask relevant questions about how the taxpayer receives payment for work performed and how the taxpayer keeps track of those payments.
- (3) If the taxpayer has not been keeping receipts of expenditures, they may be able to obtain printouts of purchases from a particular supplier to substantiate business expenses. If the taxpayer is unable to obtain printouts of purchases, ask the taxpayer if they are able to secure third party affidavits from regular customers to help establish an income pattern.

Example: The taxpayer earns a living and provides support by providing in-home childcare for their cousin's children and the children of their cousin's neighbor. The taxpayer is not licensed and does not have a bank account, and the fees charged for childcare services are based only on informal, verbal agreements. The taxpayer's cousin pays in cash, and the neighbor pays by check. The taxpayer takes the checks to the neighbor's bank and cashes them. The taxpayer purchases groceries and pays utility bills using cash or money orders. The taxpayer occasionally purchases snacks and groceries for the children in their care but has not kept receipts for those purchases. The taxpayer lives in a home that belonged to their deceased grandmother, and pays only utilities, as their father pays the property taxes. The IRS is questioning their self-employment income, and if the taxpayer provided more than half the support of their three dependents. The Case Advocate interviews the taxpayer and asks relevant questions to help identify non-traditional documentation the taxpayer may be able to provide to substantiate the earned income. The Case Advocate requests:

- Printout from utility companies of payments made for the tax year in question. Even if the utilities are in the taxpayer's father's name, if the taxpayer can provide a collection of money order receipts that match the payment amounts on the printout, those receipts can establish the payments were made by the taxpayer;
- Signed statement from the neighbor confirming verbal agreement on weekly rates, and the date taxpayer began providing care;
- Copies of school registration records for the cousin's children, showing that the taxpayer is named as an Emergency Contact and as the after-school caregiver for purposes of registering children (who are not the taxpayer's dependents) for bus transportation to a bus stop near the taxpayer's home; and
- Copies of calendar taxpayer uses to record dates and amounts of payments, so they can total the amounts paid by both their cousin and the neighbor over the course of a year.

- (4) When necessary, consult a RATA to assist with identifying acceptable alternative documents.

13.1.24.4.1.5
(10-31-2022)
**Advocacy Through
OARs and TAOs in EITC
Situations**

- (1) Once you receive all the taxpayer's information, prepare an OAR to support TAS's position to allow the EITC. Make your request specific and direct, include the supporting documentation as an attachment, and explain the purpose of any alternative documents.
- (2) Advocating for the taxpayer includes presenting the taxpayer's position, supported by facts and the law, to the Operating Division (OD)/Function so they can arrive at the correct determination. Presenting nothing more than a

request for the OD/Function to make a determination does not advocate for the taxpayer's position or communicate the facts of the case. Refer to IRM 13.1.19, Advocating With Operations Assistance Requests (OARs), for more information on creating well-developed OARs.

- (3) Document the OAR using the following points:
 - a. State the action TAS is requesting (e.g., allow the EITC for the qualifying child);
 - b. Provide the name and relationship of the qualifying child;
 - c. List the documents in bullet or numerical format (avoid listing documents in narrative form);
 - d. State how the taxpayer's records prove EITC eligibility (e.g., "The letter from the school verifies Johnny resided with the taxpayer during the 2009 and 2010 school years."). Taxpayers often need school records from two school years to establish residency for one tax year, since school years overlap tax years; and
 - e. Incorporate TBOR by presenting TAS's position and identifying the impacted rights.
- (4) If the OD/Function denies the EITC for lack of adequate documentation substantiating a qualifying child, and you believe the documentation established the taxpayer's eligibility, elevate the case to your manager or the LTA for consideration of a TAO, see IRM 13.1.20, TAS Taxpayer Assistance Order (TAO) Process
- (5) Taxpayers may be eligible for EITC within the provisions of IRC 32, even if they don't have a qualifying child. If the taxpayer is not eligible to claim EITC with a qualifying child, determine if the taxpayer qualifies for EITC as an individual without a qualifying child, and request the OD/Function adjust the account and allow the EITC amount for an individual without a qualifying child.

13.1.24.4.1.6
(10-31-2022)

**Other Ways to Help
Taxpayers Overcome
EITC Challenges**

- (1) Normally, the IRS conducts EITC audits by correspondence. TAS should help taxpayers seek other alternatives if the regular correspondence exam process for EITC audits present challenges that cannot be overcome through correspondence exam. Other options include helping the taxpayer get a face-to-face examination or if there is a dispute after the examination, educating the taxpayer on their appeal rights.
- (2) IRS will consider a written request for Examination Area Office interview. IRM 4.13.3.5.1(2), Transfers to an Area Office, provides guidance when taxpayers request a face-to-face interview. After you discuss with the taxpayer the type of alternative documents that will prove EITC eligibility, consider whether it might be helpful if the taxpayer could meet face-to-face with the IRS instead of having the audit conducted through correspondence. Advocating to get the taxpayer a face-to-face interview is an alternative to the correspondence examination process and may help the taxpayer overcome the challenges in proving EITC eligibility.
- (3) Encourage the taxpayer to cooperate fully during the examination process. If an agreement cannot be reached, educate the taxpayer on their appeal rights and, as appropriate, assist the taxpayer to assure the case is forwarded to Appeals. Appeals uses various conference methods to resolve tax disputes; most conferences are held by telephone or correspondence. The Appeals

technical employee has discretion on the conference method in accordance with guidance found in IRM 8.6.1, Conference and Settlement Practices, Conference and Issue Resolution. Appeals can consider hazards of litigation, including the credibility of the taxpayer as a witness if the case were to go to court. For more information on assisting taxpayers in getting their EITC case to Appeals, see IRM 13.1.24.7, Introduction to Appeals Issues.

13.1.24.5
(10-31-2022)
**Introduction to
Collection Issues**

- (1) Collection's mission is to collect delinquent taxes and secure delinquent tax returns through the fair and equitable application of the tax laws, including the use of enforcement tools when appropriate, provide education to customers to enable future compliance, and thereby protect and promote public confidence in the American tax system.
- (2) TAS's role is to ensure Collection acted in accordance with established laws, IRMs and procedures, to advocate for the taxpayer when errors or oversights were made, and protect the taxpayer's rights as enumerated in the Taxpayer Bill of Rights (TBOR). See IRM 13.1.24.2, Advocacy Using the Taxpayer Bill of Rights (TBOR), for additional TBOR information.
- (3) **Analyze the Balance Due.** Research the cause of the underlying balance and summarize your findings, including the Collection Statute Expiration Date (CSED), with the taxpayer. Discuss whether the taxpayer's facts and circumstances present opportunities to help the taxpayer reduce or eliminate the underlying liability. For example:
 - Did the taxpayer make payments not credited or misapplied to the taxpayer's account? If so, does the taxpayer have information to allow TAS to trace the *missing payments*?
 - If the liability is from a default automated substitute for return (ASFR) or substitute for return (SFR) assessment by the IRS, would the taxpayer be able to reduce the liability by filing a return (*ASFR* or *SFR* reconsideration)?
 - If the liability is from an audit assessment, does the taxpayer have new information that would reduce the liability and support a request for *audit reconsideration* or *doubt as to liability OIC*?
 - If there are indicators of *ID theft* (but the taxpayer has not filed an ID theft affidavit), did the taxpayer file the tax return creating the liability? If not (i.e., an identity thief filed the return), is filing an ID theft affidavit appropriate?
 - If the liability includes penalties, do the taxpayer's facts and circumstances justify full or partial *abatement* under reasonable cause? If not, is the taxpayer eligible for First Time Abate (FTA)?
 - If any of the modules with liabilities have adjustments to the CSED, or the module has multiple assessments, verify the *CSED computation*. Consult a Revenue Officer Technical Advisor (ROTA) if necessary.
- (4) **Educate the taxpayer** about all collection alternatives, including streamlined installment agreement (IA), non-streamlined IA, partial payment IA (PPIA), offers in compromise (OIC), and hardship currently not collectible (CNC).
- (5) Explain the different types of OICs to the taxpayer:
 - Doubt as to Collectibility;
 - Doubt as to Liability;
 - Effective Tax Administration (ETA) economic hardship; and

- ETA equity and public policy.

- (6) Be sure the taxpayer understands the advantages and disadvantages of an OIC or PPIA over hardship CNC. An OIC or PPIA leads to a final resolution of the liability, while hardship CNC is a temporary halt on collection that could end if the taxpayer's circumstances change. However, applying for an OIC or any type of IA suspends the running of the CSED while the IRS evaluates the proposal, making these less attractive if CSEDs will expire shortly. Consult a ROTA if you need assistance analyzing the advantages and disadvantages of each option.
- (7) Once the taxpayer has decided on an option, gather the necessary documentation to advocate for the taxpayer.
- (8) Consider a referral to a ROTA if you need assistance.

13.1.24.5.1
(10-31-2022)

Advocating to Defer Filing or the Non-filing of Notices of Federal Tax Lien in Certain Situations

- (1) While TAS employees do not make the Notice of Federal Tax Lien (NFTL) determination on behalf of the IRS, TAS employees should advocate to defer filing or the non-filing of a NFTL when it is appropriate based on the individual taxpayer's facts and circumstances.
- (2) IRC 6323(j)(1), provides the IRS a discretionary mechanism for withdrawing the NFTL when one of the listed conditions are met. See IRM 5.12.9.3, Conditions for NFTL Withdrawal.
- (3) If the IRS filed a NFTL even though IRS administrative procedures did not require a NFTL determination, advocate for a NFTL withdrawal using the criteria that best fits the facts and circumstances.

13.1.24.5.1.1
(10-31-2022)

When Installment Agreements Require NFTL Determinations

- (1) IRS employees make NFTL filing determination decisions in accordance with IRM instructions, including cases where installment agreements may be appropriate. IRM 5.19.1.6.4, Installment Agreement (IAs), (starting in paragraph (8)), and IRM 5.19.4.5.1, Notice of Federal Tax Lien Filing Determinations, describes the situations when the IRS makes an NFTL determination when it grants installment agreements.
- (2) For field collection installment agreements, see IRM 5.14.1.4.3, Notice of Federal Tax Lien and Installment Agreements.

13.1.24.5.1.2
(10-31-2022)

Determining When to Advocate to Defer Filing or Non-Filing of a NFTL

- (1) In situations where the taxpayer's individual facts and circumstances meet the criteria in IRM 5.12.2.4, Determination Criteria for Do-Not-File or Deferring the NFTL Filing, or one of the IRC 6323(j)(1) criteria for a NFTL withdrawal, TAS employees should advocate against the filing or a deferral of filing of a NFTL.
- (2) When making the decision to request that the Operating Division not file or defer filing a NFTL, you must carefully evaluate all of the facts and circumstances including the following:
 - Compliance History. Has the taxpayer had prior balances due? If so, how recently? Is the taxpayer current with all estimated tax payments or Federal Tax Deposits? Would the NFTL filing jeopardize the taxpayer's ability to comply with the tax laws in the future? The fact that a taxpayer has never had a delinquent tax account before or has not had a delinquent account in recent years should support a determination to defer filing a NFTL.

- Reasons for Noncompliance. Is the taxpayer's noncompliance attributable to a one-time unusual or catastrophic event, such as a heart attack, a natural disaster (e.g., an earthquake, hurricane, tornado, or flood), or a loss of job? Are there extenuating circumstances that may contribute to the noncompliance? Identify these circumstances to the IRS and advocate that the NFTL filing be deferred until the taxpayer is better able to address their tax debt.
- (3) The following situations are examples where TAS employees should advocate to defer filing the NFTL:
- Extenuating circumstances. After a stroke, the taxpayer fell behind in estimated tax payments, or after the loss of a job, the taxpayer incurred a ten percent penalty for early withdrawal from an IRA. In such situations, where the taxpayer has been historically compliant except for a one-time catastrophic event, filing of a NFTL will harm the taxpayer's ability to repay their tax liability and remain compliant in the future.
 - Undue Harm to the Taxpayer that Hampers Collection. Consider whether the filing of the NFTL will harm the taxpayer's financial viability, thus reducing collection potential, i.e., the filing prevents the taxpayer from obtaining or retaining employment or obtaining the financing necessary for a business taxpayer to remain in business. If the filing of the NFTL unduly harms the taxpayer and reduces collection potential, this factor should support a determination to defer filing a NFTL.
 - Payment before the Collection Statute Expiration Date (CSED). Will the proposed IA fully pay the taxpayer's balances owed prior to the expiration of the CSED? If the taxpayer can pay in installments before the CSED, this is one factor that supports advocating to defer filing a NFTL.
 - Existence and Value of the Assets. Are there assets, including real and personal property, to which the NFTL can attach? Is the taxpayer likely to acquire assets in the future? If so, determine the net equity in the assets. Research IRS databases and available third-party information concerning the taxpayer's assets, income, and the value of the equity in the assets. Where appropriate, request and review taxpayer financial information, including Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, or Form 433-B, Collection Information Statement for Businesses. If you have access, search assets on Accurant, a web-based asset locator system. Seek Revenue Officer Technical Advisor (ROTA) assistance if necessary to assist you with an equity evaluation and recommendation. If the NFTL will not attach to property with significant value, or if the taxpayer needs the equity to cover a necessary expense, this factor should support a determination to defer filing a NFTL.
- (4) In analyzing your case, consider all the factors and determine whether the IRS NFTL filing is appropriate. Remember that this is not a complete list of factors, and that you should consider other relevant factors depending on the facts of your case.
- (5) If at any time you need assistance in determining whether it is appropriate to request that IRS defer or not file the NFTL or whether the taxpayer owns assets, contact a ROTA to discuss the individual facts and circumstances of your case. ROTAs have access to the asset locator services on Accurant.

Example: You advocate for Taxpayer A, who owes \$15,000 in income tax, penalty, and interest for 2018. The compliance history shows that Taxpayer A has

been compliant in recent years and any past delinquencies were promptly resolved. A review of the taxpayer's Collection Information Statement (CIS) shows that they can afford \$150 per month. It will take the taxpayer over 72 months to pay the full balance, but the debt will be paid prior to the expiration of the CSED. The CIS also shows that Taxpayer A has no assets except their home, which has a fair market value of \$350,000 and a first mortgage of \$347,000. Thus, there is no equity in the home. The taxpayer has requested a non-streamlined IA to fully pay the tax debt; although Taxpayer A owes less than \$25,000, the liability will not be paid within 72 months. In general, you should advocate to defer filing of the NFTL as this taxpayer has been compliant in the past, the account should be paid prior to the expiration of the CSED, and the economic or irreparable harm to the taxpayer would outweigh the benefit to the government because the taxpayer has no equity to which the lien could attach.

Example: The facts are the same as in the example above, but the taxpayer has equity of \$200,000 in the house, i.e., sufficient equity against which to borrow. However, the taxpayer does not want to liquidate or borrow against the house because the taxpayer is nearing retirement and has requested a non-streamlined IA to fully pay the liability; although Taxpayer B owes less than \$25,000, the agreement will not be paid within 72 months. In these circumstances, the government's interests may outweigh the harm to the taxpayer who refuses to borrow against the property to pay the tax liability. Thus, you conclude based upon an evaluation of all of the facts and circumstances that you cannot recommend that the IRS defer filing a NFTL. You will prepare an OAR requesting that the OD make the NFTL determination. The taxpayer will have a right to a CDP hearing if the IRS files the NFTL.

Example: The facts are the same as in example 2, but the taxpayer has a special-needs child and must utilize the equity in the house to provide for ongoing medical and other care for the child. In these circumstances, you should advocate that the IRS defer filing a NFTL.

Example: Taxpayer C, who is self-employed, owns an insurance business with an unpaid combined income and employment tax liability of \$62,500 for tax years 2018 and 2019. The taxpayer requested TAS assistance, stating that they just received a notice and demand for payment of the outstanding tax liabilities. Information shows a substantial decline in gross receipts and an increase in unpaid accounts receivable. The taxpayer requested the IRS accept an offer in compromise (OIC). If the IRS files the NFTL, the taxpayer will lose their employment because the state insurance licensing board requires insurance agents to have a clean credit history. You determine the OIC is acceptable according to the IRM guidelines and it appears that the taxpayer will be able to fund the offer. You also determine that the NFTL will not be in the best interests of the taxpayer and the United States because it will hamper collection and future tax compliance if the taxpayer cannot retain their employment. In these circumstances, you should advocate that the IRS accept the OIC and that the IRS defer filing a NFTL.

13.1.24.5.1.3
(10-31-2022)

Advocacy Through OARs and TAOs in NFTL Situations

- (1) If after considering all facts and circumstances of your case, you have determined that TAS needs to advocate for the non-filing or defer filing of a NFTL, forward the OAR to the Operating Division (OD) requesting acceptance of the Installment Agreement (IA), OIC, or Currently Not Collectible (CNC) and to defer filing a NFTL. In all cases, the OAR should request an OD manager's review of any determination denying TAS's recommendation to defer filing the NFTL.
- (2) Include language in the OAR to support your recommendation, clarify the issue, and explain how the non-filing or deferral protects the taxpayer's right to privacy and confidentiality. Example: Due to the above taxpayer's financial situation, it is TAS's position that [insert - the account be placed into CNC status / the OIC be accepted / the IA be accepted]. Due to the amount of the liability, a NFTL determination is required. TAS recommends deferring the filing of the NFTL in support of the taxpayer's right to privacy based upon the following factors [explain how the taxpayer meets the criteria for deferred filing of the NFTL].
- (3) If the OD does not agree to defer filing the NFTL, evaluate the reasons given in support of filing the NFTL. If you still disagree, elevate the case to the LTA to consider issuing a TAO. If the LTA decides to issue a TAO, follow the procedures in IRM 13.1.20, TAS Taxpayer Assistance Order (TAO) Process. The TAO should order the IRS to defer filing the NFTL and must explain why, based on the law and the facts of the case, the filing is not appropriate. When preparing the TAO, consider language in the following example.

Example: "Based on a thorough review of the taxpayer's information (includes both IRS and available third party information), the taxpayer meets IRS criteria for not filing or defer filing a NFTL per IRM 5.12.2.4, Determination Criteria for Do-Not-File or Deferring the NFTL Filing. Therefore, the NFTL filing should be deferred so long as the taxpayer remains compliant."

- (4) TAS should help taxpayers seek other alternatives if the regular process for resolving NFTL issues does not meet the taxpayer's needs.

13.1.24.5.2
(10-31-2022)

Collection Appeals Program (CAP)

- (1) The Collection Appeals Program (CAP) is available for many collection actions, unlike Collection Due Process (CDP) which is limited to proposed levy actions, the filing of NFTLs and post-levy hearings in limited circumstances described in IRM 13.1.24.7.2 (2), Collection Due Process (CDP) Appeal Cases, IRM 8.24.1.2, Distinctions Between CAP and Collection Due Process (CDP) Hearings, and IRM 5.1.9.4, Collection Appeals Program (CAP), describes all the collection actions that trigger CAP rights. CAP rights are an important component of the TBOR right to appeal an IRS decision in an independent forum.
- (2) If the taxpayer is eligible to file for both types of hearings (CDP and CAP), educate the taxpayer about the differences, See IRM 5.1.9.4(5).
- (3) CAP may be available before a collection action takes place and after the action. Taxpayers who request a CAP hearing may also be entitled to a CDP hearing.
- (4) There are circumstances which do not trigger CDP rights, but do allow for a CAP appeal:

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- a. An IRS employee informs the taxpayer that a NFTL is going to be filed.
 - b. A NFTL is filed and there is an application for a withdrawal of the NFTL, a lien release, a discharge of property from the lien, a subordination of the lien's priority to another creditor, or a certificate of non-attachment and the request is denied. The denial must be in writing and include a statement of appeal rights.
 - (5) Appeals has a goal to resolve CAP appeals within 5 business days from the date Appeals assigns the case to the hearing officer. See IRM 8.24.1.2(4), (5), and (6) for details.
 - (6) See IRM 8.24.1.3.3, Exclusions from CAP, concerning what types of cases are excluded from CAP.
 - (7) The CSED is not suspended while a CAP hearing is pending unless the CAP hearing is with respect to the rejection or termination of an installment agreement (IA). The time the statute is suspended during the appeal of a rejection or termination of an IA will be added to the CSED. Verify any CSED suspension computed by the IRS is accurate to protect the taxpayer's right to finality.
 - (8) When a taxpayer files an appeal under CAP, levy action is suspended where required by law. Generally, this is during the 30-day period following the rejection of an IA request or termination of an IA, plus the time for the appeal.
 - (9) When a NFTL filing is the subject of the CAP appeal, additional lien activity is generally withheld unless collection is considered to be "at risk." If levy or seizure actions are the basis for the appeal, additional levy action will be withheld against the tax periods covered by the CAP appeal unless collection is found to be "at risk."
 - (10) Collection's definition of "at risk" would apply to a taxpayer continuing to pyramid additional liabilities, having unpaid Federal Tax Deposits (FTDs), unfiled returns, or when a taxpayer is attempting to dissipate assets.
 - (11) In these "at risk" cases, the revenue officer's (RO) group manager must approve additional lien or levy actions and notify Appeals prior to authorizing the enforcement action.
-
- (1) The first step in a CAP appeal is for the taxpayer to contact the collection employee's manager. This conference should take place within 2 business days. A verbal warning of a lien or levy action can trigger the right to a CAP appeal.
 - (2) If the taxpayer is not able to resolve the matter after discussing it with the manager, the taxpayer completes Form 9423, Collection Appeal Request. To avoid resumption of collection activity, IRS must receive the completed Form 9423 (or Form 9423 must be postmarked) within three business days of the conference with the manager. This deadline relates to resumption of collection activity, not a deadline for the right to a CAP appeal. Advocate for the IRS to honor "late" CAP requests.
 - (3) Collection will forward the appeal to the appropriate Appeals office. Refer to IRM 5.19.8.4.16.4, How Does the Taxpayer Appeal an IRS Action.
 - (4) The Appeals decision is binding on both the taxpayer and the IRS. However, in TAS cases that are in Appeals jurisdiction, Appeals has agreed to provide TAS

13.1.24.5.2.1 (10-31-2022) **How TAS Can Advocate for the Taxpayer to File a Timely CAP**

the proposed determination in advance, and give TAS five workdays to elevate any concerns. See the Service Level Agreement (SLA) between Appeals and TAS. Collection must comply with Appeals' decision. If the taxpayer defaults with any agreement made by Appeals, Collection is no longer bound by the terms of the agreement.

- (5) The taxpayer may not appeal the same issue in which a CAP appeal request has already been submitted and a determination has been made by Appeals. Form 9423 instructions also inform the taxpayer that providing false information, failing to provide all pertinent information, or an indication of fraud will void Appeals' decision. See IRM 5.1.9.4.4, CAP Process, for additional information.

13.1.24.5.3 (10-31-2022) **Advocating for Taxpayers Whose Module(s) the IRS Assigned to a Private Collection Agency**

- (1) The purpose of this section is to provide TAS employees guidance on advocating for taxpayers whose module(s) the IRS assigned to a Private Collection Agency (PCA). For an overview of the Private Debt Collection (PDC) program, including information about the types of modules eligible for and excluded from PCA assignment, see IRM 5.19.1.5.21, Private Debt Collection, and IRM 5.1.12.18, Private Debt Collection Accounts. The IRS began assigning taxpayer modules to PCAs (and notifying affected taxpayers with Notice CP 40) in April 2017.
- (2) IRM 5.19.1.5.21.2.1, Private Debt Collection Account Identification, explains how to identify taxpayers with tax modules assigned to a PCA.
- (3) Taxpayers assigned to PCAs may lack representation and be unaware that PCAs cannot issue liens or levies. They may also be unaware of the options and alternatives available beyond those offered by the PCA: full payment, installment agreement (IA) for the shorter of seven years or the CSED, or one voluntary payment. See IRM 13.1.24.5, Introduction to Collection Issues, for how to take a global look at the taxpayer's liability and explore advocacy opportunities with the taxpayer.

13.1.24.5.3.1 (10-31-2022) **Determine If the PCA Contact is Legitimate**

- (1) For every PDC inquiry, verify the collection contact received by the taxpayer is not a scam. Research IDRS to determine (based on the presence of a TC 971 AC 054) whether the IRS assigned any taxpayer modules to a PCA. The associated PDC ID number found on ENMOD or IMFOLE identifies the PCA (see IRM 5.19.1.5.21.2.1, Private Debt Collection Account Identification). If the IRS assigns the taxpayer's module to a PCA and the taxpayer wants to work with the PCA (i.e., does not want TAS to open a case):
 - Explain the two-way authentication system worked out by the IRS and the PCA. A ten digit Taxpayer Authentication Number (TAN) appears on both the notice CP 40 and the letter from the PCA. This allows the PCA to verify the taxpayer's identity and the taxpayer to verify the legitimacy of the PCA.
 - The taxpayer can ask the PCA to mail another copy of the letter with the TAN if needed.
 - If the taxpayer does not have the TAN, the PCA may ask the taxpayer to agree to authenticate using the taxpayer's Taxpayer Identification number (TIN) instead of the TAN. While the contract between the PCA and the IRS allows this, suggest the taxpayer consider carefully before

authenticating using a TIN. Authenticating by providing the PCA with a TIN does not allow the taxpayer to authenticate the legitimacy of the PCA.

- If the taxpayer contact was a scam, encourage the taxpayer to report the contact to the Treasury Inspector General for Tax Administration (TIGTA) using their *"IRS Impersonation Scam Reporting"* web page or by calling 800-366-4484. Also report the information about the potential scam on SAMS.

13.1.24.5.3.2
(10-31-2022)

When to Create a TAS Case

- (1) Create a TAS case for every inquiry received by TAS employees from taxpayers (or their representatives) assigned to a PCA.

Exception: If the taxpayer asks any of the following simple questions, answer the question(s) and do not create a TAS case:

- Whether a PCA contact is a scam;
- The correct contact information for the assigned PCA; or
- How the taxpayer can stop the PCA contacts.

- If the case does not meet criteria 1-8, use criterion 9 per *TAS-13-0622-0009*, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy.
- Use this IRM section and IRM 13.1.16.15.2, Quick Closure Cases, to determine whether to work the case as a quick closure or assign it to a case advocate for resolution.
- Important: Use Special Case Code **"PC"** to identify cases involving taxpayers whose modules the IRS assigned to PCAs.

13.1.24.5.3.3
(10-31-2022)

Remove Taxpayer From PDC Inventory

- (1) Similar to suspending collection as an initial case action, removing taxpayer modules from PCA inventory prevents further taxpayer contact by the PCA and averts conflicting actions on the account.
- (2) Within 2-4 weeks of creating the TAS case, a batch process will recall the taxpayer's modules from the PCA.
- (3) Because the PCA may continue to call the taxpayer during this 2-4 week period, encourage the taxpayer to mail by certified mail a written request to their assigned PCA stating that the taxpayer does not want to work with the PCA. Refer the taxpayer to the *"Do Not Contact" sample letter* located on the Private Debt Collection Program – What You Need to Know webpage at <https://www.taxpayeradvocate.irs.gov/news/taxtips-private-debt-collection-program-what-you-need-to-know/>. If the taxpayer does not have access to the internet, offer to mail the taxpayer two copies of the letter (one to keep for their records).
- (4) If the taxpayer does not want to mail the letter, or wants contact from the PCA to stop immediately, suggest the taxpayer call the PCA and tell the PCA they are working with TAS. The PCA will cease contact for 60 days, allowing time for the IRS to recall the module.
- (5) Inform the taxpayer they do not need to make payments requested by the PCA unless they want to; TAS will work with the taxpayer to determine their reasonable collection potential during the course of the case.
- (6) If the IRS assigned a taxpayer module to a PCA that meets a statutory exclusion per IRM 5.19.1.5.21.3.1, Legislative Exclusions to Private Debt Col-

lection Criteria, or the module was designated CNC hardship before assignment, report the example on SAMS with the TAS case number.

13.1.24.5.3.4
(10-31-2022)

Expedite Handling of Cases for Certain Taxpayers Receiving Social Security Benefits

- (1) TAS will take additional steps to expedite relief for taxpayers receiving Social Security benefits and whose income is at or below 250 percent of the federal poverty guidelines. Refer to the *LITC page on irs.gov* for 250 percent federal poverty guideline thresholds.
- (2) Analyze the case and discuss options with the taxpayer. Once the taxpayer decides on the appropriate resolution option and TAS has gathered the necessary documentation to advocate for relief, TAS will issue an expedited OAR for the IRS to take the action necessary to provide relief. If the IRS fails to act appropriately on the OAR, TAS will immediately issue a TAO ordering the IRS to take the action.

13.1.24.5.3.5
(10-31-2022)

Advocate by Exercising Your Authority to Issue a TAO

- (1) While working through the steps discussed above, issue TAOs as needed to advocate for the taxpayer. TAS will issue TAOs to the IRS as necessary to advocate to reduce the taxpayer's balance due or for collection alternatives. This is especially true when the IRS fails to act on an expedited OAR and the taxpayer's financial circumstances indicate they are unable to meet basic living expenses.
- (2) **TAS Also Has Authority to Issue a TAO Directly to a PCA.** IRC 7811(g) provides that TAOs apply to PCAs. Issue a TAO to the PCA if the:
 - Proper recall code appears on the taxpayer's module, yet the PCA continues to contact the taxpayer;
 - PCA fails to cease taxpayer contact upon receipt of the taxpayer's written Do Not Contact letter; or
 - PCA fails to stop contacting the taxpayer for 60 days after the taxpayer verbally informs the PCA they are seeking TAS assistance.

Also, consider submitting the PCA issue on SAMS.

- (3) TAS will follow the normal IRM 13.1.20, TAS Taxpayer Assistance Order (TAO) Process procedures to determine where to issue a TAO to the IRS. Any TAO to a PCA will be secure emailed to the IRS Technical Analyst assigned to that PCA. This will allow expedited secure communication with the PCA, especially if confidential documents need to be exchanged to resolve the TAO. TAS will also mail the TAO directly to the PCA. Use the *PCA TAO Addendum* to identify the correct IRS Technical Analyst, their IRS email address, and the PCA mailing address.

13.1.24.5.3.6
(10-31-2022)

Miscellaneous Situations

- (1) If the taxpayer wishes to file a complaint or report PCA employee misconduct, page 3 of Pub 4518, What You Can Expect When the IRS Assigns Your Account to a Private Collection Agency, explains how taxpayers file those complaints with TIGTA. If the taxpayer insists on filing the complaint with TAS, forward the details (taxpayer name, TIN, TAS case number, PCA, PCA employee name if known, and details of the complaint) via secure email to the PDC Rapid Response Team at **TAS PDC Questions*. Document in TAMIS the details of the taxpayer's complaint, and the actions TAS took to forward the complaint.
- (2) If the taxpayer appears to meet income eligibility, educate the taxpayer about LITCs. LITC representation may be particularly helpful with ASFR/SFR recon-

sideration, audit reconsideration, or OIC applications. Refer the taxpayer to the *Low Income Taxpayer Clinic Finder* and Pub 4134, Low Income Taxpayer Clinic List.

Reminder: Referring a taxpayer to an LITC does not mean TAS's advocacy efforts end. If the taxpayer grants the LITC power of attorney (POA), TAS will keep the case open and assist the LITC POA by continuing to advocate on behalf of the taxpayer. TAS should only close the TAS case if, after the POA consults with the taxpayer, the LITC POA requests TAS close the case.

- (3) If you issue an OAR requesting an installment agreement, do so only after the IRS recalls the case from the PCA (posted TC 972 AC 054). This prevents the possibility of the PCA simultaneously setting up an payment arrangement and ensures the PCA will not receive a commission based on work performed by TAS.
- (4) If you can advocate for other case actions via the OAR process, such as penalty abatement or CNC status, it does not matter whether the IRS has recalled the modules from the PCA. PCAs cannot perform these actions, and these actions will not trigger commissions to the PCA.
- (5) If you are unable to advocate for a resolution to the balance due, explain in your closing contact that the IRS may reassign the balance due accounts to a different PCA once TAS closes its case. If this happens and the taxpayer does not want PCA contact, remind the taxpayer that they can write a *Do Not Contact* letter to the PCA.

13.1.24.5.4
(10-31-2022)
**Advocating for
Employers Affected by
Third Party Payer
Misconduct**

- (1) The purpose of this subsection is to provide Taxpayer Advocate Service (TAS) employees guidance on advocating for employers affected by payroll service provider (PSP) and other third party payer misconduct.
- (2) Some employers enter into agreements with third parties to perform some or all of their federal employment tax obligations. These obligations include withholding and depositing taxes, and filing employment and information returns. Multiple issues arise when the third party fails to file timely returns, make timely deposits, or pay tax on behalf of the employer.
- (3) IRM 5.1.24.4, Types of Third-Party Payer Arrangements, and its subsections describe the most common types of third party payer arrangements. Certified Professional Employer Organization (CPEO) customers may not be liable for federal employment taxes imposed on remuneration remitted by the CPEO to employees covered by the customer's contract with the CPEO. More information on the CPEO program is available at www.irs.gov/CPEO. IRM Exhibit 5.1.24-1, Third-Party Arrangement Chart, summarizes the differences between many of these arrangements. For convenience, this subsection will refer to all these arrangements as third party payers.
- (4) Between fiscal years 2007 and 2012, based on IRS recommendations, the Department of Justice criminally prosecuted at least 24 different third party payer owners who collected about \$300 million in employment taxes from thousands of client employers and did not pay the funds over to the IRS. See *TIGTA, Ref. # 2015-40-023, Processes Are Needed to Link Third-Party Payers and Employers to Reduce Risks Related to Employment Tax Fraud*, page 12, (Mar. 2, 2015).

- (5) Employers may request TAS assistance related to some or all of the following IRS issues caused by third party payer misconduct, fraud, or other bad acts:
 - Penalty abatement (failure to file, failure to pay, failure to deposit, information return, and trust fund recovery);
 - Compromise of a portion of the tax the employer paid to the third party payer that the third party payer failed to pay over to the IRS (including penalty and interest accrued on such tax);
 - Relief from IRS enforcement action (levy, lien, etc.); and
 - Secondary issues relating to the financial difficulties caused by paying the IRS the employment tax liabilities after having paid the same amount to the third party payer which the employer intended as payment for the original IRS liability.
- (6) When assisting the employer, TAS employees should remember (and remind IRS employees) that from the employer's perspective, they have already paid the tax once, albeit to the third party. Thus, to the employer, it feels like they are being asked to pay the same tax twice. In advocating on behalf of the employer, TAS employees should be sensitive to the emotional and economic reality of the taxpayer's situation. See *National Taxpayer Advocate Public Forum on Taxpayer Needs and Preferences, Baltimore, MD, May 13, 2016*, Statement of Angela Armstrong.

13.1.24.5.4.1

(10-31-2022)

Case Building for Employers Affected by Third Party Payer Misconduct

- (1) Focus initial TAS case building on determining the extent of the problem and stopping similar problems from occurring in additional tax periods.
- (2) Determine the tax periods affected and which tax forms, tax deposits, and tax payments were late, insufficient, or missing. Use IDRS research to verify IRS records match the employer's records in adjacent tax periods, and the employer address of record is accurate. Research Form W-2, Wage and Tax Statement, and W-3, Transmittal of Wage and Tax Statements, filings to determine if the third party payer misconduct extended to those returns.
- (3) Identify proposed or assessed penalties and IRS enforcement actions taken using IDRS, ICS, AMS, and ALS.
- (4) Secure supporting documentation from the employer about the third party payer arrangement.
 - Identity of the third party payer (if the third party payer is a CPEO, the CPEO customer may not be liable for federal employment taxes imposed on remuneration remitted by the CPEO to employees covered by the customer's contract with the CPEO. More information on the CPEO program is at www.irs.gov/CPEO);
 - Copy of contract or agreement;
 - Details of the third party payer embezzlement or other bad acts, including:
 - Steps the third party payer took to conceal its actions from the employer (e.g., emails or voicemail messages between the employer and third party payer, interception of correspondence from the IRS, etc.);
 - Any criminal or civil charges against the third party payer (court records, media reports, bankruptcy filings, etc.); and
 - The success or likelihood of success the employer had in recovering

monies taken by the third party payer (civil actions filed, criminal reparations, reimbursement from a bonding authority or insurance company, etc.).

- Evidence the employer acted in a responsible manner;
 - Employer took reasonable steps and exercised due diligence when selecting the third party payer to provide payroll services (e.g., asked for and received references, checked with the Better Business Bureau, verified the third party payer was bonded or licensed if required by state laws and regulations, etc.);
 - Employer timely paid the third party payer all the employment taxes due or set aside funds available to pay the taxes in a timely manner (e.g., employer bank records);
 - Employer took reasonable steps to verify the third party payer fulfilled the obligations of the arrangement (e.g., reviewed bank statements, checked the Electronic Federal Tax Payment System (EFTPS)); and
 - Once the employer learned of the third party payer misconduct, it took immediate steps to remedy the problem (e.g., promptly filed any missing returns and began timely filing and depositing its current employment tax obligations). If the employer did not take immediate steps to remedy the problem, are there mitigating factors that hampered the employer's ability to act (serious illness, natural disaster, etc.)?

13.1.24.5.4.2
(10-31-2022)

**Advocating for
Employers Affected by
Third Party Payer
Misconduct**

- (1) Initial TAS advocacy will stabilize the situation to give the employer and TAS time to propose a collection alternative to resolve the problem. These initial actions may include requesting suspension of collection action (see IRM 13.1.10.11, Suspending Collection Action) and recommending withdrawal of a Notice of Federal Tax Lien (see IRM 5.12.9, Withdrawal of Notice of Federal Tax Lien).
- (2) When the facts show third party payer bad acts caused failure to timely file or pay employment taxes, and the employer acted in a responsible and prudent manner, TAS will advocate for relief. The nature of TAS advocacy will vary **for each tax period** depending on certain facts.
 1. Situation 1: The third party payer failed to take certain actions required under its arrangement with the employer, but didn't intercept any funds intended to pay federal employment taxes.
 2. Situation 2: The third party payer actions include intercepting funds intended to pay federal employment taxes, but the employer has fully paid the tax due to the IRS by the time the employer sought TAS assistance.
 3. Situation 3: The third party payer actions include intercepting funds intended to pay federal employment taxes, and the employer hasn't fully paid the tax due to the IRS by the time the employer sought TAS assistance.

13.1.24.5.4.2.1
(10-31-2022)

**Situation 1: The Third
Party Payer Did Not
Intercept Any Federal
Employment Taxes**

- (1) For some tax periods, the third party payer may have failed to file returns and make timely deposits or payments, but didn't intercept federal employment taxes. Verify the employer took immediate steps to remedy any problems (e.g., filed required returns and paid the tax) as soon as it learned of the third party payer misconduct.
- (2) There is no relief available for interest charged on employment taxes paid late (IRC 6404(e)(1) does not apply to employment taxes). However, TAS can

advocate for the employer's request for penalty relief based on reasonable cause. Most third party payer arrangements don't relieve the employer of its employment tax obligations. Therefore, advocating for relief based on erroneous advice or reliance on a tax advisor is unlikely to be effective. Instead, advocate based on general ordinary business care and prudence.

- (3) If the third party payer took steps to conceal its actions from the employer, consider advocating based on inability to obtain records. The records available to the employer may show the employer reasonably believed it met all its obligations. The records that would have revealed it had unmet obligations were not obtainable because the third party payer concealed them from the employer.
- (4) If a revenue officer conducts a Trust Fund Recovery Penalty (TFRP) investigation, advocate for non-assertion of the TFRP on the responsible persons in the employer's organization. Depending on the type of third party payer arrangement used, the revenue officer may be able to assess the TFRP against responsible persons within the third party payer.
- (5) See the following IRM references:
 - IRM 20.1.1.3.2, Reasonable Cause;
 - IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence;
 - IRM 20.1.1.3.2.2.3, Unable to Obtain Records;
 - IRM 20.1.1.3.2.2.4, Mistake Was Made;
 - IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance;
 - IRM 20.1.1.3.3.4.3, Advice from a Tax Advisor;
 - IRM 20.2.7.5, IRC 6040(e)(1), Unreasonable Error or Delay in Performing a Ministerial or Managerial Act; and
 - IRM 5.1.24.5.8, TFRP Investigations.

13.1.24.5.4.2.2
(10-31-2022)

**Situation 2: The
Employer Has Full Paid
the Tax to the IRS**

- (1) By the time some employers seek TAS assistance, they may have fully paid the tax on the account, even though they paid the full amount to the third party payer as well. From the employer's perspective, they have paid the tax twice. However, the employer is not entitled to a refund because they are still liable for the tax. There is no mechanism under the law to file an OIC on taxes already paid.
- (2) In most of these cases, advocating for penalty abatement, using the same references and advocacy approach as discussed in IRM 13.1.24.5.4.2.1 above, will achieve the best result for that tax period. Work with the employer to analyze the situation and advocate for what makes sense.

Example: A third party payer intercepted \$10,000 in tax deposits intended for the employer's Form 941, Employer's Quarterly Federal Tax Return, failed to file the return as required by the third party payer contract, and hid both actions from the employer. The employer discovered the bad acts, filed a correct Form 941 and paid the \$10,000 tax due (again) to the IRS. However, the employer still owes \$2,500 in penalties and \$400 interest. The interest will decrease to \$300 if the IRS abates the penalties. The employer determines the cost of preparing the OIC and paying the user fee is not cost effective when the IRS can only compromise \$300 in interest. TAS advocates for penalty abatement. If the interest charges are significant enough that it would be cost effective to file an offer compromising on the interest, refer to IRM 13.1.24.5.4.2.3 below.

- (3) In addition, discuss with the employer whether paying the IRS the same amount of funds that were improperly intercepted by the third party payer caused problems for the employer in other tax periods. For example, the employer may be unable to pay a current tax liability because it used those funds to pay the IRS for a tax period where the third party payer improperly intercepted the original funds intended for that employment tax liability. Advocate for resolution of the balance owed for the current tax period (installment agreement, currently not collectible, or doubt as to collectibility OIC) based on the relevant facts and the option chosen by the employer.

13.1.24.5.4.2.3
(10-31-2022)

**Situation 3: The
Employer Has Not Fully
Paid the Tax to the IRS**

- (1) To assist victims of third party payer fraud, Congress enacted Section 106 of the Omnibus Appropriations Bill in 2014, stating the "Internal Revenue Service shall give special consideration to an offer-in-compromise from a taxpayer who has been the victim of fraud by a third party payroll tax preparer." IRM 5.8.11, Effective Tax Administration, reflects this provision. The IRM chapter discusses the special consideration given to victims of third party payer fraud and explains how offer specialists investigate and expeditiously process offers submitted by taxpayers affected by third party payer fraud.
- (2) If the employer has unpaid tax for the tax period, consider an OIC. An OIC can cover the tax, interest, and penalties imposed on the employer. If the employer has unpaid tax for the tax period, consider an offer based on doubt as to collectibility with special circumstances. If the taxpayer does not qualify for a doubt as to collectibility with special circumstances, then consider making an effective tax administration (ETA) offer based on economic hardship. If the taxpayer does not qualify for such an offer, then consider making an ETA offer based on public policy or equity considerations. Factors establishing special circumstances are the same as those considered under ETA:
- Economic hardship (applies to sole proprietorships only);
 - Public policy; or
 - Equity.
- (3) The employer may offer less than the tax owed, seeking to compromise all penalties and interest, along with some of the tax, based on equity factors. When advocating that the IRS accept the offer, note that acceptance will not result in any financial gain or unfair advantage to the employer over its competitors. Based on communications with the taxpayer, identify the amount of funds intercepted by the third party payer that was intended as payment for the original IRS liability. From the employer's perspective paying even a small fraction of these funds twice (once to the third party payer, and again to the IRS) is an additional burden on the employer.
- (4) Discuss with the employer to see if paying the federal employment taxes to the IRS will create hardships for individuals or the community. Will the employer have to lay off some employees? Will the employer have to curtail activities that benefit the community or the local economy? Identify these issues in the TAS recommendation. The IRS considers these factors as compelling public policy factors that favor acceptance. However, these hardship or community elements do not have to be present for TAS to advocate for acceptance of an offer of an amount less than the tax owed if compelling equity factors exist.
- (5) Highlight any efforts the employer made to mitigate the loss through collection or civil action against the third party payer. If the IRS is concerned that the

employer may receive reimbursement in the future, advocate that the IRS accept the agreement but also secure a collateral agreement for payment from any future recovery.

- (6) Alternatively, if the employer submits an offer for the full amount of the remaining tax, exclusive of penalty and interest, financial statements, Forms 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals, and 433-B (OIC), Collection Information Statement for Business, are not required (see IRM 5.8.11.6(3), Documentation and Verification).
- (7) If a revenue officer conducts a Trust Fund Recovery Penalty (TFRP) investigation, advocate for non-assertion of the TFRP on the responsible persons in the employer's organization. Depending on the type of third party payer arrangement used, the revenue officer may be able to assess the TFRP against responsible persons within the third party payer. An investigation of the third party payer or individuals within it for TFRP purposes will not delay the consideration or acceptance of an OIC from the employer. See IRM 5.8.11.6(3).
- (8) Due to the complex collection issues involved with third party payer misconduct and ETA OICs, consider making a referral to a Revenue Officer Technical Advisor (ROTA) for guidance.

Example: An employer contracted a third party payer to handle all payroll tax matters. The employer chose a third party payer that had been in business for several years and contacted other businesses using the third party payer who stated the third party payer operated appropriately. When the IRS contacted the employer about the delinquency, the employer immediately started making FTDs. No factors weigh against offer acceptance (compliance history, the state has no third party payer bonding requirements, etc.). Since the employer acted in a reasonable manner, TAS advocates for IRS acceptance of the ETA OIC.

- (9) See the following IRM references:
 - IRM 5.1.24.5.7, Offers in Compromise;
 - IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors;
 - IRM 5.8.11.5.2, Financial Statement Analysis;
 - IRM 5.8.11.5.3, Determining an Acceptable Offer Amount;
 - IRM 5.8.11.5.3.1, Determining an Acceptable Offer Amount (Fraudulent Acts of a PSP);
 - IRM 5.8.11.6, Documentation and Verification; and
 - IRM 5.1.24.5.8, TFRP Investigations.

13.1.24.5.4.3 (08-19-2020) Coordination with Systemic Advocacy

- (1) If you identify a third party payer misconduct case where the actions of the third party payer affected multiple clients, notify your manager and add a submission to the Systemic Advocacy Management System (SAMS). The SAMS submission should include:
 - The phrase "PSP Failure" in the SAMS description;
 - Case number(s) of the third party payer misconduct cases linked to this particular third party payer;
 - Whether a list of the third party payer's victims exists (from a CI investigation, criminal indictment, media reports, etc.), and whether you have a copy of that list; and

- Do not put any personally identifiable information (PII) on SAMS.

- (2) Reporting third party payer misconduct via SAMS is important so the IRS (especially Field Collection) learns of all potential victims of third party payer misconduct, and can coordinate fair and equitable treatment of the third party payer clients (especially those not in TAS). See IRM 5.1.24.5.1, Assignment of Third-Party Payer Client Cases. If third party payer misconduct victims are localized to a particular location, Systemic Advocacy may contact the local LTA to coordinate help for non-TAS taxpayers.

13.1.24.5.4.4
(10-31-2022)

**Educate Employers to
Limit Future Third Party
Payer Problems**

- (1) If the employer receives a CP 148A or CP 148B notice of an unauthorized address change, advise the employer to contact the IRS immediately. The IRS sends a notice to both the old and new address to protect taxpayers from unauthorized address changes made by third parties. An incorrect address means the employer will not receive future notices about balances due, penalty assessments, or unfiled returns.
- (2) Recommend the employer monitor third party payer withdrawals from their bank accounts and use their *Electronic Federal Tax Payment System (EFTPS) Inquiry PIN* to verify payments made by a third party on the employer's behalf.
- (3) A summary of the steps the employer can take to protect themselves appears in the *TAS Small Business website at Third Party Arrangements for Employment Taxes*.
- (4) Further information can be found by searching for "outsourcing payroll duties" on *www.irs.gov*.

13.1.24.5.4.5
(03-05-2019)

Case Coding

- (1) Use the National Office Use (N.O. Use) code "PSP" to identify cases involving taxpayers affected by third party payer misconduct.

13.1.24.5.5
(10-31-2022)

**Advocating for
Taxpayers in Retirement
Asset Levy Cases**

- (1) The purpose of this section is to provide guidance for TAS employees in advocating for taxpayers when the IRS has levied or warned the taxpayer of a possible future levy on the taxpayer's retirement account assets.
- (2) When the IRS considers a levy of a taxpayer's retirement account assets, IRM 5.11.6.3(7), Funds in Pension or Retirement Plans, states the IRS must "*determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.*" The IRM guidance in making this determination is limited and therefore the calculation method used by individual revenue officers may vary.
- (3) TAS developed a methodology to calculate the taxpayer's need for retirement account assets. Due to the rarity and complexity of these cases, consider a referral to a Revenue Officer Technical Advisor (ROTA).

13.1.24.5.5.1
(10-31-2022)

Analysis of Law

- (1) IRC 6331 authorizes the IRS to collect tax by levy upon all property and rights to property, except property that is exempt under IRC 6334. IRC 6334 contains a list of property exempt from levy. A participant's interest in a retirement plan is not exempt from levy under this section. Title 5 USC 8437(e)(3) provides that monies due or payable from the Thrift Savings Fund to a federal employee or member (or former employee or member) are subject to IRS levy for payment of delinquent taxes.

- (2) IRM 5.11.6.3(15) limits the amount of a retirement asset levy to exclude the amount subject to 20 percent federal income tax withholding per IRC 3504(c).

13.1.24.5.5.2
(10-31-2022)
**IRS Policy on
Retirement Asset Levies**

- (1) IRM 5.11.6.3, Funds in Pension or Retirement Plans, instructs IRS employees to conduct a three-step analysis in determining whether to levy assets in retirement plan accounts.
 1. Determine what property is available to collect the liability.
 2. Determine if the taxpayer conduct has been flagrant.
 3. Determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.

TAS advocacy described in this section relates to the analysis in step 3.

- (2) IRM 5.11.6.3 directs employees to use the standards in IRM 5.15, Financial Analysis, to establish necessary living expenses and further to use the life expectancy tables in Pub 590-B, Distribution from Individual Retirement Arrangements (IRAs), to estimate how much can be withdrawn annually to deplete the retirement account over the taxpayer's life expectancy. Pub 590-B allows for the calculation of the taxpayer's life expectancy, but it does not instruct the employee on how to estimate the annual withdrawals needed for the taxpayer to deplete the account. IRM 5, Collecting Process, contains no direction for the prediction of future growth, if any, of the retirement account and necessary living expenses. Use the steps described in the *IRM 13.1.24.5.5 Supplement and Example* to address this issue.

13.1.24.5.5.3
(10-31-2022)
**How to Advocate in a
Retirement Asset Levy
Case**

- (1) In cases involving a retirement asset levy, determine whether the IRS accurately applied the three-step analysis required in IRM 5.11.6.3, Funds in Pension or Retirement Plans. For step three, review the calculation used to determine the taxpayer's need for retirement account assets.
- (2) Use the process outlined in *IRM 13.1.24.5.5 Supplement and Example* to evaluate the IRS determination. The process uses today's dollars in both the retirement asset and necessary living expense categories. Attempting to estimate the future growth of either of these contains too many variables to ensure a consistent application for all taxpayers.
- (3) If the taxpayer did not request the levy on retirement assets (or ICS indicates the taxpayer requested the retirement asset levy, but the taxpayer informs TAS the IRS compelled the request by warning of future enforcement actions), and the taxpayer wants the levy released or levy proceeds returned:
 - If the revenue officer did not follow the administrative procedures described in IRM 5.11.6.3, advocate for levy release or return of levied proceeds.
 - If the revenue officer did follow the first two steps described in IRM 5.11.6.3, but the amount levied is higher than what TAS computed using the *IRM 13.1.24.5.5 Supplement and Example*, advocate for release or return of the difference if the 2-year time period for requesting the return of levy proceeds under IRC 6343(d) has not yet expired.
 - If the levied funds are returned to the taxpayer, then the taxpayer may be eligible to contribute the funds back into an eligible retirement account under IRC 6343(f) or Rev. Proc. 2016-47. A referral to a ROTA is recommended.

- (4) If the taxpayer is considering requesting a retirement asset levy, educate the taxpayer about:
- Collection alternatives, including taking a loan from the retirement plan in lieu of a distribution or levy;
 - Reducing retirement plan contributions if the taxpayer is still making them;
 - The pitfalls of a retirement asset levy (e.g., long-term harm to income available during retirement); and
 - Comparing waiver of the 10% early withdrawal penalty to the future loss of income.

13.1.24.5.5.4
(10-31-2022)
Public Use of Exhibits

- (1) TAS employees can share the *IRM 13.1.24.5.5 Supplement and Example* with taxpayers and tax professionals to direct them to public calculators and provide them with a methodology to challenge IRS calculations.

13.1.24.5.5.5
(10-31-2022)
Case Coding

- (1) On Taxpayer Screen 5 of the Taxpayer Advocate Management Information System (TAMIS), use Systemic Advocacy Use code "LVRET" to identify cases involving a levy release or return of levied property related to retirement plan assets. Do not add "LVRET" if the levy is on periodic payments from a retirement plan.

13.1.24.6
(05-11-2018)
Introduction to Account Issues

- (1) Customer accounts' mission is to make filing and paying taxes easier for the taxpayer by providing trouble-free filing, faster refunds and efficient resolution of issues.
- (2) TAS's role is to insure Customer Accounts acted in accordance with established laws, IRMs and procedures, and to actively advocate for the taxpayer when errors or oversights were made.

13.1.24.6.1
(10-31-2022)
Penalty Relief Advocacy

- (1) Many penalties can be abated if the taxpayer can show the noncompliance that gave rise to the penalty was due to reasonable cause and not due to willful neglect. See *IRM 20.1.1.3.2, Reasonable Cause*. Penalty relief might also be available through statutory exceptions, administrative waivers, or correction of IRS errors. A table of common penalties seen in TAS casework appears below.

IRC Section	Transaction Code	Description	IRM Reference	Reasonable Cause?
6651	160, 166	Failure to File	20.1.2.3.7	Yes
6651	270, 276	Failure to Pay	20.1.2.3.8	Yes
6654	170, 176	Estimated Tax	20.1.3	No
6656	180, 186	FTD	20.1.4	Yes
6662	240	Negligence	20.1.5.8	Yes
6662	240	Accuracy	20.1.5.17	Yes
6676	240	Erroneous Claim	20.1.5.18	Yes, See P.L. 114-113

6702	240	Frivolous Submission	20.1.10.13	No
6721	240	Information Returns	20.1.7.5	Yes

- (2) TAS employees do not have the delegated authority to make penalty abatement determinations; however, as advocates, it is our job to assess the law, IRM 20.1.1, Introduction and Penalty Relief, and facts to recommend that the IRS abate the assessed penalty.
- (3) Reasonable cause is when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.
- (4) TAS uses OARs and TAOs to resolve requests for penalty relief.
- (5) TAS delegated authorities do not preclude TAS from making specific recommendations to the IRS to abate penalties, and our job as advocates requires that we advocate for taxpayers in penalty cases. TAS employees should recommend the IRS reach a particular result in its penalty relief determination if TAS supports the recommendation with facts and appropriate documentation.

13.1.24.6.1.1 (10-31-2022) Reasonable Cause Assistant (RCA)

- (1) The Reasonable Cause Assistant is a decision-support software program designed to help IRS employees determine penalty relief for Individual Master File (IMF) Failure to File (FTF), IMF Failure to Pay (FTP), and Business Master File (BMF) Failure to Deposit (FTD) penalties through the Accounts Management Services (AMS) desktop application. See IRM 20.1.1.3.6, Reasonable Cause Assistant (RCA) for the RCA categories available for penalty abatement. The IRS requires its employees (including Revenue Officers but excluding Appeals employees) to use the program where available for penalty abatement requests. RCA programming applies reasonable cause standards against the reasonable cause categories chosen by the user and the answers selected and dates entered in response to the questions posed by the RCA. To reach the correct determination, users must choose the applicable categories and answers based on the information provided by the taxpayer.
- (2) TAS maintains access to the RCA for its employees, but it is not a substitute for analysis of the taxpayer's facts, supporting documentation, and the law. Instead, TAS employees use the RCA to help determine how the IRS will evaluate the request for penalty abatement, which can assist TAS employees making OAR recommendations. See IRM 13.1.24.6.1.1.1.
- (3) In some cases, RCA will require documentation to support the taxpayer's request before reaching a conclusion. The RCA will reach one of five possible conclusions for the MFT and the tax period reviewed (listed in order of priority):
 - Abate - reasonable cause established; remove penalty.
 - Other - not a reasonable cause issue.

Example: A taxpayer disputes how the IRS computed a penalty.

 - Suspend - insufficient information; no conclusion reached.

Example: The taxpayer has not documented their statement that they were in the hospital at the time the tax return was due, which prevented them from timely filing.

 - Sustain - reasonable cause not established.

Example: The taxpayer does not qualify for penalty relief under reasonable cause, statutory exception, or administrative waiver, so the RCA denies the FTP abatement request.

- Mixed - abate one penalty/sustain the other (IMF) or partial abatement (BMF FTD).

Example: The RCA may determine the taxpayer met reasonable cause for abatement of the FTF penalty but not for the FTP penalty.

- (4) The user can abort an incorrect conclusion. See IRM 20.1.1.3.6.10.1, Overriding (Aborting) RCA's Conclusions. The abort conclusion requires an explanation, which the Office of Servicewide Penalties reviews. If the case includes unique individual facts and circumstances that the RCA cannot consider, those elements must be carefully analyzed and must show, in accordance with the reasonable cause guidelines, that despite the exercise of ordinary business care and prudence, the taxpayer was unable to comply within the prescribed time. A determination to abort/override the RCA's conclusion cannot conflict with law or IRS policy.

Example: The taxpayer filed a 2015 tax return late. The RCA correctly concluded there was no reasonable cause to abate the penalty. However, the RCA failed to determine if First-Time Abate is applicable because the IRS incorrectly used First-Time Abate to resolve a stolen identity problem on the 2013 tax return. The RCA incorrectly concluded the taxpayer is not eligible for First-Time Abate. The TAS employee researches the taxpayer's compliance history and determines the penalties assessed and reversed two years ago are all attributable to another taxpayer filing under this taxpayer's Social Security number. The TAS employee recommends that the IRS abort the RCA conclusion and allow First-Time Abate.

13.1.24.6.1.1.1
(05-11-2018)

Reasonable Cause Category Selection

- (1) The Reasonable Cause FTF/FTP Category Selection Screen displays a list of possible categories users can select, if applicable, based on the nature of the taxpayer's penalty relief request. Some factors in the category selection are:
 - Casualty - fire destroyed records;
 - Records unobtainable / destroyed;
 - Unavoidable absence;
 - Death or serious illness in the taxpayer's immediate family;
 - Illness -unable to manage affairs; and
 - IRS error - programming problems.

Note: For additional information for these Reasonable Cause situations see IRM 20.1.1.3.2, Reasonable Cause.

13.1.24.6.1.1.2
(10-31-2022)

First-Time Abate – Clean Compliance History

- (1) The RCA provides an option for penalty relief if the taxpayer has not previously been required to file a return, or if the IRS has not assessed FTF, FTP, or BMF FTD penalties against the taxpayer in the past three years. First-Time Abate (FTA) is also available if the IRS fully abated penalties assessed in the prior three years for reasonable cause. See IRM 20.1.1.3.3.2.1, First Time Abate (FTA) and IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration. The RCA will attempt to apply relief based on FTA before considering reason-

able cause. Since the FTA is an administrative waiver and not abatement for reasonable cause, IRS employees are not required to go through a reasonable cause analysis to use FTA. Users must manually review modules in the three-year penalty history that are in retention. Eighty-two percent of all FY 2009 penalties abated under the RCA were attributable to the FTA waiver.

- (2) If the taxpayer will qualify for FTA relief, and the documentation to support reasonable cause will be extensive or difficult for the taxpayer to gather, TAS employees should discuss with the taxpayer or representative the option of seeking FTA penalty relief without documentation. Explain that using the First-Time Abate will exclude its use again for the next three years.

Reminder: If TAS can advocate for reasonable cause rather than use FTA, the taxpayer's compliance history will remain clean and the FTA is preserved if the taxpayer needs it in a future tax year.

- (3) Allow the taxpayer to make this decision, and document your explanation and the taxpayer's decision. See IRM 13.1.18.6(16), Initial Contact Completed by Case Advocates, for documentation requirements. The IRS will abate the penalty using FTA.

13.1.24.6.1.2 (05-11-2018) **Building the Case for Penalty Relief**

- (1) TAS employees will generally follow these steps to advocate in penalty relief cases.
 - a. Research the standards for penalty relief;
 - b. Request information from the taxpayer;
 - c. Consider taxpayer burden;
 - d. Analyze how best to advocate for relief; and
 - e. Determine the proper OAR recommendation.

13.1.24.6.1.2.1 (10-31-2022) **Researching Relief Standards for the Penalty**

- (1) TAS employees must apply their knowledge of reasonable cause criteria, statutory exceptions, and administrative waivers when they contact the taxpayer to explore what information the taxpayer has available to make the strongest case for penalty abatement. Different penalties can have different relief standards, and some do not allow for reasonable cause abatement at all. For example, relief from the estimated tax penalty under IRC § 6654 is not available under reasonable cause, but this penalty can be abated by claiming one of several statutory waivers. See IRM 20.1, Penalty Handbook, for more information about specific penalties. Also see IRM 20.1.1.3.2.2.8, Inaccessible Notices, if the taxpayer's reasonable cause explanation relates to not receiving an IRS notice in a format readable by the taxpayer.

Note: TAS employees should consult the ITAP staff if they need assistance in researching the relief standards for a particular penalty. See Exhibit 13.1.24-4 for some examples.

13.1.24.6.1.2.2 (10-31-2022) **Requesting Information from the Taxpayer**

- (1) Review the taxpayer's request for penalty relief. During initial contact with the taxpayers, have a conversation before asking for documentation. For instance:
 - Explain the penalties assessed by the IRS, and discuss the relief standards available, including reasonable cause if applicable;
 - Verify your understanding of the circumstances the taxpayer wants the IRS to consider;

- Explain that you need to ask relevant questions to explore available options for penalty relief;
- Explain the documentation needed to support the request, including alternative sources if the taxpayer does not have access to the types of records initially requested;
- Ask open-ended questions and listen for cues that the taxpayer's individual circumstances may make it difficult to provide documentation; and
- Establish a due date for the taxpayer to provide the information.

Note: The purpose of this discussion is to gain a complete understanding of the taxpayer's situation in order to develop a successful advocacy plan. The role of TAS employees is not to judge the taxpayer, but rather to help them understand the requirements under the law and to work with them to assemble the best documentation they can provide to support a request for penalty relief.

- (2) TAS employees will also explain to the taxpayer that TAS will forward the relevant documents to the IRS to advocate for penalty relief. See IRM 13.1.5.6, Communicating Confidentiality Rules to Taxpayers and Taxpayers' Representatives, for more information.

13.1.24.6.1.2.3
(05-11-2018)

Considering Taxpayer Burden

- (1) If the IRS will use the RCA to consider a penalty abatement request, TAS employees should weigh taxpayer burden when requesting information. If the taxpayer will qualify for First-Time Abatement (FTA) relief, and the documentation to support reasonable cause will be extensive or difficult for the taxpayer to gather, TAS employees should discuss with the taxpayer or representative the option of seeking FTA penalty relief without documentation. Explain that using the FTA will preclude the taxpayer from FTA as reason for penalty relief for the next three years. Allow the taxpayer to make this decision, and document your explanation and the taxpayer's decision. Request abatement of the penalty under FTA in your OAR. See Examples 1 and 2 in IRM Exhibit 13.1.24-4.
- (2) Alternatively, if the taxpayer will qualify for FTA relief, but the taxpayer is willing to provide (without excess burden) reasonable cause documentation, they should do so. If TAS can advocate for reasonable cause, the taxpayer's compliance history will remain clean and the FTA is preserved if the taxpayer needs it in a future tax year. See Example 3 in IRM Exhibit 13.1.24-4.
- (3) In cases where the IRS has not yet considered or received the taxpayer's penalty abatement request, TAS employees should secure a signed written request under penalties of perjury for penalty abatement as a best practice if the Refund Statute Expiration Date (RSED) is near expiration.

13.1.24.6.1.3
(05-11-2018)

Analyzing How Best to Advocate for Relief

- (1) TAS employees will analyze the taxpayer's information to determine how best to advocate for penalty relief based on their knowledge of the reasonable cause abatement provisions and the facts of the case prior to using the RCA. If the penalty is an IMF Failure to File, IMF Failure to Pay, or BMF Failure to Deposit penalty, TAS employees will use the RCA to analyze whether penalty relief may be appropriate due to reasonable cause, statutory exception, or administrative waiver. However, TAS employees should not base their determination to advocate for penalty relief based only upon the results of the

RCA analysis. Rather the TAS employee should decide whether to advocate for relief based on the penalty relief standards as applied to the taxpayer's individual facts and circumstances.

- (2) TAS employees have access to the RCA because use of the RCA helps build our case, even when TAS disagrees with the answer provided by the RCA. TAS employees using the RCA will determine what category or categories (if any) will result in abatement. If the RCA decides to sustain the penalty, TAS employees should review the facts and circumstances to determine if an RCA override is appropriate, and should consult ITAP if they need help making this determination.

Caution: After using the RCA, TAS employees must always “**Cancel**” out of the RCA program before it makes any adjustments.

13.1.24.6.1.3.1
(10-31-2022)

**Deciding the Type of
OAR Recommendation
to Make to the IRS**

- (1) Once TAS employees receive the taxpayer's information and evaluate it against penalty relief standards (including reasonable cause), TAS employees must choose between two types of OAR recommendations.
 - a. **Advocating for Penalty Relief**

If analysis supports abatement, TAS employees must recommend the IRS to abate the penalty based on the law, facts, and supporting documentation. The OAR will include a request to contact the TAS employee before sustaining the penalty and rejecting the OAR, so TAS can discuss the disagreement with the function before the taxpayer receives a denial letter. When documentation supports advocating for penalty relief, an OAR should not take a neutral stance and simply ask the IRS to make a penalty relief determination. Although neutral language can be appropriate in other situations (see b) below), it is not appropriate when the facts and circumstances allow TAS to advocate for penalty relief.

Example: Based on the information provided, it is TAS's position that \$(insert dollar amount or "all" as applicable) of the (insert type) penalty is eligible for abatement based on (reasonable cause or first-time abate) due to (category of reasonable cause, statutory exception, or administrative waiver). (Insert an explanation of why the supporting documentation supports such a position.) We recommend you abate the penalty for reasons explained above. If you disagree and intend to sustain the penalty, contact me with an explanation and a copy of your complete RCA determination including all information input into the RCA and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).
 - b. **Recommending the IRS Consider the Penalty Relief Request**

If the TAS employee's analysis of the facts and supporting documentation does not support abatement and the IRS has not yet made a determination on the penalty abatement request, then TAS employees should use neutral language in their OAR recommendations to ask the IRS to consider the penalty abatement. The taxpayer is entitled to receive a decision on the abatement request, even if the information received does not support abatement. To do otherwise would create delays beyond

those that brought the taxpayer to TAS in the first place. See IRM 13.1.19.5, Operations Assistance Request (OAR) - Preparation and Example 6 in IRM Exhibit 13.1.24-4 for neutral language OAR examples.

Example: Based on the information provided, consider the taxpayer's request for (insert type of penalty) relief. Input the necessary adjustments for any penalty abated. If you deny the request, send the proper disallowance letter with appeal rights to the taxpayer, and provide a copy to TAS.

Caution: As advocates, TAS employees should advocate for the best result possible for the taxpayer under the law, after conducting an independent and impartial review of the facts and explaining our position to the IRS. TAS employees should only use neutral language if the facts and accompanying documentation do not support abatement.

13.1.24.6.1.4
(10-31-2022)
**Advocating for the "In
Between" Cases**

- (1) TAS employees may encounter "in between" cases where it may be difficult to determine the proper OAR recommendation as described in IRM 13.1.24.6.1 (5) and IRM 13.1.19.5, Operations Assistance Request (OAR) - Preparation.

Example: The taxpayer does not qualify for First-Time Abate, but does seek penalty relief for reasons that meet reasonable cause. However, the documentation received is incomplete, includes conflicting information, or only covers a portion of the period for which the taxpayer seeks penalty relief.

- (2) In these situations, TAS employees must use their good judgment and discretion to determine if a follow-up request to the taxpayer for more information would be beneficial. The follow-up contact could point out the weaknesses in the information received and suggest additional information that would strengthen the case. TAS employees should ask themselves the following questions when deciding whether to make a follow-up contact for additional information.

- During previous contacts, did the TAS employee ask for the missing information, and did the taxpayer state whether it was available?
- Would a follow-up contact provide the TAS employee an opportunity to explain why the IRS needs the information requested and to determine if the taxpayer had problems securing that information? The TAS employee and taxpayer may be able to identify alternative documentation sources.
- Can TAS advocate for penalty relief by considering the existing information in a manner most favorable to the taxpayer?

- (3) After careful consideration of these questions, TAS employees will again use their good judgment and discretion to determine whether to:

- Make a follow-up contact to the taxpayer for additional information;
- Issue an OAR that advocates for penalty relief; or
- Issue an OAR that recommends the IRS consider the penalty relief request using neutral language.

Note: When making follow-up contacts for additional information, TAS employees should avoid the perception that they are burdening the taxpayer with

repeated information requests. The initial request for documentation should be as complete as possible, but must include only the information TAS needs to advocate for relief of the taxpayer's problem.

13.1.24.6.1.5

(10-31-2022)

Deciding How to Resolve Disagreements with the IRS Penalty Determination

- (1) When the IRS disagrees with an OAR relief recommendation and sustains the penalty, TAS employees should review the reasons given to determine if and how TAS should dispute the determination. If TAS employees agree with the IRS's explanation, then TAS employees will close their OARs without further action (or if the IRS suspended the request pending TAS review, TAS employees should advise the employee assigned the OAR to proceed with sustaining the penalty). The taxpayer can still exercise appeal rights per the denial letter. TAS employees will advise the taxpayer of their appeal rights provided in the denial letter during the closing contact per IRM 13.1.21.2.1(2), Closing Actions.
- (2) At any level of OAR disagreement, if the TAS employee believes that the IRS BOD/Function was incorrect in its rejection of an OAR, they should elevate the case for TAO consideration. Discuss appeal rights and options with the taxpayer or their representative if OAR elevation efforts are not successful at the BOD/Function level. Appeals can consider hazards of litigation. Discuss this with the taxpayer or their representative, and if the taxpayer decides to go to Appeals, the taxpayer must file an appeal to the denial of penalty relief. Once the taxpayer's penalty appeal package is in Appeals, TAS employees can use the OAR process to advocate for penalty relief to Appeals. There are no administrative appeal rights on the IRS's denial of a request for a reduction of an IRC 6702 penalty. See Rev. Proc. 2012-43 to provide taxpayers with information on eligibility and the procedures for filing a request for a reduction of a IRC 6702 penalty. TAS employees will keep the TAS case open until Appeals makes its penalty relief decision. See IRM 13.1.21.2.2.2(1)(b), Appeals for more information.

Caution: If TAS does not extend its involvement into the penalty appeal, taxpayers can still exercise the appeal rights described in the disallowance letter on their own.

13.1.24.6.1.6

(03-05-2019)

Penalty Relief for Employers Affected by Third Party Payer Misconduct

- (1) See IRM 13.1.24.5.4 for advocacy information for employers affected by third party payer misconduct, including penalty relief and relief through offers in compromise.

13.1.24.6.1.7

(10-31-2022)

Penalty Relief Advocacy Based on an Inaccessible Notice

- (1) A taxpayer may request penalty relief if a notice in standard print format was received requiring a taxpayer action, but the taxpayer did not timely respond because the notice was inaccessible. If the taxpayer informs the TAS employee that they are subject to penalties due to a delay in responding to a notice, consider whether a reasonable cause exception might apply in the taxpayer's situation. See IRM 20.1.1.3.2.2.8, Inaccessible Notices, and IRM 13.1.6.9, Assisting Taxpayers Who Need Documents in an Alternative Media Format, for more information.

13.1.24.6.2
(05-11-2018)
**Advocating for
Taxpayers Seeking
Offset Bypass Refunds**

- (1) The purpose of this IRM section is to clarify when TAS can advocate for an Offset Bypass Refund (OBR), and after an offset has occurred, when TAS can advocate for the reversal of the offset.

13.1.24.6.2.1
(10-31-2022)
Overview

- (1) Under certain limited circumstances where hardship exists, the IRS may issue a manual refund without first satisfying outstanding federal tax liabilities. These refunds are known as OBRs. Generally, TAS has the delegated authority to issue OBRs if the account does not have an open control for the tax year of the overpayment. However, TAS is subject to the same rules followed by other IRS employees with similar authority. Similarly, TAS can only reverse an offset when there is legal authority to do so – and the legal authority that TAS must follow is the same legal authority applicable to the IRS. As with any other case, TAS must perform an analysis of the facts and applicable legal authorities when deciding whether to issue an OBR or reverse an offset that has already occurred.
- (2) OBRs are extremely time-sensitive, particularly with the improvements in return processing made possible by CADE 2. As a result, it is imperative that TAS employees be mindful of deadlines for requesting an OBR. If an employee will be on leave, is called out of the office unexpectedly, or has a large volume of work, it is the employee's responsibility to bring any case involving an OBR to the attention of their manager immediately for reassignment. (See IRM 13.1.16.8.1, Immediate Elevation of Emergency Cases, and the example in IRM 13.1.18.4(1), Time Frames for Taking Case Actions.)

13.1.24.6.2.2
(05-11-2018)
Law and Authorities

- (1) The following sections summarize OBR law and authorities.

13.1.24.6.2.2.1
(05-11-2018)
**IRS Can Bypass Federal
Tax Debt Under Certain
Circumstances**

- (1) There is no legal authority that requires the IRS to maintain an OBR process; rather, there is legal authority that the offset of refunds to pay a federal tax is not required. In this regard, IRC 6402 provides that the IRS “**may** credit...[an] overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment” and, “shall, subject to [certain limitations], refund any balance to such person.” IRC 6402(a) (emphasis added). Because the statute is phrased as the IRS “**may** credit...,” the IRS can exercise its discretion to bypass the outstanding federal tax liability and issue a refund to a taxpayer experiencing economic hardship. Thus, IRC 6402(a) gives the IRS the authority to offset a taxpayer's overpayment against any outstanding federal tax liability before issuing a refund. The IRS has made a policy decision not to offset an overpayment against an outstanding federal tax liability under IRC 6402 if the taxpayer can demonstrate hardship. Hardship for this purpose is economic hardship within the meaning of IRC 6343 and the regulations thereunder (i.e., unable to pay basic living expenses.)

13.1.24.6.2.2.2
(05-11-2018)
**IRS Cannot Bypass
Nontax Debts**

- (1) In contrast, IRC 6402 (c), (d), (e), and (f) require the IRS to apply a taxpayer's overpayment to any outstanding child support debt, Federal agency nontax debt, state income tax obligation, or unemployment compensation prior to crediting the overpayment to a future tax or making a refund; each of those subsections is phrased as the “Secretary **shall**...” (emphasis added). This

means that the IRS has no discretion to bypass one of those debts. In addition, IRC 6402 provides rules for the priority of offsets which require that the IRS must be paid first. Not all of the offset provisions in IRC 6402, however, contain priority rules. Consequently, for consistency and administration purposes, the IRS has adopted a policy of not issuing an OBR when the taxpayer has both a federal tax debt and any other type of debt for which offset is authorized by IRC 6402.

13.1.24.6.2.2.3
(05-11-2018)

Reversing Offset is Only Possible in the Event of a “Clerical Error”

- (1) Once the offset has occurred, there is no longer any overpayment to refund. However, there is a limited circumstance in which the IRS may reverse the offset. The authority for the IRS to reverse an offset of a refund after the offset has occurred is not in the Internal Revenue Code or Treasury Regulations. Rather, the IRS’s authority to reverse an offset, is based on case law. In this regard, courts have permitted the IRS to reverse certain clerical errors. Clerical error should be broadly interpreted to include bookkeeping, ministerial, administrative, inadvertent, or accidental errors, or even mistakes of fact. IRM 3.17.79.3.16(5), Offset Bypass Refunds, and IRM 20.2.1.4.2.2.4(4), Overpaid Overpayment Interest, generally characterize all such errors as “clerical” errors. Thus, if a clerical error prevented the processing of the OBR request, the IRS is authorized to reverse the offset and then issue an OBR.

13.1.24.6.2.3
(08-26-2020)

IRS IRMs on OBRs

- (1) IRM 21.4.6.5.11.1, Offset Bypass Refund (OBR), provides that a request for an OBR must be worked immediately upon receipt. An OBR must be issued before the overpayment has been offset. If the offset has already occurred, IRS employees are instructed to tell the taxpayer that the overpayment has been applied to the balance due account and the IRS cannot reverse the offset. Refer to IRM 21.4.6.5.11.1(6), Offset Bypass Refund (OBR), and IRM 3.17.79.3.16(5), Offset Bypass Refunds.
- (2) As described above, if a taxpayer has an IRS debt and a nontax debt for which offset is authorized under IRC 6402 (e.g., child support, student loan, unemployment compensation, state income tax debts, etc.) IRM 3.17.79.3.16(2)(Note) prohibits the IRS from bypassing either debt. The IRS debt must be paid.
- (3) Once the offset takes place, the IRS will not reverse the offset unless a clerical error occurred that prevented processing of the request. See IRM 21.4.6.5.11.1(11), IRM 3.17.79.3.16(5), and IRM 3.17.79.3.2(18), Processing Manual Refunds.
- (4) Per IRM 3.17.79.3.3(3), Issuing Hardship Refunds, a TRDBV print can be used when issuing a direct deposit hardship manual refund into a RAC/RAL account of an original electronic filed return.

13.1.24.6.2.4
(05-11-2018)

How to Advocate in an OBR Case

- (1) When TAS receives a case involving a refund request, TAS must determine whether an OBR is permissible. TAS must research the status of the current year return (if already submitted for processing), and the taxpayer’s previous attempts to communicate the necessity for an OBR prior to receipt of the case in TAS (generally accomplished through review of the Accounts Management System (AMS)).
- (2) If the offset is imminent when TAS receives the request for relief (it generally is), TAS must recognize the short window for providing relief and act quickly. TAS must take into account whether there is an outstanding federal tax debt

13.1 Taxpayer Advocate Case Procedures

(in which case an OBR is permissible), and whether there is an outstanding child support debt, Federal agency nontax debt, state income tax obligation, or unemployment compensation debt (in which case an OBR is not permissible).

- (3) Currently, CADE2 processing generally results in the tax assessment (TC 150 or 23C date) reflecting the same date as the posting of the offset (TC 826), but the cycle dates of those transactions may appear on IDRS prior to the actual assessment and offset. Legally, an overpayment does not exist until the tax is assessed and the taxpayer's payments or credits exceed the amount of the assessment. Therefore, until the return processing is complete including assessment of the tax (identified by the TC 150 or 23C date, not the cycle date), there is no overpayment available for offset. Legally, the offset cannot occur prior to the assessment. An OBR can be initiated prior to assessment but no later than the date of offset as reflected by the transaction codes (TC 150 for assessment of tax, and TC 826 for offset of the resulting credit.)
- (4) Once the tax is assessed (the 23C date), the overpayment is created and offset occurs, there is no longer any overpayment to refund and the OBR cannot be initiated. However, if a freeze code or other condition exists on the account, preventing the overpayment from offsetting to the outstanding liability, an OBR can be initiated because the overpayment is still available on the module (see IRM 21.4.6.5.11.1(6), Offset Bypass Refund (OBR).)

Example: In Figure 13.1.24-1, below, the transaction codes identifying both the assessment of tax (TC 150) and the offset of the credit (TC 826) have dates of February 24, 2014. The cycle for both actions is cycle 201406, or February 6, 2014. In this example, the OBR must be initiated prior to February 24, 2014, because it is the legally sufficient date for both the assessment of tax and the refund offset. The cycle date of February 6, 2014, is merely a processing date and should be ignored.

IDRS Example

TC	DATE	AMOUNT	CYCLE	DLN	VARIABLE DATA
150	02242014	.00	20140605		RECEIVED-DATE: 04152014
766	04152014	2,000.00-	20140605		REF-NUM:336
768	04152014	5,372.00-	20140605		
826	02242014	7,372.00-	20140605		XREF30200412

The transaction date of the TC 150 and TC 826 is the same, 2/24/2014

Cycle date of the TC 150 and TC 826 is the same, 2/6/2014

Figure 13.1.24-1

13.1.24.6.2.5
(10-31-2022)

Advocating that a Clerical Error Occurred

- (1) If a clerical error occurred in the processing of the OBR, it may be possible to reverse the offset based on the clerical error doctrine and then issue the OBR.

Note: OBRs should only be issued after the 23C date when a clerical error occurs or there is a freeze on the account holding the credit, preventing it from offsetting.

- (2) In the legal context, a clerical error is an error resulting from a minor mistake or inadvertence, in writing or copying something on the record, and not from judicial reasoning or determination. For example, a clerical error includes:

- omitting an appendix from a document,
- typing an incorrect number,
- mistranscribing a word,
- misdirecting a form, or
- sending a form to a nonworking fax machine.

A clerical error is not an error based on substance or judgment, but rather, an inadvertent act on the part of a TAS or IRS employee. Think of a clerical error not in terms of whether the person who made the error was in a clerical position or performing a clerical task, but rather, whether the error was inadvertent, administrative, or ministerial and did not involve substantive judgment. Failure to follow existing procedures causing the offset date to pass before taking an action to relieve the hardship is not a clerical error.

Note: The closure of an IRS campus that processes manual refund requests does not constitute a clerical error.

- (3) TAS should advocate for an OBR where the following occurs **before** the offset:

- The taxpayer timely requests assistance from TAS in sufficient time for TAS to process the OBR paperwork;
- The taxpayer timely provides satisfactory documentation of the economic hardship; and
- The Local Taxpayer Advocate (LTA) timely approves the manual refund paperwork, and the paperwork is submitted prior to the date of offset.

- (4) If an IRS or TAS employee makes a clerical, inadvertent or ministerial error (as opposed to a substantive error in judgment) that prevented the processing of the OBR request prior to the date of offset, resulting in harm to the taxpayer, TAS should advocate by requesting the IRS to reverse the offset and providing TAS with written authorization to issue a manual refund. If the Operating Division (OD)/Function disagrees with TAS's recommended actions, then the TAS employee should elevate the issue to the LTA for possible issuance of a Taxpayer Assistance Order (TAO).

13.1.24.6.2.5.1
(10-31-2022)

Examples of a Clerical Error

- (1) A TAS employee receives documentation of the taxpayer's economic hardship (\$989.00) and submits the OBR request to the IRS before the offset occurs. However, the TAS employee inadvertently transposes the numbers and requests \$898.00. The error goes unnoticed by TAS until after the offset occurs. The requested incorrect amount is an inadvertent mistake, not a substantive one. This mistake is considered a "clerical error" which prevented the processing of the OBR for the correct amount (\$989.00). TAS should advocate for the reversal of the offset based on clerical error.
- (2) A TAS employee receives the taxpayer's economic hardship documentation, the LTA approves the manual refund form, and the TAS employee timely faxes the OBR request to the IRS at least one business day before the offset is scheduled. Two days later, the TAS employee calls the IRS to check on the status of the OBR request. The IRS employee discovers the fax machine jammed or was out of paper; therefore, the IRS never received the OBR request and the offset has occurred. The TAS employee refaxes the OBR

request. The IRS's lack of receipt prior to the offset is an inadvertent mistake, not a substantive one. In this scenario, a clerical error occurred that prevented the processing of the OBR request. TAS should advocate for the reversal of the offset based on clerical error.

- (3) A TAS employee receives documentation of the taxpayer's economic hardship, the LTA approves the OBR, and the Case Advocate timely e-faxes the OBR request to the IRS the Friday before the offset will occur on Monday. The TAS employee neglects to check a box in Section II of Form 3753, Manual Refund Posting Voucher. The IRS informs the Case Advocate via voicemail Monday afternoon that Form 3753 was incomplete and asks the TAS employee to resubmit a corrected form. The TAS employee does not receive the voicemail message until Tuesday morning, after the offset occurred on Monday. The TAS employee resubmits the OBR request. The incomplete Form 3753 submitted before the offset occurred was a clerical error that prevented the processing of the OBR request. TAS should advocate for the reversal of the offset based on clerical error.
- (4) Taxpayer contacted TAS requesting an OBR due to hardship on Wednesday, March 3. The 23C date is Monday, March 8. TAS secured hardship documentation, completed Form 5792, Request for IDRS Generated Refund (IGR), obtained LTA approval, and faxed the paperwork to Accounting on Thursday, March 4. Accounting rejected the paperwork because the LTA's digital signature on the Form 5792 contained a middle initial, and the digital signature on file did not. TAS corrected the paperwork and re-submitted it to Accounting on Tuesday, March 9. Can TAS pursue a reversal of the offset due to "clerical error"? Yes, because this was an inadvertent error that did not require substantive judgment.
- (5) The above examples are not all-inclusive of situations in which TAS may or may not advocate for the reversal of an offset based on a clerical error. One of the most important things to remember during the filing season is that OBRs are extremely time-sensitive, particularly with the improvements in return processing made possible by CADE 2. As a result, it is imperative that TAS employees be mindful of deadlines for requesting an OBR. Employees need to screen all their incoming cases to determine if an OBR may be an option in providing relief to the taxpayer. Further, if an employee will be on leave, is called out of the office unexpectedly, or has a large volume of work, it is the employee's responsibility to bring any case involving an OBR to the attention of their manager immediately for reassignment. If TAS employees follow established procedures for working OBRs, the instances in which TAS employees would need to advocate for the reversal of an offset will be minimized.

13.1.24.6.2.5.2 (10-31-2022)

Examples of Errors in Judgment/Substantive Errors

- (1) The taxpayer clearly indicated a need for the OBR prior to the 23C date, had suitable documentation of hardship, and TAS had adequate time to prepare the OBR prior to the 23C date, and the ONLY reason it was missed was due to an oversight on the part of an IRS or TAS employee, even if you feel this is a really strong case, **this does not qualify as a clerical error**. This is a substantive error in judgment.
- (2) Taxpayer called IRS Toll-Free Line on Friday, March 5 to request an OBR based on hardship. The 23C date was Monday, March 15. The IRS assistor documented the call in AMS but did not initiate a referral to TAS, despite taxpayer's clear description of imminent harm. Taxpayer contacted TAS Toll-Free on Thursday, March 25, to request an OBR. Failure to act by the IRS assistor

is a lapse in judgment, not an inadvertent error. This is a substantive error in judgment and TAS should not advocate for reversal of the offset based on clerical error.

- (3) The TAS employee receives documentation of the taxpayer's economic hardship on May 1. Due to the TAS employee's workload, the TAS employee doesn't submit the OBR request to the IRS until May 6. The offset occurred on May 5. The TAS employee should have reprioritized their work or asked their manager for assistance. This is a substantive error in judgment and TAS should not advocate for reversal of the offset based on clerical error.
- (4) The TAS employee receives documentation of the taxpayer's economic hardship on May 1. The TAS employee is on planned or unplanned leave until May 6. The offset occurred on May 5. The TAS employee should have brought this case immediately to their manager's attention before planned leave and if unplanned leave occurs management should have been aware of time sensitive cases. This is a substantive error in judgment and TAS should not advocate for reversal of the offset based on clerical error.
- (5) A TAS employee receives documentation of the taxpayer's economic hardship on the morning of May 1. The TAS employee is out of the office unexpectedly beginning that afternoon and does not return until May 3. The offset occurred on May 2. The TAS employee should have brought this case immediately to their manager's attention before leaving that afternoon. This is a substantive error in judgment and TAS should not advocate for reversal of the offset based on clerical error.

13.1.24.6.2.6
(05-11-2018)

Other Considerations

- (1) It is important to recognize that refund offsets may be the only avenue for the IRS to collect from some taxpayers. Without the application of refund offsets, those outstanding liabilities continue to accrue more interest and penalties, so the taxpayer's indebtedness to the government grows, potentially subjecting the taxpayer to enforcement actions like the filing of a Notice of Federal Tax Lien (NFTL) or a levy. TAS should educate taxpayers seeking OBRs about alternatives to resolving their outstanding liabilities, such as installment agreements or offers in compromise.
- (2) Alternatively, it is also important to recognize that many taxpayers facing refund offsets may not have sufficient resources to meet necessary living expenses and make payments towards their liabilities. It is not unusual for such taxpayers to experience economic hardship year after year, which may lead them to seek TAS assistance more than once. In these situations, TAS can advocate by exploring, with the taxpayer, the feasibility of adjusting withholding exemptions to reduce tax withholdings, resulting in increased take-home pay, improving the taxpayer's financial situation. Just because a taxpayer has requested an OBR in one or more prior years is not, in and of itself, a reason to deny an OBR request in a current year.
- (3) TAS employees must always approach each case involving an OBR request with an advocacy perspective, reviewing the individual facts and circumstances to determine the best approach for providing relief or alternatives.

13.1.24.6.2.7
(10-31-2022)
**OBRs and Receipt of
Unprocessed Original
Tax Returns and Other
Circumstances**

- (1) **TAS employees do not have authority to solicit unprocessed original or amended tax returns.** A TAS office is not considered a “designated filing location” for tax returns and TAS employees have not been delegated the responsibility to accept hand-carried returns. In general, the only exception for acceptance of returns by TAS employees is when the return is time-sensitive and the failure of TAS to accept the return would be detrimental to the taxpayer. The return is not received or filed, however, until the return is transmitted by TAS to the proper IRS filing location or hand-carried to an IRS employee who has the delegated authority to accept hand-carried returns.
- (2) In rare circumstances the taxpayer may send the unprocessed original return to TAS when requesting an expedite refund. Examples of these rare circumstances are:
 - if the taxpayer refuses to send the return to the IRS, or
 - if the taxpayer sends an unsolicited return. The return qualifies as “time-sensitive” because the OBR issue requires processing of that tax return concurrent with the OBR request. For additional information on time-sensitive criteria see IRM 13.1.18.8.3, Taxpayers Delivering Returns to TAS and TAS Date Stamp.

13.1.24.6.2.7.1
(10-31-2022)
**Time Sensitive
Unprocessed Original
Return Procedures**

- (1) The following are instructions for a time-sensitive unprocessed original tax return received in TAS by mail or hand delivered with an expedite refund request and a balance due on a prior tax module only.
- (2) If TAS receives the unprocessed original tax return **and** it must be used to resolve the OBR, mail the original tax return via the OAR process to the appropriate Campus Operating Division within one workday of receipt. See IRM 13.1.18.8.3, Taxpayers Delivering Returns to TAS and TAS Date Stamp.
- (3) Edit the Return and Notate “OBR” on the OAR:
 1. Date stamp the return with the TAS received date (TARD), (this does not mean the return was filed with the IRS); and
 2. Add computer condition codes (CCC), “O” and “Y” in the entity section of the tax return (**always** put “O” before “Y”); and
 3. Write the words, “OBR Request” in the top margin of the OAR.
- (4) Write the OAR with this suggested language:

Please expedite processing of the attached original tax return. Stamp the return with the “official IRS received date” stamp. Add an “X” on the Refund line of the tax return to indicate “no transcription.” Ensure the return has Computer Condition Code (CCC) “O” and “Y” in the proper location to hold the refund and send the return to ERS.

- (5) When the return falls out to ERS, add the ERS employee’s initials next to the refund amount for verification purposes. Fax pages 1 and 2 of the tax return and the screen print of the Error Code Screen Display highlighting the refund amount back to the OAR originator.
- (6) Before mailing the return for processing:
 - Verify taxable income;
 - Verify credits claimed;

- Verify the return is mathematically accurate;
 - Verify all supporting documentation is attached, including Forms W-2 and 1099s;
 - Verify presence of taxpayer's original signature (if joint, both signatures);
 - Add CCC "O" in the Entity section of the face of Form 1040 to freeze the refund;
 - Add CCC "Y" just after the "O" code (OY) to send the return to Error Resolution (ERS) for Systemic Validation and screen print.
- (7) For additional information on issuing manual refunds for an unprocessed tax return see IRM 3.17.79.3.3.2, Manual Refunds for Unprocessed Original Returns.
- (8) If the return is missing supporting forms/schedules, request that the taxpayer send you the missing information immediately.
- (9) Mail the return for processing using the instructions above adding **an additional OAR instruction** that reads, "TAS requested the missing return information and will fax it to the ERS Liaison." List on the OAR exactly what forms/schedules were requested. If the ERS employee, after reviewing the return, determines more information is needed from the taxpayer, ERS will send the taxpayer a letter. (Duplicate requests for the same information can appear to the taxpayer that TAS and the IRS are not working together).
- (10) When TAS receives the requested information, contact the ERS Liaison (phone or email) asking if they have the OAR. Make arrangements to forward the information to the ERS liaison for association with the return and continue processing. Because this is an OBR case requiring expeditious handling by all employees, send missing information to ERS by fax or scanning (under 20 pages) if possible. Once ERS validates the refund amount, TAS can issue the OBR.
- (11) If the taxpayer does not respond, contact ERS advising they can close the OAR because the taxpayer did not respond to TAS's request for missing information. ERS employees should follow their guidance and continue processing the return as a "No Reply." This action prevents the taxpayer from receiving an OBR.
- (12) In instances where the taxpayer states it may take a few days to provide hardship documentation, take the appropriate actions to freeze the account until TAS can determine if a hardship exists. Send the return for processing using the instructions above in IRM 13.1.24.6.2.7.1 (2).
- (13) If the taxpayer does not provide supporting hardship documentation and the return posted to IDRS (TC150), release the "O" code and the "-X" Freeze, (generated when the TC150 posts to an account without a TC 840) by transferring the overpayment to the balance due account(s) via credit transfer procedures. If the taxpayer's overpayment is in excess of the balance due(s) issue a manual refund for the remaining overpayment.
- (14) If the taxpayer cannot provide supporting hardship documentation and the return is not posted (no TC150), monitor the account until the return posts to IDRS (TC150) and then follow the procedures in the preceding paragraph.

- (15) See Document 6209, Section 8A Master File Codes, for information on freeze code conditions and IRM 21.5.6.4, Freeze Code Procedures. For information on how to input a credit transfer see IRM 21.5.8.4, IDRS Guidelines for Credit Transfers.

13.1.24.6.2.7.2
(05-11-2018)

Taxpayer Sent Original Return to IRS

- (1) If the taxpayer submitted a return to the IRS and then contacts TAS to issue an expedite refund, it is possibly too late to issue an OBR to the taxpayer.
- (2) CADE 2 accelerated **refund** processing **not return** processing; therefore if the taxpayer's return is currently being processed it is difficult to know exactly when the return will complete processing. In addition, the return might not pass computer validity checks, have math errors, unpost, etc.
- (3) If posting of the refund created a freeze condition on the account or you receive the taxpayer's request prior to the overpayment offsetting to the balance due account, there should still be time to process an OBR. If this occurs follow procedures in IRM 21.4.6.5.11.1, Offset Bypass Refund (OBR) and IRM 3.17.79.3.16, Offset Bypass Refunds.

13.1.24.6.3
(10-31-2022)

Advocating in cases involving Amish, Mennonite, religious or conscience-based objectors to obtaining an SSN and were denied Child Tax Credit

- (1) The purpose of this section is to provide TAS employees guidance on how to advocate in cases involving Amish, Mennonite, religious or conscience-based objectors to obtaining a Social Security Number (SSN) who were denied the Child Tax Credit (CTC) for tax year 2018. This advocacy will ensure these taxpayers' rights to a fair and just tax system, to challenge the IRS's position and be heard, and to appeal an IRS decision in an independent forum are protected, along with their Constitutional right to freely exercise their religion.

Note: Because of the unique issues involved, TAS will centralize the work of these cases in a few offices. See IRM 13.1.17.3.1, Transfer of Cases Involving Amish, Mennonite, Religious or Conscience-Based Objectors to Obtaining an SSN and Were Denied Child Tax Credit.

13.1.24.6.3.1
(10-31-2022)

Background

- (1) The Tax Cuts and Jobs Act (TCJA), enacted in December 2017, changed the CTC beginning in tax year 2018. The changes included requiring a social security number and increasing the credit amount to \$2,000 per qualifying child. It also created a new credit called the Credit for Other Dependents (ODC) which provides a non-refundable credit of \$500 for certain other dependents.
- (2) As discussed in the *National Taxpayer Advocate 2020 Objectives Report*, *TAS Will Urge the IRS to Reconsider Its Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under IRC § 24(h)(7), Which Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups* and in a NTA blog post, *The IRS's Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under Internal Revenue Code § 24(h)(7) Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups*, (subsequently amended and edited during the current NTA's tenure), some taxpayers with deeply held religious beliefs, most notably the Amish, do not obtain SSNs due to these beliefs. The IRS subsequently revised IRM 3.12.3.26.17.6(2)(a), TIN Requirements (EC 287), indicating it will not allow the CTC on returns where the dependent does not have an SSN due to the taxpayer's religious beliefs. Most typically, these would include returns filed

by Amish and Mennonite taxpayers. The NTA does not agree with the IRS's position. The NTA and TAS will continue to assert, pursuant to *Sherbert v. Verner*, 374 U.S. 398 (1963), that the IRS's position abridges the free exercise of religion and may be in violation of the Religious Freedom Restoration Act.

13.1.24.6.3.2
(10-31-2022)

Advocating for Taxpayers with Religious Objections to Obtaining Social Security Numbers

- (1) Since the IRS is disallowing the CTC where a qualifying child does not have an SSN, these taxpayers may pursue one of two options:
 1. Pursue the CTC, or
 2. Forego the CTC and claim the ODC.
- (2) To advocate effectively for the position the taxpayer chooses, you will need to discuss both options with the taxpayer after you complete your initial research. Ensure the taxpayer understands that if they so choose you will advocate for the CTC despite the IRS's position. Our advocacy will be based on the NTA's disagreement with the IRS's position which is outlined in the articles noted above. Be aware that the Amish and Mennonites are averse to litigation. See *CABIC 325*, Invalid Dependent SSN/Name, for more information.

13.1.24.6.3.2.1
(10-31-2022)

Initial Analysis

- (1) It is critical in these cases to check the date on the taxpayer's math error notice (CP 11, CP 12, or CP 13) to see if the request is within the 60-day period or outside of the 60-day period. You should research IDRS for MINISTER SE CD of 4 on ENMOD or IMFOLE to determine if the taxpayer has an approved Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits, on file with the IRS, which will allow you to argue that the IRS has provided similar exceptions for these taxpayers in the past. It is possible that the taxpayer's Form 4029 indicator may not be present on the account, even though the taxpayer may have previously submitted that form.
- (2) Follow *CABIC 390*, Other, and ask that IRS place the appropriate indicator on the taxpayer's account. See IRM 5.1.12.12.3(5), IDRS Religious Exemption Indicators, to determine if the taxpayer has a valid Form 4029 on file.
 1. **To pursue the CTC**, ask the taxpayer to send you a letter requesting the IRS abate the tax pursuant to IRC 6213(b)(2) within 60 days of the math error notice per IRM 21.5.4.2(5), General Math Error Procedures Overview. Explain to the taxpayer that requesting abatement means the IRS may examine the return and issue a Statutory Notice of Deficiency if it disagrees with the taxpayer's position at the conclusion of the exam. Send your OAR to Accounts Management (AM), Adjustments units at the campus which processed the return. You should consider a TAO if AM denies the taxpayer's request or rejects your OAR. See *CABIC 325* for OAR/TAO template language.

Additionally, the taxpayer may file a protective claim for refund claiming the CTC if the taxpayer decides to claim the ODC for the time being. The protective claim preserves the taxpayer's right to claim the CTC if the IRS changes its position on disallowing the CTC or if a court issues an opinion permitting these claims.

2. **To pursue the ODC**, If the taxpayer is unable, due to contacting TAS more than 60 days after the math error notice is received or unwilling to

claim the CTC, they can still claim the ODC. The ODC is a lesser credit than the CTC and the taxpayer does not need to file a Form 1040X, Amended U.S. Individual Income Tax Return. Ask the taxpayer to send you proof of each child's residency in the U.S. or U.S. citizenship so you can send it with your OAR to AM and request the ODC. See IRM 21.6.3.4.1.24.3(6), Credit for Other Dependents.

13.1.24.7
(05-11-2018)
Introduction to Appeal Issues

- (1) The Appeals mission is published in paragraph (1) of IRM 1.1.7.1, Chief, Appeals (AP).
- (2) TAS's role is to ensure taxpayers are afforded their rights as enumerated in the Taxpayer Bill of Rights (TBOR) and all pertinent information is considered by Appeals. The rights related to appeal issues include the right to challenge the IRS's position and be heard, the right to appeal an IRS decision in an independent forum, the right to finality, and the right to a fair and just tax system. See IRM 13.1.24.2 for additional TBOR information.
- (3) For information on how Appeals handles new taxpayer information not previously shared with the IRS, see IRM 8.6.1.7.5, Taxpayer Provides New Information.

13.1.24.7.1
(10-31-2022)
Non-Docketed Appeals

- (1) Taxpayers can challenge IRS determinations by exercising their administrative appeal rights as provided by statute and expressed in the TBOR. Taxpayers can challenge the following determinations and collection actions (not all-inclusive):
 - a. Examination (pre-assessment and reconsideration post-assessment);
 - b. Automated Underreporter (AUR pre-assessment and reconsideration post-assessment);
 - c. Automated Substitute for Return (ASFR pre-assessment and post-assessment);
 - d. Collection actions reviewable in a Collection Due Process (CDP) or equivalent hearing (EH);
 - e. Collection actions reviewable through the Collection Appeals Program (CAP); and
 - f. Most penalty appeals.
- (2) Educate the taxpayer on appeal rights available. The role TAS plays when a taxpayer exercises an appeal right depends on the problem that brought the taxpayer to TAS. See IRM 13.1.21.2.2.2, Appeals.
- (3) If the IRS failed to offer the taxpayer proper appeal rights, advocate to the OD/Function to offer the right to appeal. If the BOD/Function granted appeal rights, but failed to consider the taxpayer's appeal request, advocate to the OD/Function to first reconsider their determination or action based on the appeal. If the OD/Function sustains its determination or action, advocate the OD/Function assemble the appeal package and send it to Appeals. Issue these types of advocacy OARs to the OD/Function, not Appeals.
- (4) Appeals can reach settlements the OD/Function cannot reach based on hazards of litigation.

13.1.24.7.2
(10-31-2022)

Collection Due Process (CDP) Appeal Cases

- (1) The Restructuring and Reform Act of 1998 (RRA '98) created IRC 6320 , Notice and Opportunity for Hearing Upon Filing of Notice of Lien, and IRC 6330 , Notice and Opportunity for Hearing Before Levy. See IRM 8.22.4.2.2, Summary of CDP Process, for a list of notices and letters that trigger CDP rights. It also explains what Appeals must take into consideration during these hearings.
 - a. IRC 6320 requires the IRS to notify in writing the taxpayer of the filing of a Notice of Federal Tax Lien (NFTL) and the right to request a CDP hearing. The IRS has five business days after the first NFTL for the particular tax debt to notify the taxpayer.
 - b. IRC 6330 requires the IRS to notify in writing the taxpayer of its intent to levy and the right to request a CDP hearing not less than 30 days before issuing the first levy to collect a particular tax debt.
- (2) IRC 6330(f) provides exceptions to the right to a hearing before levy. In the following instances, the taxpayer is afforded the right to request a post-levy hearing:
 - a. State tax refund under the State Income Tax Levy Program (SITLP);
 - b. Collection of the tax was in jeopardy;
 - c. "Disqualified" employment taxes (see IRM 8.22.6.3.3, Disqualified Employment Tax Levy (DETL)); and
 - d. Federal contractor levies.
- (3) The taxpayer may seek judicial review of the Notice of Determination issued by Appeals at the conclusion of the CDP hearing by filing a timely petition in the United States Tax Court. See IRM 8.22.9.15.1, Deadline to Petition Tax Court.
- (4) IRC 6330(e) suspends the collection statute expiration date (CSED) for the period of time during which the CDP hearing and any appeals therein are pending. The Internal Revenue Code further states that no CSED shall expire before the 90th day after which the determination is made final. Treas. Reg. § 301.6330-1(g)(2), Q&A-G1 states the suspension period begins the date the IRS receives the taxpayer's written request for a CDP hearing. For field collection, see IRM 5.1.9.3.6, Suspension of Collection Statute of Limitations, for a further discussion of the suspension of the CSED. IRM 5.1.9.3.5.1, Levy Action During the Period of the CDP or EH, discusses what collection actions can be taken during a CDP case. Levy action is not suspended by law but is generally suspended by policy during an equivalent hearing or during a timely requested CDP lien hearing. IRM 5.19.8.4.6, Collection Action During the CDP Appeal Period, contains similar information for use by ACS employees.

13.1.24.7.3
(10-31-2022)

How TAS Can Advocate for the Taxpayer to Timely Request a CDP Hearing

- (1) Confirm the period for timely requesting a CDP hearing is open to the taxpayer. Refer to IRM 5.19.8.4.2.1, CDP Hearing Request - Timeliness.
- (2) Check the Integrated Data Retrieval System (IDRS) for the following CDP indicators:
 - TC 520 with closing code (cc) 76 (active CDP-NFTL)
 - TC 520 with cc 77 (active CDP- Notice of Intent to Levy)
 - TC 521 with cc 76 (closed CDP-NFTL)
 - TC 521 with cc 77 (closed CDP- Notice of Intent to Levy)
 - TC 971 with action code (AC) (275-280) for CDP and equivalent hearings

13.1 Taxpayer Advocate Case Procedures

Note: Refer to specific definitions in Automatic Data Processing (ADP) Document 6209, Gateway to Document 6209 Codes and Descriptions for these transaction codes, closing codes, and action codes. The TC 971 action codes contain a mix of open, resolved, and closed CDP or equivalent hearing cases.

- (3) If the period for requesting a CDP hearing is open for the tax period under consideration and there is no prior evidence of an active or closed CDP or equivalent hearing, advise the taxpayer of the option to request a hearing. If the taxpayer wants a hearing, advise the taxpayer to submit Form 12153, Request for a Collection Due Process or Equivalent Hearing, to the address shown on the lien or levy notice to timely request a hearing under either IRC 6320 or IRC 6330 .
- (4) The taxpayer must explain the reason for requesting the hearing on Form 12153. Page 4 of the form provides examples. Discuss the elements of the case with the taxpayer to help the taxpayer identify the appropriate reasons for the taxpayer to use on the form. If the basis for the CDP hearing is a NFTL filing, attach a copy of the notice of federal tax lien.
- (5) A timely request for a CDP hearing preserves the taxpayer's right to go to Tax Court if the taxpayer disagrees with Appeals' determination.
- (6) A written request for a hearing signed by the taxpayer or taxpayer's representative can be substituted in lieu of Form 12153 as long as the request contains all required information.
- (7) Per IRC 6330(g), the IRS can disregard a CDP hearing request made solely on frivolous arguments. When the IRS determines the CDP hearing request is frivolous, review the taxpayer's request and the IRS decision to disregard, and advocate for a CDP hearing if at least some of the taxpayer's reasons are not frivolous. Protect the taxpayer's right to a hearing in an independent forum.
- (8) If the hearing request is not rejected on the basis of a frivolous submission, a hearing is required by statute. If the IRS proposes to conduct the CDP hearing by telephone, discuss with the taxpayer whether the taxpayer would prefer a face to face or Virtual Service Delivery (VSD) teleconference hearing, and help the taxpayer determine the best venue for the hearing. If the taxpayer prefers a face to face or VSD hearing, advocate for the preferred conference type per IRM 8.22.5.6.1, Types of Appeals Conferences.
- (9) After this hearing is concluded, Appeals must issue a determination letter.
- (10) Once the taxpayer's case is open in Appeals, TAS may prepare and send an OAR to Appeals to expedite resolution of the CDP case. The OAR must provide a thorough explanation of the taxpayer's circumstances.
- (11) If the taxpayer agrees with Appeals' determination, the terms are binding for both the IRS and the taxpayer. If the taxpayer disagrees, the taxpayer has 30 days from the date of the determination letter to petition the U.S. Tax Court.
- (12) Appeals "retains jurisdiction" (RJ) over their CDP decision, which can result in the taxpayer returning to Appeals for a RJ hearing in some circumstances. See IRM 8.22.9.18, Retained Jurisdiction (RJ) Hearings.

13.1.24.7.4
(10-31-2022)

Equivalent Hearing (EH)

- (1) When the taxpayer makes a request for a CDP hearing that is untimely (post-marked after the established timeframe, or submitted late), they are no longer entitled to a CDP hearing.
- (2) If a taxpayer failed to timely exercise their CDP rights, explain to the taxpayer it is still possible to obtain a review of the lien or levy collection action, provided more than a year has not elapsed from the date of the levy notice or, with respect to a lien notice, one year plus five business days from the filing date of the NFTL. The taxpayer must specifically request consideration for an EH on Form 12153 or by written request.
- (3) The EH is similar to a CDP hearing. However, there is no statute suspension nor does the taxpayer have the right to seek judicial review if Appeals' determination is in favor of the government.
- (4) Although taxpayers have no further appeal or judicial rights following an Appeals EH determination letter, in TAS cases that are in Appeals' jurisdiction, Appeals has agreed to provide TAS with the proposed determination. After five workdays, the assigned Appeals employee will notify the taxpayer/representative of Appeals' final determination, unless TAS elevates any specific concerns. See IRM 8.22.4.3, Equivalent Hearing (EH), and the Service Level Agreement between Appeals and TAS.

13.1.24.8
(03-05-2019)

Advocating for Taxpayers Facing Passport Revocation/Denial

- (1) This subsection provides guidance to TAS employees advocating for taxpayers with seriously delinquent tax debt(s) subject to the IRS's Passport Certification Program.

13.1.24.8.1
(10-31-2022)

Background

- (1) In 2015, Congress passed the Fixing America's Surface Transportation Act (FAST Act), Pub. L. No. 114-94, § 32101(e), 129 Stat. 1311, 1732 (2015), which requires the Department of State (DOS) to deny a passport application and allows it to revoke or limit a passport if the IRS certifies a taxpayer's seriously delinquent tax debt. The right to travel internationally is a fundamental right, protected by the Due Process Clause of the Constitution. Under the Universal Declaration of Human Rights, adopted in 1948 by the United Nations after a unanimous vote (including the United States) "[e]veryone has the right to leave any country, including their own, and to return to their country." The National Taxpayer Advocate expressed concerns that the IRS's implementation of the passport program fails to protect taxpayers' right to travel as well as their rights promised under the Taxpayer Bill of Rights. See the *National Taxpayer Advocate's blog* and the *Fiscal Year 2018 Objectives Report to Congress*.
- (2) Although TAS used a TAS IDRS Marker of TC 971 AC 154 with "TAS" in the MISC field through 12/31/2020, and switched to a TAS IDRS Marker of TC 971 AC 517 on 1/1/2021, these markers will not exclude or decertify the taxpayer's seriously delinquent debt.

13.1.24.8.2
(10-31-2022)

Identifying a Seriously Delinquent Tax Debt

- (1) IRC 7345(b) defines a seriously delinquent tax debt as an "unpaid, legally enforceable federal tax liability of an individual," which:
 - Has been assessed;

- Is greater than \$50,000 (indexed annually for inflation, \$55,000 in 2022 per IRM 5.19.25.3, Seriously Delinquent Tax Debt); and
 - Meets either of the following criteria: (1) a notice of lien has been filed under IRC 6323 and the Collection Due Process (CDP) hearing rights under IRC 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC 6331.
- (2) A seriously delinquent tax debt does not include accrued but unassessed interest or penalties. It also does not include non-tax debts, such as Affordable Care Act assessments, criminal restitution assessments, child support obligations, and Foreign Bank and Financial Report (FBAR) penalties.
- (3) There are statutory exclusions, which include a debt:
- That is being timely paid through an installment agreement (IA) or OIC;
 - For which collection is suspended because the taxpayer requested a CDP hearing or a CDP hearing is pending; or
 - For which collection is suspended because the taxpayer has requested relief from joint liability per IRC 7345(b)(2) (known as innocent spouse relief).
- (4) As of July 16, 2018, IRM 5.19.25.5, Discretionary Exclusions from Certification, provides additional exclusions from certification and includes the following discretionary exclusions:
- Debt determined to be in currently not collectible (CNC) status due to hardship. Currently not collectible (CNC) status removes taxpayer accounts from active collection inventory per IRM 5.19.17.2, *Currently not Collectible (CNC) Procedures*. The IRS places taxpayer accounts into CNC Hardship status when “collection of the liability would create a hardship for taxpayers by leaving them unable to meet necessary living expenses” per IRM 5.19.17.2.1.2, *Hardship Closure Authority Levels*.
 - Debt that resulted from identity theft;
 - Taxpayers in a disaster zone;
 - Debt of a taxpayer in bankruptcy;
 - Debt of a deceased taxpayer;
 - Debts included in a pending OIC or pending IA; and
 - Debt for which there is a pending claim and the resulting adjustment is expected to result in no balance due. See IRM 5.19.25.5, Discretionary Exclusions from Certification.
- (5) The IRS will reverse a certification if the taxpayer meets either a statutory or discretionary exclusion. Additional information can be found in three sections of IRM 5.19.25, Passport Program:
- IRM 5.19.25.3, Seriously Delinquent Tax Debt;
 - IRM 5.19.25.4, Statutory Exclusions from Certification; and
 - IRM 5.19.25.5, Discretionary Exclusions from Certification.
- (1) TAS has witnessed firsthand the devastating effects on taxpayers who have had to give up their passports for even a temporary period. TAS has worked a number of cases where the IRS lost or delayed returning passports to applicants for Individual Taxpayer Identification Numbers. We have seen situations where taxpayers were unable to visit a dying family member, undergo urgent medical surgery abroad, and travel for business as part of a job. TAS is likely to see similar situations because of the passport certification program.

- (2) New taxpayers coming to TAS prior to certification may not understand why the IRS is taking action and may be frustrated because they have been voluntarily trying to resolve their tax debt. Taxpayers who come to TAS after certification may feel it is unfair for the first notice they receive about the passport certification to be a notice that the IRS already certified their tax debts. Planning and paying for international travel can be a stressful experience, especially when taxpayers do not have certainty that they will be able to follow through with their plans. Exercising understanding and compassion for taxpayers in these cases, and acting with the appropriate sense of urgency, is vital.
- (3) Now that the IRS has begun certifying qualifying taxpayers to the Department of State, the TAS advocacy approach will depend on whether the IRS has not yet or has already certified the seriously delinquent tax debt to the Department of State.

13.1.24.8.4
(10-31-2022)
**Advocating for
Uncertified Taxpayers
with Seriously
Delinquent Tax Debt**

- (1) If a taxpayer has an aggregate debt over \$50,000 (indexed annually for inflation, \$55,000 in 2022), check for the existence of the unreversed TC 971 AC 641 on ENMOD. If no such TC is present, determine if the debt is eligible now for passport certification (a levy or a notice of lien issued, Collection Due Process (CDP) rights exhausted or lapsed, and the debt is not eligible for any statutory or discretionary exclusions). Also determine if the debt will soon be eligible for passport certification (e.g., federal disaster area exclusion about to elapse).
- (2) If the taxpayer is certified, follow the procedure in IRM 13.1.24.8.5.
- (3) If the taxpayer is uncertified, but eligible or soon will be eligible for certification, explain the risk to the taxpayer. Review the information in IRM 13.1.24.8.3 and ask the taxpayer questions per IRM 13.1.24.8.5 to determine the impact of certification to the taxpayer. If the taxpayer has imminent foreign travel plans, lives abroad, or has another compelling need for a passport, immediately seek the advice of a Revenue Officer Technical Advisor (ROTA).
- (4) The ROTA will verify the taxpayer is eligible or will soon be eligible for certification and no statutory or discretionary exclusions will apply. If possible, the ROTA will also determine how much time the taxpayer will have before certification.
- (5) Elevate the case to your Local Taxpayer Advocate (LTA) if the case meets all the following criteria. The taxpayer has:
 - Imminent foreign travel plans, lives abroad, or has another compelling need for the passport;
 - A significant risk of being certified before TAS will be able to help resolve the taxpayer's debt; and
 - Taken demonstrable recent steps to get into compliance with the IRS that nevertheless fall short of the statutory and discretionary exclusions.

Example: TAS is working to get a taxpayer who owes \$100K into an installment agreement. The Case Advocate (CA) learns the IRS recently filed a Notice of Federal Tax Lien, and the taxpayer just missed the deadline for requesting a CDP hearing before coming to TAS. The CA discusses the potential passport consequences with the taxpayer. The taxpayer travels internationally for business, and plans to attend a conference in Paris next month. The CA makes a ROTA referral, and the ROTA estimates the taxpayer will be certified in two weeks. At TAS's request, the

taxpayer recently filed two delinquent returns and an amended return that will reduce the debt to \$30K. The CA elevates this case to the LTA because although the taxpayer has taken demonstrable steps, the recently filed returns are not likely to be processed in time to prevent certification, and the IRS will not accept an IA until the taxpayer is in filing compliance.

- (6) If the LTA concludes all the requirements in paragraph (5) above are satisfied, the LTA will email the **TAS Passport Questions mailbox*. Provide the relevant facts and ask the TAS Passport Rapid Response Team to forward the information to the TAS Attorney Advisor currently assigned the passport certification program so the AA can negotiate with the Small Business/Self-Employed (SB/SE) Passport Office point of contact to temporarily block certification to give TAS time to assist the taxpayer to resolve the debt. If agreement cannot be reached, consider a TAO.

13.1.24.8.5

(03-05-2019)

Advocating When the IRS Certified a Taxpayer's Debt

- (1) Identify taxpayers whom the IRS certified to the Department of State. These taxpayers will have an unreversed TC 971 AC 641 on ENMOD. *This means TAS employees must immediately alert the taxpayer to this situation and determine its urgency.*
- (2) TAS employees will discuss with the identified taxpayers the IRS passport revocation/denial certification process and steps that can be taken to resolve their debt so the IRS will decertify their accounts.
- (3) As part of their discussion with the taxpayer, TAS employees will determine and discuss the impact the passport revocation/denial will have on the taxpayer, and document the discussion in TAMIS. In other words, find out if the taxpayer currently has a passport, has a passport application or renewal pending (and the application number), and whether the taxpayer has any plans for foreign travel or other need for their passport.
- (4) TAS advocacy for taxpayers whom the IRS certified to the Department of State is a three-step process:
 - Determine the urgency of the taxpayer's need for a passport or for decertification for another urgent reason;
 - Resolve the seriously delinquent debt; and
 - Request decertification of the debt with the Department of State.

13.1.24.8.5.1

(02-04-2020)

Resolve the Debt

- (1) Advocate for a resolution that will remove the taxpayer from the criteria for the Passport Certification Program. For example:
 - Completely satisfying the debt;
 - Meeting a statutory or discretionary exclusion that will exclude the taxpayer's debt from certification (e.g., CNC hardship status, pending or accepted IA, OIC);
 - Having an underlying liability recalculated to reflect the taxpayer did not owe a seriously delinquent debt (e.g., audit reconsideration, appeals conference, penalty abatement, innocent spouse relief, or identity theft); or
 - Providing evidence that the IRS erroneously certified the debt as seriously delinquent, meaning the taxpayer was not eligible for certifica-

tion according to the statute (e.g., the taxpayer was serving in a combat zone or the liability did not exceed \$50,000 (indexed annually for inflation, \$55,000 in 2022)).

- (2) Analyze the situation and discuss the options with the taxpayer. Once you have decided on an option, gather the necessary documentation to advocate for the selected relief. If the case is complex and may take time to fully resolve and the taxpayer has a need for a passport, discuss with the taxpayer the possibility of entering into an Installment Agreement or Partial Pay Installment Agreement while working on a longer-term resolution, to have the taxpayer decertified. Ensure your TAMIS histories show the reason the advocacy option was selected and your efforts to secure the necessary documentation.
- (3) If the taxpayer has planned foreign travel within 45 days, lives abroad, or has another compelling reason for the passport, use expedited OARs with short requested completion dates to resolve the debt. If agreement is not reached on your OAR, immediately elevate the situation to your LTA for issuance of a TAO.
- (4) If the taxpayer's need for foreign travel is related to an emergency or humanitarian situation, IRM 13.1.24.8.6 explains the discretion the Department of State can exercise while the taxpayer remains certified.

13.1.24.8.5.2
(10-31-2022)

Decertify the Debt with the Department of State

- (1) Once the taxpayer meets a criterion for decertification under IRM 5.19.25.10, Reversal of Certification, review IRM 13.1.24.8.8 to determine if the account will require manual decertification. If so, send an OAR to the SB/SE Passport Office seeking manual decertification.
- (2) If the taxpayer has an imminent need for a passport as defined in IRM 5.19.25.10.1, Expedited Decertification, gather the supporting documentation described. If the IRS function that resolved the debt did not complete and sign page one of Form 14794, Expedited Passport Decertification, prepare the form for LTA signature on page one.
- (3) Send an expedited OAR to *SBSE Passport Group mailbox, requesting that the taxpayer be decertified within one business day. Include the signed Form 14794 and the required documentation. If the OAR is not complied with timely, or if you disagree with the response, immediately elevate the case to your LTA for issuance of a TAO.

13.1.24.8.6
(10-31-2022)

Taxpayers Seeking Emergency or Humanitarian Relief from the Department of State

- (1) The Department of State has some discretion under *Section 32101(e) of the FAST Act* when the IRS notifies the Department of State that an individual has a seriously delinquent tax debt. If the taxpayer has emergency or humanitarian reasons for travel, the Department of State (not the IRS) may:
 - Issue a passport;
 - Limit a previously issued passport only for return travel to the United States; or
 - Issue a limited passport that only permits return travel to the United States.
- (2) If the IRS has certified the seriously delinquent tax debt, and the taxpayer cites an emergency or humanitarian situation that could be relieved through use of this Department of State discretion (e.g., risk of bodily harm to the taxpayer or a family member, taxpayer stranded in a war zone or country in the midst of civil strife, need to travel to receive medical care or care for a family member):

- Advise the taxpayer of the discretion available to the Department of State;
- Recommend the taxpayer *contact the Department of State* directly to seek relief; and
- Send a secure email to **TAS Passport Questions mailbox* with the TAS case number and a summary of the situation.

13.1.24.8.7
(03-05-2019)

Case Coding

- (1) Use issue code 930, Passport Revocation/Denial, as the secondary issue code in applicable cases, including pre-certification efforts to resolve the taxpayer's debt to prevent IRS certification of the debt to the Department of State. The primary issue code will be the process used to resolve the taxpayer's debt (audit reconsideration, installment agreement, hardship CNC, etc.).

13.1.24.8.8
(10-31-2022)

Manual And Systemic Decertification of Taxpayer Debts Under the Passport Certification Program

- (1) Situations where the TC 972 AC 641 will not appear on ENMOD systemically, and will require manual decertification include:
 - Penalty abatements under any basis except First Time Abate (e.g., not liable, IRS error, reasonable cause, etc.), which reduces (but does not fully satisfy) the taxpayer's total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$55,000 in 2022).
 - An amended return or audit/ASFR/SFR reconsideration reduces (but does not fully satisfy) the total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$55,000 in 2022).
 - The certification was erroneous and correction of the error does not result in the systemic posting of TC 972 AC 641 on ENMOD.
 - If mirroring activity will result the requesting spouse being eligible for decertification, verify the mirroring triggers the systemic decertification on the requesting spouse's ENMOD. If it doesn't, advocate for the Passport Analyst to manually decertify the requesting spouse.
 - Preparer misconduct cases that are adjusted to reduce (but not fully satisfy) the total unpaid assessments to \$50,000 or lower (indexed annually for inflation, \$55,000 in 2022).
- (2) Situations where the TC 972 AC 641 and the CP 508R will appear on ENMOD systemically (no manual decertification needed) include:
 - Taxpayer makes a payment large enough to put all the certified modules into collection status 12.
 - The entire unpaid assessment on all certified modules becomes unenforceable due to expiration of the CSED.
 - All certified modules are being timely paid under an IA (unreversed TC 971 AC 063), or all certified modules have a posted TC 971 AC 043 pending IA indicator.
 - All certified modules are in hardship currently not collectible status (posted TC 530 with a closing code of 24-32).
 - All the certified modules have a pending OIC (unreversed TC 480) or an accepted OIC being timely paid (unreversed TC 780).
 - An amended return, penalty abatement request, or audit/ASFR/SFR reconsideration eliminates balance owed on all certified modules (putting them in collection status 12).
 - All certified modules are due to identity theft (unreversed TC 971 AC 501, 522, 523, or 525).

- All certified modules have a -O disaster zone freeze. New certifications will be suspended for taxpayers in a Disaster Zone indicated with a -S Freeze. However, previously certified taxpayer accounts will not be de-certified by the -S Freeze.
- All certified modules have a bankruptcy indicator (unreversed TC 520 cc 60-67, 81, or 83-89).
- All certified modules have a pending claim expected to result in no balance due (unreversed TC 470 cc 90).
- All certified modules are suspended due to a timely requested or pending CDP hearing (unreversed TC 520 cc 76 or 77).
- All certified modules have a pending innocent spouse claim (unreversed TC 971 AC 065).

13.1.24.9
(02-04-2020)
**Advocating for
Taxpayers Adversely
Impacted by the
Government Shutdown**

- (1) This section provides guidance to TAS employees about advocating for taxpayers adversely impacted by a government shutdown due to the lapse in appropriations.

13.1.24.9.1
(02-04-2020)
**Reviewing and
Receiving Cases
Following a Shutdown**

- (1) Because of the possible length of a Shutdown and the potential influx of taxpayers waiting to come to TAS, it is critical that we identify the most urgent cases in need of immediate TAS assistance and address those cases first. It is vital that TAS employees look for those situations in open inventories and during the intake process, rather than waiting for taxpayers to make a Shutdown-specific complaint.
- (2) During the intake process, TAS employees will identify those cases that are the most urgent and time-sensitive. As required by IRM 13.1.16.8.1, Immediate Elevation of Emergency Cases, TAS employees will notify management in the office receiving the case that it will require expeditious handling. Employees will document the TAMIS History with the literal ****EMERGENCY****.

13.1.24.9.2
(02-04-2020)
**Zip Code Routing (ZCR)
of Cases Received
During the Shutdown**

- (1) Cases received during the shutdown are eligible for ZCR, however the transferring office must contact the taxpayer to complete the initial contact per IRM 13.1.18.6, Initial Contact Completed by Case Advocates, **before** transferring the case. Receiving offices will not transfer these cases again; instead, they will keep these cases and work them. Keep in mind that the taxpayer has been waiting to hear from us. TAS is responsible for advocating for the taxpayer and it is in the taxpayer's best interest for us to begin working to resolve the taxpayer's issue as quickly as possible.
- (2) The Taxpayer Advocate Received Date (TARD) is **the date TAS received the Taxpayer's inquiry**. Offices **will not** change the date of the TARD to a date other than the date TAS received the inquiry even though that date may fall on a Shutdown day. It is critical that we know the date the case was received into TAS and offices **cannot** change this date no matter the circumstances. We want to record the impact of the Shutdown from the taxpayer's perspective. The fact that we received a request for assistance during the Shutdown and were not able to help the taxpayer at that time is vital information to show that impact.

13.1.24.9.3
(02-04-2020)

**Prioritizing Caseloads
and Advocating for
Taxpayers Experiencing
Imminent Hardship**

- (1) As employees begin to prioritize their caseloads, they need to be mindful that IRS employees were also furloughed and are facing backlogs of work. Even those IRS employees who were “excepted” were limited in the work that they were able to perform during the shutdown and very likely were unable to perform work requested by OARs prior to the shutdown.
- (2) TAS employees will triage their workload – **all** workload, including those cases that were open before the shutdown, those that came in while we were shut down, and new cases we have received since the shutdown. Give priority to those cases where the taxpayer is **experiencing imminent hardship**:
 - The IRS has taken or is about to take enforcement action, i.e., levy, lien, or seizure; or
 - The taxpayer will experience significant economic hardship or irreparable harm: if the IRS does not take action.
- (3) If a case falls into these categories, TAS employees should determine what relief is necessary to resolve the taxpayer’s issue to the extent possible under the internal revenue laws.
- (4) When necessary to address imminent hardship, OARs and TAOs should provide for very abbreviated response times. Since time is of the essence in many of these cases, a 24-hour response time may be appropriate. In other instances, a slightly longer timeframe may be required to execute the requested relief, but the OAR or TAO should generally require a 24-hour response as to whether the IRS agrees to undertake the required relief. If the IRS fails to meet the deadline, the TAS employee should immediately discuss this case with the LTA for TAO consideration. Consider sending an immediate TAO and bypassing the OAR if needed to quickly resolve the taxpayer’s issue. If the IRS fails to meet the deadlines set in the TAO, and the LTA determines it is inappropriate or harmful to modify those timeframes, the LTA should immediately elevate the TAO to the DEDCA. See IRM 13.1.19, TAS Operations Assistance Request (OAR) Process, and IRM 13.1.20, TAS Taxpayer Assistance Order (TAO) Process, for additional information.

13.1.24.9.4
(02-04-2020)

**Prioritizing Caseloads
and Advocating for
Taxpayers Not
Experiencing Imminent
Hardship**

- (1) TAS employees need to be mindful that IRS employees were also impacted by the Shutdown. TAS does not want to exacerbate an already difficult situation by sending OARs to the IRS requesting expedite treatment when it is not necessary. Therefore, TAS should not use the expedite OAR process on cases not experiencing an imminent hardship.
 - a. For cases where TAS issued an OAR before the Shutdown and the taxpayer is not experiencing an imminent hardship, TAS employees will grant an extension of at least ten business days to the negotiated completion date or requested completion date (whichever is applicable). Grant this extension from the date you determine the taxpayer is not experiencing an imminent hardship.
 - b. For cases requiring a new OAR that are not experiencing an imminent hardship, TAS employees will set more flexible requested completion dates (RCDs).

Example: You could allow an additional five business days beyond the RCD you would normally set.
 - c. When negotiating completion dates for cases where the taxpayer is not experiencing imminent hardship, be mindful that taxpayers have been

waiting for relief and it is not their fault that the government shut down. Where appropriate, grant all reasonable requests to extend. In determining “reasonableness,” factor in whether the taxpayer is extremely anxious. If you are unsure if a request is reasonable, discuss the case with your manager.

13.1.24.9.5
(02-04-2020)
**Identifying TAS
Taxpayers Adversely
Impacted by the
Government Shutdown**

- (1) It is vitally important for TAS to capture the impact of the Shutdown on taxpayers so we can include this information in our many discussions with Congress and the IRS as part of our advocacy and collaborative improvement efforts. TAS has created the Systemic Advocacy Use code **FURLO** to identify cases impacted by the Shutdown. TAS will systemically update all TAS cases that were open during the Shutdown and cases received for a period of time following the Shutdown to include FURLO in the Systemic Advocacy Use Code field. TAS will evaluate the need to update new cases received with the FURLO code on a weekly basis after a Shutdown.

13.1.24.9.6
(02-04-2020)
**Identifying Systemic
Issues**

- (1) As you proceed with your casework, you may identify systemic problems impacting multiple taxpayers as the result of how the IRS is handling certain inquiries or outcomes from the Shutdown. Elevate these issues to your LTA and load them on the *Systemic Advocacy Management System* (SAMS), as appropriate. (See IRM 13.1.21.2.1.1, Relief Codes.) Be sure to provide TAMIS case file numbers, but do not include specific details or taxpayer information in the SAMS submission.

13.1.24.10
(10-31-2022)
**Special Situations
Requiring Immediate
Action**

- (1) This section describes different situations that require TAS employees to take immediate actions to protect taxpayer rights.

13.1.24.10.1
(10-31-2022)
**Advocating for
Taxpayers Who
Received a Refund
Disallowance Letter from
the IRS**

- (1) Reserved.

13.1.24.10.2
(10-31-2022)
**TAS Receipt of Taxpayer
Payments**

- (1) TAS cannot accept cash payments. Refer the taxpayer to the nearest Taxpayer Assistance Center (TAC) for payment acceptance and processing.
- (2) Generally, TAS does not accept non-cash payments. Refer taxpayers to *irs.gov/payments* for payment options. If TAS mistakenly receives a non-cash remittance, see IRM 1.4.13.4.6, Payment Processing, and also IRM 3.8.47.5.4, Procedures for Sending Tax Receipts to a Submission Processing Center.

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Exhibit 13.1.24-1 (10-31-2022)
Alternative Documentation for Qualifying Child

	Document / Records	Relationship	Residency	Support
1	Birth Certificate	x		
2	Marriage certificate	x		
3	Divorce decree, separation agreement or decree of separate maintenance	x		
4	A letter from an authorized adoption agency	x		
5	Letter from an authorized placement agency or applicable court document	x	x	
6	Custody order	x		
7	School records (may require 2 years since school years over-lap tax years)	x	x	
8	Medical records	x	x	
9	Social service records	x	x	
10	Section 8 housing applications		x	
11	Immigration paperwork	x		
12	Green card		x	
13	Citizenship papers	x		
14	Childcare provider records	x	x	
15	Baptismal certificate (or letter on official letter-head from place of worship)	x		
16	Court document	x		
17	A letter on official letterhead from a landlord or property manager that shows names, common address and dates		x	
18	A statement from any government agency verifying the amount and type of benefits you and/or your dependent received for the year	x		
19	Rental agreements or a statement showing the fair rental value of your residence		x	x
20	Property tax bills		x	
21	Mortgage receipts		x	x
22	Official mail (<i>i.e.</i> , envelope or package addressed to dependent)		x	
23	Earnings Statement		x	
24	Social Security card		x	

Exhibit 13.1.24-1 (Cont. 1) (10-31-2022)
Alternative Documentation for Qualifying Child

25	Library card		x	
26	Utility and repair bills (proof of household expenses) with canceled checks or receipts		x	x
27	Clothing bills (proof of child's support with canceled checks or receipts)		x	x
28	A driver's license		x	
29	Automobile registration		x	
30	Automobile insurance bill		x	
31	Club membership		x	
32	Copies of canceled checks for mortgage payments, rent, utilities, insurance		x	x
33	Credit card statements		x	
34	Bank statements		x	
35	Military records	x		
36	Statement or records from homeless shelter		x	
37	Eviction notices		x	
38	Paperwork to obtain a Post Office box		x	
39	Parole office files	x	x	
40	Accurant	x	x	
41	Magazine subscriptions		x	
42	DDBKD transcript	x		
43	Obituary	x		
44	Census records	x		
45	Voter registration card		x	
46	Homeowners/Renters insurance Policy		x	
47	Passport	x		
48	Ancestry.com (document of an old birth, marriage record, etc.)	x		
49	DNA test	x		
50	Alumni yearbooks	x		

Exhibit 13.1.24-2 (10-31-2022)

Case Scenarios Identifying Alternative Documentation

Taxpayer's Situation	Alternative Documents
<p>The TAS employee obtained the following facts from the taxpayer through dialogue and thoughtful questioning:</p>	<p>The TAS employee requested the following documents to support EITC eligibility:</p>
<p>Scenario 1: The taxpayer's qualifying child is enrolled in school, but the taxpayer used the grandmother's address on the school registration forms. The grandmother provides before and after-school care while the taxpayer works. The taxpayer uses this address so the child can ride the bus to and from the grandmother's house. The grandmother is also the adult who attends most doctor's appointments with the child.</p> <p>The taxpayer cannot provide school records or a statement from the doctor to substantiate that the child lived with them for more than six months of the tax year. The taxpayer moved in the middle of the tax year and spent six weeks in between leases living with their mother, so neither lease agreement covers more than six months for the year.</p>	<ul style="list-style-type: none"> • Benefit statement from taxpayer's employer showing that they pay for a health insurance plan covering taxpayer and a dependent for the entire tax year. The statement identifies the taxpayer and the dependent by name and date of birth, which will match Social Security records. • Medical invoices for the child made out to the taxpayer's home address. • A printout from a pharmacy of the child's prescriptions that include the child's address. • Copies of both lease agreements. When combined, the agreements verify that the leasing companies recognized the child as an authorized resident for both apartments and demonstrate residency of the child for more than six months of the year.
<p>Scenario 2: The taxpayers are caring for their niece and nephew, who the state social services department removed from their mother's home due to neglect. The taxpayers do not have certified copies of birth certificates for the children and will need six to eight weeks to obtain them, but the taxpayers are experiencing an economic burden and cannot wait that long for their refund. The children are ages 2 and 4 and do not attend pre-school. A counselor from Social Services makes quarterly visits to check in on the children.</p>	<ul style="list-style-type: none"> • A copy of the court documents granting the taxpayers temporary custody of the two children. The court documents should name the mother and confirm the mother's relationship to the taxpayers. • A letter from Social Services acknowledging quarterly visits and confirming the children resided with the taxpayers for more than six months of the tax year

Exhibit 13.1.24-2 (Cont. 1) (10-31-2022)**Case Scenarios Identifying Alternative Documentation**

Scenario 3: After the taxpayer filed a 2018 return claiming the son as a dependent, they received a notice that someone else had already claimed the same dependent. The taxpayer divorced in 2012 under a decree that provides joint custody but allows the taxpayer to claim the son as a dependent for all tax years. The Parenting Plan provides equal time (50/50) with the child. However, the taxpayer tells TAS that their former spouse moved to another town in 2016 and only spends alternate weekends with the son. Taxpayer never requested a modification to the Parenting Plan because they did not want to incur more attorney fees and court costs. The taxpayer owns a three-bedroom home and has no other family living at that address.

The son, age 17, was expelled from school in May 2017, obtained their driver's license in July 2017, and enrolled in a GED program at the local community college in January 2019.

- A copy of the notification of expulsion from the school to show the son's address until May 2017.
- Copies of emails from the former spouse acknowledging their move out of town and coordinating alternate weekend visitations.
- A copy of the son's driver's license. The license will show the date issued and the son's address for 2017.
- A copy of the GED registration. Although the son enrolled in classes after the tax year in question, the driver's license registration before the tax year in question, combined with the GED registration after the tax year in question, demonstrates a continuance of residency.

Exhibit 13.1.24-3 (10-31-2022)

Examples of OAR Recommendations for EITC Cases

Examples of OAR Recommendations that DO NOT advocate for the taxpayer	Example of OAR recommendation that ADVOCATES for the taxpayer
<p>1. The taxpayer has a hardship; please reconsider the EITC.</p> <p>2. TAS / I recommend that the IRS review the taxpayer records and contact the TAS employee / me if you need additional information.</p> <p>3. The taxpayer requests the IRS allow EITC.</p> <p>4. I believe the taxpayer has proven eligibility for the EITC and should be allowed to claim the credit. Adjust the account. Admin file; additional information is attached.</p> <p>5. Please allow EITC for the taxpayer's niece. The niece resided with the taxpayer. See attached documents to verify residency.</p>	<p>The taxpayer is experiencing an economic hardship and needs immediate relief. Please adjust the taxpayer's account and allow their niece, Amy, as a qualifying child for EITC purposes. It is TAS's position that the taxpayer is entitled to claim Amy as a qualifying child for EITC in tax year 2018. Amy was age 16 and resided with the taxpayer for 12 months during the year. The taxpayer provided all support for Amy. Thank you in advance for reviewing the documents and adjusting the account. 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> <p>The attached documents support TAS's position:</p> <ul style="list-style-type: none"> • Birth certificate verifies Amy's age. • Lease agreements covering 2018 verifies at least six months of residency. • School report cards, mailed to taxpayer's residence, for school years 2018/2019 and 2019/2020 verify residency throughout the 2019 tax year. • Medical records and insurance statements verify residency and relationship. • Court documents verify legal guardianship and/or the child's relationship to the taxpayer. • Itemized statement from utility companies and cancelled checks verify support provided by the taxpayer. • Amy's drivers license / government issued ID, issued in March 2018, verifies their address.

Exhibit 13.1.24-4 (05-11-2018)**Penalty Relief Examples**

Examples	Suggested OAR Language
<p>Example 1: Advocating for First-Time Abate Rather Than Reasonable Cause The First-Time Abate (FTA) is an administrative waiver that generally allows a taxpayer relief from certain penalties if the taxpayer had not been previously required to file a return, or if the IRS has not assessed certain penalties in the prior three years. FTA is also available if the IRS fully abated for reasonable cause penalties assessed in the prior three years. See IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration for more information. The Reasonable Cause Assistant (RCA) prompts users to abate penalties via the FTA option by default for qualified taxpayers. TAS employees will recommend use of the FTA when no other options apply. If using FTA will result in a larger penalty abatement or when the other options would burden the taxpayer due to documentation requirements, the TAS employee should discuss the FTA option with the taxpayer. If the taxpayer decides to pursue the FTA option, TAS will recommend the IRS use FTA to abate the penalty. If a taxpayer requests Failure To Pay (FTP) penalty abatement, but can only support reasonable cause for a short period, TAS employees should use their judgment in these situations to determine if advocating for use of the FTA would be in the best interest of the taxpayer and discuss the various options for relief with the taxpayer. For example, if a taxpayer with a clean compliance history requests FTP penalty abatement due to a two-week illness that overlaps with the payment due date but the tax remained unpaid for one year, then the TAS employee should recommend that the taxpayer seek full abatement based on FTA, not reasonable cause. TAS employees should access the RCA to confirm it will abate the FTP penalty based on FTA.</p>	<p>Suggested language for the OAR: “The taxpayer provided a signed written statement requesting the FTP penalties be removed in full. The taxpayer experienced a medical emergency that prevented him from paying on time, and has a clean compliance history. The taxpayer full paid the tax on the account. Because the medical emergency was for such a short period, it is TAS’s position that the entire FTP penalty is eligible for abatement under the First-Time Abate waiver per IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration. We recommend you abate the penalty for the reasons explained above. If the RCA conclusion is to sustain any part of the FTP penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”</p>

Exhibit 13.1.24-4 (Cont. 1) (05-11-2018)
Penalty Relief Examples

<p>Example 2: Advocating Use of First-Time Abate The taxpayer requests abatement of (Failure to File) FTF and FTP penalties in a written, signed statement which explains that the taxpayer usually files timely and pays in full, but does not give a reason for filing and paying late this year. The TAS employee contacts the taxpayer to ask relevant and appropriate questions but finds no specific reason why the taxpayer did not file or pay timely. The taxpayer fully paid the tax owed with the late return. Accessing the RCA, the TAS employee finds the RCA concludes the taxpayer compliance history qualifies the taxpayer for First-Time Abate.</p>	<p>Suggested language for the OAR: “The taxpayer provided a signed written statement requesting abatement of the FTF and FTP penalties. I verified the taxpayer has not been charged FTF or FTP penalties in the past three years. The taxpayer paid the tax in full. It is TAS’s position that all of the FTF and FTP penalties on the account are eligible for abatement under the First-Time Abate waiver per IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration. We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain either penalty, per the Service Level Agreement (SLA).”</p>
<p>Example 3: Advocating Not To Use First-Time Abate The use of FTA is sometimes not in the best interest of the taxpayer. If TAS can advocate for the IRS to abate the penalty for reasonable cause rather than FTA, the taxpayer’s compliance history will remain clean and the FTA is preserved for a future tax year if the taxpayer needs it. The taxpayer requests Failure to File (FTF) and FTP penalty abatement due to a fire (casualty), and provides a report from the Fire Department stating an electrical short caused a fire that extensively damaged the taxpayer’s home two weeks before the filing deadline. The taxpayer filed two months later after recreating records. Accessing the RCA, the TAS employee confirms the casualty causing lost records will abate the FTF and FTP penalties based on reasonable cause, but also finds the RCA could remove the penalty based on FTA. After discussing the options with the taxpayer, the TAS employee recommends that the IRS abate the penalty due to reasonable cause, not FTA.</p>	<p>Suggested language for the OAR: “A fire in the taxpayer’s home destroyed records needed to file a return. See the supporting documentation provided. It is TAS’s position that the entire FTF and FTP penalty is eligible for abatement due to reasonable cause (casualty destroyed records) as the taxpayer filed the return with full payment two months after the fire. The two-month delay represented the time it took the taxpayer to recreate the records necessary to file an accurate return. We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty or to utilize FTA, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”</p>

Exhibit 13.1.24-4 (Cont. 2) (05-11-2018)**Penalty Relief Examples**

<p>Example 4: Advocating for Relief Due to IRS Error The taxpayer receives a balance due notice, pays the amount due, receives a refund for the same amount, then receives another balance due notice (and the cycle repeats several times). TAS employee research finds the balance owed is due to adjustments of timely withholding credits. The TAS employee also discovers this is a known IDRS programming problem that requires manual restriction of the FTP penalty. Many IDRS programming problems can cause over-assessment of the FTP penalty (e.g., Multiple transaction codes 520 and 521 on the account, Multiple collection status codes of 60 and 64 on the account and reversed refundable credits). The TAS employee conducts a compliance check and finds the IRS charged a correct FTP penalty in a prior year, so full abatement of the FTP penalty under First-Time Abate is not available. However, the taxpayer is still eligible for partial penalty relief due to the IRS error for the tax period open in TAS. The TAS employee makes a referral to an Account Technical Advisor (ATA) for assistance due to the complexity of a manual FTP computation. Accessing the RCA, the TAS employee identifies an IRS error category, but finds the RCA cannot compute the erroneous penalty, and the IRS must input the abatement manually. The TAS employee and ATA manually compute the proper FTP penalty for the period.</p>	<p>Suggested language for the OAR: “The balance due on the account is the result of an IRS programming problem for the FTP penalty. (Include a description of the programming problem identified.) The balance due is the result of an adjustment of timely credits. I have provided a computation showing the correct FTP penalty. I recommend assignment of this OAR to a penalty computation specialist to verify our computation. It is TAS’s position that the FTP penalty on the account is excessive due to IRS error. We recommend you abate the FTP penalty so it matches the FTP computation I provided. If the RCA conclusion is to sustain the FTP penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain the penalty, per the Service Level Agreement (SLA).”</p>
<p>Example 5: Advocating for Unavoidable Absence The taxpayer requests FTF and FTP penalty abatement because he was hospitalized due to an accident, and provides a signed doctor’s statement confirming the hospitalization. The taxpayer also states there was no one to handle their affairs. The TAS employee verifies the taxpayer has a clean compliance history. The taxpayer filed and paid the tax in full in mid-May. The doctor’s statement shows the span of hospitalization began before April 15 and ended a few days before the taxpayer filed. Accessing the RCA, the TAS employee selects all appropriate categories, and verifies the RCA will reach a conclusion to abate the penalties in full for reasonable cause.</p>	<p>Suggested language for the OAR: “The taxpayer was hospitalized unexpectedly from April xx through May xx, preventing them from filing and paying their taxes timely. The doctor’s statement verifies hospitalization through the dates indicated. The taxpayer filed and paid the tax in full promptly once released from the hospital. The taxpayer states there was no one to handle their affairs. It is TAS’s position that all of the FTF and FTP penalties are eligible for abatement due to unavoidable absence. We recommend you abate the penalties for the reasons explained above. If the RCA conclusion is to sustain either penalty, please suspend the case, contact me with an explanation, and allow me three work days to review your reasoning before you sustain either penalty, per the Service Level Agreement (SLA).”</p>

Exhibit 13.1.24-4 (Cont. 3) (05-11-2018) Penalty Relief Examples

Example 6: Advocating When the Explanation Does Not Meet Reasonable Cause The taxpayer requests abatement of FTF and FTP penalties. The TAS employee conducts a compliance check and finds recent assessments of both penalties. During initial contact, the TAS employee has a conversation with the taxpayer, and explains acceptable reasonable cause standards for both penalties. The TAS employee explains the need to ask some respectful but specific questions to determine if there are circumstances that may merit reasonable cause. Why are you filing your tax returns late? Did you file an extension? Are there circumstances preventing you from filing and paying timely? The taxpayer states they work a lot, did not have time to file their return or request an extension, and could not pay the tax timely. Accessing the RCA, the TAS employee explores the available categories, but cannot find a reason to abate the penalty, and sees no facts or circumstances that will justify overriding the RCA decision to sustain the penalties. The TAS employee has an honest discussion with the taxpayer, stating TAS can forward the abatement request to the IRS for consideration. However, the circumstances described do not appear to meet the standard of ordinary business care and prudence needed to abate the penalties for reasonable cause. Based on the reason the taxpayer came to TAS, the TAS employee might also say that even though the IRS will most likely deny the abatement request, it still has a responsibility to timely consider and respond to the request. TAS will make sure the IRS does so, and if the IRS denies the abatement request, TAS will make sure the taxpayer receives the proper appeal rights.

Suggested neutral language for the OAR:

“Based on the information provided, consider the taxpayer’s request for FTF and FTP penalty relief. Input the necessary adjustments for any penalty abated. If you deny the request, send the proper disallowance letter with appeal rights to the taxpayer, and provide a copy to TAS.”

Exhibit 13.1.24-5 (05-11-2018)**Terms**

Term	Definition
Audit Reconsideration	A taxpayer request to reconsider a prior unpaid IRS audit adjustment on an individual income tax return.
Clerical Error	Is an error resulting from a minor mistake or inadvertence, in writing or copying something on the record, and not from judicial reasoning or determination. A clerical error is not an error based on substance or judgment, but rather, an inadvertent act on the part of a TAS or IRS employee.
Offset Bypass Refund (OBR)	Issuance of a manual refund without first satisfying outstanding federal tax liabilities.
Operations Assistance Request (OAR)	Conveys a recommendation or request that the IRS act to resolve an issue when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem.
Recommendation	A request for an action supported by the facts presented by the taxpayer, law, and procedures.
Refundable credit	A tax credit that is not limited by the amount of an individual's tax liability. Typically a tax credit only reduces an individual's tax liability to zero. Refundable credits go beyond this and can be considered the same as a payment.
Taxpayer Assistance Order (TAO)	A statutory tool used by TAS to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions. See IRM 13.1.20, <i>TAS Taxpayer Assistance Order (TAO) Process</i> .
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.
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.

Exhibit 13.1.24-5 (Cont. 1) (05-11-2018)
Terms

Term	Definition
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.
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.
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.
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.
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.
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.
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 LITC if they cannot afford representation.

Exhibit 13.1.24-5 (Cont. 2) (05-11-2018)**Terms**

Term	Definition
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.

Exhibit 13.1.24-6 (08-26-2020)
Acronyms

Acronyms	Definitions
ACS	Automated Collection System
AMS	Accounts Management System
CAP	Collection Appeals Program
CDP	Collection Due Process
CEAS	Correspondence Examination Automation Support
CNC	Currently Not Collectible
CSED	Collection Statute Expiration Date
DETL	Disqualified Employment Tax Levy
EITC	Earned Income Tax Credit
FTA	First-Time Abate
IA	Installment Agreement
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
ITAP	Internal Technical Advisor Program
LITC	Low Income Taxpayer Clinic
LTA	Local Taxpayer Advocate
NFTL	Notice of Federal Tax Lien
OAR	Operations Assistance Request
OBR	Offset Bypass Refund
OD	Operating Division
OIC	Offer in Compromise
RAC/RAL	Refund Anticipation Check/Refund Anticipation Loan
RATA	Revenue Agent Technical Advisor
RCA	Reasonable Cause Assistant
RGS	Report Generation Software
ROTA	Revenue Officer Technical Advisor
SITLP	State Income Tax Levy Program
TAO	Taxpayer Assistance Order

Exhibit 13.1.24-6 (Cont. 1) (08-26-2020)**Acronyms**

TBOR	Taxpayer Bill of Rights
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Exhibit 13.1.24-7 (10-31-2022)

Related Resources

IRM Related Resources
IRM 3.17.79.3.2, Processing Manual Refunds;
IRM 3.17.79.3.3.2, Manual Refunds for Unprocessed Original Returns;
IRM 3.17.79.3.16, Offset Bypass Refunds;
IRM 4.13.3.5.1, Transfers to an Area Office;
IRM 4.19.13.4, Researching Cases;
IRM 4.19.14.6.5, EITC - Personal Exemptions and Dependents;
IRM 4.19.14.7.1, EITC 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET);
IRM 5.1.9.3.5.1, Levy Action During the Period of the CDP or EH;
IRM 5.1.9.4, Collection Appeals Program (CAP);
IRM 5.1.24.5.7, Offers in Compromise;
IRM 5.1.24.5.8, Trust Fund Recovery Penalty (TFRP) Investigations;
IRM 5.8.11.3.2.1, Public Policy or Equity Compelling Factors;
IRM 5.8.11.5.2, Financial Statement Analysis;
IRM 5.8.11.5.3, Determining an Acceptable Offer Amount;
IRM 5.8.11.5.3.1, Determining an Acceptable Offer Amount (Fraudulent Acts of a PSP);
IRM 5.8.11.6, Documentation and Verification;
IRM 5.12.2.4, Determination Criteria for Do-Not-File or Deferring the NFTL Filing;
IRM 5.12.9.3, Conditions for NFTL Withdrawal ;
IRM 5.14.1.4.3, Notice of Federal Tax Lien and Installment Agreements;
IRM 5.14.5.2, Streamlined Installment Agreements;
IRM 5.19.1.2.6.3, Installment Agreements;
IRM 5.19.17.2.1.2, Hardship Closure Authority Levels;
IRM 5.19.1.6.4, Installment Agreements (IAs);
IRM 5.19.8.4.16.4, <i>How Does the Taxpayer Appeal an IRS Action;</i>
IRM 5.19.8.4.2.1, CDP Hearing Request - Timeliness;
IRM 5.19.17.2, Currently not Collectible (CNC) Procedures;
IRM 5.19.25 , Passport Program;
IRM 5.19.25.3, Seriously Delinquent Tax Debt;

Exhibit 13.1.24-7 (Cont. 1) (10-31-2022)**Related Resources**

IRM Related Resources
IRM 5.19.25.4, Statutory Exclusions from Certification;
IRM 5.19.25.5, Discretionary Exclusions from Certification;
IRM 5.19.25.10, Reversal of Certification;
IRM 8.6.1.7.5, Taxpayer Provides New Information;
IRM 8.22.4.2.2, Summary of CDP Process;
IRM 8.22.5.6.1, Types of Appeals Conference;
IRM 8.22.9.15.1, Deadline to Petition Tax Court;
IRM 8.24.1.3, CAP Appeals;
IRM 8.24.1.3.3, Exclusions from CAP;
IRM 13.1.5, Taxpayer Advocate Service (TAS) Confidentiality;
IRM 13.1.5.6, Communicating Confidentiality Rules to Taxpayers and Taxpayers' Representatives;
IRM 13.1.6, Casework Communications;
IRM 13.1.12, Internal Technical Advisor Program;
IRM 13.1.16.10.1, Engaging in Discussions about TAS;
IRM 13.1.18.6, Initial Contact Completed by Case Advocates;
IRM 13.1.18.8.3, Taxpayers Delivering Returns to TAS and TAS Date Stamp;
IRM 13.1.19, TAS Operations Assistance Request (OAR) Process;
IRM 13.1.19.5, Operations Assistance Request (OAR) - Preparation;
IRM 13.1.20, TAS Taxpayer Assistance Order (TAO) Process;
IRM 13.1.20.2, Determining When to Issue a Taxpayer Assistance Order;
IRM 13.1.20.5, TAO Appeal Process;
IRM 13.1.21.2.1, Closing Actions;
IRM 13.1.21.2.1.1 , Relief Codes;
IRM 20.1.1, Introduction and Penalty Relief;
IRM 20.1.1.3.2, Reasonable Cause;
IRM 20.1.1.3.2.2, Ordinary Business Care and Prudence;
IRM 20.1.1.3.2.2.3, Unable to Obtain Records;
IRM 20.1.1.3.2.2.4, Mistake Was Made;
IRM 20.1.1.3.2.2.5, Erroneous Advice or Reliance;
IRM 20.1.1.3.2.2.8 , Inaccessible Notices;
IRM 20.1.1.3.3.2.1, First Time Abate (FTA);

Exhibit 13.1.24-7 (Cont. 2) (10-31-2022)

Related Resources

IRM Related Resources	
IRM 20.1.1.3.3.4.3, Advice from a Tax Advisor;	
IRM 20.1.1.3.6, Reasonable Cause Assistant (RCA);	
IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration;	
IRM 20.1.1.3.6.10.1, Overriding (Aborting) RCA's Conclusions;	
IRM 20.2.1.4.2.2.4, Overpaid Overpayment Interest;	
IRM 20.2.7.5, Unreasonable Error or Delay in Performing a Ministerial or Managerial Act - IRC §6404(e)(1);	
IRM 21.4.6.5.11.1, Offset Bypass Refund (OBR);	
IRM 21.5.4.2 , General Math Error Procedures Overview;	
IRM 21.5.6.4, Freeze Code Procedures;	
IRM 21.5.8.4, IDRS Guidelines for Credit Transfers; and	
IRM 21.6.3.4.1.24.3, Credit for Other Dependents (ODC).	

