

Case Advocacy

Activities of the Office of the Taxpayer Advocate

Under Internal Revenue Code (IRC) § 7803(c), the Office of the Taxpayer Advocate has four principal functions:

- Assist taxpayers in resolving problems with the IRS;
- Identify areas in which taxpayers are experiencing problems with the IRS;
- Propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- Identify potential legislative changes which may be appropriate to mitigate such problems.

Taxpayer Advocate Service (TAS) employees assist taxpayers whose tax problems are causing financial difficulty, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe an IRS system or procedure is not working as it should. TAS employees share with all IRS personnel the responsibility to consider and protect taxpayer rights.

In addition to helping taxpayers with specific cases and individual problems, TAS employees advocate for taxpayers by identifying IRS procedures that adversely impact taxpayer rights or create taxpayer burden, recommending solutions to taxpayer problems, and working with the IRS to improve tax administration. TAS serves as the voice of the taxpayer within the IRS by providing the taxpayer's viewpoint when the IRS is considering new policies, procedures, or programs. Additionally, TAS administers the Low Income Taxpayer Clinic (LITC) grant program and oversees the Taxpayer Advocacy Panel (TAP).¹

TAS Assists Taxpayers in Resolving Problems

Taxpayers come to TAS with specific cases when:

- They have experienced a tax problem that causes financial difficulty;
- They have encountered problems trying to resolve their issues directly with the IRS; or
- An IRS action or inaction has caused or will cause them to suffer a long-term adverse impact, including a violation of taxpayer rights.

TAS accomplishes this part of its statutory mission through a combination of case advocacy and outreach. TAS's philosophy calls for each employee who works on a case to advocate, communicate, and reach the right answer, not only for the taxpayer who sought help, but also for others by elevating issues for a more broad-based form of advocacy. This process enables TAS to resolve individual issues, address systemic issues that surface in our casework, and identify areas where taxpayer education is needed. TAS's education and outreach campaigns are designed to make TAS a known advocacy organization, help taxpayers

¹ TAP issue committees work to identify and resolve systemic IRS problems.

resolve current problems, educate them to avoid future ones, protect taxpayer rights, and reduce taxpayer burden.

TAS provides a vital service to individual and business taxpayers who come to or are referred to TAS for help with a specific tax issue by:

- Researching IRS systems to determine what is occurring on the taxpayer's account (TAS looks at all the taxpayer's issues, not just the one that brought the taxpayer to TAS);
- Researching appropriate statutes, regulations, and IRS guidance;
- Determining the correct resolution for each issue;
- Helping the taxpayer obtain any supporting documentation needed to resolve the issue;
- Advocating for the taxpayer with the appropriate function in the IRS to resolve each issue, including expediting actions where appropriate; and
- Helping the taxpayer understand all the issues involved and the resolution(s) achieved.

Because Congress did not intend TAS to be a substitute for regular IRS channels for resolving issues, TAS accepts cases in four categories:

- Economic Burden – Cases in which a taxpayer is experiencing financial difficulty;
- Systemic Burden – Cases in which an IRS process, system, or procedure has failed to operate as intended, and as a result, the IRS has failed to timely respond to or resolve a taxpayer's issue;
- Equitable Treatment or Taxpayer Rights – Cases accepted to ensure taxpayers receive fair and equitable treatment and taxpayers' rights are protected; and
- Public Policy – Cases accepted when the National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

TAS received 298,933 cases in fiscal year (FY) 2010, a 9.7 percent increase from FY 2009, and provided relief to taxpayers in 73.7 percent of cases closed in FY 2010.² Figure 4.1 shows TAS FY 2010 receipts and closures by case category.

FIGURE 4.1, TAS Case Receipts, Closures, and Relief Rates³

	FY 2010 Receipts	FY 2010 Closures	Relief Rate
Economic Burden	119,807	114,320	70.4%
Systemic Burden	178,784	171,720	75.8%
Equitable Treatment or Taxpayer Rights Issues	290	211	63.5%
Public Policy	52	47	72.3%
Total Cases	298,933	286,298	73.7%

TAS Analyzes Economic Burden and Systemic Burden Case Receipts to Improve IRS Processes

TAS cases rose by 23.4 percent from FY 2006 to FY 2010.⁴ Figure 4.2 below breaks down receipts by case acceptance category.

FIGURE 4.2, TAS Case Receipts by Case Acceptance Category, FY 2006 – FY 2010⁵

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	% Change FY 2006 to FY 2010
Economic Burden	72,463	86,261	92,410	101,624	119,807	65.3%
Systemic Burden	169,198	161,235	181,120	170,524	178,784	5.7%
Equitable Treatment or Taxpayer Rights Issues	273	257	484	228	290	6.2%
Public Policy	239	86	37	28	52	-78.2%
Total TAS Receipts	242,173	247,839	274,051	272,404	298,933	23.4%

As reflected in Figure 4.2, the composition of TAS receipts has changed in recent years. In FY 2006, economic burden cases represented roughly 30 percent of all receipts and systemic burden cases receipts made up nearly 70 percent. In FY 2010, economic burden cases represented 40 percent of total receipts and systemic burden cases accounted for 60 percent. While TAS strives to expeditiously resolve all cases meeting TAS criteria, it establishes special timeliness requirements in cases involving taxpayers who are experiencing financial difficulty. In these instances, TAS requires case advocates to take specific actions to expedite

² TAS determines relief based upon whether TAS is able to provide full or partial relief or assistance on the issue initially identified by the taxpayer. Thus, this relief rate is understated because TAS frequently provides relief on issues that differ from the ones the taxpayer initially identified. Data obtained from the Taxpayer Advocate Management Information System (TAMIS). TAS uses TAMIS to record, control, and process taxpayer cases, as well as to analyze the issues that bring taxpayers to TAS.

³ Data obtained from TAMIS. TAS tracks resolution of taxpayer issues through codes entered at the time of closing on TAMIS and requires case advocates indicate the type of relief or assistance they provide to the taxpayer. See Internal Revenue Manual (IRM) 13.1.7.10.2.1 (Apr. 1, 2003). The codes reflect full relief, partial relief, or assistance provided. The relief rate is determined by dividing the total number of cases closed with full relief, partial relief, or assistance by the total number of closures.

⁴ Data obtained from TAMIS.

⁵ *Id.*

initial case processing, and contact the taxpayer to communicate these actions and request additional information (if needed) within three workdays of the date TAS received the case.⁶

TAS experienced a 65.3 percent growth in economic burden receipts over the past five years, compared with a 5.7 percent growth in systemic burden receipts.⁷ TAS expects both the number and percentage of economic burden cases to continue to grow because of the weak U. S. economy and the IRS's increased enforcement actions designed to close the tax gap. New tax credit programs, such as the First-Time Homebuyer Credit (FTHBC)⁸ or the adoption credit,⁹ can cause IRS processing delays because they require taxpayers to file paper returns and attach supporting documentation. These delays in turn increase the likelihood of taxpayers experiencing economic burden by not receiving their refunds on time.

By categorizing the issues involved in individual casework, TAS identifies trends that also affect larger groups of taxpayers and uses that information to work with the IRS to resolve the broader issues.¹⁰ Figure 4.3 shows the increases and decreases in different types of TAS cases since FY 2006.

FIGURE 4.3, TAS Case Receipts by Issue, FY 2006 – FY 2010¹¹

Description of Issue	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	% Chg FY 2006 to FY 2010
Document Processing Issues	52,775	44,552	58,888	53,528	86,485	63.9%
Audit Issues	47,703	59,601	60,051	55,542	67,949	42.4%
Refund Issues	27,781	31,521	46,680	47,785	43,687	57.3%
Collection Issues	43,552	43,706	42,418	43,799	41,142	-5.5%
Entity Issues	11,495	15,334	17,313	22,920	23,526	104.7%
Penalty Issues	12,328	15,716	13,705	13,921	13,399	8.7%
Technical, Procedural, or Statute Issues	12,585	12,121	11,103	10,248	9,428	-25.1%
Payment or Credit Issues	8,173	9,047	9,046	7,891	6,251	-23.5%
Appeals Issues	2,618	2,498	2,841	3,084	3,443	31.5%
Criminal Investigation Issues	21,395	11,846	10,152	11,954	2,150	-90.0%
Interest Issues	1,029	1,249	1,235	1,135	907	-11.9%
Other Issues	739	648	619	597	566	-23.4%
Total TAS Receipts	242,173	247,839	274,051	272,404	298,933	23.4%

⁶ See IRM 13.1.7.5.2 (Oct. 31, 2004); TAS Interim Guidance Memorandum, *Re-issuance of Memorandum to Implement Arbitration Decision re: 2007 Revisions to IRM 13.1, TAS-13.1-0810-006* (Sept. 1, 2010). For all other types of cases, TAS employees have seven calendar days from the date TAS receives the case to complete the same activities. IRM 13.1.7.6.3 (Oct. 31, 2004); TAS Interim Guidance Memorandum, *Re-issuance of Memorandum to Implement Arbitration Decision re: 2007 Revisions to IRM 13.1, TAS-13.1-0810-006* (Sept. 1, 2010).

⁷ Data obtained from TAMIS.

⁸ IRC § 36.

⁹ IRC § 36C.

¹⁰ TAS also asks its employees to submit systemic issues they find in TAS cases to the Systemic Advocacy Management System (SAMS). SAMS allows TAS to record and manage advocacy activities that benefit groups of taxpayers. To assist with systemic issue identification, TAS asks case advocates to answer questions about systemic problems on each individual case when closing the case on TAMIS.

¹¹ Data obtained from TAMIS.

In addition to grouping receipts by categories, TAS also analyzes the underlying issues. Figure 4.4 lists the top 15 issues facing taxpayers who came to TAS in FY 2010.

FIGURE 4.4, Top 15 Issues Received In TAS, FY 2010¹²

Rank	Description of Issue	FY 2009	FY 2010	% Change
1	Processing Amended Return	19,939	30,891	54.9%
2	Open Audit (Not Earned Income Tax Credit)	10,630	26,182	146.3%
3	Unpostable and Reject Returns ¹³	3,786	22,341	490.1%
4	Levies (including Federal Payment Levy Program) ¹⁴	18,153	18,015	-0.8%
5	Stolen Identity	14,023	17,291	23.3%
6	Reconsideration of Substitute for Return under IRC § 6020(b) ¹⁵ and Audits ¹⁶	11,488	12,843	11.8%
7	Processing Original Return	9,170	11,997	30.8%
8	Expedite Refund Request	10,959	11,755	7.3%
9	Earned Income Tax Credit	13,475	11,198	-16.9%
10	Injured Spouse Claim	10,130	7,777	-23.2%
11	IRS Offset	6,176	6,865	11.2%
12	Other Refund Inquiries and Issues	11,578	6,707	-42.1%
13	Automated Underreporter Completed ¹⁷	7,481	6,137	-18.0%
14	Returned and Stopped Refunds	5,517	6,115	10.8%
15	Installment Agreements	6,318	6,039	-4.4%
Total TAS Receipts Cumulative		272,404	298,933	9.7%

The following discussion addresses trends in TAS cases as well as individual issues affecting receipts.

Downstream Impact on TAS of IRS Administration of Social Benefit Programs

The objectives of the Office of the Taxpayer Advocate are firmly linked to the IRS's goals, initiatives, and challenges. TAS's case inventory reflects, in part, the downstream impact of changes to IRS policies and procedures. In her FY 2011 Objectives Report to Congress, the

¹² Data obtained from TAMIS. Data reflect only the top 15 issues and will not total to all TAS receipts received for the fiscal year.

¹³ Each account transaction, including tax return processing, is subjected to a series of validity checks before posting to the IRS Master File. A transaction is termed unpostable when it fails to pass any of the checks and is returned to the campus (Rejects Function) for follow-up action(s). IRM 21.5.5.2 (Oct. 1, 2007).

¹⁴ The Federal Payment Levy Program (FPLP) is a systemic collection enforcement tool authorized by IRC § 6331(h). It allows the IRS to levy on federal payments disbursed by Treasury's Financial Management Service (FMS) to delinquent taxpayers. Each week, the IRS creates a file of certain balance due accounts and transmits the file to FMS's Treasury Offset Program. FMS transmits a weekly file back to the IRS listing those that matched. FPLP will subsequently transmit levies on matching accounts.

¹⁵ IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on its own knowledge and other data, and assess the tax after providing a statutory notice of deficiency to the taxpayer.

¹⁶ Audit reconsideration is the process the IRS uses to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid, or a tax credit was reversed. IRM 21.5.10.4.3 (Oct. 1, 2010).

¹⁷ The Automated Underreporter program matches information returns reporting income and deductions submitted by third parties (e.g., Forms 1098, *Mortgage Interest Statement*, and 1099-MISC, *Miscellaneous Income*) against amounts reported on the taxpayer's return.

National Taxpayer Advocate discussed the challenges posed to the IRS by the economy and the need to close the tax gap. Further, she noted the IRS is increasingly viewed not only as a tax collection agency, but also as a vehicle for administering social benefit programs, and suggested the IRS's mission statement should acknowledge this dual mission.¹⁸

The Earned Income Tax Credit (EITC) was one of the first social benefit programs administered by the IRS.¹⁹ In recent years, the IRS faced the task of distributing billions of dollars to millions of taxpayers through other programs, including Economic Stimulus Payments (ESP),²⁰ Making Work Pay (MWP) Credits (including their interaction with Economic Recovery Payments),²¹ the FTHBC,²² and the Hybrid Car Credit,²³ to name just a few. In FY 2011, the IRS will begin to administer provisions of the Affordable Care Act, the Adoption Credit, and other social programs. The IRS's administration of these programs can result in:

- High volumes of telephone contacts and taxpayer correspondence;
- Processing delays and programming problems; and
- Opportunities for refund fraud schemes.

¹⁸ National Taxpayer Advocate Fiscal Year 2011 Objectives Report to Congress v-vii. See also Most Serious Problem: *The IRS Mission Statement Does Not Reflect the Agency's Increasing Responsibilities for Administering Social Benefits Programs*, *supra*.

¹⁹ IRC § 32. In 1975, Congress enacted legislation creating the EITC. The EITC program is administered by the IRS and provides support to low to moderate income working individuals and families. The EITC is a refundable credit which means eligible taxpayers may get a refund of the credit even if they had no tax liability and paid no withholding or estimated tax. Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).

²⁰ IRC § 6428.

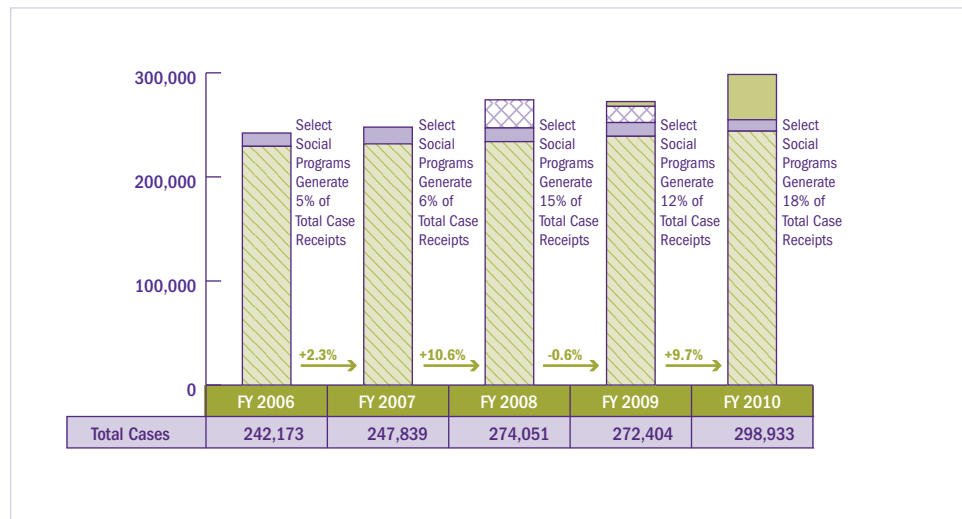
²¹ IRC § 36A.

²² IRC § 36.

²³ IRC § 30B.

As demonstrated in Figure 4.5, the expansion of social benefit programs in the tax code increases TAS's case receipts. The percentage of TAS total case receipts attributable to social benefit programs rose from five percent to 18 percent over the past five years (from 12,769 in FY 2006 to 54,997 in FY 2010).

FIGURE 4.5, TAS Case Receipts, FY 2006 – FY 2010²⁴



TAS Assists the IRS with the Administration of the First-Time Homebuyer Credit²⁵

The FTHBC was designed to bolster the residential real estate market during the recession and continuing economic downturn.²⁶ However, it requires taxpayers to navigate a complex set of rules. To claim the credit, taxpayers must attach a Form 5405, *First-Time Homebuyer Credit and Repayment of the Credit*, to an original or amended 2008, 2009, or 2010 tax return along with supporting documentation that cannot be submitted

²⁴ Data obtained from TAMIS. The level of growth for TAS receipts without social programs is 6.3 percent from FY 2006 to FY 2010. TAS employees use primary issue codes to identify the most significant issue, policy, or process causing the taxpayer's problem. IRM 13.4.5-1 (Jan. 15, 2005). EITC data obtained from TAMIS using the EITC primary issue code. In addition to the primary issue code, TAS uses special case codes to track issues which may have significant impact, but are short term in nature (e.g., ESP or MWP), or be categorized and worked under more than one IRS process (e.g., TAS FTHBC cases may involve return processing, audit, or collection issues). IRM 13.4.5.2.1.5(2)(t) (Jan. 15, 2005). Cases having special case codes will also have a primary issue code. To avoid counting a case more than once for purposes of this chart, TAS removed cases coded as FTHBC, MWP, and ESP and having a primary issue of EITC from the number of EITC cases. The statistics gathered for ESP, MWP, and FY 2009 FTHBC were compiled on Oct. 7, 2010, and FY 2010 FTHBC data was compiled on Oct. 4, 2010. TAMIS is a dynamic system, therefore the ESP, FTHBC, and MWP statistics may not match statistics gathered on another date. TAS began capturing statistics for the ESP on Feb. 15, 2008, FTHBC on Oct. 20, 2009, and MWP on Apr. 20, 2010. MWP cases fall into the Social Benefit Program category, but the number of MWP cases received in FY 2010 (483) was so small that the category did not show up in the graph.

²⁵ The laws, in order of enactment, are the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, 122 Stat. 2654; the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115; the Worker, Homeownership, and Business Assistance Act of 2009 (WHBAA), Pub. L. No. 111-92, 123 Stat. 2984; the Homebuyer Assistance and Improvement Act of 2010 (HAI/A), Pub. L. No. 111-198, 124 Stat. 1356.

²⁶ Associated Press, *Northeast Home Sales Post 13 Pct. Annual Increase*, The New York Times, available at <http://www.nytimes.com/aponline/2010/03/23/business/AP-US-Home-Sales-Northeastern-Cities.html> (Mar. 23, 2010).

electronically. Thus, FTHBC claims can only be filed with paper (not e-filed) returns.²⁷ The inability of taxpayers to obtain the credit electronically created administrative problems for the IRS during FY 2010:

- Taxpayers filed more than 2.3 million original and amended returns that include FTHBC claims;²⁸
- The IRS has selected more than 415,500 of these returns for examination; and
- Nearly 132,000 of these audits remain open.²⁹

As of September 30, 2010, the IRS had completed more than 1.3 million individual audits for FY 2010.³⁰ Of these, more than 295,000 (over 22 percent) involved the FTHBC. At the same point in FY 2009, only 1.1 percent of more than 1.1 million completed audits involved the FTHBC.³¹ Thus, FTHBC-related audits displaced a significant number of regular discretionary audits in FY 2010.

To the IRS's credit, the FTHBC audit selection process appears to have improved somewhat, as reflected by a decrease in FTHBC no-change rates over the last year.³² In September 2009, the Small Business/Self-Employed Division's (SB/SE's) and the Wage & Investment Division's (W&I's) no-change rates involving original returns claiming FTHBC were nearly 82 percent and over 83 percent, respectively, compared to September 2010, where SB/SE and W&I no-change rates involving original returns claiming FTHBC were over 68 percent and 38 percent. In September 2009, the no-change rates for SB/SE and W&I audits involving FTHBC amended returns were nearly 41 percent and 60 percent, respectively, compared to September 2010 where the rates had fallen to 34 percent and 51 percent.³³ Although the FY 2010 no-change rates have improved, they are still unacceptably high.

The FTHBC also impacts TAS's inventory. In FY 2010, TAS received 43,520 FTHBC-related cases, of which approximately 91 percent concerned an audit or document processing issue. This number may seem like a small fraction of all the FTHBC-related returns processed by

²⁷ See IRM 21.6.3.4.2.11.6(8) (Mar. 5, 2010); IRS Instructions to Form 5405, *First-Time Homebuyer Credit and Repayment of the Credit* (July 2010). The year in which the FTHBC is claimed depends in part on the home purchase date. Taxpayers can elect to treat a residence purchased after December 31, 2008, and before December 1, 2009, as purchased on December 31, 2008, so that the FTHBC may be claimed on a 2008 amended return. IRC § 36(g). The FTHBC may also be claimed on 2009 or 2010 original or amended returns, but cannot be claimed before the closing date. IRS, *First-Time Homebuyer Credit*, available at <http://www.irs.gov/newsroom/article/0,,id=204671,00.html> (last visited Apr. 5, 2010).

²⁸ IRS, *FTHBC Compliance Activities Report* (Sept. 2010).

²⁹ *Id.*

³⁰ Regular discretionary audit work involves non-EITC and non-Questionable Refund Program (QRP) cases. IRS, W&I Insider, *W&I Compliance Examination Program Responsibilities*. Examples of such discretionary work include innocent spouse, non-filers, alimony, charitable contributions, employee business expenses, and alternative minimum tax issues. IRS, Audit Information Management System (AIMS) (data extracted on July 23, 2010).

³¹ IRS, AIMS (data extracted on Sept. 30, 2010).

³² The term "change rate" represents the percent of cases in which the examiner took corrective action. By extension, the "no-change" rate refers to the percentage of examinations that did not result in any change to the amounts reported by the taxpayer. A lower no-change rate indicates that the IRS is doing a better job of selecting returns that actually need to be audited and not selecting returns that were correct as they were filed, thereby allowing timely refunds for the correctly filed returns.

³³ IRS, AIMS (data extracted on Sept. 30, 2010). In 2009, SB/SE started 27 percent of the FTHBC audits and W&I started 73 percent. In 2010, SB/SE started 25 percent of the FTHBC audits and W&I started 75 percent.

the IRS and selected for audit. However, Figure 4.6 below shows that if not for the FTHBC, TAS would have received fewer cases in FY 2010 than 2009 in three of the seven top case categories affected by the credit. TAS provided relief to taxpayers in 79.6 percent of the FTHBC cases closed in FY 2010. This is eight percent higher than the relief rate provided to taxpayers for all TAS cases closed during the same period.³⁴

FIGURE 4.6, Analysis of TAS Top Seven FTHBC Case Issues Impacted by the FTHBC, FY 2009 – FY 2010³⁵

Issue Description	FY 2009	FY 2010	% Change	FY 2009 without FTHBC	FY 2010 without FTHBC	% Change without FTHBC
Open Audit (Not EITC)	10,630	26,182	146.3%	9,394	10,539	12.2%
Processing Amended Return	19,939	30,891	54.9%	17,812	18,217	2.3%
Unpostable or Reject Returns ³⁶	3,786	22,341	490.1%	3,762	17,594	367.7%
Math Error	2,741	4,597	67.7%	2,713	2,568	-5.3%
Reconsideration of Substitute for Return under IRC § 6020(b) and Audits	11,488	12,843	11.8%	11,467	11,313	-1.3%
Expedite Refund Request	10,959	11,755	7.3%	10,761	10,343	-3.9%
Processing Original Return	9,170	11,997	30.8%	9,117	10,598	16.2%

In addition to advocating for individual taxpayers on FTHBC cases, TAS is addressing the broader, systemic issues by:

- Recommending that the FTHBC be administered by the Federal Housing Administration or another agency that would have direct access to information to verify eligibility, a step which would also address concerns about the delay in providing this credit;³⁷
- Participating on the IRS's FTHBC executive steering committee;
- Maintaining an internal TAS team that meets regularly to identify and discuss FTHBC issues impacting taxpayers;
- Establishing an internal (intranet) web page for TAS employees to use when working FTHBC issues, including the latest procedures, guidance, and frequently asked questions; and
- Joining with the IRS to present a FTHBC session for tax practitioners at the 2010 Nationwide Tax Forums.

³⁴ TAS provided relief to taxpayers in 73.7 percent of the cases closed in FY 2010. Data obtained from TAMIS. TAS determines relief based upon whether TAS is able to provide full or partial relief or assistance on the issue initially identified by the taxpayer.

³⁵ Data obtained from TAMIS.

³⁶ See *TAS Assists with Document Processing Issues*, *infra*, for a discussion of other factors impacting TAS Unpostable or Reject Return cases.

³⁷ See National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 102-103; Tax Filing Season Update: Current IRS Issues, Hearing Before the Sen. Comm. on Finance, 111th Cong. 5-12 (Apr. 15, 2010) (statement of Nina E. Olson, National Taxpayer Advocate).

TAS Assists with Audit Issues

As previously noted in the FTHBC discussion and reflected in Figure 4.7, TAS experienced a dramatic increase (nearly 278 percent) in open audit cases from FY 2006 to FY 2010.

FIGURE 4.7, TAS Audit Receipts, FY 2006 – FY 2010³⁸

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	% Chg FY 2006 to FY 2010
Open Audit (Not EITC)	6,934	8,729	9,232	10,630	26,182	277.6%
Reconsideration of Substitute for Return under IRC § 6020(b) and Audits	10,005	12,331	12,419	11,488	12,843	28.4%
EITC - Revenue Protection Strategy Claims	12,769	16,081	13,489	13,475	11,198	-12.3%
Automated Underreporter - Closed Cases ³⁹	7,706	9,125	9,594	7,481	6,137	-20.4%
Combined Annual Federal Wage Reporting (CAWR) and Federal Unemployment Tax Act (FUTA) ⁴⁰	4,223	7,123	8,928	6,755	5,495	30.1%
Automated Underreporter - Open Cases	4,718	4,645	4,575	3,874	3,726	-21.0%
Other Audit	1,348	1,567	1,814	1,839	2,368	75.7%
Audit Issues	47,703	59,601	60,051	55,542	67,949	42.4%

While the FTHBC accounts for the 2010 increase, the National Taxpayer Advocate has advocated extensively on audit issues by identifying them as Most Serious Problems (MSPs) in her Annual Reports to Congress over the past decade.⁴¹ Additionally, TAS conducted two research studies and has participated on several IRS teams that dealt with audit issues.⁴² Moreover, in an effort to strengthen TAS's advocacy efforts through education, the National Taxpayer Advocate recorded four video segments to educate taxpayers about the audit process: an examination (audit) overview, information about the Automated Underreporter (AUR) program, correspondence audits, and appealing audit results. These videos are available to the public on YouTube, Facebook, and TAS's Tax Toolkit.⁴³

³⁸ Data obtained from TAMIS.

³⁹ The Automated Underreporter program matches information returns reporting income and deductions submitted by third parties (e.g., Forms 1098, *Mortgage Interest Statement*, and 1099-MISC, *Miscellaneous Income*) against amounts reported on the taxpayer's return.

⁴⁰ While TAS CAWR/FUTA receipts showed a 30 percent increase from FY 2006 to FY 2010, these cases actually peaked in FY 2008 and significantly decreased in FYs 2009 and 2010. The IRS and the Social Security Administration (SSA) jointly administer the CAWR document matching program, which is designed to ensure that employers report the correct amount of wages, pay the proper amount of taxes, and properly credit the individual employee's Social Security account. The FUTA provides for cooperation between state and federal governments in the establishment and administration of unemployment insurance. For additional information on CAWR/FUTA, see Most Serious Problem: *The Combined Annual Wage Reporting Program Continues to Impose a Substantial Burden on Employers, supra*.

⁴¹ National Taxpayer Advocate 2009 Annual Report to Congress 158-179, 185-195; National Taxpayer Advocate 2008 Annual Report to Congress 176-192, 227-259; National Taxpayer Advocate 2007 Annual Report to Congress 222-241, 259-274, 287-323; National Taxpayer Advocate 2006 Annual Report to Congress 289-310, 355-375; National Taxpayer Advocate 2005 Annual Report to Congress 94-122; National Taxpayer Advocate 2004 Annual Report to Congress 211-225; National Taxpayer Advocate 2003 Annual Report to Congress 26-37, 87-98, 135-144; National Taxpayer Advocate 2002 Annual Report to Congress 55-68, 75-80; National Taxpayer Advocate 2001 Annual Report to Congress 26-29, 59-60.

⁴² National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 94-116 (*Taxpayer Advocate Service Research Studies and Reports*); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

⁴³ See <http://www.youtube.com/user/TASNTA>; <http://www.facebook.com/YourVoiceAtIRS>; <http://www.taxtoolkit.irs.gov>.

In addition to assisting taxpayers with the overall audit process, the National Taxpayer Advocate has long been concerned about the success of taxpayers who qualify for the EITC but for one reason or another are unable to navigate IRS processes to obtain the credit.⁴⁴ In 2004, TAS and the IRS conducted a study of the factors that made a difference in whether taxpayers in the IRS audit process were ultimately successful in obtaining the EITC.⁴⁵ Concerned that relief rates in EITC cases were lower than other types of cases worked by TAS, the National Taxpayer Advocate asked that a sample of TAS cases be tested to determine if changes to TAS processes could better assist these taxpayers.⁴⁶

The National Taxpayer Advocate commissioned a team to review TAS EITC cases in which no relief was provided. Working with the TAS Research office, a statistically valid sample of 400 EITC cases closed in TAS during fiscal year 2009 was selected for review and analysis. TAS is reviewing this sample to determine why EITC cases have such a low relief rate, and specifically whether TAS can put procedures into place to facilitate communication with the taxpayer and decrease the amount of TAS cases closed because the taxpayer failed to respond.⁴⁷ TAS anticipates completing this study by March 2011.

TAS Assists with Document Processing Issues

Historically, document processing issues have been among the largest sources of TAS systemic burden receipts.⁴⁸ These issues include problems or delays related to IRS processing of original returns, amended returns, and claims for refund.

⁴⁴ IRC § 32. In 1975, Congress enacted legislation creating the EITC. The EITC program is administered by the IRS and provides support to low to moderate income working individuals and families. The EITC is a refundable credit which means eligible taxpayers may get a refund of the credit even if they had no tax liability and paid no withholding or estimated tax. Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975). National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 12 (*EITC Audit Reconsideration Study*).

⁴⁵ The study found that 43 percent of the taxpayers who sought reconsideration of their audits that disallowed the EITC in whole or in part received additional EITC as a result of the reconsideration. Additionally, the study found that where TAS employees initiated contact with taxpayers by phone instead of relying solely on correspondence, the likelihood of additional EITC increased with the number of phone calls made by the TAS employees. National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, i (*EITC Audit Reconsideration Study*).

⁴⁶ TAS classifies completed cases as “full relief,” “partial relief,” or “no relief,” depending on the outcome of the case. Whether relief is provided to a taxpayer is dependent on numerous factors, including: whether the taxpayer is legally entitled to the relief and can substantiate the claim. While TAS has provided some relief in an average of 73 percent of all cases over the last three years, the average relief in EITC cases over that time has been 47 percent.

⁴⁷ In addition to tracking whether relief is granted in its cases, TAS also classifies its cases based on the reason that no relief was provided. For example, codes are assigned to cases where the taxpayer was not legally entitled to relief or did not respond to TAS’s attempts at contact. Of the average 53 percent of no relief EITC cases in TAS in FY 2008, 2009, and 2010, 38 percent were closed by TAS because the taxpayer did not respond.

⁴⁸ Data obtained from TAMIS.

Figure 4.8 depicts the various TAS case-related issues associated with document processing:

FIGURE 4.8, TAS Document Processing Cases, FY 2006 – FY 2010

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	% Chg FY 2006 to FY 2010
Processing Amended Return	17,140	16,267	21,963	19,939	30,891	80.2%
Unpostable or Reject Returns	2,484	1,969	2,948	3,786	22,341	799.4%
Processing Original Return	10,398	9,290	10,021	9,170	11,997	15.4%
Other Document Processing Issues	8,248	6,252	6,941	7,762	8,882	7.7%
Injured Spouse Claim	11,599	8,295	14,238	10,130	7,777	-33.0%
Math Error	2,906	2,479	2,777	2,741	4,597	58.2%
Total Document Processing Issues	52,775	44,552	58,888	53,528	86,485	63.9%

As with audit cases, the IRS’s administration of the FTHBC had a significant impact on TAS’s document processing caseload, specifically in processing original and amended returns and math errors.⁴⁹

Procedural and Legislative Changes Impact IRS’s Ability to Expediently Process Tax Returns

As shown in Figure 4.8 above, unpostable or “reject” returns were the most common issue in TAS document processing cases in FY 2010,⁵⁰ with receipts increasing by nearly 800 percent over FY 2006. The IRS experienced higher inventories of reject returns because of a significant procedural change resulting from an IRS Office of Chief Counsel opinion,⁵¹ tax law changes, and programming errors. On May 21, 2010, IRS reject inventory included over 1.1 million returns compared to fewer than 400,000 for the same period in 2009, an increase of over 190 percent.⁵² Several factors caused the growth, including:

- A new procedure for processing unsigned refund returns;
- Returns claiming the Making Work Pay Credit where taxpayers claimed an incorrect amount, failed to claim the credit, used an invalid Social Security number, or failed to provide the number;⁵³ and

⁴⁹ See IRC § 6213(g)(2), for the definition of “mathematical or clerical error.” See also *TAS Assists the IRS with the Administration of the First-Time Home-buyer Credit* for a discussion of the impact the FTHBC had on TAS’s case receipts.

⁵⁰ Each account transaction is subjected to a series of validity checks prior to posting to the Master File. A transaction is termed unpostable when it fails to pass any of the validity checks (e.g., the taxpayer failed to sign the return prior to filing it with the IRS) and is then returned to the campus (Rejects function) for follow-up action(s). IRM 21.5.5.2 (Oct. 1, 2007).

⁵¹ IRS, *National Office Program Manager Technical Advice*, PMTA 2008-1947 (Sept. 2, 2008).

⁵² IRS, *Miscellaneous Monitoring Report* (Aug. 20, 2010).

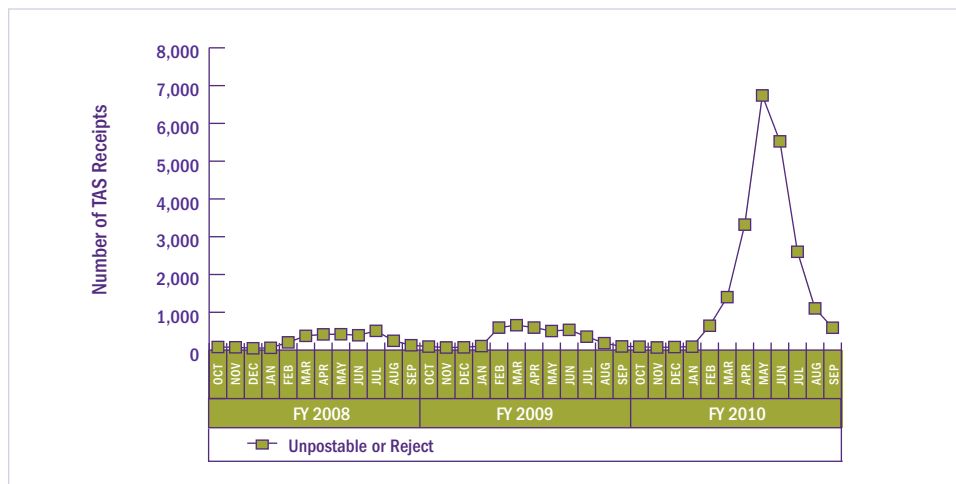
⁵³ The ARRA of 2009 provided for the MWP credit – a refundable credit of up to \$400 for working individuals and up to \$800 for working married taxpayers who file joint returns. See IRC § 36A.

- The IRS’s decision to manually verify returns claiming the FTHBC.⁵⁴

The new procedure for processing refund returns had the most significant impact on TAS document processing receipts. On September 2, 2008, the IRS Office of Chief Counsel issued a memorandum addressing “*Correspondence to the Taxpayer for Missing Information and Supporting Schedules*.⁵⁵” This memo stated that an unsigned refund return does not constitute a valid return,⁵⁶ but should be retained to determine whether it can be processed as an informal claim for refund. Additionally, in instances where a taxpayer files a signed return without a required entry, form, schedule, or other missing information or documentation, the return is still valid if it provides sufficient data to allow the IRS to calculate the tax liability.

Based on this opinion, on October 1, 2009, the IRS changed its return processing procedures.⁵⁷ For the 2010 filing season, refund returns missing a signature or schedule were no longer sent back to taxpayers, but were retained while the IRS suspended processing and sent letters requesting the missing information from the taxpayers. This change created large inventories of returns waiting for replies from taxpayers and a backlog of work for the Rejects function.⁵⁸

FIGURE 4.9, TAS Case Receipts Related Unpostable or Reject Returns by Month, FY 2008 – FY 2010⁵⁹



⁵⁴ In addition to requiring manual verification, the IRS initially required that taxpayers claiming the FTHBC submit a copy of Form HUD-1, *Settlement Statement*, or another settlement statement, bearing the signature of both the buyer and seller. The IRS subsequently learned that the law in some jurisdictions does not require signatures on settlement statements. This misunderstanding caused additional delays until the IRS updated its procedures to accept statements that are complete and valid according to local law. See National Taxpayer Advocate 2011 Objectives Report to Congress 3; *TAS Assists the IRS with the Administration of the First-Time Homebuyer Credit*, *infra*.

⁵⁵ IRS, *National Office Program Manager Technical Advice*, PMTA 2008-1947 (Sept. 2, 2008).

⁵⁶ IRC § 6061; *Beard v. Comm’r*, 82 T.C. 766, 777 (1984), *aff’d per curiam*, 793 F.2d 139 (6th Cir. 1986).

⁵⁷ IRM 3.11.249, *Nature of Changes* (9) (Jan. 1, 2010). “IRM 3.11.249.4.4(2)(b) - In compliance with a Chief Counsel opinion issued September 2, 2008, tax examiners will no longer send returns back to the taxpayer when corresponding for missing signature, missing information and supporting schedules and documentation on refund or zero balance returns (with some exceptions). These changes are effective October 5, 2009.”

⁵⁸ On May 21, 2010, IRS reject inventory numbered 1,168,229 compared to 399,434 for the same period in 2009, an increase of 192.5 percent. IRS, *Miscellaneous Monitoring Report* (Aug. 20, 2010).

⁵⁹ Data obtained from TAMIS.

Once the IRS recognized the implications of the processing change, it shifted resources from other unpostable or reject work. Thus, while the change may have caused much of the increase in TAS receipts, the cases TAS received encompassed a variety of unpostable or reject issues. As shown in Figure 4.9, TAS's monthly reject case receipts began to increase significantly in the second quarter of FY 2010 and peaked in May. In FY 2009, TAS received about 120 reject cases a week in the month of May. In May 2010, TAS received approximately 1,500 such cases each week, a 1,150 percent increase.⁶⁰

TAS secured additional overtime funding to address the increase in receipts. Additionally, in June 2010, the IRS temporarily detailed 41 campus employees who were familiar with document processing procedures into TAS to help with these cases.⁶¹ TAS and the IRS also developed procedures for quick communications on unpostable or reject cases, eliminating the need for an Operations Assistance Request (OAR).⁶² This action allowed TAS to resolve these cases more expeditiously. In FY 2010, TAS closed 20,377 unpostable or reject cases, with a relief rate of 77.9 percent.⁶³

The National Taxpayer Advocate, the Deputy National Taxpayer Advocate, and the Executive Director of Systemic Advocacy are in discussions with the Office of Chief Counsel and W&I to revise the procedures for the upcoming filing season. The goal is to minimize harm to taxpayers and get correct return information.

TAS Assists with Collection Issues

Issues involving IRS collection actions are most likely to affect taxpayers who are facing financial difficulties. TAS's overall collection cases decreased nearly six percent from 43,552 in FY 2006 to 41,142 in FY 2010; yet as shown in Figure 4.10, economic burden collection receipts increased by nearly six percent.⁶⁴ Cases involving levies, installment agreements (IAs), liens, currently not collectible (CNC) determinations, and offers in compromise (OICs) represented nearly 89 percent of TAS economic burden collection receipts in FY 2010.

⁶⁰ Data obtained from TAMIS.

⁶¹ TAS trained the detailed employees to advocate for taxpayers on a number of unpostable or reject issues, while assigning other cases to TAS employees when the taxpayers would be better served by the expertise of TAS employees. The temporary assignments ended in September 2010. This was the first time TAS used IRS employees in this manner and found it to be an effective way to address a large influx of unanticipated single-issue cases quickly and in the best interest of the taxpayer.

⁶² TAS issues an OAR when TAS lacks the statutory or delegated authority to directly resolve a taxpayer's problem.

⁶³ Data obtained from TAMIS. TAS tracks resolution of taxpayer issues through codes entered at the time of closing on TAMIS and requires case advocates to indicate the type of relief or assistance they provide to the taxpayer. See IRM 13.1.7.10.2.1 (Apr. 1, 2003). The codes reflect full relief, partial relief, or assistance provided. The relief rate is determined by dividing the total number of cases closed with full relief, partial relief, or assistance provided by the total number of closures.

⁶⁴ Data obtained from TAMIS.

FIGURE 4.10, Analysis of TAS Economic Burden Collection Receipts, FY 2006 – FY 2010

Economic Burden Receipts						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	% Chg FY 2006 to FY 2010
Levies	15,119	15,481	14,274	15,167	15,263	1.0%
Liens	3,287	3,246	2,972	2,961	3,438	4.6%
IAs	1,191	1,660	1,916	2,536	2,435	104.5%
CNC Determinations	972	1,218	198	1,746	1,791	84.3%
OICs	483	433	411	418	420	-13.0%
Other Collection Issues	3,843	3,760	4,558	3,574	2,975	-22.6%
Total Economic Burden Collection Receipts	24,895	25,798	24,329	26,402	26,322	5.7%

A TAS economic burden case generally involves a taxpayer who is experiencing a financial difficulty. It is not surprising that, when the national unemployment rate is hovering around ten percent,⁶⁵ many taxpayers who met their tax obligations in the past have hit a rough patch (*e.g.*, a job loss, foreclosure, serious illness, or other personal setback) and have fallen behind on their tax payments. What is surprising is that, despite the IRS's announced initiatives to help taxpayers who are experiencing economic difficulties in 2008, 2009, and 2010, TAS economic burden collection cases continue to rise.⁶⁶

Levy issues are among the top 15 TAS case issues.⁶⁷ A taxpayer coming to TAS because of an economic burden resulting from a levy is often facing the immediate threat of an adverse action, but may be unaware that the IRS has also filed a Notice of Federal Tax Lien (NFTL) that could impede his or her future financial viability and ability to pay past,

⁶⁵ Bureau of Labor Statistics (BLS), *Labor Force Statistics for the Current Population Survey*, (data extracted on Oct. 14, 2010). In August 2009, the federal unemployment rate was 9.7 percent and peaked at 10.1 percent in October 2009. As of September 2010, the unemployment rate stood at 9.6 percent.

⁶⁶ In December 2008, the IRS announced an expedited process to assist financially distressed homeowners whose refinancing or sale of their homes was hampered by the IRS's filing of a notice of federal tax lien (NFTL). See IRS News Release, *Prepared Remarks of Douglas H. Shulman, Commissioner of Internal Revenue, Before the American Payroll Association & the American Accounts Payable Association 28th Annual Congress*, IR-2010-68 (May 27, 2010); IRC § 6050W; Prop. Treas. Reg. § 1.6041-1(a)(1)(iv), 74 Fed. Reg. 61,294 (Nov. 24, 2009). In 2009, the IRS kicked off the tax filing season by announcing assistance to financially distressed taxpayers, including the postponement of collection actions, added flexibility for missed payments, an additional review of home values for offers in compromise, prevention of OIC defaults, and expedited levy releases. See IRS News Release, *IRS Begins Tax Season 2009 with Steps to Help Financially Distressed Taxpayers; Promotes Credits, e-File Options*, IR-2009-2 (Jan. 6, 2009). In March 2010, the IRS outlined additional steps to assist unemployed taxpayers such as adding "new" flexibility for OIC considerations and accelerated lien relief for taxpayers who cannot refinance or sell a home because of the tax lien. See IRS News Release, *IRS Outlines Additional Steps to Assist Unemployed Taxpayers and Others*, IR-2010-29 (Mar. 9, 2010).

⁶⁷ Data obtained from TAMIS.

current, and future taxes.⁶⁸ Levy and lien issues account for 71 percent of TAS's economic burden collection receipts.⁶⁹

As shown in Figure 4.10, TAS's FY 2010 currently not collectible economic burden cases rose 84 percent over FY 2006. A CNC (hardship) designation means that the IRS has determined collection of a liability would create a hardship on a taxpayer by leaving him or her unable to meet necessary living expenses.⁷⁰ While a CNC determination may benefit a financially struggling taxpayer because the account will be removed from active collection inventory, that same taxpayer may not realize that the IRS routinely files an NFTL in CNC hardship cases if the liability exceeds \$5,000.⁷¹ Taxpayers also may not understand the impact of the NFTL on future financial viability.

TAS's OIC cases continue to decrease, falling by 13 percent from FY 2006 to FY 2010.⁷² It may be that declining TAS OIC receipts reflect taxpayers and practitioners giving up on the offer process, or that the IRS is placing more taxpayers into CNC status instead of accepting their offers.⁷³

Since 2001, the National Taxpayer Advocate has raised concerns about how the IRS interacts with and treats taxpayers in the collection arena.⁷⁴ In FY 2010, the National Taxpayer Advocate:

⁶⁸ National Taxpayer Advocate 2011 Objectives Report to Congress 14-16 (*TAS Is Zealously Advocating for the IRS to Change Its Lien Filing Policies and Practices, Which Unnecessarily Harm Taxpayers and May Undermine Future Tax Compliance*); National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of Law, Fail to Promote Future Tax Compliance and Unnecessarily Harm Taxpayers*); National Taxpayer Advocate 2009 Annual Report to Congress vol. 2, 1-18 (TAS Research Study: *The IRS's Use of Notices of Federal Tax Lien*); National Taxpayer Advocate 2009 Annual Report to Congress 357-364 (Legislative Recommendation: *Strengthen Taxpayer Protections in the Filing and Reporting of Federal Tax Liens*); Tax Filing Season Update: Current IRS Issues, Hearing Before the Sen. Comm. on Finance, 111th Cong. 26-35 (Apr. 15, 2010) (statement of Nina E. Olson, National Taxpayer Advocate); The *National Taxpayer Advocate's 2009 Annual Report to Congress, Hearing Before the H. Subcomm. on Oversight and H. Comm. on Ways and Means*, 111th Cong. 5-14 (Mar. 16, 2010) (statement of Nina E. Olson, National Taxpayer Advocate).

⁶⁹ Data obtained from TAMIS.

⁷⁰ IRM 5.16.1.2.9 (June 29, 2010). CNC status generally suspends certain enforced collection actions, but the liability is still due and owing; thus, penalties and interest continue to accrue until the statutory period of limitations on collection expires. IRM 5.16.1.2.9(11) (June 29, 2010); see also IRM 1.2.14.1.14, IRS Policy Statement P-5-71 (Nov. 19, 1980).

⁷¹ IRM 5.19.4.5.2 (Aug. 4, 2009).

⁷² Data obtained from TAMIS.

⁷³ See Status Update: *The IRS Offer in Compromise Program Continues to Be Underutilized*, supra; National Taxpayer Advocate 2011 Objectives Report to Congress 20-22 (*IRS Initiatives to Improve the Offer in Compromise Program Have Not Yet Achieved Tangible Results*); National Taxpayer Advocate 2009 Annual Report to Congress 196-216.

⁷⁴ National Taxpayer Advocate 2009 Annual Report to Congress 17-40, 196-216, 217-227, 228-244, 318-319; National Taxpayer Advocate 2008 Annual Report to Congress 15-38, 193-212, 328-336; National Taxpayer Advocate 2007 Annual Report to Congress 324-336, 337-354, 355-373, 374-387, 388-394, 395-410, 411-431, 432-447; National Taxpayer Advocate 2006 Annual Report to Congress 34-61, 62-82, 83-109, 110-129, 130-140, 141-156, 157-171; National Taxpayer Advocate 2005 Annual Report to Congress 76-93, 123-135, 192-208, 209-222, 270-291, 345-356; National Taxpayer Advocate 2004 Annual Report to Congress 180-192, 226-245, 246-263, 311-343, 342-355; National Taxpayer Advocate 2003 Annual Report to Congress 99-112, 206-212; National Taxpayer Advocate 2002 Annual Report to Congress 15-24, 104-109, 110-115, 116-121; National Taxpayer Advocate 2001 Annual Report to Congress 41-42, 52-55). See also Status Update: *The IRS Has Been Slow to Address the Adverse Impact of its Lien Filing Policies on Taxpayers and Future Tax Compliance*, supra; Status Update: *The IRS Offer in Compromise Program Continues to Be Underutilized*, supra; Status Update: *The IRS's Handling of Collection Statute Expiration Dates Continues to Adversely Affect Taxpayers*, supra.

- Issued three Taxpayer Advocate Directives (TADs) to the senior leaders of the IRS, directing them to revise certain collection practices;⁷⁵
- Issued guidance to TAS Case Advocacy employees on advocating for the non-filing of NFTLs in certain situations and handling cases where economic hardship is present but the taxpayer has not filed all required tax returns;⁷⁶
- Developed training for TAS employees on taxpayer rights in the collection context;⁷⁷
- Supported Local Taxpayer Advocates who issued 48 Taxpayer Assistance Orders (TAOs) in cases involving collection;⁷⁸ and
- Participated in a servicewide “Collection Process Study” established in response to the 2009 Annual Report to Congress.⁷⁹

TAS will continue to advocate vigorously for taxpayers in the collection arena.

TAS Assists with Entity Issues

Entity issues involve taxpayers’ identities, including their names and taxpayer identifying numbers (TINs).⁸⁰ Nearly 74 percent of TAS entity cases stem from identity theft.⁸¹

The IRS and TAS Continue to Work Together to Address Return Processing Issues Impacting Victims of Identity Theft

The National Taxpayer Advocate initially recognized identity theft as an emerging trend in tax administration in her 2004 Annual Report to Congress.⁸² Since that time, the IRS has significantly improved its processes for identifying and helping taxpayers who are victims of identity theft.⁸³ Identity theft may occur in tax administration when an individual uses the Social Security number (SSN) of another person to file a false tax return or fraudulently gain employment. When these types of identity theft occur, the victim often begins a journey through IRS processes and procedures that may take years to complete. When those processes and procedures fail to resolve the taxpayers’ issues timely, those taxpayers often seek TAS assistance.

⁷⁵ TADs 2010-1, 2010-2, and 2010-3 (Jan. 20, 2010). See National Taxpayer Advocate 2011 Objectives Report to Congress Appendix VIII.

⁷⁶ TAS, Interim Guidance Memorandum, *Nonfiling of Notices of Federal Tax Liens in Certain Situations*, TAS Control No. 13.1-0310-003 (Mar. 31, 2010), available at <http://www.irs.gov/pub/foia/ig/tas/tas-13.1-0310-003.pdf>; TAS, Interim Guidance Memorandum, *Interim Guidance on Handling Collection Cases Where Economic Hardship Is Present but the Taxpayer Has Not Filed All Required Returns*, TAS Control No.13.1-0110-001 (Mar. 23, 2010), available at http://www.irs.gov/pub/foia/ig/tas/tas-13_1-0110-01.pdf.

⁷⁷ TAS, Collection Alternatives Overview; TAS, Collection Alternatives Levies I; TAS, Collection Alternatives Liens I; TAS, Collection Alternatives Installment Agreements; TAS, Collections Alternatives Offers in Compromise.

⁷⁸ See TAS Uses Taxpayer Assistance Orders to Advocate for Taxpayers, *infra*.

⁷⁹ See IRS, *The Collection Process Study* (Sept. 30, 2010). See also National Taxpayer Advocate 2010 Report to Congress vol. 2 (*The IRS Collection Strategy is Failing to Meet Key Objectives of the IRS Mission*), *infra*.

⁸⁰ See IRM 21.6.2.1 (Jan. 19, 2010) for details about the types of problems relating to TINs.

⁸¹ Of the 23,526 entity cases TAS received in FY 2010, 17,291 involved identity theft. Data obtained from TAMIS.

⁸² See National Taxpayer Advocate 2004 Annual Report to Congress 133-136.

⁸³ See National Taxpayer Advocate Fiscal Year 2011 Objectives Report to Congress 51-53; National Taxpayer Advocate 2009 Annual Report to Congress 307-317.

In January 2008, the IRS began marking the accounts of identity theft victims to protect them from tax-related identity theft actions. The IRS places a marker on an account when the taxpayer identifies himself or herself as a victim of identity theft or when the IRS identifies and confirms that a taxpayer is a victim.⁸⁴ This marker puts IRS employees on notice and allows the IRS to track the number of affected taxpayer accounts, protect federal revenue threatened by identity theft, and reduce taxpayer burden.⁸⁵

In January 2009, the IRS began to apply a series of filters or “business rules” to any return filed with an SSN associated with a marked account.⁸⁶ Business rules give the IRS an automated means of distinguishing valid returns from fraudulent ones, and blocking potentially fraudulent returns from processing. Returns that do not pass the “business rules” will not post to the taxpayer’s account until the IRS reviews the account and determines that the return belongs to the true owner of the SSN. In calendar year 2009, the IRS placed the identity theft tracking marker on 254,079 taxpayer accounts and has marked an additional 234,966 accounts in calendar year 2010 through September 2010.⁸⁷

The IRS appropriately subjected all accounts with identity theft markers to the business rules in an effort to protect taxpayers from identity theft. Unfortunately, the rules can also delay refunds for the very taxpayers the process is designed to safeguard. To address these concerns, the IRS enlisted employees in the Identity Protection Specialized Unit (IPSU), Accounts Management Taxpayer Assurance Program (AM TAP), and the Criminal Investigation Division, who have unique skills in resolving identity theft issues, to assist Submission Processing employees with account resolution. In addition, the AM TAP and TAS finalized procedures that will allow the IRS to process the return filed by the actual owner of the SSN expeditiously.⁸⁸

Despite the IRS’s process improvements, TAS’s identity theft receipts continued to increase in FY 2010, as reflected in Figure 4.11 below. While TAS’s identity theft cases continue to rise, TAS received nearly 3,400 fewer cases in FY 2010 than it would have, because the IPSU worked these cases under the Memorandum of Understanding between TAS and W&I discussed below.⁸⁹

⁸⁴ IRM 10.5.3.2.3 (May 15, 2009).

⁸⁵ IRM 10.5.3.2(1) (May 15, 2009).

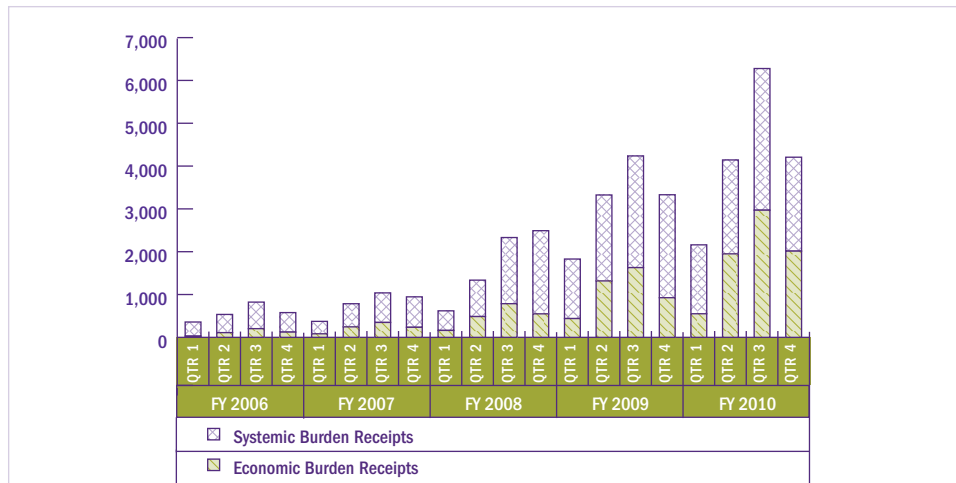
⁸⁶ IRM 3.12.179.43.1 (Jan. 1, 2010).

⁸⁷ IRS, *Identity Protection Incident Tracking Statistics Report 2009*; IRS, *Identity Protection Incident Tracking Statistics Report* (Sept. 30, 2010).

⁸⁸ IRM 21.9.1.8 (Oct. 1, 2010).

⁸⁹ IRS, *IPSU Identity Theft Report* (Oct. 2, 2010). The IPSU began working TAS’s systemic burden identity theft cases on June 14, 2010. See Memorandum of Understanding Between the National Taxpayer Advocate and the Commissioner, Wage & Investment to Transition TAS Criteria 5-7 Identity Theft Cases to Wage & Investment Identity Protection Specialized Unit (IPSU) (Mar. 31, 2010).

FIGURE 4.11, Identity Theft Receipts by Burden, FY 2006 – FY 2010⁹⁰



TAS identity theft receipts have increased over 23 percent, from 14,023 cases in FY 2009 to 17,291 in FY 2010.⁹¹ Some of the growth stems from the business rules implemented in FY 2010 as receipts involving the tracking indicator nearly tripled from 969 in FY 2009 to 2,710 in FY 2010.⁹²

As with any new process, unanticipated issues will occur. However, the National Taxpayer Advocate is pleased that the IRS continues to work through these issues to improve this process, which benefits victims of identity theft and strengthens overall tax administration. The IRS estimates it held on to \$245 million in fraudulent refunds by not processing more than 48,000 “bad” returns during calendar year 2010 (through September 30, 2010).⁹³

On March 31, 2010, the National Taxpayer Advocate and W&I Commissioner signed a Memorandum of Understanding (MOU) granting the IPSU the authority to work certain identity theft systemic burden cases.⁹⁴ The IRS has agreed to provide taxpayers whose cases move to the unit a service level similar to that provided by TAS and to contact the taxpayer within TAS timeframes so the transition of cases to the IPSU will not harm the taxpayers. The IPSU will operate in a manner similar to TAS, maintaining contact with the taxpayer and communicating estimated timeframes for resolving all issues. The IRS will

⁹⁰ Data obtained from TAMIS.

⁹¹ *Id.*

⁹² *Id.* Data reflect receipts with a primary issue code 425 (identity theft) and a secondary issue code 315 (unpostable/reject) (Oct. 1, 2010). TAMIS is a dynamic system, therefore a report run on one date may not exactly match a report run on another date.

⁹³ IRS, Generalized Unpostable Framework (GUF) 5740 Closed Inventory Summary (Sept. 30, 2010).

⁹⁴ The MOU called for the IPSU to start taking certain systemic burden identity theft cases on June 14, 2010. A systemic burden case is a case in which an IRS process, system, or procedure has failed to operate as intended, and as a result, the IRS has failed to timely respond to or resolve a taxpayer’s issue.

continue to direct taxpayers facing economic burden to TAS for immediate assistance.⁹⁵ TAS employees will continue to handle cases involving identity theft when taxpayers:

- Are facing financial difficulties;
- Are dissatisfied with prior attempts to resolve the issue with the IRS; or
- Have unusual circumstances that require TAS's unique advocacy role.

TAS and the IRS are tracking these cases to ensure that taxpayers receive the proper assistance and are not harmed by this agreement. Through FY 2010, identity theft referrals that would previously have come to TAS, but went to IPSU, totaled 3,376 cases.⁹⁶ TAS expects fewer systemic burden identity theft cases to come to TAS in FY 2011. However, TAS continues to receive identity theft cases because some government agencies are still listing TAS as the IRS point of contact for taxpayers with this problem.⁹⁷ As agencies are identified, TAS works with them to update their listings. Additionally, Local Taxpayer Advocates educate taxpayers about the IPSU as the first point of contact for identity theft issues during outreach events.

TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases

IRC § 7811 authorizes the National Taxpayer Advocate to issue a TAO when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered if relief is not granted.⁹⁸ In certain circumstances, the National Taxpayer Advocate may issue a TAO to order the IRS to take an action, cease an action, or refrain from taking an action in a case.⁹⁹ The National Taxpayer Advocate may also issue a TAO to order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level of the organization.¹⁰⁰ Upon receipt of a TAO, the responsible IRS official can either agree to take the action or appeal the order.¹⁰¹ Only the National Taxpayer Advocate, the Commissioner, or the Deputy Commissioner can modify or rescind a TAO.¹⁰²

In FY 2010, TAS issued 95 TAOs. The IRS complied with 68, TAS rescinded three, and the remaining 24 are under consideration by the IRS. Of the 13 TAOs the IRS appealed, it

⁹⁵ See Memorandum of Understanding Between the National Taxpayer Advocate and the Commissioner, Wage & Investment to Transition TAS Criteria 5-7 Identity Theft Cases to Wage & Investment Identity Protection Specialized Unit (IPSU) (Mar. 31, 2010).

⁹⁶ IRS, *IPSU Identity Theft Report* (Oct. 2, 2010).

⁹⁷ For example, in 2006, the Federal Trade Commission (FTC), the lead federal agency responsible for combating identity theft, published a brochure advising identity theft victims with unresolved tax issues to contact TAS. This brochure is still available on the FTC website. See FTC, *Take Charge: Fighting Back Against Identity Theft* 24 (Feb. 2006), available at <http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt04.pdf> (last viewed Oct. 24, 2010). Until the FTC updates its brochure, some identity theft victims may continue to contact TAS, rather than the IPSU, when they have an unresolved tax issue.

⁹⁸ See IRC § 7811(a)(1); IRM 13.1.20.1 (Dec. 15, 2007).

⁹⁹ See IRC § 7811(b); IRM 13.1.20.3 (Dec. 15, 2007).

¹⁰⁰ IRM 13.1.20.3 (Dec. 15, 2007).

¹⁰¹ IRM 13.1.20.5(2) (Dec. 15, 2007).

¹⁰² IRC § 7811(c).

subsequently complied with four, TAS modified one, and eight are awaiting resolution.¹⁰³ The figure below depicts the TAOs issued annually from FY 2006 through FY 2010.

FIGURE 4.12, Taxpayer Assistance Orders Issued to IRS, FY 2006 – FY 2010¹⁰⁴

Fiscal Year	TAOs Issued
2006	46
2007	28
2008	68
2009	45
2010	95

The TAO can be an effective tool to advocate for taxpayers. In situations where the IRS does not agree with TAS's recommendation, TAS can issue a TAO to advocate for the taxpayer based on the law and the facts of the taxpayer's case. TAS also uses the TAO to secure taxpayer relief in situations where the IRS has not taken the actions requested on an OAR,¹⁰⁵ or in circumstances where time constraints require bypassing the OAR procedure.¹⁰⁶

In FY 2010, TAS issued 14 TAOs to advocate for taxpayers where the IRS had served a levy to collect a delinquent tax liability. The IRS may generally levy if it assessed the tax and sent notice and demand for payment, the taxpayer did not pay, and the IRS sent the taxpayer a *Notice of Intent to Levy and Notice of Your Right to a Hearing* at least 30 days before the levy.¹⁰⁷ However, the IRS will release the levy if certain conditions are met.¹⁰⁸ TAS used TAOs to successfully advocate for ten taxpayers by demonstrating to the IRS that these taxpayers met at least one of the conditions for release of the levy. TAS rescinded one TAO and the IRS is still considering the remaining three.¹⁰⁹

¹⁰³ TAOs can be appealed to three levels in TAS – the Local Taxpayer Advocate, the Area Director, and the National Taxpayer Advocate.

¹⁰⁴ Data obtained from TAMIS.

¹⁰⁵ TAS issues an OAR when TAS lacks the statutory or delegated authority to directly resolve a taxpayer's problem.

¹⁰⁶ IRM 13.1.20.2(5) (Dec. 15, 2007).

¹⁰⁷ See IRC §§ 6331(d) and 6330(a). For examples of exceptions to these general rules, see IRC §§ 6331(d)(3) and 6330(f).

¹⁰⁸ IRC § 6343(a). The IRS will release the levy if:

- The tax, penalty, and interest owed are paid in full;
- The time for collection (the statute of limitations) ended before the levy was served;
- Documentation proves that releasing the levy will facilitate collection of the tax;
- The taxpayer has an installment agreement, or enters into one, unless the agreement says the levy does not have to be released;
- The levy is creating an economic hardship as defined in Treas. Reg. § 301.6343-1(b)(4); or
- The fair market value of the property exceeds the liability, and the levy could be released on a part of the property without hindering collection of the liability.

¹⁰⁹ Data obtained from TAMIS. See Most Serious Problem: *IRS Collection Policies and Procedures Fail to Adequately Protect Taxpayers Suffering an Economic Hardship*, *supra*. See also TAS Interim Guidance Memorandum, *Interim Guidance on Handling Collection Cases Where Economic Hardship Is Present but the Taxpayer Has Not Filed All Required Returns* (Mar. 23, 2010), available at http://www.irs.gov/pub/foia/ig/tas/tas-13_1-0110-01.pdf.

TAS also used the TAO process in FY 2010 to advocate for 22 taxpayers seeking the withdrawal of a lien. Thus far, TAS has resolved 12 of these cases and the remaining ten are still under consideration. When a taxpayer cannot fully pay a balance due, the IRS can file an NFTL to protect the government's interest in any assets held by the taxpayer and establish its priority against certain third party creditors and purchasers.¹¹⁰ The lien reaches all the taxpayer's interest in present and future property, appears on the taxpayer's credit report, and can severely hamper his or her ability to obtain credit. IRC § 6323(j)(1) provides for withdrawal of an NFTL under certain conditions.¹¹¹ The National Taxpayer Advocate has repeatedly urged the IRS to exercise its discretion to withdraw liens when it is in the best interest of the United States and the taxpayer.¹¹²

TAS also used a TAO to advocate for 12 taxpayers facing IRS audits or requesting audit reconsideration. The IRS complied with 11 TAOs, including three issued when the IRS audit function failed to respond to OARs. One TAO remains under consideration. TAS issued another four TAOs to advocate for taxpayers under audit who filed returns using their own Individual Taxpayer Identification Numbers (ITIN) but who had also used other individuals' SSNs to obtain work.¹¹³ This created a situation where the IRS accepted the income reported on the Form W-2, but would not allow the withholding taxes reported on the same form.¹¹⁴

¹¹⁰ IRC § 6323.

¹¹¹ The IRS will withdraw a lien when:

- The NFTL was filed prematurely or not in accordance with administrative procedures;
- Issuance of a withdrawal will facilitate collection of the tax;
- The taxpayer entered into an installment agreement to pay the tax, unless the agreement provides for the NFTL; or
- With the consent of the taxpayer or National Taxpayer Advocate, the withdrawal of the NFTL is in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States (as determined by the Commissioner of the IRS). See IRC § 6323(j)(1); Treas. Reg. § 301.6323(j)-1.

¹¹² See TAS Interim Guidance Memorandum, *Interim Guidance on Handling Collection Cases Where Economic Hardship Is Present but the Taxpayer Has Not Filed All Required Returns*, (Mar. 23, 2010), available at http://www.irs.gov/pub/foia/ig/tas/tas-13_1-0110-01.pdf; TADs 2010-1 and 2010-2 (Jan. 20, 2010); Status Update: *The IRS Has Been Slow to Address the Adverse Impact of its Lien Filing Policies on Taxpayers and Future Tax Compliance*, *supra*; National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*).

¹¹³ Any individual who has a tax return filing obligation but is not eligible to obtain an SSN must apply to the IRS for an ITIN. IRC § 6109; Treas. Reg. § 301.6109-1(d)(3).

¹¹⁴ Data obtained from TAMIS. See also Status Update: *Despite Program Improvements, the IRS Policy of Processing Most ITIN Applications with Paper Returns During Peak Filing Season Continues to Strain IRS Resources and Unduly Burden Taxpayers*, *supra*.

TAOs serve to focus the IRS's attention on procedures and policies that are not working as intended. Figure 4.13 lists the tax issues and reason(s) for which TAOs were issued in FY 2010.

FIGURE 4.13, TAOs Issued, FY 2010¹¹⁵

Issue Description	Number of TAOs Issued	Why TAO was Issued
Collection Issues	48	The IRS refused to withdraw a lien. The IRS refused to release a levy. The IRS refused to return levied funds. The IRS refused to place an account in CNC status. The IRS refused to process an OIC. The IRS refused to establish an IA.
Audit Issues	12	The IRS refused to consider additional information provided to support claim. The IRS refused to expedite the taxpayer's claim after proof of economic burden was provided.
Penalty Issues	10	The IRS refused to consider penalty abatement.
Refund Issues	7	The IRS refused to process a refund claim.
Document Processing Issues	6	The IRS refused to process an injured spouse claim.
Technical, Procedural, or Statute Issues	6	The manner in which the IRS administered the tax account caused additional penalty and interest charges to accrue. The IRS refused to correct the statute expiration date.
Other Issues	6	The IRS refused to follow its policy on cash bond payments. The IRS delayed processing a request for exempt status. The IRS refused to reconsider its decision to deny an OIC. The IRS refused to reconsider an innocent spouse claim.
Total	95	

¹¹⁵ Data obtained from TAMIS.

Congressional Case Trends

TAS is responsible for responding to certain tax account inquiries sent to the IRS by members of Congress. As shown in Figure 4.14, document processing, audit, and collection-related issues made up the top three categories of congressional inquiries in 2010.

FIGURE 4.14, Issues In Congressional Cases, FY 2009 – FY 2010¹¹⁶

	FY 2009	FY 2010	Percentage Change
Document Processing Issues	1,888	3,451	82.8%
Audit Issues	2,165	3,244	49.8%
Collection Issues	3,359	3,009	-10.4%
Refund Issues	5,273	1,778	-66.3%
Technical, Procedural, or Statute Issues	1,500	1,367	-8.9%
Penalty Issues	1,459	1,258	-13.8%
Entity Issues	905	830	-8.3%
Payment or Credit Issues	475	335	-29.5%
Appeals Issues	282	278	-1.4%
Interest Issues	124	88	-29.0%
Other Issues	64	49	-23.4%
Criminal Investigation Issues	68	24	-64.7%
Total Congressional Issues	17,603	15,711	-10.7%

TAS congressional inquiries peaked in FY 2008, with 47 percent of the inquiries relating to Economic Stimulus Payments. As shown in Figure 4.15, congressional inquiries declined in FY 2009 and FY 2010, but the ESP and FTHBC contributed significantly to TAS congressional receipts in both years.

FIGURE 4.15, TAS Congressional Receipts, FY 2006 – FY 2010¹¹⁷

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Congressional Receipts	10,873	9,779	22,097	17,603	15,711
Total Case Receipts	242,173	247,839	274,051	272,404	298,933
% of Total Receipts	4.5%	3.9%	8.1%	6.5%	5.3%
Congressional Receipts Related to ESP			10,320	4,264	127
Congressional Receipts Related to FTHBC					3,243

¹¹⁶ Data obtained from TAMIS. TAMIS is a dynamic system, and the statistics gathered for issue categories for this table were not compiled from the same data as the total congressional receipts and therefore will not match. The congressional receipt data by issue were retrieved on November 2, 2009, for FY 2009 and October 8, 2010, for FY 2010.

¹¹⁷ Data obtained from TAMIS.