

Office of Chief Counsel
Internal Revenue Service
memorandum

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National Taxpayer Advocate

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subject: Submitting a second request to a Responsible Internal Revenue Service (IRS) Official with respect to a taxpayer assistance order (TAO)

This memorandum responds to your request for assistance and may not be used or cited as precedent.

ISSUE

Once a TAO is issued, the responsible IRS official can either comply with the TAO or appeal it. Generally, if the official decides to appeal the TAO, he or she provides a response explaining the basis for appeal. May the National Taxpayer Advocate (NTA) or her delegate, after receiving an official's explanation and request for appeal, order that the same official reconsider the matter again if the second request is accompanied by a new memorandum addressing the concerns raised by the official in the request for appeal?

CONCLUSION

Yes. If the responsible IRS official provides a response to the TAO at any time during the process explaining why the official will not comply, the NTA or her delegate may provide a supplemental memorandum to that official addressing the issues raised in the response and ordering that the official reconsider his or her decision again in light of the supplemental information.

LAW AND ANALYSIS

Internal Revenue Code section 7811 and the accompanying Treasury Regulations authorize the NTA¹ to issue a TAO when a taxpayer is suffering or is about to suffer a

¹Although section 7811(a) grants authority to the NTA to issue a TAO, section 7811(f) provides that for purposes of issuing TAOs, the term NTA includes any designee of the NTA. The NTA has delegated the

significant hardship² as a result of the manner in which the Internal Revenue laws are being administered by the IRS and the law and the facts support relief.³ A TAO may be issued to any IRS operating division (OD) or function, including Appeals.⁴ Under the regulations, where the statute does not authorize the issuance of a TAO to order a specific action, a TAO can still be issued ordering the IRS to expedite, review, or reconsider an action at a higher level.⁵ Before issuing a TAO, a conversation must take place between TAS and the responsible IRS official in the OD or function with respect to the requested action.⁶

A TAO is an order by the NTA to the IRS, and the IRS has two choices upon receipt: comply with the actions ordered in the TAO or appeal the TAO.⁷ Many TAOs initiated by Local Taxpayer Advocates (LTAs) are resolved at that level or at the Deputy Executive Director Case Advocacy (DEDCA) level, but a small percentage of the cases reach the NTA level through the appeal process. At that point, the NTA typically sustains or modifies the TAO and sends it to the head of the appropriate IRS Office, such as the Business Operating Division (BOD) Commissioner or function chief who again has the choice of complying or appealing. If the IRS official who is the recipient of the TAO decides to continue the appeal, then the NTA can either rescind or modify the TAO or sustain the TAO to either the Commissioner or a Deputy Commissioner.

A question has arisen whether after receiving an IRS official's request to appeal that provides reasons for requesting the appeal, including citing new facts, policy positions or legal analysis, can the NTA or her delegate provide a supplemental memorandum to the same official addressing the concerns raised in the response and ordering that the official reconsider the matter again in light of the new information before modifying or sustaining the TAO to the next level IRS official for further consideration. As will be discussed in more detail below, the answer is yes. Nothing in section 7811 or its accompanying regulations or the Internal Revenue Manual (IRM) prohibits this in any way. In keeping with the spirit and purpose of the TAO process and the mission of the Taxpayer Advocate Service, ordering reconsideration in this situation is not only legally permitted, but should be encouraged, as it promotes prompt resolution of the taxpayer's problem, which is the goal of these statutory provisions.

authority to issue TAOs to the Local Taxpayer Advocate (LTA) level and those officials in the chain of command between the LTA and the NTA. See IRM 1.2.50.2, *Delegation Order 13-1 (Rev. 1)* (Mar. 17, 2009) and IRM 1.11.4.4.1(1), *Intervening Position Authority* (Oct. 10, 2008).

² Section 7811(a)(2) provides that a significant hardship includes, but is not limited to, an immediate threat of adverse action, a delay of more than 30 days in resolving taxpayer account problems, the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted, and irreparable injury to, or a long-term adverse impact on the taxpayer if relief is not granted.

³ Treas. Reg. § 301.7811-1(c).

⁴ A TAO may be issued to Criminal Investigation only when it will not impede the criminal investigation. Generally, a TAO may not be issued to the Office of Chief Counsel. Treas. Reg. § 301.7811-1(d).

⁵ Treas. Reg. § 301.7811-1(c)(3).

⁶ IRM 13.1.20.2(5), *Determining When to Issue a Taxpayer Assistance Order* (Feb 1, 2011).

⁷ Treas. Reg. § 301.7811-1(b).

As stated above, once a TAO is issued, the TAO must be complied with or appealed. IRM 13.1.20.5 sets forth the appeal process. The process begins generally with the LTA issuing the TAO. Once the LTA issues the TAO, the responsible IRS official can either take the action ordered in the TAO or appeal the TAO.⁸ If the responsible IRS official decides to appeal the TAO, the responsible IRS official will provide a written request for reconsideration to the LTA who issued the TAO. Upon receipt of the request for reconsideration, the LTA can modify or rescind the TAO or sustain the appeal. In this circumstance, the LTA may discuss with the responsible IRS official his or her request for reconsideration before making a decision to continue the TAO appeal process. If the LTA agrees with the OD's or function's reasons for not complying, the LTA will rescind the TAO. If the LTA disagrees with the OD's or function's response, the LTA sustains the appealed TAO and forwards the appealed TAO to the TAS DEDCA for review.

After receiving the appeal from the LTA, the TAS DEDCA will review the appeal and make a decision to sustain, modify, or rescind the TAO.⁹ If the TAS DEDCA decides to rescind the TAO, the case folder is returned to the LTA along with a written discussion of the rationale for rescission. If the TAS DEDCA decides to modify the TAO, the Area Office will forward the modified TAO back to the responsible IRS official in the OD or function who prepared the initial written request for reconsideration. If the TAS DEDCA agrees with the LTA, a memorandum supporting the decision to sustain the TAO will be prepared. This memorandum, along with the TAO, will be forwarded to the next level of OD or function management (for example, a Territory Manager) for review. After receipt of the appeal, the next level of management in the OD or function must decide whether to comply with or continue the appeal of the TAO. If the OD or function manager continues with the appeal, he or she must prepare a written response to the TAS DEDCA explaining the basis for the appeal.

If the DEDCA decides to continue the appeal, the case will be elevated to the NTA. The NTA will make a decision to sustain, modify, or rescind the TAO. If the NTA sustains or modifies the TAO, the responsible IRS official must then decide whether to take the action ordered or continue with the appeal. The responsible IRS official will advise the NTA of his or her decision. If the responsible IRS official agrees to take the action requested on the TAO, the responsible IRS official must take the action within the timeframe specified in the TAO. If the responsible IRS official decides to continue with

⁸ IRM 13.1.20.5, *TAO Appeal Process* (Dec. 9, 2015) provides the procedures regarding TAO appeals and the timeframes for response during an appeal. Some of the timeframes for response, however, are very short and, in practice, often are not followed (either by the IRS or TAS). TAS plans to do a substantial rewrite of IRM 13.1.20, which will include revising the timeframes for responses during an appeal.

⁹ The position of Area Director is referenced throughout IRM 13.1.20.5. However, since the publication of the IRM, the title of Area Director has been changed to DEDCA. Thus, the position of DEDCA is used in this memo.

the appeal, the NTA will sustain the TAO and forward it to the Commissioner or a Deputy Commissioner.

The IRM appeal process described above does not specifically address the issue at hand, which is whether a responsible IRS official can be asked to reconsider his or her determination to appeal if the second request addresses the issues raised by the official in his or her appeal request. The IRM provisions summarized above clearly contemplate a back and forth between the responsible IRS official and the responsible TAS official during the entire process. A TAO cannot be issued until there has been a conversation between TAS and the OD or function.¹⁰ The current IRM appeal process allows the responsible TAS official to rescind or modify the TAO after consulting with the responsible IRS official about the case. Examples in the TAO regulations state that the NTA can provide her analysis for resolving the case in her request for reconsideration,¹¹ thus, signaling that a discussion between TAS and the IRS about how to resolve the case is a cornerstone of the process. Moreover, one of TAS's statutory functions is to assist taxpayers in resolving problems with the IRS.¹² Resolution of problems requires open communications between the parties. The statute, the regulations and the IRM cannot cover all situations; however, these provisions contemplate an open process where the responsible TAS official and the responsible IRS official communicate back and forth in an effort to resolve the taxpayer's problem. Therefore, if at any time during the TAO process, the responsible IRS official provides an explanation as to why the official will not comply, the NTA or her delegate may provide a supplemental memorandum to that official addressing the issues raised in the response and ordering that the responsible IRS official reconsider his or her decision again in light of the supplemental information.

It should be noted that it is also legally permissible in this situation for the NTA to rescind the original TAO and issue a new TAO to the same responsible official that addresses the concerns raised in the official's request for appeal. However, it is up to the discretion of the NTA as to which approach to take.

¹⁰ See IRM 13.1.20.2(5), *Determining When to Issue a Taxpayer Assistance Order* (Feb. 1, 2011).

¹¹ Treas. Reg. § 301.7811-1(c)(4), Examples 2 and 3 are examples illustrating TAOs ordering reconsideration of an action. Both examples provide that when ordering the IRS or Appeals to reconsider their decision, the TAO may include TAS's analysis of, and recommendation for resolving, the case.

¹² I.R.C. § 7803(c)(2)(A)(i).