

Case Advocacy

Activities of the Office of the Taxpayer Advocate

Under Internal Revenue Code (IRC) § 7803(c)(2), the Office of the Taxpayer Advocate has four principal functions:

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

To achieve its statutory mission as an independent organization within the IRS, the Taxpayer Advocate Service (TAS) helps taxpayers resolve problems with the IRS and recommends changes that will prevent the problems from recurring. TAS employees help taxpayers whose tax problems are causing financial difficulty; who have not been able to resolve their problems through normal IRS 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 ensure that taxpayer rights are considered and protected in all cases. TAS's mission also includes providing taxpayers with access to information and services, and giving them clear, correct responses to inquiries. In addition to helping taxpayers with specific cases and individual problems, TAS studies issues that negatively affect large groups of taxpayers, and where warranted, develops proposals for administrative or legislative change. TAS serves as the voice of the taxpayer 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 Program¹ and oversees the Taxpayer Advocacy Panel (TAP).² LITC workgroups and TAP issue committees work on real-time identification and resolution of systemic problems. TAS expects all of its employees to identify and raise issues and to advocate for solutions to taxpayers' problems.

Identifying Problems and Trends That Harm Taxpayers and Advocating to Resolve These Issues

TAS accomplishes a large part of its statutory mission through casework. Because Congress did not intend TAS to replace regular IRS channels, TAS has developed specific criteria

¹ IRC § 7526 authorizes the IRS to award matching grants of up to \$100,000 per year to qualifying clinics that represent low income taxpayers involved in controversies with the IRS, or that provide education and outreach on the rights and responsibilities of U.S. taxpayers who speak English as a second language.

² TAP is a Federal Advisory Committee made up of citizen volunteers representing all 50 states, the District of Columbia, and Puerto Rico, who are dedicated to helping the IRS identify ways to improve customer service and responsiveness to taxpayers needs.

for accepting cases.³ TAS assists taxpayers whose circumstances place them in one of four main categories:

- Economic Burden – Cases in which a taxpayer’s problems are causing financial difficulty or significant cost, including the cost of professional representation;
- 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 issue;
- Equitable Treatment or Taxpayer Rights Issues – Cases accepted to ensure that taxpayers receive fair and equitable treatment and that taxpayers’ rights are protected; and
- Public Policy – Cases accepted when the National Taxpayer Advocate determines that compelling public policy warrants assistance to an individual or group of taxpayers.

TAS received 272,404 cases in fiscal year (FY) 2009,⁴ a decrease of less than one percent from the 274,051 receipts in FY 2008.⁵ Figure 4.1 shows TAS FY 2009 receipts and closures by category:

FIGURE 4.1, FY 2009 TAS Case Receipts, Closures, and Relief Rates⁶

	FY 2009 Receipts	FY 2009 Closures	Relief/Assistance Rate ⁷
Economic Burden	101,624	101,440	67.5%
Systemic Burden	170,524	182,147	74.8%
Equitable Treatment or Taxpayer Rights Issues	228	229	66.8%
Public Policy	28	25	64.0%
Total Cases	272,404	283,841	72.2%

3 Internal Revenue Manual (IRM) 13.1.7.2 (July 23, 2007) defines TAS case acceptance criteria as:

Criteria 1 – The taxpayer is experiencing economic harm or is about to suffer economic harm;

Criteria 2 – The taxpayer is facing an immediate threat of adverse action;

Criteria 3 – The taxpayer will incur significant costs if relief is not granted (including fees for professional representation);

Criteria 4 – The taxpayer will suffer irreparable injury or long term adverse impact if relief is not granted;

Criteria 5 – The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem;

Criteria 6 – The taxpayer has not received a response or resolution to the problem or inquiry by the date promised;

Criteria 7 – A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer’s problem or dispute within the IRS;

Criteria 8 – The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair taxpayers’ rights; and

Criteria 9 – The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

4 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.

5 National Taxpayer Advocate 2008 Annual Report to Congress 546.

6 Data obtained from TAMIS. Cases received during one fiscal year may not close in the same fiscal year; therefore receipts and closures may not match.

7 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 provided 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.

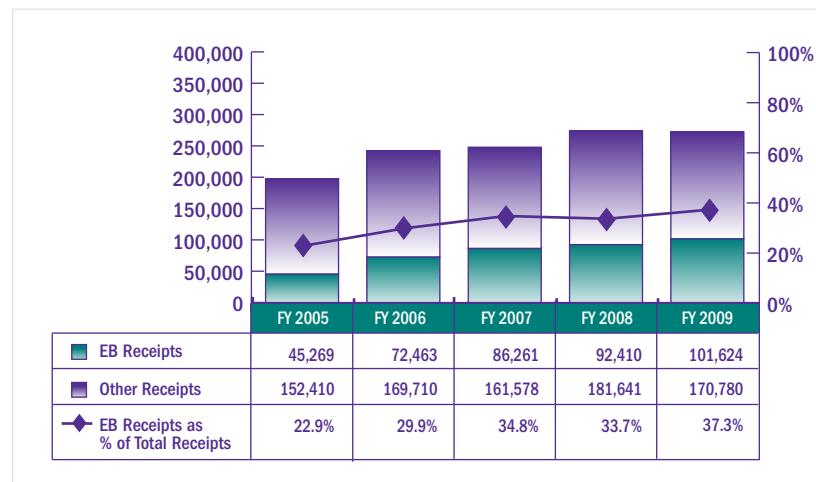
TAS works to obtain full or partial relief for taxpayers whenever the law and the facts of the specific case support it, and has provided relief to more than 70 percent of the taxpayers assisted since FY 2007.⁸ In some circumstances, however, TAS cannot provide the relief the taxpayer requests, because either the law prevents it or the taxpayer cannot provide documentation to support the requested relief.

As discussed in the National Taxpayer Advocate's FY 2010 Objectives Report to Congress, over the past several years TAS faced a growing workload and instituted hiring and improvement initiatives to meet the challenge.⁹ TAS closed more cases than it accepted in FY 2009, achieving a closure-to-receipt ratio of 104.2 percent, an indication that the hiring and improvements have begun to pay off.¹⁰

TAS Assists Taxpayers Whose Tax Problems Are Causing Financial Difficulty.

Economic burden cases involve taxpayers whose tax problems are causing financial difficulty or significant cost (including the cost of professional representation), or who are facing the immediate threat of adverse action, or irreparable injury or long-term adverse impact if relief is not granted. TAS received 101,624 cases where taxpayers experienced an economic burden in FY 2009 compared with 45,269 in FY 2005, a 124.5 percent increase.¹¹ As shown in Figure 4.2, economic burden receipts have risen steadily since FY 2005.¹²

FIGURE 4.2, Economic Burden (EB) Receipts, FY 2005 - FY 2009



8 The relief rate was 72.6 percent in FY 2008. National Taxpayer Advocate 2008 Annual Report to Congress 563. The relief rate was 73.3 percent in FY 2007. National Taxpayer Advocate 2007 Annual Report to Congress 659.

9 National Taxpayer Advocate 2010 Objectives Report to Congress 57.

10 See *TAS Works with the IRS to Resolve the Taxpayer Issues at the First Point of Contact*, *infra*.

11 Data obtained from TAMIS.

12 *Id.* In FY 2008, the percentage of economic burden receipts to total receipts declined due to the large volume of systemic burden cases TAS received in FY 2008 because of difficulties the IRS experienced in administering the Economic Stimulus Payment Program (ESP). Criteria code data of ESP receipts obtained from TAMIS on Dec. 3, 2008 showed 80 percent of the FY 2008 receipts involved systemic burden. Economic Stimulus Act of 2009, Pub. L. No. 110-18, 112 Stat. 613 (2008); National Taxpayer Advocate Fiscal Year 2010 Objectives Report to Congress 5.

Figure 4.3 illustrates the tax issues that caused taxpayers economic burden. In FY 2009, financial difficulties involving IRS collection actions ranked first among sources of economic burden receipts. Collection issues include liens, installment agreements (IA), offers in compromise (OIC), insolvency, and other payment options for resolving tax balances. TAS inventory reflects IRS trends in collection activities. Levies are the number one reason taxpayers come to TAS with a collection issue. TAS received 15,167 economic burden levy cases in FY 2009; however, these receipts have not increased significantly since FY 2006.¹³

FIGURE 4.3, Top Issues In Economic Burden Case Receipts, FY 2005 – FY 2009

TAS Economic Burden Receipts by Category	FY 2005 EB Receipts	FY 2006 EB Receipts	FY 2007 EB Receipts	FY 2008 EB Receipts	FY 2009 EB Receipts	% Change FY 2005 - FY 2009
Collection Issues	14,397	24,895	25,798	24,329	26,402	83.4%
Refund Issues	8,786	14,265	17,374	20,189	23,143	163.4%
Document Processing Issues	7,667	14,369	14,314	20,705	19,800	158.2%
Audit Issues	6,628	9,082	14,789	13,591	15,167	128.8%
Entity Issues ¹⁴	842	1,581	2,720	3,790	6,106	625.2%
Criminal Investigation Issues	3,665	3,792	5,072	3,969	4,799	30.9%
Penalty Issues	627	1,088	1,991	1,705	1,888	201.1%
Technical, Procedural, or Statute Issues	1,531	1,769	1,903	1,699	1,853	21.0%
Payment/Credit Issues	764	1,124	1,716	1,719	1,747	128.7%
Appeals Issues	222	332	380	476	518	133.3%
Interest Issues	59	67	97	129	107	81.4%
Other Issues	81	99	107	109	94	16.0%
Total TAS EB Receipts	45,269	72,463	86,261	92,410	101,624	124.5%

Amid high unemployment and an economy just beginning to recover from recession,¹⁵ TAS is seeing an increase in taxpayers seeking assistance with collection issues, particularly IAs and currently not collectible (CNC) determinations.¹⁶ TAS helps taxpayers understand what

13 Data obtained from TAMIS. TAS received 15,167 economic burden levy cases in FY 2009, 14,040 in FY 2008, 15,481 in FY 2007, 15,119 in FY 2006, and 8,377 in FY 2005.

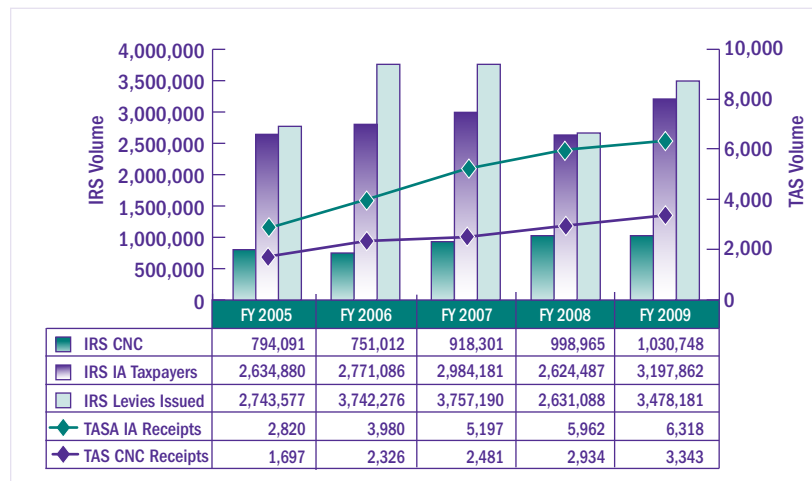
14 Entity issues include processing problems resulting from mismatched or erroneous taxpayer identification numbers (TINs) or names on returns, returns processed to incorrect TINs, in addition to accounts affected by identity theft.

15 In its November *Monthly Lending and Intermediation Snapshot*, the Department of the Treasury indicated “The economy began to grow again in the July-to-September period after a year of steady contraction.... Despite the pickup in economic activity, the labor market remains weak and forecasters expect the unemployment rate to remain about 10 percent well in 2010.” Department of the Treasury, *Monthly Lending and Intermediation Snapshot* (updated Nov. 16, 2009), available at <http://www.financialstability.gov/impact/monthlyLendingandIntermediationSnapshot.htm>.

16 See National Taxpayer Advocate 2008 Annual Report to Congress 15-38 (Most Serious Problem: *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulties*); IRM 5.16.1.1 (May 5, 2009). IRS Policy Statement P-5-71 provides the IRS authority to report an account as CNC for a variety of reasons (e.g., unable to pay, unable to contact or locate, and death). IRM 1.2.14.1.14 (Nov. 19, 1980). This generally suspends collection actions but the liability is still due and owing; thus, penalties and interest continue to accrue until the statutory period of collection expires.

documentation the IRS needs in order to enter into a reasonable payment arrangement or establish clear evidence of a taxpayer’s inability to pay.¹⁷ TAS economic burden IA receipts rose from 741 in FY 2005 to 2,536 in FY 2009, a 242 percent increase. Receipts involving CNC determinations have increased by 155 percent, from 684 in FY 2005 to 1,746 in FY 2009. The number of taxpayers placed on IAs by the IRS has also increased by 21.4 percent, from FY 2005 to FY 2009.¹⁸ Additionally, the IRS reported a 29.8 percent increase from FY 2005 to FY 2009 in accounts reported as CNC.¹⁹ Figure 4.4 below compares IRS CNC and IA taxpayers to total TAS IA and CNC receipts.

FIGURE 4.4, IRS Levies, and IRS and TAS Installment Agreement and Currently Not Collectible Cases by Volume, FY 2005-FY 2009²⁰



This upward trend reflects the fact that traditional IRS enforcement actions, such as the issuance of levies, do not always yield full payment of tax liabilities. IRS levies increased by 26.8 percent (from 2.74 million to roughly 3.48 million) from FY 2005 to FY 2009.²¹ However, the inflation-adjusted total collection yield during this period actually decreased

17 The IRS requires employees to secure and verify financial information prior to establishing installment agreements that do not meet certain requirements. Employees must also secure and verify financial information prior to determining an account is uncollectible. See IRM 5.19.1.5.4.4 (Apr. 28, 2008); IRM 5.19.1.6 (Apr. 28, 2008).

18 IRS, Collection Activity Report NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 5, 2009).

19 IRS, Collection Activity Report NO-5000-149, *Recap of Accounts Currently Not Collectible Report* (Oct. 5, 2009).

20 See TAMIS; IRS Collection Activity Report, NO-5000-6 *Installment Agreement Cumulative Report* (FY 2005 – FY 2009); IRS, Collection Activity Report NO-5000-149, *Recap of Accounts Currently Not Collectible Reports* (FY 2005 – FY 2009); IRS, *Statistics of Income (SOI) Data Books, Table 16, Delinquent Collection Activities, 2000-2008*; IRS Collection Activity Report, NO-5000-23 *Collection Workload Indicators* (FY 2009).

21 IRS, *SOI Data Books, Table 16, Delinquent Collection Activities, 2005-2008*; IRS Collection Activity Report, NO-5000-23 *Collection Workload Indicators* (FY 2009).

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by 11.3 percent.²² While levies may prompt taxpayers to engage in dialogue with the IRS to negotiate a more preferable solution to resolving tax liabilities, such as paying debts in installments, many levies are systemic, issued without much IRS effort to locate the taxpayer or make outbound calls to the taxpayer.²³ Negotiating the release of a levy includes a discussion on how the tax balance will be resolved. TAS not only negotiates the release of levies imposing economic hardship, but assists the taxpayer all the way through the collection process, including reaching an agreement with the IRS on how to resolve the tax balance.

As demonstrated by the volume of CNC determinations, not all taxpayers are able to pay their liabilities. A viable option is the OIC, which enables taxpayers to pay what they can, even if that amount does not fully cover the liability.²⁴ This program can benefit taxpayers by allowing them a “fresh start” and can also benefit the IRS by allowing collection of at least part of the tax liability. However, IRS data from FY 2001 to FY 2009 reveal the number of offer acceptances has declined by 72 percent.²⁵ Likewise, TAS OIC cases have declined 34.6 percent since 2005 because as fewer taxpayers submit OICs then fewer taxpayers require TAS services for OIC issues.²⁶

The National Taxpayer Advocate has also noted concerns with IRS lien filing policies and procedures over the past few years.²⁷ Statutory liens for taxes arise anytime the taxpayer does not pay an IRS assessment within ten days of the demand for payment.²⁸ The IRS can also file a notice of federal tax lien (NFTL) to protect the government’s right of priority against certain third parties, typically a purchaser, holder of a security interest, mechanic’s lien, or judgment lien creditor.²⁹

22 IRS, *Statistics of Income (SOI) Data Books, Table 16, Delinquent Collection Activities, 2005-2009*; Bureau of Labor Statistics (BLS), *Consumer Price Index All Urban Consumers* (Oct. 10, 2009), available at <http://www.bls.gov/CPI/>. Total collection yield as reported in the SOI Data Book is any revenue collected attributable to IRS collection activities, such as levies, liens, and seizures. Total collection yield includes previously unpaid taxes on returns filed plus assessed and accrued penalties and interest. For fiscal year 2008, it includes a total of \$37,254,116 collected by private debt collection agencies. For a more detailed discussion, see *Introduction to Collection, supra*.

23 During FY 2009, IRS issued 4,328,238 levies through the Federal Payment Levy Program (FPLP), compared to 3,478,181 levies issued manually by field Revenue Officers and the Automated Collection Service (ACS). W&I response to TAS research request (Nov. 3, 2009). Collection Activity Report NO-5000-C23, *Collection Workload Indicators Reports* (Oct. 13, 2009).

24 IRC § 7122. For a more detailed discussion of the OIC program, see Most Serious Problem: *The Steady Decline of the IRS Offer in Compromise Program Is Leading to Lost Opportunities for Taxpayers and the IRS Alike, supra*.

25 IRS, Collection Activity Report NO-5000-108, *Monthly Report of Offer in Compromise Activity (FY 2001-FY 2008)*; IRS, Collection Activity Report NO-5000-108, *Monthly Report of Offer in Compromise Activity* (Sept. 30, 2009). The IRS accepted 38,643 OICs in FY 2001 and 10,665 in FY 2009.

26 TAS received 2,250 OIC-related cases in FY 2005 and 1,471 cases in FY 2009. For further discussion on how the IRS could better utilize OICs as a viable collection tool, see Most Serious Problem: *The Steady Decline of the IRS Offer in Compromise Program is Leading to Lost Opportunities for Taxpayers and the IRS Alike, supra*.

27 See 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, supra*.

28 IRC § 6321. For further discussion of IRS lien policy, see 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, supra*.

29 IRC § 6323.

Economic considerations, particularly those that restrict the ability of consumers to obtain credit, may negatively impact taxpayers with tax balances. Taxpayer access to home equity loans has been diminished by changes in real estate values and credit standards.³⁰ Likewise, the amount of equity to which the NFTL attaches may not be as great as property valuations decline. Additionally, taxpayers with NFTLs on their credit reports will have greater difficulty borrowing to pay IRS debts, as the filing of the NFTL adversely impacts taxpayers' borrowing options. If a taxpayer cannot obtain a loan to satisfy the tax debt, he or she may instead pursue IRS payment plans or even worse, the IRS may report the account as CNC and collect nothing. IRS lien filings continue to increase as CNC determinations do because IRS guidance directs compliance employees that they "must file" liens when reporting an account CNC if the taxpayer owes at least \$5,000.³¹ While TAS receipts with lien issues have declined 12.9 percent since FY 2005,³² TAS CNC cases have risen, and are likely to have lien issues related to those CNC determinations. The lien issues may not become a problem until later when the taxpayer tries to refinance, sell, or purchase an asset or otherwise attempt to borrow to pay the tax debt. As discussed elsewhere in this report, NFTLs have long-lasting adverse impact on taxpayers, leading to economic burdens that taxpayers may not be able to resolve without the assistance of TAS.

Refund issues are another major source of TAS economic burden receipts. TAS assistance is critical when taxpayers are depending on a tax refund to satisfy necessary living expenses or to relieve a financial burden (such as a home foreclosure).

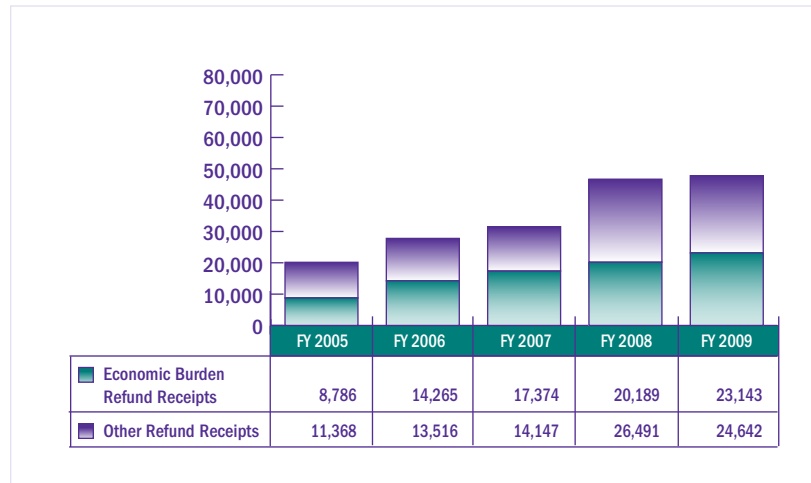
TAS received 23,143 refund-related economic burden cases in FY 2009 compared to 8,786 in FY 2005, a 163.4 percent increase, as shown in Figure 4.5.³³

30 U.S. home prices fell 0.7 percent in the second quarter of 2009 from the first quarter of 2009, according to the Federal Housing Finance Agency's (FHFA) seasonally-adjusted purchase-only house price index (HPI). Over the year ending in the second quarter of 2009, seasonally-adjusted prices fell 6.1 percent. FHFA, *Home Prices Decline Slightly in Second Quarter* (Aug. 25, 2009). available at <http://www.fhfa.gov/webfiles/14802/FINAL2q09hpi.pdf>.

31 The IRS reported 522,887 liens were filed during FY 2005 and 965,518 in FY 2009. IRS, *Data Book 2008*, Table 16; IRS, *Collection Activity Report NO-5000-C23, Collection Workload Indicators Reports* (Oct. 13, 2009). See IRM 5.12.2.4.1 (Oct. 30, 2009).

32 Data obtained from TAMIS. TAS received 5,340 lien cases in FY 2005 and 4,650 in FY 2009.

33 Data obtained from TAMIS.

FIGURE 4.5, Refund Case Receipts, FY 2005 – FY 2009

Nearly 30 percent (13,255 cases) of the total increase in refund cases during FY 2008 and 17 percent during FY 2009 (8,209 cases) resulted from the administration of the Economic Stimulus Payment (ESP) program.³⁴ Even without ESP-related cases, however, overall economic burden refund receipts increased in both FY 2008 and FY 2009.³⁵

TAS refund-related cases often involve issues that are susceptible to systemic delays. For example, the IRS may hold refunds owed to low income taxpayers claiming the Earned Income Tax Credit (EITC) to document the taxpayers' eligibility for the credit before releasing the refunds.³⁶

As taxpayers cope with the economic downturn, including job losses and home foreclosures, an anticipated tax refund becomes an important asset for many. Additionally, recent legislation passed to provide new credits to taxpayers (*e.g.*, the Making Work Pay Credit³⁷ and First-Time Homebuyer Credit (FTHBC))³⁸ can increase the refund to the point where taxpayers place even greater value on its prompt delivery. Because Congress enacted these

34 Congress passed the Economic Stimulus Act in February 2008 with the goal of strengthening the economy by placing an estimated \$152 billion into the hands of consumers and businesses. See The White House, *Fact Sheet: Bipartisan Growth Package Will Help Protect Our Nation's Economic Health* (Feb. 13, 2008); Economic Stimulus Act of 2008, Pub. L. No. 110-18 Stat. 613 (2008).

35 Data obtained from TAMIS. Refund receipts without ESP receipts were 33,425 in FY 2008 and 39,576 in FY 2009.

36 Generally, the IRS will send a letter to notify the taxpayer about the refund hold and request supporting documentation for the EITC. If the IRS believes the records provided by the taxpayer do not establish EITC eligibility, the IRS will send the taxpayer a report disallowing the credit. The IRS will not release the refund until it accepts the taxpayer's records establishing EITC eligibility and adjusts the taxpayer's account; or denies the EITC and adjusts the taxpayer's account to release any refund the taxpayer is entitled to receive. This process can take up to 195 days (255 days if the taxpayer's address is located in a foreign country). See IRM 4.19.14.3.1 (Jan. 1, 2009).

37 IRC § 36A. In 2009 and 2010, the Making Work Pay provision of the American Recovery and Reinvestment Act provided a refundable tax for working taxpayers. For people who are subject to withholding, the credit is typically handled by their employers through automated withholding changes in early spring. These changes may result in an increase in take-home pay. The amount of the credit will be computed on the employee's 2009 income tax return filed in 2010. Taxpayers who do not have taxes withheld by an employer during the year can also claim the credit on their 2009 returns.

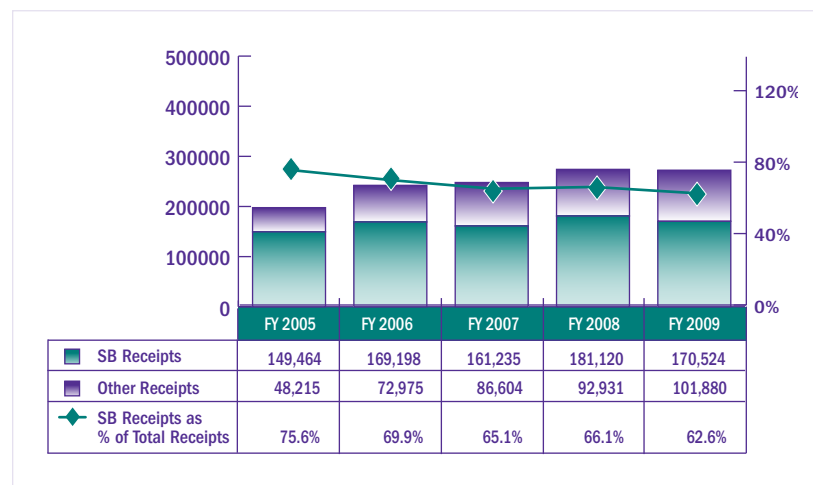
38 IRC § 36 provides a refundable tax credit for individuals who are qualified first-time homebuyers of a principal residence in the United States. For 2008, the credit applies to a principal residence purchased by the taxpayer on or after April 9, 2008. For 2009, the credit applies to qualifying purchases made on or after January 1, 2009, and no later than April 30, 2010. See *Running Social Programs Through the Tax System*, Vol. 2, *infra*.

credits through legislation passed *after* the 2009 filing season had already begun, early-filing taxpayers had to file amended returns to benefit from the FTHBC, during the time of year when IRS traditionally experiences backlogs.³⁹ Taxpayers facing financial hardships then turn to TAS for help.⁴⁰

TAS Assists Taxpayers When an IRS Process, System, or Procedure Fails to Operate as Intended.

A systemic burden case is one in which an IRS process, system, or procedure failed to operate as intended, and as a result, the IRS fails to timely respond to or resolve a taxpayer issue. Figure 4.6 reflects systemic burden case receipts from FY 2005 through FY 2009.

FIGURE 4.6, Systemic Burden (SB) Case Receipts, FY 2005 – FY 2009⁴¹



While the volume of systemic burden cases has increased from FY 2005 to FY 2009, systemic burden receipts as a percentage of all cases declined from 75.6 percent to 62.6 percent over that same period.⁴² TAS works with the IRS, taxpayers, practitioners, and other stakeholders (including the TAP and LITCs) to identify and recommend fixes to systemic problems within the IRS. TAS works to do more than resolve individual taxpayer problems; it also uses taxpayer experiences to help analyze broader problems and recommend improvements.

Figure 4.7 identifies categories of taxpayer problems involving systemic burden. The refund category accounts for the highest percentage increase of systemic burden receipts, increasing 120.9 percent from FY 2005 to FY 2009. Additionally, TAS systemic burden

39 National Taxpayer Advocate 2007 Annual Report to Congress 3-12.

40 For additional information on IRS amended return processing, see *Amended Return Processing Continues to Be a Leading Source of TAS Case Receipts, infra*.

41 Data obtained from TAMIS.

42 *Id.*

receipts involving entity issues increased 94.2 percent from FY 2005 to FY 2009,⁴³ which TAS attributes in large part to the growing problem of identity theft.⁴⁴

FIGURE 4.7, Systemic Burden Case Receipts By Issue FY 2005 – FY 2009⁴⁵

Systemic Burden Receipts by Category	FY 2005 Receipts	FY 2006 Receipts	FY 2007 Receipts	FY 2008 Receipts	FY 2009 Receipts	% Change FY 2005-FY 2009
Audit Issues	32,580	38,494	44,733	46,388	40,316	23.7%
Document Processing Issues	28,911	38,360	30,218	38,156	33,691	16.5%
Refunds	11,145	13,497	14,135	26,471	24,618	120.9%
Collection Issues	14,566	18,578	17,774	17,790	17,349	19.1%
Entity Issues	8,651	9,888	12,610	13,517	16,799	94.2%
Penalty Issues	9,153	11,211	13,714	11,988	12,018	31.3%
Technical, Procedural, or Statute Issues	9,489	10,686	10,169	9,356	8,364	-11.9%
Criminal Investigation Issues	25,009	17,592	6,773	6,179	7,151	-71.4%
Payment/Credit Issues	6,268	7,036	7,324	7,324	6,138	-2.1%
Appeals Issues	2,018	2,267	2,098	2,342	2,553	26.5%
Interest Issues	947	958	1,148	1,104	1,027	8.4%
Other Issues	727	631	539	505	500	-31.2%
Total TAS Systemic Burden Receipts	149,464	169,198	161,235	181,120	170,524	14.1%

TAS Works with the IRS to Resolve Taxpayer Issues at the First Point of Contact.

A taxpayer who is eligible for TAS assistance can expect to be assigned to a TAS employee who knows the IRS and how to navigate it. TAS employees:

- Listen to the taxpayer’s problem;
- Help the taxpayer understand what needs to be done to resolve it; and
- Stay with the taxpayer every step of the way until the problem is resolved.

However, TAS is a limited resource. To carry out our mission, it is important to ensure we receive only the cases TAS is uniquely equipped to handle. Congress did not intend TAS to substitute for regular IRS operations and processes; rather, TAS serves as a safety net, helping to prevent and resolve taxpayers’ problems.

⁴³ Entity issues include processing problems resulting from mismatched or erroneous taxpayer identification numbers (TINs) or names on returns, returns processed to incorrect TINs, in addition to accounts affected by identity theft. Data obtained from TAMIS.

⁴⁴ For a further discussion of identity theft issues, see Status Update; *IRS’s Identity Theft Procedures Require Fine Tuning*, *supra*; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 180-91; and National Taxpayer Advocate 2004 Annual Report to Congress 133-36. TAS received 900 systemic burden identity theft receipts in FY 2005 and 9,329 in FY 2009, a 936.6 percent increase. In addition, TAS economic burden entity receipts increased from 842 cases in FY 2005 to 6,106 in FY 2009, a 625.2 percent increase. The growth in TAS economic burden identity theft case accounts contributed to this increase, receiving 196 economic burden identity theft cases in FY 2005 and 4,685 in FY 2009. See Figure 4.3, *Top Issues in Economic Burden Case Receipts, FY 2005 – FY 2009*, *supra*.

⁴⁵ Data obtained from TAMIS.

In FY 2009, TAS had received 42.2 percent of its cases from IRS employees referring taxpayers to TAS.⁴⁶ This means 115,041 taxpayers first contacted the IRS to resolve their problems, and the employees handling their inquiries could not resolve them or provide relief in a reasonable time.

TAS and the IRS are reviewing employees' referrals to TAS, as well as working to update policies and processes that prevent other IRS functions from handling taxpayers' issues on first contact.⁴⁷ The objective of this initiative is to encourage IRS employees the opportunity to resolve problems rather than referring them to TAS. The IRS will then act on these cases, often by taking steps that could have been taken when the taxpayer first came to the IRS for help. The basic premise in this approach is that:

- The National Taxpayer Advocate alone has the authority under IRC § 7803(c)(2)(C)(ii) to develop guidance for all IRS employees outlining the criteria for referral of taxpayer inquiries to TAS;
- There can be no harm to the taxpayer by the IRS not making an immediate referral to TAS; and
- TAS and the IRS must track those cases that would have qualified for TAS assistance, but based on negotiations with TAS, the IRS is working expeditiously to resolve.

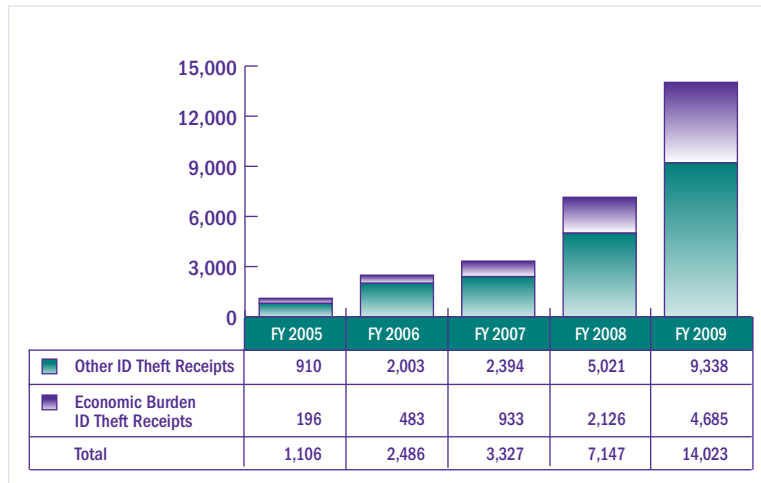
For example, in FY 2010 the IRS will retain some systemic burden identity theft cases based on a negotiated agreement with TAS. The IRS will refer those cases to TAS where the IRS has already tried to provide relief in the past, and has failed. The IRS's Identity Protection Specialized Unit (IPSU) will work the retained identity theft cases to resolution.⁴⁸ TAS will continue to work with taxpayers facing an economic burden as a result of identity theft, but expects a significant drop in TAS identity theft receipts. To further assist with this effort, TAS is providing the IRS with specific examples and scenarios for training material, as well as identifying situations where TAS is uniquely equipped to handle a taxpayer's problem and an immediate referral would be appropriate, regardless of whether it is an economic or systemic burden case.

⁴⁶ Data obtained from TAMIS. Of the 272,404 cases TAS received in FY 2009, 115,041 were identified by the IRS as meeting TAS case acceptance criteria and referred to TAS. TAS puts a code on every case to identify how TAS received the case, whether a taxpayer or practitioner came directly to TAS, the taxpayer was referred to TAS by an IRS employee, etc.

⁴⁷ National Taxpayer Advocate FY 2010 Objectives Report to Congress 32-33.

⁴⁸ For further information on IRS identity theft procedures, see Status Update; *IRS's Identity Theft Procedures Require Fine-Tuning*, *supra*.

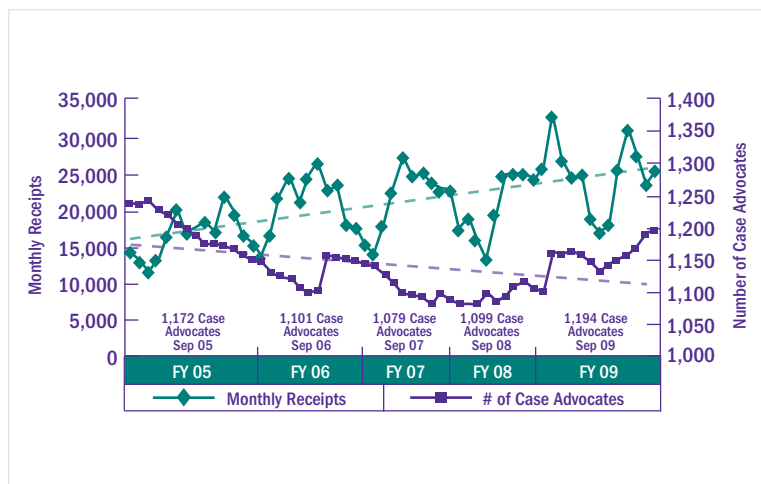
FIGURE 4.8, TAS Identity Theft Case Receipts FY 2005 – FY 2009⁴⁹



TAS Continues to Attract and Retain a Workforce of Skilled Advocates.

TAS embarked on a hiring initiative to attract employees who have the skills and attitude to succeed in advocacy. FY 2008 was the first year since FY 2003 that TAS was able to hire beyond attrition.⁵⁰ As shown in Figure 4.9, in fiscal years 2005, 2006, and 2007, TAS receipts increased while the number of case advocates working these cases declined. Not until the end of FY 2008 did hiring begin to outpace attrition.

FIGURE 4.9, Receipts vs. Case Advocates On Rolls, FY 2005 – FY 2009



49 Data obtained from TAMIS.

50 National Taxpayer Advocate FY 2010 Objectives Report to Congress 62.

As new employees come on board, TAS trains them with entry-level classes tailored to employee experience levels, for employees hired from within the IRS and from outside the IRS. At the end of each training phase, employees begin a rigorous on-the-job training program. In addition to training new employees, TAS keeps a skilled workforce with training initiatives designed to keep advocates up-to-date with the latest tax law and IRS procedural changes. For example, TAS produced a video to expand TAS employees' knowledge of the collection process.⁵¹ TAS continues to implement training initiatives designed to improve our employees' ability to effectively advocate for taxpayers.

TAS does not expect the demand for its services to decline, particularly as the IRS increases its compliance workforce.⁵² However, TAS will continue its efforts to find areas where the IRS can resolve taxpayers' problems at the first point of contact without TAS assistance, to hire and train the right mix of employees to advocate effectively for taxpayers, and to seek to improve policies and procedures.

TAS Uses Taxpayer Assistance Orders (TAOs) to Advocate for Taxpayers.

IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or is 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.⁵³ IRC § 7811 grants the National Taxpayer Advocate, or her delegate, the authority to issue a TAO ordering the IRS to take an action, cease an action, or refrain from taking an action in a case.⁵⁴ The National Taxpayer Advocate or her delegate may also issue a TAO ordering 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.⁵⁵ Upon receipt of a TAO, the responsible IRS official can comply with the order or request an appeal.⁵⁶ Only the National Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner can modify or rescind a TAO issued by the National Taxpayer Advocate.⁵⁷

Figure 4.10 lists the TAOs issued to the IRS each year from FY 2005 to FY 2009.

51 Collection Alternatives Part I was released to TAS employees in November 2009. The video provides an overview of collection actions, various collection alternatives, and helpful reminders on how TAS employees can better advocate for taxpayers who come to TAS for assistance.

52 IRS Commissioner Douglas Shulman has stated that the "IRS will undertake the largest hiring initiative in recent history to enhance taxpayer compliance." IRS Commissioner Douglas Shulman, *FY 2009 Budget, E-mail Message to IRS Employees* (Mar. 12, 2009).

53 See IRC § 7811(a)(i)(A).

54 See IRC § 7811(a), (b), and (f); IRM 13.1.20.3 (Dec. 15, 2007).

55 IRM 13.1.20.3 (Dec. 15, 2007).

56 IRM 13.1.20.5(2) (Dec. 15, 2007).

57 IRC § 7811(c) and (f).

FIGURE 4.10, Taxpayer Assistance Orders Issued⁵⁸

Fiscal Year	TAOs
2005	20
2006	46
2007 ⁵⁹	28
2008	68
2009	45

Of the 45 TAOs issued in FY 2009, the IRS complied with 31, TAS rescinded six, six are pending resolution, and the IRS appealed two. TAS sustained and the IRS ultimately complied with one of the TAOs appealed, and after TAS modified the other TAO, the IRS complied.

A TAO is an effective tool to obtain relief for taxpayers in situations where the IRS is unresponsive to or does not agree with TAS's recommendation for relief. TAOs may also influence IRS policy and procedures by bringing areas into focus that the IRS needs to examine and revise, not just for the individual taxpayer at the center of the TAO, but for all taxpayers. For example, TAS issued TAOs to advocate for taxpayers who did not receive their ESP refunds. TAS found the IRS was not processing some ESPs that qualified for lost, stolen, or destroyed refund check procedures. While the law prohibited the IRS from issuing refunds after December 31, 2008,⁶⁰ the IRS Office of Chief Counsel provided an interpretation allowing the IRS to issue replacement checks after December 31, 2008, in certain instances. TAS worked with the IRS to credit taxpayer accounts for the returned or undeliverable checks.⁶¹

In addition, TAS used the TAO process to advocate for taxpayers seeking IRS lien withdrawals. When a taxpayer files a return and cannot fully pay the balance due, the IRS has the authority to file a NFTL against any assets held by the taxpayer.⁶² The purpose of filing the NFTL is to protect the government's interest and obtain priority against certain other third-party creditors and purchasers. The NFTL reaches all of the taxpayer's interests in present and future property. When the IRS files the NFTL, it affects a taxpayer's ability to obtain credit. In FY 2009, TAS issued TAOs to help several taxpayers where the NFTL was filed by the IRS or the IRS was contemplating filing an NFTL. TAS advocated for these

58 TAS headquarters staff tracks TAOs.

59 The number of TAOs issued in FY 2007 differs from the figure in the 2007 Annual Report to Congress due to a TAO issued late in the fiscal year and not initially captured in the year-end statistical reports.

60 IRC § 6428(g)(3).

61 There are several situations where the IRS can issue a replacement check. For example, when:

- The post office returns the refund check to the IRS as undeliverable;
- The surviving spouse or executor of a decedent, who is legally entitled to the refund, returns the check because the original was issued in the name of the decedent;
- The IRS erroneously direct deposits the refund into the wrong account; or
- The IRS offsets the ESP refund to satisfy a balance due in another tax account, but later reverses the offset.

62 IRC § 6323(a).

taxpayers by demonstrating to the IRS that not filing an NFTL, or withdrawing an already filed lien, was in the best interest of both the taxpayer and the government, or would facilitate collection by allowing the taxpayer to secure a loan or employment to satisfy the debt.⁶³ Figure 4.11 lists the tax issues and reason(s) for which TAS issued TAOs in FY 2009.

FIGURE 4.11 Examples of TAOs Issued in FY 2009

TAO Issue Category	# of TAOs Issued	Examples of Why a TAO Was Issued
Collection Issues	16	<ul style="list-style-type: none"> The IRS refused to reinstate an OIC. The IRS refused to reconsider its decision to default an OIC. The IRS refused to withdraw a lien. The IRS refused to refrain from filing a NFTL. The IRS inappropriately levied when an installment agreement was in effect. The IRS refused to release levies that caused economic hardship. The IRS refused to release a levy when it previously agreed to suspend all levy action.
Refund Issues	11	<ul style="list-style-type: none"> The IRS refused to process a refund claim. The IRS refused to issue ESPs because the processing period had expired. The IRS declined to accept hardship documentation and release a held refund.
Audit Issues	4	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's request for audit reconsideration.
Document Processing Issues	4	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's recommendation to correctly process an injured spouse claim. The IRS refused to recalculate amended returns processed incorrectly. The IRS refused to process an amended return with a claim for refund.
Technical, Procedural, or Statute Issues	≤ 3	<ul style="list-style-type: none"> The IRS refused to recalculate the Collection Statute Expiration Date (CSED) in disagreement with TAS's assertion that IRS inappropriately extended the CSED. The IRS refused to allow a refund of a timely payment. The manner in which the IRS administered the tax account caused additional penalty and interest charges to accrue.
Penalty Issues	≤ 3	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's request for a recalculation of penalty and interest charges.
Entity Issues	≤ 3	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's recommendation to complete account corrections.
Payment or Credit Issues	≤ 3	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's request to apply payments that were timely to the correct account.
Appeals Issues	≤ 3	<ul style="list-style-type: none"> The IRS was unresponsive to TAS's request for a recalculation of penalty and interest charges.
Interest Issues	≤ 3	<ul style="list-style-type: none"> The IRS refused to work a request for abatement, claiming it was routed to the incorrect IRS function.
Other Issues	≤ 3	<ul style="list-style-type: none"> The IRS refused to process account adjustments on the Non-Master File (NMF).

TAS Identifies and Overcomes Barriers to Efficient Advocacy

TAS is constantly searching for ways to improve its processes in order to advocate more effectively and efficiently for its customers. The systems TAS presently uses to distribute workload and document activity are not configured to share information with each other.

⁶³ See Most Serious Problem: *One-Size-Fits-All Lien Policies Circumvent the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers, supra.*

Two years ago, TAS joined with IRS technology engineers to review TAS's current information systems. The engineers considered long-term viability and compatibility with the overall IRS information systems and proposed integration of the TAS systems. The sum of their recommendations is the TAS Integrated System (TASIS).⁶⁴

TASIS will gather the organization's data needs under one system, improving linkage between advocacy activities. The new system will also connect with other IRS systems to limit repetitive manual input and research. Consolidation of systems will streamline administration and the ability to incorporate new tools as they become available by replacing 14 TAS systems, many of which are at the end of their practical limits. The TASIS project strongly reflects an IRS strategic commitment to improving efficiency and productivity through advanced technology.

The core of TAS advocacy and case management information is supported by the TAMIS. TAMIS records, controls, and processes taxpayer cases, as well as provides data that TAS analyzes to identify systemic issues within IRS processes. Created in 1993, the structure of this aging, critical system no longer meets IRS systems standards and will lose support beyond 2017. Interim modifications offer limited benefit, and a replacement system must be in place before TAMIS expires.

While the TASIS project is currently scheduled to begin in FY 2010, project funding and resource availability will be primary hurdles to success. TAS provides the safety net for the U.S. taxpayer, and TASIS is a key component in TAS's ability to continue to meet not only the TAS mission, but the mission of the IRS to provide "top-quality service."⁶⁵

TAS Analyzes Economic and Systemic Burden Case Receipts for Process Improvements

By categorizing the issues involved in casework, TAS identifies trends in individual cases that also affect larger groups of taxpayers and uses that information to work with the IRS to resolve issues. Figure 4.12 breaks down TAS case receipts by issue for FY 2005 through FY 2009.

64 See National Taxpayer Advocate FY 2010 Objectives Report to Congress 60-62.

65 The IRS mission is to provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

FIGURE 4.12, TAS Case Receipts By Issue, FY 2005 – FY 2009⁶⁶

Receipts by Category All Criteria	FY 2005 Receipts	FY 2006 Receipts	FY 2007 Receipts	FY 2008 Receipts	FY 2009 Receipts	% Change FY 2005- FY 2009
Audit Issues	39,864	47,703	59,601	60,051	55,542	39.3%
Document Processing Issues	36,878	52,775	44,552	58,888	53,528	45.1%
Refund Issues	20,154	27,781	31,521	46,680	47,785	137.1%
Collection Issues	29,439	43,552	43,706	42,418	43,799	48.8%
Entity Issues	9,588	11,495	15,334	17,313	22,920	139.0%
Penalty Issues	9,972	12,328	15,716	13,705	13,921	39.6%
Criminal Investigation Issues	28,765	21,395	11,846	10,152	11,954	-58.4%
Technical, Procedural, or Statute Issues	11,671	12,585	12,121	11,103	10,248	-12.2%
Payment or Credit Issues	7,120	8,173	9,047	9,046	7,891	10.8%
Appeals Issues	2,299	2,618	2,498	2,841	3,084	34.1%
Interest Issues	1,025	1,029	1,249	1,235	1,135	10.7%
Other Issues	904	739	648	619	597	-34.0%
Total TAS Receipts	197,679	242,173	247,839	274,051	272,404	37.8%

TAS received the most cases as a result of taxpayer problems stemming from IRS audits. TAS audit receipts have increased by 39.3 percent from FY 2005 to FY 2009.

In addition to grouping receipts by categories, TAS also analyzes the underlying issue codes. Figure 4.13 lists the top 15 issues taxpayers came to TAS.

66 Data obtained from TAMIS.

FIGURE 4.13, Top 15 Issues Received In TAS (FY 2009)⁶⁷

Rank	Description of Issues	FY 2008	FY 2009	% Change
1	Processing Amended Return	21,963	19,939	-9.2%
2	Levies (Including Federal Payment Levy Program) ⁶⁸	17,082	18,153	6.3%
3	Identity Theft	7,147	14,023	96.2%
4	Earned Income Tax Credit (EITC) - Revenue Protection Strategy Claims	13,489	13,475	-0.1%
5	Criminal Investigation	10,152	11,954	17.8%
6	Other Refund Inquiries or Issues	14,817	11,578	-21.9%
7	Reconsideration of Substitute for Return under IRC § 6020(b) ⁶⁹ and Audits ⁷⁰	12,419	11,488	-7.5%
8	Expedite Refund Request	11,376	10,959	-3.7%
9	Open Audit (Not EITC)	9,232	10,630	15.1%
10	Injured Spouse Claim	14,238	10,130	-28.9%
11	Processing Original Return	10,021	9,170	-8.5%
12	Automated Underreporter Examination Completed ⁷¹	9,594	7,481	-22.0%
13	Lost or Stolen Refunds	3,775	6,799	80.1%
14	Installment Agreements	5,969	6,318	5.8%
15	IRS Offset	6,461	6,176	-4.4%

In analyzing the top issues among individual cases, TAS is working to effect systemic changes in the following areas:

Amended Return Processing Continues to be a Leading Source of TAS Case Receipts.

Document processing issues are the second highest contributor to TAS casework. The processing of amended returns is included in this category and has ranked among the top four issues generating TAS case receipts every year since 2000.⁷² In FY 2009, TAS worked 19,939 cases involving problems with amended return processing.⁷³ Figure 4.14 shows the volume of amended returns processed by the Accounts Management function of the IRS and TAS amended return receipts. When IRS volumes are high, TAS receipts increase. In FY 2009, 68.8 percent of TAS amended return receipts involved a systemic burden,

67 Data obtained from TAMIS.

68 The Federal Payment Levy Program is a systemic collection enforcement tool where certain delinquent taxpayers are matched to their federal payments disbursed by Treasury's Financial Management Service (FMS), which are levied. 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 accounts that had matched.

69 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 notice to the taxpayer.

70 Reconsideration of a tax assessment resulting from an IRS examination, or an income or employment tax return prepared by the IRS under IRC § 6020(b).

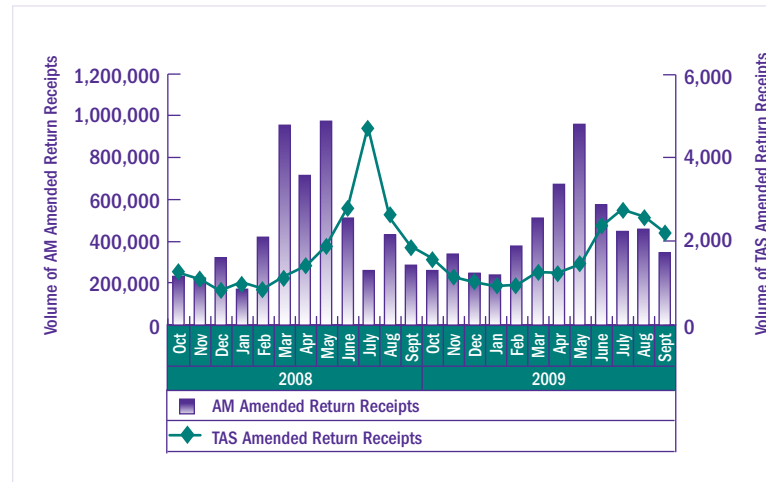
71 The Automated Underreporter program matches taxpayer income and deductions submitted by third parties against amounts reported on the taxpayer's return.

72 Data obtained from TAMIS.

73 *Id.*

meaning TAS received the case after the taxpayer had already experienced processing delays or problems.

FIGURE 4.14, Amended Return Receipts, FY 2008 – FY 2009⁷⁴



In August 2009, the IRS extended the normal processing time for amended returns from 8-12 weeks to 12-16 weeks.⁷⁵ This allows the IRS an extra month to finish processing the taxpayer's return. Normally, a taxpayer qualifies for TAS assistance 30 days after normal processing time elapses.⁷⁶ Thirty percent of FY 2009 TAS amended return receipts became TAS cases because the IRS failed to process the return within 30 days of the original or extended timeframe.⁷⁷ When call volumes increase during the peak filing season, employees working taxpayer correspondence, amended returns, and other paper submissions that result in adjustments to taxpayer accounts, are pulled away from this work to answer phones.⁷⁸ As a result, backlogs occur and lead to processing delays. As of September 30, 2009, the Wage & Investment (W&I) Division, which is responsible for processing amended returns, had more than \$5.5 million of funding budgeted to it for FY 2009 that was not spent.⁷⁹ Perhaps W&I should have considered using some of the funds to increase permanent staffing to enable timely processing of amended returns rather than extending the timeframe.

⁷⁴ Data obtained from TAMIS.

⁷⁵ IRS, *e-News for Tax Professionals 2009-34* (Aug. 24, 2009).

⁷⁶ IRM 13.1.7.2 (July 23, 2007).

⁷⁷ Of the 19,939 FY 2009 TAS amended return case receipts, 6,029 were received because the taxpayer experienced a delay of more than 30 days to process the amended return.

⁷⁸ For additional discussion of IRS service to taxpayers calling toll-free, see Most Serious Problem: *IRS Toll-Free Telephone Service Is Declining as Taxpayer Demand for Telephone Service Is Increasing*, *supra*.

⁷⁹ Data obtained from the Integrated Financial System (IFS) (Nov. 30, 2009). The IRS fiscal year ends on September 30.

Systemic Efforts to Address Amended Return Problems

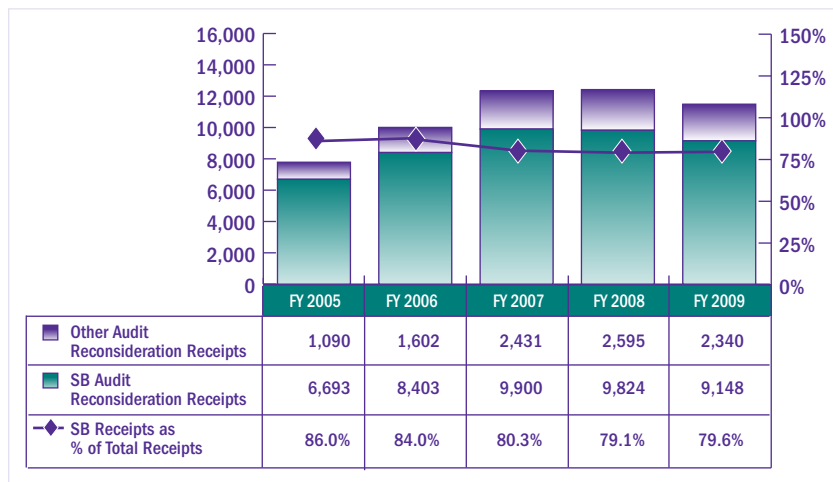
In 2006, the IRS Oversight Board directed TAS and W&I to create a joint task force to determine what causes amended return rework. The task force identified factors that prolong processing and delay refunds and made recommendations to improve the timeliness of amended return processing and lessen taxpayer burden. In 2008, the National Taxpayer Advocate selected amended return processing as a Most Serious Problem in her Annual Report to Congress and recommended a number of improvements.⁸⁰ W&I has since changed some aspects of its amended return processing.⁸¹ The National Taxpayer Advocate maintains her commitment to seeing TAS's recommendations fulfilled while continuing collaborative efforts with the IRS to reduce the amended return rework.

Audit Reconsiderations Are a Symptom of Problems Within the Audit Process

Background

Audit reconsideration is a review by the IRS of an unpaid tax assessment (including assessments resulting from prior field and correspondence audits, the Automated Underreporter (AUR) program, and situations when taxpayers contest “substitute for return” determinations by filing a delinquent return).⁸² Audit reconsideration receipts are consistently among the leading reasons why taxpayers request TAS assistance.⁸³ Figure 4.15 shows audit reconsideration cases rose from 7,783 in FY 2005 to 11,488 in FY 2009, a 47.6 percent increase.

FIGURE 4.15, TAS Audit Reconsideration Receipts, FY 2005 - FY 2009



80 See National Taxpayer Advocate 2008 Annual Report to Congress 274-89 (Most Serious Problem: *Incorrect Examination Referrals and Prioritization Decisions Cause Substantial Delays in Amended Return Refunds for Taxpayers*).

81 See National Taxpayer Advocate FY 2010 Objectives Report to Congress 31-2.

82 IRC § 6020(b) grants the IRS authority to prepare a return, i.e., a substitute for return, if a taxpayer fails to file as required.

83 Audit reconsiderations of tax assessments resulting from correspondence examinations and face-to-face audits and substitute for return processing cases have ranked as top ten case issues received by TAS from 2006 through 2009. See National Taxpayer Advocate 2008 Annual Report to Congress 578; National Taxpayer Advocate 2007 Annual Report to Congress 676; National Taxpayer Advocate 2006 Annual Report to Congress 642.

With few exceptions, once an audit reconsideration is granted, the cases proceed with reasonable efficiency and the taxpayer often gets a better outcome. For example, the National Taxpayer Advocate has reported that EITC audit reconsiderations allowed taxpayers to recover significant portions of the previously disallowed credit.⁸⁴ The 2004 EITC Audit Reconsideration Study and the National Taxpayer Advocate's 2007 Annual Report to Congress both identified problems in the initial audit processes.⁸⁵ In her 2008 Annual Report, the National Taxpayer Advocate said of the audit process, "Because the IRS does not consistently meet taxpayer needs and preferences, the tax assessed sometimes reflects the taxpayer's inability to navigate the audit process rather than the amount truly owed."⁸⁶

TAS and the IRS have identified problems with taxpayer communications. The root cause of most unsatisfactory audits is the IRS's inability to explain its substantiation requirements sufficiently for taxpayers to understand them.⁸⁷ Documentation difficulties and communication challenges, when combined, generated nearly 90 percent of all EITC audit reconsideration cases for the period from July 1, 2002 to January 31, 2003.⁸⁸

Systemic Efforts to Improve Audit Processes

The IRS and TAS are collaborating on several initiatives to improve the audit processes within the correspondence examination system and the AUR program. This should help reduce the number of cases requiring rework. The initiatives include:

- Better receipt and control of audit-related mail;
- Increased use of high-speed fax machines and scanners;
- Use of acknowledgment letters (acknowledging receipt or confirmation of taxpayer information or commitments); and
- Optimizing telephone contacts with the IRS to clarify what information is needed and why certain documentation the taxpayer has submitted may not be what the IRS needs to resolve the case, and to discuss next steps.

The IRS/TAS Audit Reconsideration Team is continuing to look at various research projects to pinpoint why taxpayers must request audit reconsideration and what, if anything, the IRS can do to address these issues.

84 National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 9 (*Earned Income Credit Audit Reconsideration Study*) ("As a group, taxpayers working with TAS ultimately recovered about 46 percent of the total EITC dollars they originally claimed on their returns. Taxpayers working solely with Examination in aggregate recovered about 38 percent of the EITC dollars they originally claimed."). For a discussion of how EITC impacts low income taxpayers, see Most Serious Problem: *Beyond EITC: The Needs of Low Income Taxpayers Are Not Being Adequately Met*, *supra*.

85 See National Taxpayer Advocate 2007 Annual Report to Congress 287-302; National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 10 (*Earned Income Credit Audit Reconsideration Study*).

86 National Taxpayer Advocate 2008 Annual Report to Congress 227.

87 See National Taxpayer Advocate 2007 Annual Report to Congress 287-302. National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 19 (*Earned Income Credit Audit Reconsideration Study*).

88 National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 15 -16, 19 (*Earned Income Credit Audit Reconsideration Study*).

Problems Continue with IRS Processing of Requests for Individual Taxpayer Identification Numbers (ITIN)

Background

The National Taxpayer Advocate identified problems with the IRS processing of ITIN⁸⁹ applications in her 2003, 2004, and 2008 Annual Reports to Congress. On December 17, 2003, the IRS announced a significant change to the ITIN application process. From that date on, the IRS requires applicants to attach an original valid federal tax return with their Form W-7, *Application for IRS Individual Taxpayer Identification Number*, unless they meet one of the designated exceptions. As a result of this policy, the IRS receives most ITIN applications during the tax return filing season, creating a bottleneck of ITIN applications at that time.⁹⁰ This bottleneck also delays tax return processing and associated refunds, causing significant burden to taxpayers, ITIN acceptance agents, and tax preparers, including the taxpayer's inability to e-file his or her tax return.⁹¹ Another serious ITIN issue discussed in the 2008 Annual Report to Congress was the IRS's business decision to consider ITIN applications for deceased individuals only on a case-by-case basis.⁹²

Case Trends

In her 2008 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS process ITIN applications throughout the year but retain the requirement that taxpayers demonstrate a tax administration purpose for the number. The IRS has not yet acted upon this recommendation. Consequently, during FY 2009, the ITIN program office once again experienced a backlog of applications. TAS ITIN case receipts grew by 78.3 percent from the second to the third quarter of FY 2009.⁹³ As of June 27, 2009, the IRS had 157,454 ITIN applications in inventory, compared to 68,877 on June 28, 2008, an increase of 128.6 percent.⁹⁴ The rise in unprocessed ITIN applications was mainly due to the IRS receiving 16 percent more applications in the first three months of the 2009 filing season than in the previous year.⁹⁵ The ITIN office reduced its backlog of 157,454 as of June 27, 2009 to 27,122 as of September 26, 2009, but TAS had already experienced a corresponding increase in new ITIN cases, as shown in Figure 4.16, below.⁹⁶

89 An ITIN is an individual taxpayer identification number assigned by IRS to individuals who need an identification number for federal tax purposes, but are ineligible to receive a social security number from the Social Security Administration.

90 Of the 1,409,903 ITIN applications with tax returns received by September 30, 2008, at the IRS's Austin Campus, 1,201,109 (or 85 percent) had been received by May 19, 2008. IRS, *ITIN SPO01 Reports* (May 19, and Sept. 30, 2008).

91 In addition, the IRS requirement for ITIN applicants to file paper returns is inconsistent with the congressional mandate for the IRS to achieve an 80 percent e-file rate. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 2001(a)(2), 112 Stat. 685, 723 (1998).

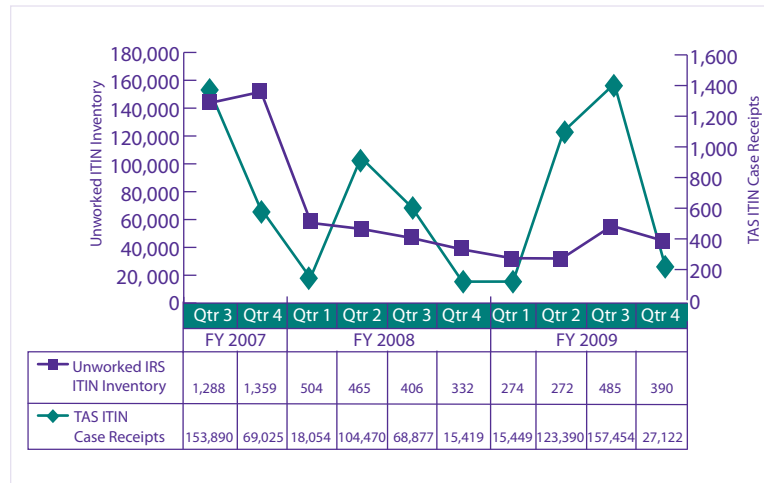
92 This IRS policy caused unwarranted negative tax consequences to such deceased individuals, their estates, spouses, or dependents who were unable to secure a taxpayer identifying number and claim certain tax benefits such as personal exemption, dependency exemption, child tax credit, or a particular filing status.

93 TAS received 272 ITIN cases during the second quarter FY 2009, and 485 during the third quarter.

94 IRS, *ITIN Production Report, Yearly Comparative Data* (June 28, 2008 and June 27, 2009).

95 IRS, *ITIN Production Report, Yearly Comparative Data* (Mar 29, 2008 and Mar. 28, 2009). The IRS received 801,344 applications in 2008 compared to 929,290 in 2009.

96 IRS, *ITIN Production Report, Yearly Comparative Data* (Sept. 26, 2009).

FIGURE 4.16, TAS ITIN Receipts by Quarter and IRS ITIN Unworked Inventory, FY 2005 – FY 2009⁹⁷

Systemic Efforts to Improve ITIN Application Processing

TAS asked the IRS to clear the backlog and monitored the IRS's progress, when TAS discovered that delays in processing these applications were harming taxpayers by delaying their refunds from the tax returns filed with the applications.⁹⁸ The ITIN program used additional hours and overtime to clear the backlog and belatedly reach its goal for processing applications within 11 business days by June 5, 2009.⁹⁹ However, the backlogs will likely recur in subsequent filing seasons if the IRS does not change its policy to process only applications attached to a tax return.

To address ITIN processing problems and provide relief to affected taxpayers, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the Commissioner of W&I in February 2009.¹⁰⁰ The TAD directed the IRS to develop a process that allows individual taxpayers to receive ITINs without an associated tax return upon proof of employment and withholding (or self-employment), and to establish a routine process for ITIN assignment for deceased individuals.¹⁰¹ In response to the TAD, W&I changed its ITIN assignment procedures regarding deceased individuals effective April 1, 2009.¹⁰² The IRS will

97 Unprocessed ITIN inventory data was not available prior to the third quarter of FY 2007.

98 W&I ITIN program briefing to TAS (June 2009).

99 W&I response to TAS research request (Oct. 22, 2009). The IRS's 11-day goal excludes the timeframe that applications are suspended by the IRS when the IRS requests the applicants to submit additional or missing information.

100 Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a TAD to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers. IRM 1.2.50, *Delegation of Authorities for Taxpayer Advocate Service Activities* (Aug. 1, 2008); Delegation Order 13-3 (formerly DO-250, Rev. 1) (Jan. 17, 2001). See also IRM 13.2.1.5, *Taxpayer Advocate Directives* (Aug. 21, 2000).

101 See TAD 2009-1, *Processing of Forms W-7/Filing ITIN Applications and Associated Tax Returns, infra*. The IRS has not yet acted upon this recommendation.

102 National Taxpayer Advocate FY 2010 Objectives Report 39.

measure the effectiveness of the procedures developed in response to the February 2009 TAD by reporting the number of ITINs provided for deceased individuals from April 1, 2009 to March 31, 2010.¹⁰³

Congressional Case Trends

TAS is responsible for independently responding to all tax account inquiries sent to the IRS by members of Congress. As shown in Figure 4.17, refund, collection, and audit-related issues were the top three categories of congressional inquiries in 2009.

FIGURE 4.17, Issues In Congressional Cases, FY 2008 – FY 2009¹⁰⁴

	FY 2008	FY 2009	Percentage Change
Refund Issues	10,106	5,273	-47.8%
Collection Issues	2,693	3,359	24.7%
Audit Issues	2,084	2,165	3.9%
Document Processing Issues	2,279	1,888	-17.2%
Technical, Procedural, or Statute Issues	1,615	1,500	-7.1%
Penalty Issues	1,120	1,459	30.3%
Entity Issues	1,004	905	-9.9%
Payment or Credit Issues	625	475	-24.0%
Appeals Issues	266	282	6.0%
Interest Issues	90	124	37.8%
Criminal Investigation Issues	69	68	-1.4%
Other Issues	84	64	-23.8%
Total Congressional Issues	22,097	17,603	-20.3%

During FY 2008 and FY 2009, TAS experienced an increase in congressional inquiries. Much of the increase is attributable to taxpayers with inquiries related to ESP, as shown in Figure 4.18 below.

FIGURE 4.18, TAS Congressional Receipts, FY 2005 – FY 2009

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Congressional Receipts	11,509	10,873	9,779	22,097	17,603
Total Case Receipts	197,679	242,173	247,839	274,051	272,404
% of Total Receipts	5.8%	4.5%	3.9%	8.1%	6.4%
Congressional Receipts Related to ESP				10,320	4,264

103 W&I response to TAS research request (Oct. 22, 2009).

104 Data obtained from TAMIS. TAMIS is a dynamic system, and the statistics gathered for issue categories for this table were not compiled on the same date as the total congressional receipts, and therefore will not match. The congressional receipt data by issue was retrieved on November 2, 2009. The total congressional receipt data was obtained on October 1, 2009, for FY 2009, and October 1, 2008, for FY 2008.

February 25, 2009

MEMORANDUM FOR RICHARD E. BYRD, JR.
 COMMISSIONER, WAGE AND INVESTMENT DIVISION

FROM: Nina E. Olson
 National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2009-1 (*Processing of Forms W-7/Filing of ITIN Applications and Associated Tax Returns*)

TAXPAYER ADVOCATE DIRECTIVE

I am issuing this Taxpayer Advocate Directive (TAD) to direct the Commissioner, Wage and Investment Division:

- 1) to develop a process that allows individual taxpayers to obtain Individual Taxpayer Identification Numbers (ITINs) without an associated tax return upon proof of employment and withholding (or self-employment);¹ and
- 2) to develop a process for routine assignment of ITINs to deceased applicants who are otherwise entitled to a taxpayer identification number and upon proof of a legitimate tax need.

I direct that such processes be developed by and implemented prior to the 2010 filing season.

I. Authority

This TAD is being issued pursuant to Delegation Order No. 13-3, which grants the National Taxpayer Advocate the authority to issue a TAD to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.² I have raised concerns, in writing (via three Annual Reports to Congress³), regarding the IRS policy of allowing taxpayers to submit ITIN applications only when associated with a tax return. In addition, I have raised concerns, in writing (via the 2008 Annual Report to

1 To address the IRS's concern that persons may seek an ITIN for a non-tax purpose, the IRS should require documentation of employment and withholding (or self-employment), e.g., pay stubs, Forms 1099-MISC, *Miscellaneous Income*, etc. as proof that they will need to file a form with the IRS that requires a TIN.

2 Internal Revenue Manual (IRM) 1.2.50, *Delegation of Authorities for Taxpayer Advocate Service Activities* (Aug. 1, 2008); Delegation Order 13-3 (formerly DO-250, Rev. 1) (Jan. 17, 2001). See also IRM 13.2.1.5, *Taxpayer Advocate Directives* (Aug. 21, 2000).

3 National Taxpayer Advocate 2003 Annual Report to Congress 60-86; National Taxpayer Advocate 2004 Annual Report to Congress 143-62; National Taxpayer Advocate 2008 Annual Report to Congress 126-40.

Congress), regarding the IRS's refusal to issue ITINs for deceased individuals. Attached is the Most Serious Problem, *IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*, from the National Taxpayer Advocate's 2008 Annual Report to Congress, which serves as a formal memorandum issued to the responsible operating area within the meaning of IRM 13.2.1.5.1.3 (Oct. 1, 2001), and which includes the IRS formal written response, declining to make those changes. In addition, since 2002, TAS has raised these concerns in IRS-TAS taskforces and working groups. Therefore, all procedural requirements for issuing this TAD have been satisfied.⁴

II. Background

Federal law requires individuals with U.S. income, regardless of immigration status, to pay U.S. taxes. Section 6109 of the Internal Revenue Code provides that if a person is required to file a return, statement, or other document with the IRS, the person must include an identifying number. In general, an individual required to furnish a taxpayer identifying number must use a social security number.⁵ Taxpayers who are not eligible for a Social Security number must obtain an ITIN before they can file a U.S. tax return.⁶ The requirement to provide a taxpayer identifying number does not end upon death; deceased individuals are also required by law to furnish a taxpayer identification number when filing returns or other documents with the IRS.

Because of concerns about the use of ITINs for nontax purposes, the IRS requires taxpayers to document their identity and tax administration need for the number before it will issue an ITIN.⁷ With limited exceptions, the IRS also requires all ITIN applicants to demonstrate the need for a number by submitting the application along with a tax return filed on paper (*i.e.*, the return cannot be submitted electronically).⁸ In addition, the IRS generally refuses to issue ITINs for deceased individuals as a matter of policy.

III. Reasons for Issuing This TAD

Because a taxpayer generally cannot obtain an ITIN before filing a return, the IRS receives most ITIN applications during the tax return filing season. Thus, the IRS's restriction creates a bottleneck of ITIN applications at that time.⁹ This bottleneck also delays tax

⁴ In advance of issuing a TAD, the National Taxpayer Advocate is required to work with and communicate with the owners of the process in order to correct the problem. IRM 13.2.1.5.1 (Aug. 21, 2000). The requirement to issue a proposed TAD was satisfied when the Most Serious Problem was submitted to the IRS for comment. Thus, the procedural requirements set forth in IRM 13.2.1.5.1.4 have been satisfied.

⁵ Treas. Reg. § 301.6109-1(a)(1)(ii)(A).

⁶ Treas. Reg. § 301.6109-1(a)(1)(ii)(B).

⁷ In contrast, it is much easier for an employer to obtain a TIN by filing an online Employer Identification Number (EIN) application, with the EIN assigned instantly online without any proof of identity or tax administration purpose. See EIN Online Application, at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html> (last visited Jan. 5, 2009).

⁸ For example, applicants who have income from property or an income-generating asset (e.g., a savings account) may still apply for an ITIN at any time throughout the tax year, substantiating their need for an ITIN by simply attaching a letter from a third party, such as a bank or financial institution. IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number* 11 (Jan. 2009).

⁹ Of the 1,409,903 ITIN applications with tax returns received by September 30, 2008, at the AUSPC, 1,201,109 (or 85 percent) had been received by May 19, 2008. IRS, *ITIN SP001 Reports* (May 19, and Sept. 30, 2008).

return processing and associated refunds, causing significant taxpayer burden.¹⁰ For example, in 2005 alone, the inability to receive an ITIN before preparing and filing a paper tax return caused processing delays that affected 280,000 refunds totaling over \$500 million.¹¹

Due to the taxpayer burden created by these delays, in my 2003, 2004, and 2008 Annual Reports to Congress, I identified the IRS's failure to timely process ITIN applications as a Most Serious Problem.¹² In the IRS's formal response to the 2008 Most Serious Problem, *IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*, it stated:

[T]he IRS had, and continues to have, significant and valid concerns that ITINs were being requested for non-tax purposes, such as for obtaining a driver's license.... In light of these concerns, the IRS believes the requirement to attach a return to the Form W-7 ITIN application strikes a reasonable balance between the competing objectives of facilitating compliance with U.S. tax laws and ensuring, to the extent possible, that ITINs are not issued for purposes other than federal tax administration. The National Taxpayer Advocate's suggested acceptance of a pay stub in lieu of the requirement to file a tax return with the ITIN application will not achieve the same degree of assurance.¹³

I believe that a taxpayer can document the need for an ITIN without providing a return. Indeed, the IRS will issue an ITIN before receiving a return if the taxpayer owns "an asset that generates income subject to IRS information reporting and/or tax withholding requirements."¹⁴ This inconsistent treatment of unearned and earned income for assigning ITINs ignores the legal requirement for the taxpayer to furnish a taxpayer identification number when filing returns or other documents with the IRS, regardless of the type of income at issue.¹⁵ I have proposed a well-balanced approach to developing a process for taxpayers to obtain ITINs at any time during the year, rather than just during filing season, upon proof of employment and withholding (or self-employment), *e.g.*, pay stubs, Forms 1099-MISC, *Miscellaneous Income*, etc. Such an approach would help the IRS smooth out its workload during the year especially the logjam created when ITIN applications are received during the filing season, while allowing the taxpayers to e-file and receive their refunds expeditiously.

10 In addition, the IRS requirement for ITIN applicants to file paper returns is inconsistent with the congressional mandate for the IRS to achieve an 80 percent e-file rate. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 2001(a)(2), 112 Stat. 685, 723 (1998).

11 ITIN processing delays also result in other burdens as described in my 2008 Annual Report to Congress (Most Serious Problem: *IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*), which is attached.

12 National Taxpayer Advocate 2003 Annual Report to Congress 60-86; National Taxpayer Advocate 2004 Annual Report to Congress 143-62; National Taxpayer Advocate 2008 Annual Report to Congress 126-40.

13 National Taxpayer Advocate 2008 Annual Report to Congress 137.

14 IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number* 11 (Jan 2009).

15 IRC § 6109; Treas. Reg. § 301.6109-1(d)(3).

In my 2008 Annual Report to Congress, I expressed a concern about the IRS's policy to deny ITIN applications to deceased individuals, which causes unwarranted negative tax consequences to their estates or, in the case of a deceased dependent, to the primary taxpayer.¹⁶ In the IRS's formal response to the 2008 Most Serious Problem, *IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*, the IRS concluded:

[I]t was not prudent to allow ITINs for decedent applicants due to increased vulnerability of fraud, the limited tax purpose (one time use), and the IRS's limited ability to monitor and subsequently revoke the number to eliminate future use.... As a result, effective for the 2009 filing season we will make every effort to accommodate decedent ITIN applications on a case-by-case basis after a review of the particular circumstances involved in each such application.¹⁷

The IRS does not explain how an ITIN assigned to a decedent is any more susceptible to fraud or misuse than one assigned to a yet living applicant. As a result of the business decision to consider ITIN applications for deceased individuals only on a case-by-case basis, such deceased individuals, their estates, spouses, or dependents may be unable to secure a taxpayer identifying number and claim certain tax benefits such as personal exemption, dependency exemption, child tax credit, or a particular filing status.

I believe the IRS ITIN Policy should uniformly apply to all ITIN applicants living or deceased, upon satisfaction of documentary evidence requirements and proof of a legitimate tax need.

If you have any questions, please contact Rosty Shiller on my staff at (202) 622-4248.

Attachment (3)

cc: Linda Stiff, Deputy Commissioner, Services and Enforcement

¹⁶ National Taxpayer Advocate 2008 Annual Report to Congress 126-40.

¹⁷ National Taxpayer Advocate 2008 Annual Report to Congress 137.