TAS CASE ADVOCACY

FUNCTIONS OF THE OFFICE OF THE TAXPAYER ADVOCATE

The National Taxpayer Advocate leads TAS in all aspects of its statutory mission. Under Internal Revenue Code (IRC) § 7803(c)(2)(A), 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 that may be appropriate to mitigate such problems.

The first function described in the statute relates to TAS's Case Advocacy, which involves assisting taxpayers with their cases. The next three functions are associated with identifying and correcting systemic problems impacting taxpayers. In addition to helping taxpayers resolve specific cases and individual problems, TAS employees advocate systemically by identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden and recommending solutions to improve tax administration.[1]

TAS serves as the voice of the taxpayer within the IRS by providing the taxpayer's viewpoint on new policies, procedures, or programs. While systemic advocacy is the responsibility of everyone in TAS, primary oversight of systemic advocacy efforts belongs to the Office of Systemic Advocacy. Additionally, TAS administers the Low Income Taxpayer Clinic (LITC) grant program[2] and oversees the Taxpayer Advocacy Panel (TAP).[3]

TAS ANALYZES ECONOMIC AND SYSTEMIC BURDEN CASE RECEIPTS TO IMPROVE IRS PROCESSES

Taxpayers seek TAS assistance with specific issues when:

- They have experienced a tax problem that causes financial difficulty;
- They have been unable 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.

1 Taxpayers and practitioners can use the Systemic Advocacy Management System (SAMS) to submit a systemic issue to TAS at www.irs.gov/SAMS.

2 The LITC program provides matching grants to qualifying organizations to operate clinics that represent low income taxpayers in disputes with the IRS, or educate taxpayers for whom English is a second language about their tax rights and responsibilities. LITCs provide services to eligible taxpayers for free or for no more than a nominal fee. *See* IRC § 7526.

3 TAP is a Federal Advisory Committee established by the Department of the Treasury to provide a taxpayer perspective on improving IRS service to taxpayers. TAS provides oversight and support to the TAP program. The Federal Advisory Committee Act (5 U.S.C. Appendix) prescribes standards for establishing advisory committees when those committees will furnish advice, ideas, and opinions to the federal government. *See also* 41 C.F.R. Part 102-3.

TAS generally accepts cases in four categories.

1. *Economic Burden* – Four categories of cases are classified as economic burden cases:
   a) A taxpayer is experiencing economic harm or is about to suffer economic harm;
   b) A taxpayer is facing an immediate threat of adverse action;
   c) A taxpayer will incur significant costs if relief is not granted; and
   d) A taxpayer will suffer irreparable injury or long term adverse impact if relief is not granted.

In many of these cases, time is of the essence, and if the IRS does not act quickly (*e.g.*, to remove a levy or release a lien), the taxpayer will experience even more economic harm.[4]

2. *Systemic Burden* – Systemic burden cases involve situations where the taxpayer has experienced a delay of more than 30 days to resolve a tax account problem, where the taxpayer has not received a response by the date promised, or where a system or procedure has either failed to operate as intended or failed to resolve the taxpayer's problem or dispute within the IRS.[5]
3. *Best Interest of the Taxpayer* – Best interest of the taxpayer cases involve situations where the manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights. For example, this criterion would be met if the taxpayer disagrees with a proposed tax assessment and the IRS issued a notice of deficiency without giving the taxpayer his or her appeal rights.[6]
4. *Public Policy* – Public policy cases are those where the National Taxpayer Advocate has determined that compelling public policy warrants assistance to an individual or group of taxpayers. The National Taxpayer Advocate has the sole authority to determine which issues are included in this criterion and will so designate by memo.[7]

In fiscal year (FY) 2010, TAS received the highest number of cases in its history (298,933).[8] In FY 2011, a hiring freeze was imposed on the federal government. To ensure that the resources necessary to advocate effectively are commensurate with TAS's growing inventory, TAS identified certain types of systemic burden cases that the IRS ultimately resolves without the need for TAS engagement. In FY 2011, TAS suspended acceptance of four issue codes in systemic burden cases: original return processing, amended return processing, injured spouse claims and unpostable/reject cases. This guidance remains in effect so TAS can provide effective service to taxpayers who are in most need of assistance and timely resolve their cases.[9]

4 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.1 (Aug. 24. 2007).

5 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.2 (July 23, 2007).

6 *Id*.

7 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.4 (Apr. 26. 2011).

8 Data obtained from TAMIS (October 1, 2011) compared to TAMIS data on October 1 of each year since TAS was formed in 2000 through the present.

9 In September 2012, TAS reissued the memorandum to reiterate the changes to TAS case-acceptance criteria - 16M TAS-13-0912-019 (Sept. 25, 2012). In September 2013, TAS again reissued the guidance – 16M TAS-13-0913-009 (Sept. 27, 2013).

TAS continues to accept cases involving the four categories listed above if the taxpayer:

- Is suffering an economic burden;
- Has related issues (*e.g.*, needs an amended return processed quickly, because the IRS has created a substitute for return and is trying to collect, and the amended return will eliminate or minimize the tax liability);[10]
- Is referred by a congressional office; or
- Specifically requested TAS assistance.

The change in case acceptance criteria was the first step in a long-term strategy to continue to focus on our primary mission and serve the most vulnerable taxpayers. TAS must continually adjust to conditions of limited resources, growing case complexity, an increase in economic burden cases, and the IRS's inability, on occasion, to address taxpayer issues timely and effectively. The next phase of TAS's strategy is exploring new approaches and alternative services on certain issues, to allow TAS to keep its focus on providing vital service to those suffering economic burden and preventing negative consequences to the most vulnerable taxpayer population. This strategy will involve:

- Identifying and testing self-help tools for taxpayers in resolving requests for expedited refunds, returned or stopped refunds, and requests for copies of certain documents, (returns, reports, determination letters, etc.). This includes producing short videos with downloadable forms and simple guidelines for taxpayers.
- Identifying issues where intake advocates (employees who handle the initial contact with the taxpayer) can take full and complete action(s) to resolve all issues without assigning the case to a case advocate, and with no negative impact on customer satisfaction.

TAS RECEIPT TRENDS

Increasing Cases, Complexity, and Urgency in TAS Casework

In FY 2013, TAS received 244,956 cases of all types, a nearly 12 percent increase from FY 2012. TAS provided relief to taxpayers in approximately 79 percent of cases closed in FY 2013, which was an increase of about 2.1 percent from FY 2012.[11] Figure 4.1 below compares FY 2011, FY 2012, and FY 2013 receipts and relief rates by case acceptance category.

10 A substitute for return is a return prepared for a taxpayer by the IRS when it has no record of receiving a return and has not been able to obtain one from someone who was expected to file. IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on available information, and assess the tax after providing a statutory notice of deficiency to the taxpayer.

11 TAS determines relief rates based upon whether TAS can provide full or partial relief or assistance on the issue initially identified by the taxpayer. Because TAS frequently provides relief on issues that differ from the ones initially identified, the relief rate as calculated is understated. Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2013). TAS uses TAMIS to record, control, and process cases, and analyze the issues that bring taxpayers to TAS.

FIGURE 4.1, TAS Case Receipts and Relief Rates, FY 2011–2013[12]

Case Categories	Receipts FY 2011	Receipts FY 2012	Receipts FY 2013	Relief Rate FY 2011	Relief Rate FY 2012	Relief Rate FY 2013
Economic Burden	131,482	133,082	156,130	72.7%	74.6%	77.1%
Systemic Burden	164,173	85,671	88,598	78.0%	80.1%	81.3%
Best Interest of Taxpayers	216	167	160	73.0%	75.7%	70.6%
Public Policy	33	746	68	79.2%	29.2%	70.8%
Total Cases	**295,904**	**219,666**	**244,956**	**75.7%**	**76.9%**	**78.5%**

Below, we explore some of the reasons for continued increases in cases, complexity, and urgency in TAS casework.

Increasing Complexity

TAS measures complexity in its cases in a number of ways, including whether a case involves multiple issues or multiple tax periods and whether technical advice is needed, thus increasing the resources required to resolve the matter.[13] Whether the issues are linked or separate, the Case Advocate must resolve all issues before closing the case.[14] Case Advocates must identify primary and secondary issues on cases, which they record in TAS's case management system, TAMIS.[15] In addition to cases that required expedited actions, more than 63 percent of all closed cases in FY 2013 involved two or more issues, as shown in Figure 4.2.[16]

12 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2012).

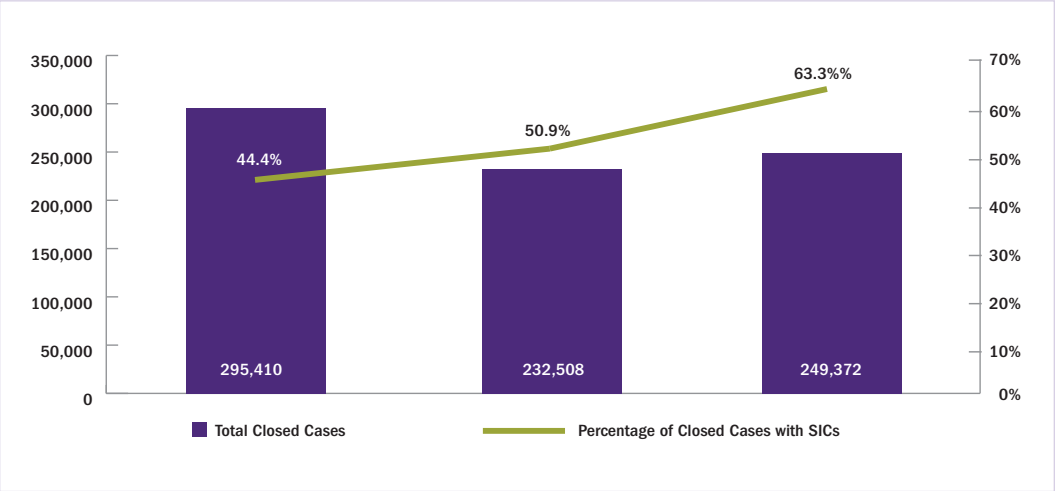
13 In 2010, TAS implemented a complexity factor screen to its case management system containing 24 factors whose presence in a case tends to make the case more complex. For example, one of the complexity factors is whether the case requires statutory analysis. TAS is using this data for purposes of developing its new case management system, Taxpayer Advocate Service Integrated System (TASIS), and the factors will be used in the process of assigning cases to Case Advocates. See National Taxpayer Advocate FY 2014 Objectives Report to Congress, Section VII for a full discussion of TASIS.

14 IRM 13.1.21.1.1 (Aug. 24, 2012).

15 IRM 13.1.16.13.1 (June 22, 2012). The Primary Core Issue Code (PCIC) is a three-digit code that defines the most significant issue, policy or process within the IRS that needs to be resolved. The Secondary Core Issue (SCIC) is a three-digit code that is used to identify secondary issues involved in the case. The SCIC is used when a case has multiple issues to resolve.

16 Data obtained from TAMIS (Oct. 1, 2013).

FIGURE 4.2, TAS Closed Cases and Percent of Closures with Secondary Issue Codes (SICs), FY 2011 through FY 2013[17]



There are a number of reasons for the increasing complexity of TAS cases. Identity theft cases, discussed as a Most Serious Problem in this report and more briefly below, are inherently complex.[18] Erroneous information can affect a victim's account for multiple tax periods and cause multiple issues, impacting accounts management, examination, and collection. Because identity theft cases are growing and now account for more than a quarter of all TAS cases, this issue significantly impacts complexity.[19]

Increasing Economic Burden Cases

For the second consecutive fiscal year, more than half of TAS receipts involved taxpayers experiencing economic burden as shown by Figure 4.3 below. Because of the dire financial situations facing these taxpayers, TAS requires that the cases be worked within enhanced timeframes.[20] TAS receipts reflect a higher percentage of cases where the outcome will have profound consequences on taxpayers' lives, as well as an increased workload for TAS employees. Economic Burden cases often occur where IRS processes are not functioning smoothly or experience other systemic problems.

17 Data obtained from TAMIS (Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013).

18 For a detailed discussion of the identity theft problem see Most Serious Problem: Identity Theft: *The IRS Should Adopt a New Approach to Identity Theft Victim Assistance That Minimizes Burden and Anxiety for Such Taxpayers*, *supra*.

19 Data obtained from TAMIS (Oct.1, 2013).

20 IRM 13.1.16.12(1) (Upon acceptance into the TAS program, cases are ready for assignment to Case Advocates. Assign cases to Case Advocates within 2 workdays of the Taxpayer Advocate Received Date (TARD) for Criteria 1–4 cases and 3 workdays of the TARD for Criteria 5-9 cases.) IRM 13.1.18.3(1) (Contact the taxpayer or representative by telephone within 3 workdays of the TARD for criteria 1–4 cases, and within 5 workdays of the TARD for criteria 5–9 cases to notify of TAS's involvement and independence from the IRS.)

FIGURE 4.3, TAS Economic Burden and Systemic Burden Receipts, FY 2010 Through FY 2013[21]

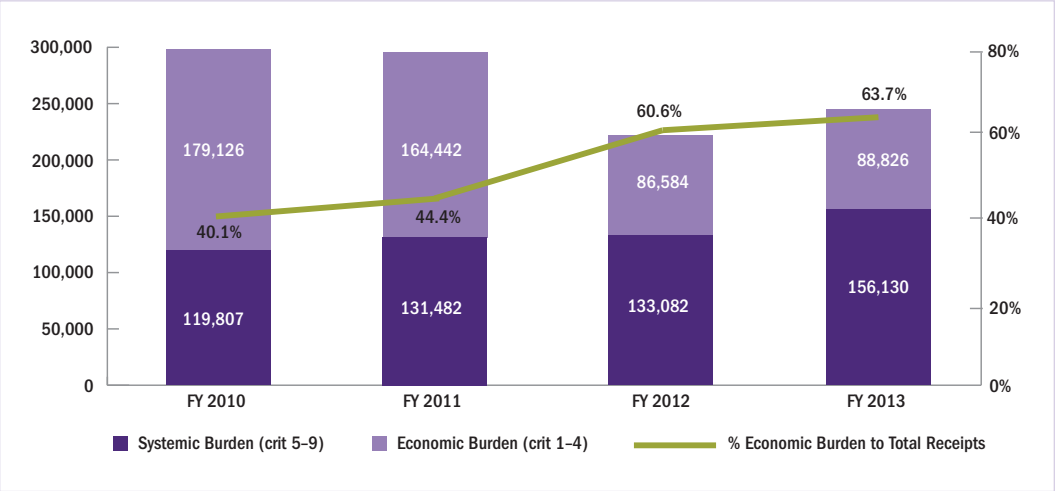


FIGURE 4.4, Top 10 Issues for Cases Received in TAS, FY 2012 and FY 2013, Cumulative[22]

Rank	Issue Description	FY 2012	FY 2013	FY 2013 Percent of Total	Percent Change FY 2012 to FY 2013
1	Identity Theft	54,748	57,929	23.6%	5.8%
2	Pre-Refund Wage Verification Hold	18,012	26,136	10.7%	45.1%
3	Unpostable and Rejected Returns	5,286	17,045	7.0%	222.5%
4	Earned Income Tax Credit (EITC)	7,441	11,980	4.9%	61.0%
5	Processing Amended Return	8,783	10,441	4.3%	18.9%
6	Levies (including Federal Payment Levy Program)	11,419	8,829	3.6%	-22.7%
7	Processing Original Return	6,250	8,714	3.6%	39.4%
8	Injured Spouse Claim	4,115	8,021	3.3%	94.9%
9	Reconsideration of Audits and Substitute for Return under IRC 6020(b)	9,344	7,527	3.1%	-19.4%
10	Open Audit (Not EITC)	8,885	6,734	2.7%	-24.2%
	Other TAS Receipts	85,383	81,600	33.3%	-4.4%
Total TAS Receipts		**219,666**	**244,956**		**11.5%**

Figure 4.5 below shows the top five issues driving the economic burden receipts in TAS casework. TAS's percentage of economic burden case receipts to total receipts increased from 40.1 percent in FY 2010 to 63.7 percent in FY 2013, a 58.8 percent increase.[23] These five issue codes represent the majority of the increase in economic burden cases and overall caseloads.

21 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013). TAS retrieved the data on the first day of the month following the end of each fiscal year.

22 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013).

23 *Id*.

FIGURE 4.5, Top Five Increasing Economic Burden (EB) Case Issues, FY 2012 and 2013[24]

Issue Description	EB FY 2012	EB Receipts as % Total Receipts for Issue FY 2012	EB FY 2013	EB Receipts as % Total Receipts for Issue FY 2013	EB Percent Change FY 2012 to FY 2013
Identity Theft	42,300	77.3%	43,695	75.4%	3.3%
Pre-Refund Wage Verification Hold	12,649	70.2%	18,200	69.6%	43.9%
Unpostable and Rejected Returns [25]	4,358	82.4%	14,866	87.2%	241.1%
Earned Income Tax Credit (EITC)	4,915	66.1%	9,968	83.2%	103%
Injured Spouse Claim	3,598	87.4%	7,015	87.5%	95%

TAS has undertaken strategic efforts to have other IRS functions address problems where no economic burden exists. This strategy allows TAS to focus on taxpayers whose issues require the expertise of TAS employees for expeditious resolution to allay economic harm and rests responsibility with the IRS to address case problems that arise from its own operations. TAS also dedicates significant resources to resolving the systemic causes of these issues, as discussed in the Most Serious Problems section of this report. Of the top ten issue codes listed in Figure 4.4, TAS has taken steps to limit acceptance of cases where no economic burden exists in five categories.[26] In identity theft cases, unless certain exceptions are met, the Wage and Investment (W&I) division's Identity Protection Specialized Unit (IPSU) will retain and work the cases rather than refer them to TAS.[27] Additionally, as described above, TAS has modified case acceptance criteria in certain issue codes where there is no economic harm to the taxpayer. With these efforts to limit systemic case receipts in some of TAS's highest volume issue codes, it is natural that the percentage of economic burden cases would increase.

IDENTITY THEFT

Identity theft continues to be the number one reason that taxpayers seek TAS assistance — comprising 23.6 percent of all case receipts for FY 2013. The National Taxpayer Advocate first addressed the issue as a Most Serious Problem affecting taxpayers beginning in 2005, and it is again addressed in this report.[28] Typically, a taxpayer's name, Social Security number (SSN), and other information is misused by another to file a false return and obtain a fraudulent refund. Unless the IRS catches the fraudulent return in its filters, the IRS issues the refund to the perpetrator, and the false information will appear on the taxpayer's account. When the victim attempts to file an electronic tax return, the IRS will not process it because a

24 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013). TAS computed the top five economic burden issue codes that are increasing using only Primary Issue Codes (PIC). Often TAS cases involve more than one issue and TAS tracks these data; however, these are not included within this computation to avoid counting a case more than once.

25 In FY 2013, TAS actually had 31,368 cases with unpostable returns as an issue; however, 16,502 of these returns were identity theft returns and are counted under the identity theft PIC.

26 The five issues where TAS has taken steps to limit the acceptance of systemic burden cases are: identity theft thru a Memorandum of Understanding with the Identity Protection Specialized Unit dated December 9, 2010 through which TAS only accepts identity theft cases with economic burden or at the taxpayer's insistence and, unpostable/reject returns, injured spouse, original return processing, and amended return processing as stated in the previously mentioned IGM 16M TAS-13-0913-009 (Sept. 27, 2013).

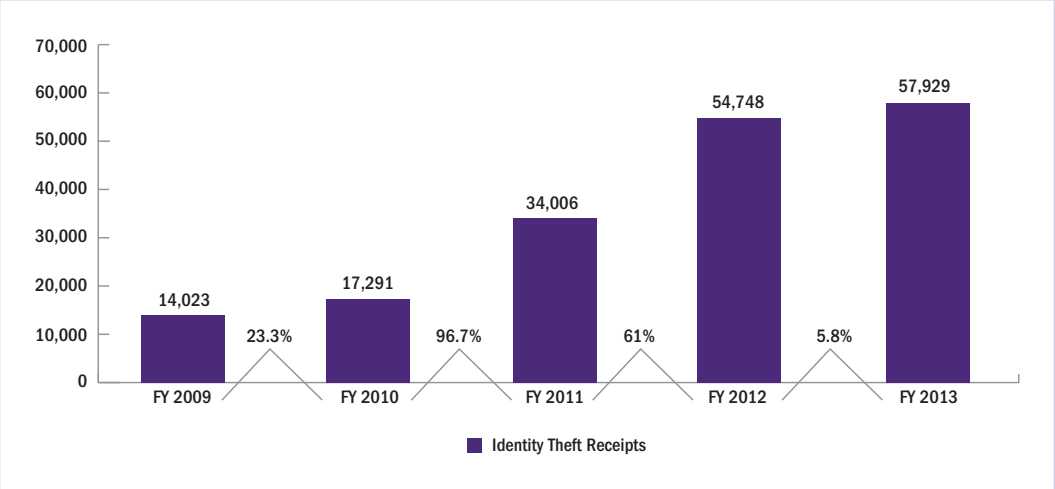
27 Memorandum of Understanding between the National Taxpayer Advocate and the Commissioner, Wage and Investment, Transition TAS Criteria 5-7 ID Theft Cases to W&I, Identity Protection Specialized Unit (IPSU) (effective April 30, 2010).

28 For a detailed discussion of the identity theft problem, see Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance That Minimizes Burden and Anxiety for Such Taxpayers*, *supra*.

return with the same name and SSN has already been processed. If the victim files a paper return, the IRS posts it as a "duplicate" return, but the victim will not receive any refund claimed, because the false refund was previously issued, which causes the victim to seek TAS assistance. The IRS procedures for verifying the identity of the innocent taxpayer, moving the incorrect tax information off the account, and processing the innocent taxpayer's tax return take an inordinate amount of time. In addition, identity theft cases often involve related collection and examination issues, as well as multiple years. Thus, victims often come to TAS for faster resolution.

TAS obtains relief for a significant majority of taxpayers in identity theft cases. In FY 2013, taxpayers received relief in over 87 percent of cases with an average timeframe of 87 days to resolution. On September 23, 2013, Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS averaged 312 days to resolve identity theft cases, with 277 of those days showing no activity. In response to TIGTA, the IRS stated "for cases received in filing season 2013 we are currently achieving a 120 day resolution timeframe.[29] While the IRS's published time for completing identity theft cases has improved,[30] it is still significantly (33 days) longer than the average time it takes TAS to resolve an identity theft case. In addition, TIGTA reported an average of ten different IRS assistors reviewed and reassigned the case prior to case resolution resulting in case processing delays.[31] As Figures 4.6 and 4.7 below demonstrate, despite increasing identity theft inventories since FY 2009, TAS timeframes for completing identity theft cases and relief rates have improved over time.

FIGURE 4.6, TAS Identity Theft Case Receipts and Percentage Increases, FY 2009 Through FY 2013[32]



As Figure 4.6 above reflects, over the last five years, TAS has helped over 175,000 identity theft victims to resolve their account problems.

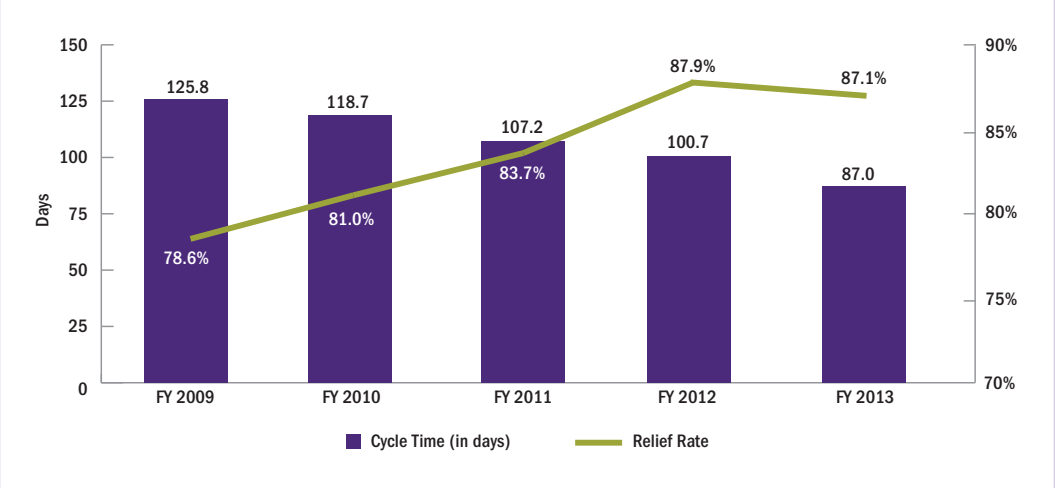
29 TIGTA Ref. No. 2013 40-129, *Case Processing Delays and Tax Account Errors Increased Hardship for Victims of Identity Theft* (Sept. 26, 2013).

30 In a May 2012 report, the Treasury Inspector General for Tax Administration found the average cycle time for the identity theft cases it reviewed to be **414 days**. TIGTA, Ref. No. 2012-40-050, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (May 3, 2012).

31 TIGTA Ref. No. 2013 40-129, *Case Processing Delays and Tax Account errors Increased Hardship for Victims of Identity Theft* (Sept. 26, 2013).

32 Data obtained from TAMIS (Oct. 1, 2009; Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013).

FIGURE 4.7, Identity Theft Relief Rate and Cycle Time, FY 2009 through FY 2013[33]



In part, these improvements are a tribute to the TAS Case Advocates who communicate with their taxpayers directly over the span of the case's resolution and work to resolve all problems. Additionally, TAS continues to make process improvements that reduce time spent on these cases. For example, Case Advocates now have access to the Integrated Automation Technologies (IAT) Identity Theft tool that consolidates information from multiple IRS systems, allowing Case Advocates to quickly gather needed information to expedite correction of identity theft-related issues and to promptly secure refunds, as applicable.[34]

PRE-REFUND WAGE VERIFICATION HOLDS — QUESTIONABLE REFUND PROGRAM

The IRS employs various filters to attempt to prevent fraudulent returns from being processed and refunds issued, but which also stop a certain percentage of innocent taxpayers' returns. When the IRS stops more returns than it has resources to evaluate, it places holds on the refunds to keep them from going out. These efforts in the past have raised significant taxpayer rights issues, and increasing numbers of impacted taxpayers come to TAS for assistance.[35]

Originally, the Questionable Refund Program (QRP) was managed by the Criminal Investigation division but was transferred to the W&I Accounts Management Taxpayer Assurance Program (AMTAP) in 2006 due to significant problems in the QRP process.[36] After the 2011 Annual Report to Congress identified program management problems, AMTAP was transferred to the new Return Integrity and Correspondence Services function in W&I and renamed the Integrity Verification Office.[37] The QRP is again a Most Serious Problem impacting taxpayers, and is the subject of a TAS Research study.[38]

33 Data obtained from TAMIS (Oct. 1, 2009; Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013).

34 IAT supplies automated tools to IRS employees that simplify research, reduce keystrokes, and increase accuracy. IAT is working with TAS Business Systems Planning to provide automated tools for TAS employees that meet TAS requirements and are compatible with TAS work processes and delegations of authority: http://tas.web.irs.gov/tech/iat/default.aspx.

35 See National Taxpayer Advocate 2005 Annual Report to Congress 25, addressing the IRS's Questionable Refund Program that failed to provide taxpayer's adequate due process protections and failed to maintain an adequate system to vet IRS concerns about taxpayer refund claims.

36 National Taxpayer Advocate 2005 Annual Report to Congress 25.

37 National Taxpayer Advocate 2011 Annual Report to Congress 28.

38 For a detailed discussion of the identity theft problem see Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance That Minimizes Burden and Anxiety for Such Taxpayers*, *supra*.

Pre-refund wage verification holds under the QRP constitute the second most frequent reason that taxpayers come to TAS for assistance.

FIGURE 4.8, Pre-Refund Wage Verification Hold, QRP Receipts, FY 2010 through FY 2013

	FY 2010	FY 2011	FY 2012	FY 2013
TAS QRP Receipts	3,171	21,286	18,012	26,136
Total TAS Receipts	298,933	295,904	219,666	244,956
QRP Receipts as a Percentage of TAS Receipts	1.1%	7.2%	8.2%	10.7%

Generally, TAS achieves over a 70 percent relief rate in these cases.[39] TAS also achieved an 86 percent customer satisfaction rate in these cases.[40] Inventories of pre-refund wage verification QRP cases in FY 2013 have almost climbed back to their 2005 levels.[41]

UNPOSTABLE AND REJECTED RETURNS

In 2013, TAS receipts involving unpostable and rejected returns totaled 17,045, an increase of nearly 223 percent from FY 2012.[42] An unpostable return is one that has been accepted onto the taxpayer's account, but fails to completely post to the account because it contains a condition that requires IRS employee intervention to correct.[43] A rejected return is not processable and will not be accepted onto the taxpayer's tax account because a math error must be corrected, or additional research is required due to missing or incomplete information.[44] An IRS employee must determine why the return was rejected and request the appropriate information from the taxpayer or another IRS function.[45]

TAS has significantly more unpostable cases than the 14,866 economic burden cases described in Figure 4.5.[46] In addition to the economic burden unpostable cases, TAS received 2,179 systemic burden unpostable cases and 16,500 identity theft cases involving an unpostable return in FY 2013.[47] When factoring in the identity theft receipts, unpostable return related cases in TAS totaled 31,368 in FY 2013 for economic burden.[48] The increase in unpostable receipts resulted from:

- A replacement Identity Protection PIN process designed to cause unpostable conditions;

39 Data obtained from TAMIS (Oct. 1, 2013).

40 TAS customer satisfaction is determined using a survey administered by a contractor. Customer satisfaction is the percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS. The FY 2013 results through June 30, 3013 are from the Taxpayer Advocate Service National Report, Sept. 2013.

41 In FY 2005, TAS had over 28,000 cases involving CI frozen refunds, while for FY 2013 TAS has almost 27,000 pre-refund wage verification QRP cases. See National Taxpayer Advocate 2006 Annual Report to Congress 408 for information on the restructuring of the QRP.

42 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013).

43 IRM 21.5.5.2 (A transaction is termed unpostable when it fails to pass any of the validity checks and is then returned to the campus for follow up action(s).)

44 IRM 21.4.1.3.1.2.2 (1) Rejects are returns or documents that cannot be processed, usually due to missing or incomplete information. ERS is the computer tracking system used by the Submission Processing Centers Reject/Suspense Unit to categorize and resolve rejects.

45 IRM 3.12.3.2.4.

46 Data obtained from TAMIS (Oct. 1, 2013) for FY 2013 Receipts with PIC 315.

47 *Id*. See footnote 15 for an explanation of primary and secondary issue codes for tracking cases. Because of the importance of tracking and identifying identity theft, the identity theft code is always treated as the primary issue in a case. Where there is another issue on a case, such as "unpostable tax return," it retains the secondary code.

48 See footnote 20.

- Issues with the recapture of the 2008 First-Time Homebuyer Credit (FTHBC) used the unpostable process;
- A vendor's return preparation software programming issue involving Form 8863, *Education Credit*, placed returns into the reject inventory;[49] and
- Returns with missing Forms 8867, *Paid Preparer's Earned Income Credit Checklist*, were rejected.

Replacement Identity Protection Personal Identification Numbers (IP PINS)

IRS decision-making plays a significant role in which returns "go unpostable," because the IRS sets the validity checks.[50] One such policy decision involves IP PINs. An IP PIN is a single-use six-digit identification number the IRS sends to a taxpayer who has previously reported to the IRS that he or she has been the victim of identity theft and has provided information sufficient for the IRS to validate his or her identity.[51] The IRS issues IP PINs to identity theft victims so that they can file their tax returns with the assurance that an identity thief is not able to file first. If the innocent taxpayer loses the IP PIN and requests a replacement, the IRS does not give the taxpayer a unique IP PIN. Previously, the IRS gave the taxpayers a universal replacement IP PIN and made all returns belonging to taxpayers who received replacement IP PINs go unpostable.[52] The IRS plans to initiate a new process enabling taxpayers who have lost, misplaced, or never received their IP PIN to retrieve their original IP PIN with an online application. Only taxpayers who are unwilling or unable to authenticate their identity will be issued a replacement IP PIN. We will provide more information about this new process as it becomes available.

2008 First-Time Homebuyer Credit (FTHBC) Recapture Payments

Problems with repayments of the FTHBC again plagued some taxpayers in the 2013 filing season.[53] Taxpayers who claimed and received the FTHBC in 2008 must repay it over a 15-year "recapture period," beginning with the second tax year after the credit was received.[54] When taxpayers began repaying the credit in the 2011 filing season, numerous conditions caused their returns not to post, including when taxpayers failed to repay the precise amount that IRS data showed as due (even if the taxpayers overpaid).[55]

In FY 2013, TAS received 1,456 FTHBC unpostable cases.[56] These cases resulted from the indicator that the IRS sets on accounts of taxpayers subject to the recapture period:

- Tax returns went unpostable if the full credit was repaid prior to 2012, but the indicator was not removed from the account.

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49 SERP Alert 13A0205 IRS Announcement, *IRS Statement on Form 8863, Education Credit*, dated March 12, 2013.

50 Validity checks are specific items built into any system for which information exists in the system that is compared to correlating information being input to the system to assure return accuracy before it is accepted. The IRS validity checks are sensitive information that cannot be shared. A non-tax example would be security questions to access financial accounts.

51 *See* IRM 10.5.3.2.16 (Jan. 11, 2013).

52 IRM 10.5.3.

53 See 2012 National Taxpayer Advocate Objectives Report to Congress 28, where the National Taxpayer Advocate described problems associated with the FTHBC following the 2011 first filing season when taxpayers began repaying the FTHBC.

54 IRC § 36(f)(1). The tax shall be increased by 6 2/3 percent of the amount of the total FTHBC for each taxable year in the recapture period. IRC § 36(f)(7) defines the recapture period as 15 years beginning with the second taxable year after the year in which the home was purchased.

55 2012 National Taxpayer Advocate Objectives Report to Congress 28.

56 Data obtained from TAMIS (Oct. 1, 2013).

- Accounts went unpostable that correctly showed a 2008 FTHBC recapture indicator, but no recapture amount was included on the 2012 return, or a repayment had to be divided between two taxpayers.[57]
- When identity theft in 2008 involved FTHBC claims, the FTHBC indicator was placed on the victim's account. The 2012 accounts then went unpostable when the victim filed a return that did not include a FTHBC recapture amount.

The IRS has permanent procedures for FTHBC recapture in place, so this problem should not repeat in the upcoming filing season.

Problems with Return Preparers' Software Created Problems for Some Taxpayers Claiming Education Credits

In 2013, some electronically filed 2012 tax returns with Form 8863, *Education Credits (American Opportunity and Lifetime Learning Credits),* were rejected because the software of certain return preparers failed to transmit the education credit information into the IRS's filing system.[58] The IRS and TAS worked together to correct all of these returns. The IRS worked directly with the software companies, so that returns filed after February 22 would not be affected. Despite the IRS's efforts, TAS's unpostable receipts due to this issue continued to increase. In an effort to resolve these cases expeditiously, TAS negotiated with the IRS to address all of the accounts at once, rather than TAS having to make an individual request on each case. The IRS successfully corrected 844 taxpayers' accounts. Moreover, TAS continued to communicate with the IRS on behalf of taxpayers whose 2012 tax returns were unpostable and were being held until the IRS established procedures to deal with the non-IRS software glitch.

Form 8867, Paid Preparer's Earned Income Credit Checklist

In 2013, TAS also observed an increase in unpostable receipts due to 2012 tax returns filed prior to February 19, 2013, which included Earned Income Credit (EIC) claims, but failed to include a completed Form 8867, *Paid Preparer's Earned Income Credit Checklist*. The IRS made an initial decision not to allow these returns to post via the reject process, unless all of the information on the form was provided. In these cases, the 2012 tax returns went unpostable until the IRS reviewed the tax return and issued the taxpayer a Letter 12C, requesting that the taxpayer substantiate eligibility for the EIC.[59] In these cases, TAS used the OAR process to have the taxpayer's refund released or collect the missing information. The IRS subsequently reversed its decision allowing returns without a complete Form 8867 to post and addressing missing information after processing.[60]

57 SERP Alert 13A0208 (March 14, 2013).

58 SERP Alert 13A0132.

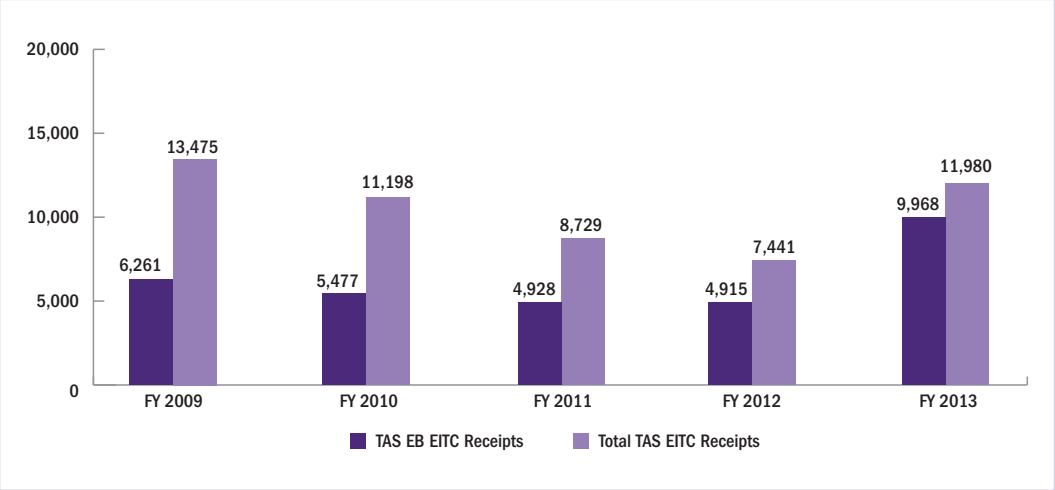
59 SERP Alert 13A0168 (Feb. 25, 2013).

60 *Id.*

EARNED INCOME TAX CREDIT CASES

The EITC is an important economic benefit for low income taxpayers who have earned income.[61] TAS's FY 2013 EITC receipts increased by 61 percent compared to FY 2012.[62] Over 83 percent of the 2013 cases involved taxpayers who were experiencing an economic burden, with the number of economic burden cases increasing by 102.8 percent from FY 2012.[63]

FIGURE 4.9, TAS EITC Economic Burden and Total Case Receipts, FY 2009 through FY 2013[64]



Under the IRS examination plan for FY 2013, the increase in TAS EITC cases does not appear to be caused by a corresponding increase in EITC audits. For example, the W&I plan for FY 2013 was to conduct 338,656 EITC audits, while the total EITC audits for W&I in FY 2012 was 339,322.[65] Rather, the most significant trend we have identified as causing more EITC claimants to come to TAS in FY 2013 is that W&I experienced almost a 76,780 percent increase in overaged mail during FY 2013.[66] In FY 2012, W&I had approximately 46 overaged EITC responses, while in FY 2013, inventory exceeded 35,565.[67] W&I could not timely handle the taxpayer correspondence to the EITC examination function, reporting 79.9 percent of total mail was overaged.[68] Additionally, W&I's level of service, the number of taxpayer calls involving EITC initially handled by an assistor as opposed to calls received, declined by

61 The benefit is available for low income taxpayers without children, but is more significant for those with children. The maximum benefit for 2012 was $5,891 with three or more qualifying children and $475 with no qualifying children. IRS Publication 596, EIC Table.

62 Data obtained from TAMIS (Oct. 1, 2013).

63 Data from TAMIS (Oct. 1, 2009; Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013).

64 *Id*.

65 EITC PAC 7F Report – W&I through September 2013.

66 W&I, *Reporting Compliance PAC 7E & PAC 7F reports*, Sept. 2013, at 22.

67 *Id*. at 20.

68 IRS should initiate a response to incoming mail from taxpayers within 30 calendar days from the received date. In IRM 4.19.13.10, *Monitoring Overaged Replies*, if the IRS does not send a reply within 70 to 115 days, Exam updates the Audit Information Management System (AIMS) to Status 55 and if more than 115 days, to Status 57.

seven percent.[69] The extensive delays in responding to EITC claimants do not appear to be caused by reductions in staffing. EITC full-time equivalents, *i.e.*, W&I employees working EITC cases, declined from FY 2012 to FY 2013, but only by 2.3 percent.[70]

While the cause of the overaged correspondence is uncertain, the impact of delayed and ineffective communication on taxpayers claiming EITC is more certain. The EITC is a complex tax provision, yet the taxpayers navigating its provisions tend to be in the lower economic stratum and least able to navigate complex processes. TAS taxpayers experience issues relating to the EITC's residency and relationship requirements.[71] Taxpayers with the most difficulty navigating the EITC requirement are those with non-traditional family relationships (where the child is not the biological child of the taxpayer claiming the EITC) for whom the documentation requirements can be daunting (such as the need to obtain numerous birth certificates to establish the required relationship for a niece, nephew or other extended relative).[72]

Studies performed by TAS demonstrate the importance of timely and clear communications to enable taxpayers to obtain the EITC to which they are entitled.[73] TAS is improving its own EITC casework through a number of initiatives, as well as engaging W&I on the backlog of aged EITC correspondence, and more effective ways to administer EITC examinations.[74] One such TAS effort involves advocating to the IRS that it accept TAS's comprehensive list of alternative documentation that taxpayers can use in lieu of the more restrictive approach taken by the IRS.[75]

INJURED SPOUSE

When a married couple files a return claiming a refund, the IRS may offset the refund to satisfy certain outstanding tax and non-tax debts belonging to one of the spouses. The non-liable spouse has a right to have a portion of the refund returned.[76]

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69 W&I, *Reporting Compliance PAC 7E & PAC 7F reports*, Sept. 2013, at 20.

70 *Id*.

71 For the relationship test, the child must be the taxpayer's child (including an adopted child, stepchild, or eligible foster child), brother, sister, half-brother, half-sister, stepbrother, stepsister, or descendant of one of these relatives. An adopted child includes a child lawfully placed with a taxpayer for legal adoption even if the adoption is not final. An eligible foster child is any child placed with a taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. IRC §§ 152(c)(1)(A);152(c)(2);152(f)(1). For the residency test, the child must live with the taxpayer for more than half of the tax year. Exceptions apply for temporary absences for special circumstances such as illness, school attendance, business, vacation, and military service. There are also exceptions for children who were born or died during the year, children of divorced or separated parents, and kidnapped children. IRC §§ 152(c)(1)(B); 152(f)(6); Treas. Reg. § 1.152-2(a)(2)(ii).

72 National Taxpayer Advocate 2005 Annual Report to Congress, MSP: *Earned Income Credit Exam Issues*, Taxpayer Advocate Service, *Challenges for Taxpayers Claiming the Earned Income Tax Credit (EITC), From Interviews with Low Income Tax Clinics* (Sept. 2005). The Low Income Taxpayer Clinic (LITC) Program is a grant program under IRC § 7526 where qualified organizations receive matching federal grants to represent taxpayers in controversies before the IRS or provide tax outreach and education to English as a second language taxpayers.

73 National Taxpayer Advocate 2004 Annual Report to Congress, Vol. II, EITC Audit Reconsideration Study. In the study of EITC audit reconsideration cases by TAS Research, it was found that in cases originally closed as "no response," but where taxpayers were provided additional communication approximately 43 percent of the taxpayers had some or all of their EITC restored. They received on average about 96 percent of what they originally claimed on their returns.

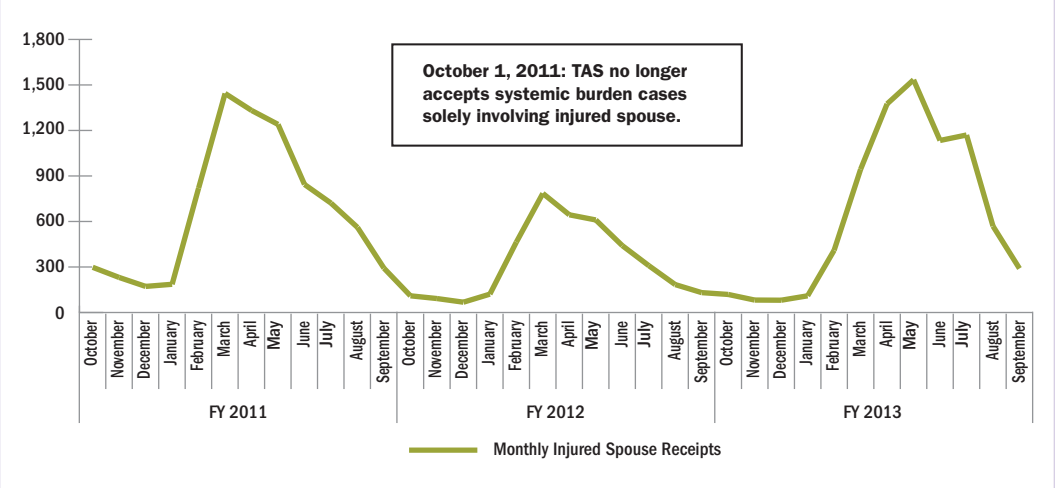
74 EITC cases present TAS leadership with an improvement opportunity. For years, TAS offices on average only achieved relief rates on average of around 50 percent while generally TAS achieves relief for approximately 79 percent of TAS taxpayers. TAS has taken a number of steps to improve its service to these taxpayers, including: EITC training for field employees led by the National Taxpayer Advocate, decentralization of all EITC casework so that EITC cases can be worked in local offices; and EITC case reviews by TAS leadership to identify which offices need additional training on EITC issues.

75 Attachment 1 to the TAS Interim Guidance Memorandum TAS-13-1213-011, Reissuance of *Interim Guidance on Advocating for Taxpayers Claiming Earned Income Tax Credit (EITC) with Respect to a Qualifying Child* (Dec 23, 2013). This document was re-issued, pending incorporation into the IRM.

76 IRC § 6402.

Gathering enough facts to show that a spouse qualifies for the relief and assisting the spouse in completing Form 8379, *Injured Spouse Allocations*, are important advocacy opportunities in these cases. Taxpayers mainly seek TAS assistance in injured spouse cases due to lengthy delays in processing times and economic burden. Figure 4.10 shows injured spouse claim receipts for the past two years.

FIGURE 4.10, TAS Monthly Injured Spouse Receipts, FY 2011 through FY 2013[77]



While TAS changed its case acceptance criteria for injured spouse cases on October 1, 2011, to exclude injured spouse cases involving solely systemic burden, TAS still accepts economic burden injured spouse cases and injured spouse cases involving other issues (*e.g.,* where one spouse needs TAS to advocate for an audit reconsideration of the IRS debt subject to offset absent the injured spouse claim).

FIGURE 4.11, IRS Injured Spouse Inventory, FY 2012 and 2013[78]

Selected FY 2012 Dates				Selected FY 2013 Dates			
As of	Open Inventory	Overage Inventory	Percent Overage	As of	Open Inventory	Overage Inventory	Percent Overage
3/17/2012	75,088	2,996	4.0%	3/16/2013	110,254	2,965	2.7%
4/14/2012	72,408	11,959	16.5%	4/13/2013	138,213	52,302	37.8%
5/12/2012	75,648	15,115	20.0%	5/11/2013	140,539	59,414	42.3%
6/9/2012	47,967	22,959	47.9%	6/8/2013	101,352	71,804	70.8%
7/7/2012	18,678	9,562	51.2%	7/6/2013	59,809	46,615	77.9%
8/4/2012	10,198	4,476	43.9%	8/3/2013	38,332	29,229	76.3%
9/8/2012	7,477	2,783	37.2%	9/7/2013	16,464	10,434	63.4%

77 Data obtained from TAMIS. TAS retrieved the data on the first day of the month following the end of the month for each fiscal year for FY 2011 through FY 2013.

78 Joint Operations Center CIS Inventory reports.

On July 25, 2013, the IRS alerted employees that the Accounts Management function was receiving a higher than normal volume of refund calls or inquiries on Form 8379 due to a delay in processing.[79] The Alert further instructed employees that "if a taxpayer states he or she called in previously and was informed to allow up to 45 days for processing, apologize for the delay in processing and inform the taxpayer it could take an additional four weeks to complete the processing."[80]

Overall, TAS received 8,021 injured spouse cases in FY 2013, compared to 4,115 in FY 2012, an increase of 95 percent.[81] Ninety-two percent of the cases from the week ending March 16, 2013 to the week ending July 6, 2013 (the heart of the filing and processing season) consisted of economic burden cases.[82] In addition, over 96 percent of the FY 2013 injured spouse receipts involved claims for the current tax year.

COLLECTION CASES

While still a source of a substantial number of cases, collection issues continued to decline between FY 2012 and FY 2013. In FY 2013, collection issues accounted for nearly 11 percent of all economic burden receipts and nearly ten percent of TAS's total caseload.[83] These issues are vitally important to the affected taxpayers, because IRS collection tools (bank levies, wage levies, personal residence seizures, and the filing of Notices of Federal Tax Lien) significantly affect all taxpayers, but can have a devastating impact on low income taxpayers.

Collection cases also present an improvement opportunity for TAS leadership, as TAS provided relief in 69 percent of these cases in FY 2013, while providing relief on other issues approximately 79 percent of the time.[84] TAS continuously strives to improve advocacy in collection cases through enhanced guidance and detailed training for employees.[85]

In FY 2013, TAS issued 24 Taxpayer Assistance Orders (TAOs) in collection cases where the IRS did not agree with TAS's case-specific recommendations. The IRS complied with 19 of these (including one where TAS modified the TAO), and five are still in process.[86]

TAS OPERATIONS ASSISTANCE REQUEST TRENDS FOR FY 2013

To serve taxpayers more efficiently, the Commissioner delegated to the National Taxpayer Advocate certain tax administration authorities that do not conflict with or undermine TAS's unique statutory mission of advocating for taxpayers, but allow TAS to take actions to resolve routine problems.[87] When TAS lacks the statutory or delegated authority to directly resolve a taxpayer's problem, TAS works with the responsible IRS operating division (OD) or function to resolve the issue, a process necessary in 66 percent

79 IRS, SERP Alert 13A0446.

80 *Id*.

81 Data obtained from TAMIS (Oct. 1, 2012 through Oct. 1, 2013).

82 *Id.*

83 Data obtained from TAMIS (Oct. 1, 2013).

84 *Id*.

85 In FY 2012, the National Taxpayer Advocate developed and led the course *Roadmap to a Tax Controversy*, which addressed the collection stage of the process. Additional courses were also developed to provide advanced training on more complex collection related topics.

86 For a detailed discussion of TAOs, see *TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases, infra*. TAO compliance data is as of Oct. 1, 2013.

87 IRM 1.2.50.3(1) Delegation Order 13-2 (Rev. 1) Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions.

of all TAS cases closed in FY 2012 and 66 percent in FY 2013.[88] After independently reviewing the facts and circumstances of the case and communicating with the taxpayer, TAS uses Form 12412, *Operations Assistance Request* (OAR), to transmit documentation to the IRS and convey a recommendation or requested action to resolve the issue. The OAR also serves as an advocacy tool by:

- Giving the IRS a second chance to resolve the issue;
- Opening discussions between TAS and the IRS in an effort to resolve the issue without having to elevate it; and
- Documenting trends that could lead to improvements in IRS processes.

Each IRS function has agreed to work TAS cases as priority and expedite the process for taxpayers whose circumstances warrant immediate handling. Negotiated Service Level Agreements (SLAs) require the ODs and functions to direct resources to process OARs and alert them to the number of taxpayers who seek TAS assistance because they have not been able to resolve their problems through regular IRS channels. Form 12412 also includes an "expedite" box that TAS case advocates can check when the OD needs to act immediately to relieve the taxpayer's hardship.

FIGURE 4.12, Expedited OARs and Non-Expedited OARs Issued by BOD for FY 2013[89]

Business Operating Division	FY 2013 OARs Issued Requesting Expedited Action	FY 2013 OARs Issued Without Expedited Request	FY 2013 Total OARs
Appeals	247	530	777
Criminal Investigation	83	107	190
LB&I	61	241	302
SB/SE	19,190	28,399	47,589
TE/GE	1,134	1,581	2,715
W&I	111,099	98,026	209,125
Totals	**131,814**	**128,884**	**260,698**

TAS generally completes an OAR on each case it sends to the IRS, but as previously described, a single OAR may be used to handle multiple taxpayers with the same issue by agreement with the IRS.

Additionally, in FY 2013, TAS and the IRS made strides in implementing several recommendations from a joint study of the OAR process.[90] The recommendations included:

- Simplifying and automating OAR routing;
- Improving timeliness and reducing cycle time;
- Setting joint goals and process monitoring; and
- Leveraging workflow technology for TAS's integrated system of the future.

88 In FY 2012, TAS closed 152,775 cases requiring an OAR. During FY 2013, TAS closed 165,003 cases with OARs. Data obtained from TAMIS (Oct. 18, 2013).

89 Data obtained from TAMIS (Oct. 1, 2013).

90 MITRE Report, *Case Advocacy Review Phase 2: Operations Assistance Request Process Review – Exploring Future State Opportunities in the Operation Assistance Request Process* (Mar. 10, 2011).

The actions implemented in FY 2013 flowing from these recommendations included:

- Using aggressive, informed Requested Completion Dates (RCDs) for frequently worked OAR issue codes. This improves timeliness and reduces cycle time, speeding up resolutions for taxpayers facing hardships.
- Developing a high-level measure related to the use of consistent OAR document requirements.
- Aligning TAS area offices to IRS campuses based on certain OAR issues, to simplify routing and resolve problems more efficiently.

These steps will help TAS achieve its long-term goal of resolving taxpayer problems accurately and timely. TAS surpassed its FY 2013 goal of reducing OAR rejects to 3.6 percent.[91] A properly routed OAR, which includes an advocacy-focused narrative along with an informed RCD, promotes efficient tax administration by directing the appropriate IRS function to provide prompt relief to the taxpayer.

As Figure 4.13 reflects, TAS is already making significant strides in reducing its OAR rejection rate with the percentage of rejected OARs decreasing from FY 2012 to FY 2013 in each operating division and function.

FIGURE 4.13, OARs Issued, Rejected, and Reject Rate, FY 2012 and FY 2013[92]

OD / Function	FY 2012			FY 2013			Change in OAR Reject Rate
	OARs Issued	OARs Rejected	OAR Reject Rate	OARs Issued	OARs Rejected	OAR Reject Rate	
Appeals	830	26	3.1%	777	14	1.8%	- 42.5%
CI	309	28	9.1%	190	7	3.7%	- 59.3%
LB&I	209	12	5.7%	302	12	4.0%	- 30.8%
SB/SE	54,620	2,451	4.5%	47,589	1,918	4.0%	- 10.2%
TE/GE	1,416	21	1.5%	2,715	16	0.6%	- 60.3%
W&I	198,248	6,767	3.4%	209,125	5,970	2.9%	- 16.4%
Total	**255,632**	**9,305**	**3.6%**	**260,698**	**7,937**	**3.0%**	**- 16.4%**

TAS USES TAXPAYER ASSISTANCE ORDERS TO ADVOCATE EFFECTIVELY

The TAO is a powerful statutory tool delegated by the National Taxpayer Advocate to the Local Taxpayer Advocates (LTAs) and others to resolve taxpayer cases.[93] An LTA may issue a TAO to order the IRS to take an action, cease an action, or refrain from taking an action (*e.g.*, to release a levy).[94] A TAO may 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.[95] When a taxpayer faces significant hardship and the facts support relief,

91 OAR reject rate is the percent of rejected requests for action to be taken by the IRS. The corporate OAR reject goal for TAS in FY 2013 is 3.6 percent.

92 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013).

93 IRC § 7811. IRC § 7811(f) states that for purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate.

94 IRC § 7811(b); Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3 (Dec. 15, 2007).

95 Treas. Reg. § 301.7811-1(c)(3): IRM 13.1.20.3 (Dec. 15, 2007).

an LTA should issue a TAO when the IRS refuses to take the action TAS has requested to resolve the case.[96] Once TAS issues a TAO, the IRS can comply with the request or appeal the issue for resolution at higher levels.[97]

In FY 2013, TAS issued 353 TAOs.[98] TAS issued 74 TAOs because the IRS failed to respond to an OAR. Of these 74 TAOs, the IRS complied with 72 in an average of eight days.[99] This indicates that had the IRS responded timely to TAS's initial requests through the OAR process, which was clearly within its power, TAS could have resolved the taxpayers' issues sooner.

Figure 4.14 reflects the results of the TAOs. Figure 4.15 shows the TAOs issued by fiscal year.

FIGURE 4.14, Actions Taken on FY 2013 TAOs Issued[100]

Action	Total
IRS Complied with TAO	231
IRS Complied after TAO Modified	12
TAS Rescinded TAO	16
TAO Pending In Process	94
Total	**353**

FIGURE 4.15, TAOs Issued to the IRS, FY 2010–FY 2013[101]

Fiscal Year	TAOs Issued
2010	95
2011	422
2012	434
2013	353

The following examples illustrate the use of TAOs to obtain taxpayer relief. To comply with IRC § 6103, which generally requires the IRS to keep taxpayers' returns and return information confidential, the identifying details of the fact patterns have been modified or redacted.

96 IRC § 7811(a)(1); Treas. Reg. § 301.7811-1(a)(1) and (c).
97 IRM 13.1.20.5(2) (Dec 15, 2007).
98 Data obtained from TAMIS (Oct. 1, 2013).
99 *Id*.
100 *Id*.
101 *Id*.

TAOs Involving Account Resolution

As discussed throughout this report, identity theft harms our tax system in many ways.[102] More than 75 percent of individual taxpayers filing returns claim refunds, averaging about $3,000.[103] In an identity theft situation, where the IRS has processed a false return before the "true" taxpayer's return, refunds are not paid to the SSN owner until the IRS fully resolves the SSN ownership, which can take 180 days.[104] In FY 2013, TAS issued 39 TAOs involving identity theft, 23 of which were issued because the IRS failed to respond to OARs by the negotiated completion date.[105] The IRS complied with all 23 of these TAOs within an average of five days.[106] Of the original 39 TAOs issued, 30 involved economic burden that caused a hardship and required swift TAS action.[107] Specific examples of hardships encountered by these taxpayers, and worsened by IRS delays, include:

- Taxpayer being evicted;
- Taxpayer needed to pay rent and utilities; and
- Taxpayer behind on bills and needed to repair auto to get to work.

TAS Issues TAOs Where IRS Inaction Exacerbates Return Preparer Misconduct

Earlier in this report, we outline the issues surrounding the IRS's current policy with respect to assisting victims of tax return preparer misconduct.[108] Taxpayers seek TAS assistance when they become aware of preparer misconduct, which generally only happens after the IRS:

- Reviews or audits the return;
- Disallows the incorrect deductions, withholding, or credits;
- Holds the taxpayer liable for the resulting increased tax assessment; or
- Prevents the taxpayer from obtaining the portion of the refund he or she was entitled to and did not actually receive.

As a result, TAS continued to raise the problem, issuing 100 TAOs due to return preparer misconduct in FY 2013.[109] Sixty-nine TAOs for this issue were elevated to the National Taxpayer Advocate and 25 were elevated to the Acting Commissioner.[110]

102 See Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers, supra*.

103 See National Taxpayer Advocate FY 2014 Objectives Report to Congress 85 (*TAOs Resolving Account Issues*).

104 IRM 21.9.2.2.1 (May 29, 2013).

105 Under the Service Level Agreements between TAS and the operating divisions of the IRS, the TAS employee will contact the assigned IRS employee to negotiate or renegotiate the earliest possible requested completion date.

106 Data obtained from TAMIS (Oct. 1, 2013).

107 *Id*.

108 For a detailed discussion of the return preparer fraud problem, see Most Serious Problem: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Fraud, Despite Ample Guidance Allowing the Payment of Such Refunds, supra*.

109 Data obtained from TAMIS (Oct. 1, 2013).

110 See Most Serious Problem: *Return Preparer Fraud: The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct, Despite Ample Guidance Allowing the Payment of Such Refunds, supra*.

TAOs to Examination Functions

TAS issued 45 TAOs to examination units for a variety of issues, including return preparer misconduct, audit reconsiderations, and problems with the adoption tax credit. Several examples follow:

- A taxpayer was denied dependency exemptions, EITC, and head of household filing status with respect to children and grandchildren. The taxpayer repeatedly sent the verification documents to the Examination function, but received no response. The taxpayer, facing eviction and unable to meet basic living expenses, turned to TAS for help. TAS did not receive a response from the Examination function. Upon inquiry, TAS learned the examiner was on "extended leave." TAS immediately issued a TAO. The IRS promptly reviewed the documents and issued the refund to the taxpayer.
- The IRS determined the taxpayer was not engaged in a business for profit pursuant to IRC § 183, and thus denied certain business expenses and assessed additional tax. The taxpayer disagreed with the assessment and requested review by the Office of Appeals. The IRS disregarded the taxpayer's request and issued the taxpayer a Statutory Notice of Deficiency, asserting that because the amount in controversy exceeded $25,000, the taxpayer should have filed a formal appeal, as opposed to an informal one. The Local Taxpayer Advocate issued a TAO, pointing out that the correct procedure under IRM 4.10.8.11.9(9) is for the IRS to allow the taxpayer the opportunity to cure an improper protest before issuing a notice of deficiency.[111] The IRS complied by rescinding the Statutory Notice of Deficiency.
- During an audit, the Innocent Spouse Unit granted a taxpayer's request for innocent spouse relief under IRC § 6015 but the unit did not properly process a partial agreement on the claim. The taxpayer's other issues were resolved subsequently, but when the case was returned to the IRS for completion, the function refused to make the previously agreed innocent spouse adjustments. TAS issued a TAO, and the IRS agreed to make the adjustments.

TAOs to TE/GE

As the issues addressed in both the report of the Treasury Inspector General for Tax Administration and the report of the National Taxpayer Advocate demonstrate, Tax Exempt and Government Entity (TE/GE) cases present vitally important advocacy opportunities, both on substantive legal determinations and on processing issues.[112] Non-profit organizations contribute religious, educational, scientific, social welfare, and other similar positive benefits to the public good, and most of these exempt organizations are small entities serving local communities staffed by volunteers.[113] Entities pursuing tax exempt status under IRC § 501(c)(3) generally will not operate in advance of IRS exempt organization status. Therefore, the timeliness of the application approval process is crucial to the goals of the organization. Without the IRS determination on the tax exemption, the entity will struggle in its efforts to solicit funds from donors, who are motivated in part by the ability to deduct contributions to an approved IRC § 501(c)(3) tax

111 IRC § 7811(a)(3) establishes a presumption that when the IRS fails to follow its own guidance the National Taxpayer Advocate shall view the facts in the light most favorable to the taxpayer when determining whether to issue a TAO.

112 *See* Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013); National Taxpayer Advocate Special Report to Congress, *Political Activity and the Rights of Applicants for Tax-Exempt Status*, June 30, 2013.

113 National Taxpayer Advocate 2009 Annual Report to Congress 287, addressing the need for targeted research and increased collaboration to meet the needs of tax exempt organizations; National Taxpayer Advocate 2005 Annual Report to Congress 293 discussing inadequate service to exempt organization resulting in unnecessary penalties; National Taxpayer Advocate Special Report to Congress, *Political Activity and the Rights of Applicants for Tax-Exempt Status* (June 30, 2013).

exempt entity. While some exempt organizations under IRC § 501(c) may operate without the need to seek an IRS determination, it is TAS's experience with IRC § 501(c)(4) cases that many entities are reluctant to operate without IRS approval.[114] TAS is advocating for these taxpayers on both the procedural issues surrounding the application process and the substantive aspects of the determination process.

TAS's FY 2013 cases involving applications for exempt status have increased by 371 percent compared to FY 2010, 218 percent since FY 2011, and 110 percent since FY 2012.[115] Thirty percent of the FY 2013 cases met economic burden criteria, and 70 percent were congressional referrals.[116] Since May, TAS has averaged about 62 new receipts per week.[117] This increase in exempt organization cases demonstrates that the IRS's processes are creating significant hardship for both new exempt organizations and those whose exempt status was automatically revoked. In FY 2013, TAS issued 42 TAOs to the TE/GE function, compared with six in FY 2012 (four of which were rescinded), and three in FY 2011.[118] The TAOs in FY 2013 were issued primarily due to issues surrounding:

- Delays in processing Forms 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and Form 1024, *Application for Recognition of Exemption Under Section 501(a)*; and
- Automatic revocations of exempt status pursuant to provisions of the Pension Protection Act, which requires tax-exempt organizations to file an annual return or notice with the IRS or face automatic revocation.[119]

With respect to delays in processing, TAS has encountered problems with TE/GE understanding TAS's statutory authorities, and the National Taxpayer Advocate has written about these issues.[120] TE/GE tends to work applications in a first-in/first-out basis, and the essence of TAS advocacy is ensuring that certain applications are moved to the "front of the line" based on taxpayer need.[121]

The numerous problems surrounding the automatic revocation requirement are discussed at length in a Most Serious Problem in this report.[122] TAS advocacy in the typical fact pattern for an exempt organization revocation follows.

> The exempt organization is surprised when it is informed by its donors and grant-making foundations that it is no longer on the list of Exempt Organizations authorized to receive deductible contributions, discovering the exempt status was revoked. Immediately, the organization completes the necessary paperwork, enclosing a check for the application fee. The organization then applies for grants and discovers its exempt status has not been reinstated.

114 Some organizations are not required to be tax exempt but may obtain formal recognition of tax-exempt status by submitting IRS Form 1024. Of the 19 cases TAS received, three taxpayers withdrew their applications because of the excess burden and delays. National Taxpayer Advocate Special Report to Congress, June 30, 2013, *Political Activity and the Rights of Applicants for Tax-Exempt Status*, 3. www.taxpayeradvocate.irs.gov/2014ObjectivesReport/Special-Report.

115 Data obtained from TAMIS (Oct. 1, 2010, 2011, 2012, and 2013). See Most Serious Problem: *Exempt Organizations: The IRS Continues To Struggle With Revocation Processes and Erroneous Revocations of Exempt Status, supra*.

116 Data obtained from TAMIS (Oct. 1, 2013).

117 *Id*.

118 *Id*.

119 The Pension Protection Act of 2006, Pub. L. No. 109-280 § 1223, 120 Stat. 780, 1090 (2006).

120 National Taxpayer Advocate Special Report to Congress, *Political Activity and the Rights of Applicants for Tax-Exempt Status* (June 30, 2013).

121 *Id*. at 3.

122 See Most Serious Problem: *Exempt Organizations: The IRS Continues To Struggle With Revocation Processes and Erroneous Revocations of Exempt Status, supra*.

> The IRS cashed the check for the processing fee, but the organization did not receive a determination letter. When the organization inquires of the IRS, it is informed that it will be another six to eight weeks. This has been the constant response by the IRS. Often, this response is repeated several times for the organization. TAS conducts research to determine a recommended action, secures proof of grants that are being lost, and issues an OAR to the Exempt Organization Unit, recommending the exempt status be reinstated promptly, due to the lost funding. If the function does not respond within the established timeframe, TAS issues a TAO and the unit complies by reinstating the organization's exempt status.[123]

Overall, TAS provided relief to 1,552 exempt organizations in FY 2013.[124] The average time TAS took to resolve exempt status application cases was 75 days and TAS provided some form of relief in 79.3 percent of the cases.[125]

TAOs on Collection issues

In FY 2013, levy issues were the sixth most significant source of TAS economic burden receipts.[126] If the IRS does not act quickly in these cases, the taxpayer may experience even more financial harm.[127] TAS issued 20 TAOs on levy cases in FY 2013, compared to 17 in FY 2012 and 11 in FY 2011. Of the 20 TAOs for levies, TAS issued 15 TAOs to obtain the return of levy proceeds for taxpayers experiencing economic burden. The IRS complied with 15 of these TAOs, involving cases where:[128]

- The IRS initially refused to allow TAS time to review the taxpayer's situation to determine possible alternatives to resolve the issue, effectively denying the taxpayer access to TAS's assistance.
- After an Appeals Settlement Officer determined possible resolution via an installment agreement, the Revenue Officer refused to consider the request for an installment agreement.
- A taxpayer and revenue officer (RO) disagreed on the appropriate monthly payment amount for a proposed installment agreement, so the RO issued a levy. TAS requested additional time to review the matter to reach a mutually agreeable installment agreement, pointing out that required procedures for the processing of installment agreements, which includes independent review and appeal rights, were not being followed. The RO's response was that TAS should issue a TAO if it wanted additional time, so TAS did.
- The IRS did not properly code a taxpayer's account with currently not collectible (CNC) status at the time of its original determination to place the account in CNC hardship status. The IRS subsequently levied the taxpayer's income source, leaving the taxpayer with insufficient funds for basic living expenses. The IRS refused to return the levy proceeds until TAS issued the TAO.
- The IRS wrongly refunded payments to a taxpayer after a failed offer in compromise application. The taxpayer returned the money for proper application to the debt, but the IRS lost the check. After TAS issued the TAO, the IRS found the check and correctly applied it to the taxpayer's account.

123 Data obtained from TAMIS (Oct. 1, 2013).
124 *Id*.
125 *Id*.
126 *Id*.
127 *Id.*
128 *Id.*

TAOs to Appeals

TAS issued ten TAOs to Appeals on a variety of issues during FY 2013. TAS cases involving Appeals continue to reflect a misunderstanding on the part of many Appeals' employees about TAS's statutory authority to advocate for taxpayers.[129] Some Appeals employees attempted to limit TAS's actions on the taxpayer's behalf under the misguided notion that communicating with TAS violated the prohibition on Appeals from "*ex parte* communications" with functions, that TAOs may violate Appeals' independence or exceed the National Taxpayer Advocate's authority.[130]

However, TAS worked cooperatively with Appeals in many areas. For example, TAS worked with Appeals through a joint team to reach agreement to provide standard language on OARs that includes the SLA requirement concerning the five-day advance notification to TAS of a proposed determination. The impact of this agreement is significant as it will vastly increase TAS's advocacy opportunities, because when Appeals issues a final determination to the taxpayer without notifying TAS in advance, TAS's ability to advocate, if it does not agree with the finding, is severely hampered due to time limits. This agreement puts the SLA requirements up-front when the case is assigned to an Appeals Officer or Settlement Officer.

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 4.16, entity, document processing, and refund issues made up the top three categories of congressional inquiries in FY 2013.[131]

FIGURE 4.16, TAS Congressional Inquiries by Issue Group, FY 2012 and FY 2013[132]

Issue Category	FY 2012	FY 2013	%Change
Entity Issues	5,251	5,558	5.8%
Document Processing Issues	2,048	3,034	48.1%
Refund Issues	2,033	2,577	26.8%
Collection Issues	2,424	2,407	-0.7%
Audit Issues	2,573	2,258	-12.2%
Technical, Procedural, or Statute Issues	1,348	1,322	-1.9%
Penalty Issues	1,053	989	-6.1%
Payment or Credit Issues	359	426	18.7%
Appeals Issues	278	268	-3.6%
Interest Issues	65	44	-32.3%
Other Issues	29	37	27.6%
Criminal Investigation Issues	9	12	33.3%
Total Congressional Issues	**17,470**	**18,932**	**8.4%**

129 Data obtained from TAMIS (Oct. 1, 2013).

130 See Rev. Proc. 2012-18, 2012-10 I.R.B. 455. An "*ex parte* communication" is a communication that takes places between any Appeals employee and employees of other IRS functions without the taxpayer (or representative) being given an opportunity to participate in the communication.

131 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2012).

132 *Id*.

From FY 2009 through FY 2011, congressional inquiries declined, but increased in FY 2012 and 2013. As shown in Figure 4.17, issues related to the FTHBC and the adoption credit contributed significantly to TAS congressional receipts in FY 2011.

FIGURE 4.17, TAS Congressional Receipts, FY 2009–FY 2013[133]

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Congressional Receipts	17,603	15,711	14,761	17,470	18,932
Total Case Receipts	272,404	298,933	295,904	219,666	244,956
% of Total Receipts	6.5%	5.3%	5.0%	8.0%	7.7%
Congressional Receipts Related to Economic Stimulus Payment (ESP)	4,264	127	22		5
Congressional Receipts Related to FTHBC		3,243	2,018	399	197
Congressional Receipts Related to Adoption Credit			496	476	118

133 Data obtained from TAMIS. TAS obtains the data on the first day following the end of the FY for FYs 2009 through 2013.