

## TAS CASE ADVOCACY

### 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. This section of the report discusses how TAS fulfills its mission to assist taxpayers with their specific issues and concerns involving IRS systems and procedures.

TAS's other three functions involve identifying and proposing changes to systemic problems affecting taxpayers. TAS employees advocate systemically by:

- Identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden; and
- Recommending solutions, either administrative or legislative, to improve tax administration.<sup>1</sup>

TAS serves as the voice of the taxpayer within the IRS by providing the taxpayer's view on IRS 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<sup>2</sup> and oversees the Taxpayer Advocacy Panel (TAP).<sup>3</sup>

### TAS CASE RECEIPT CRITERIA

Taxpayers typically 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.

TAS accepts cases in four categories: economic burden, systemic burden, best interest of the taxpayer, and public policy. See Figure 4.1.1, TAS Case Acceptance Criteria.

- 1 Taxpayers and practitioners can use the Systemic Advocacy Management System (SAMS) to submit systemic issues to TAS at <http://www.irs.gov/sams>.
- 2 The LITC program provides matching grants of up to \$100,000 per year to qualifying organizations to operate clinics that represent low income taxpayers in disputes with the IRS and educate taxpayers for whom English is a second language about their taxpayer 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.

FIGURE 4.1.1

## TAS Case Acceptance Criteria

As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.<sup>1</sup> TAS case acceptance criteria fall into four main categories.

<b>Economic Burden</b>	Cases involving a financial difficulty to the taxpayer; an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.
<b>Criteria 1</b>	The taxpayer is experiencing economic harm or is about to suffer economic harm.
<b>Criteria 2</b>	The taxpayer is facing an immediate threat of adverse action.
<b>Criteria 3</b>	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
<b>Criteria 4</b>	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
<b>Systemic Burden<sup>2</sup></b>	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.
<b>Criteria 5</b>	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
<b>Criteria 6</b>	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
<b>Criteria 7</b>	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
<b>Best Interest of the Taxpayer</b>	TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected. <sup>3</sup>
<b>Criteria 8</b>	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair the taxpayer's rights.
<b>Public Policy</b>	TAS acceptance of cases under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers. <sup>4</sup>
<b>Criteria 9</b>	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

1 IRC § 7803(c)(2)(A)(i).

2 TAS has changed its case acceptance criteria to generally stop accepting certain systemic burden issues. IRM 13.1.7.3(d), *Exceptions to TAS Criteria* (Feb. 4, 2015).

3 IRM 13.1.7.2.3, *TAS Case Criteria 8, Best Interest of the Taxpayer* (Feb. 4, 2015).

4 See Interim Guidance Memorandum (IGM) TAS-13-0414-001, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Apr. 2, 2014).

In many of the economic burden cases, time is critical. If the IRS does not act quickly (*e.g.*, to remove a levy or release a lien), the taxpayer will experience additional economic harm.<sup>4</sup> Best interest of the taxpayer (Criteria 8) includes breaches of the Taxpayer Bill of Rights (TBOR).<sup>5</sup> With respect to public policy cases (Criteria 9), the National Taxpayer Advocate has the sole authority to determine which issues are included in this criterion and will designate them by memo.<sup>6</sup>

## REDEFINING TAS'S CASE ADVOCACY OPERATIONS

In the last year, as the demands for TAS's service have increased, TAS has implemented multiple strategies to focus on effectively advocating for taxpayers, as discussed below.

### *TAS Organizational Shift to Expanded and Additional Local Offices in Underserved Communities*

TAS has focused staffing efforts based on the importance of TAS's local presence and its connection with communities, especially as other IRS functions reduce their geographic presence and become more centralized. The National Taxpayer Advocate established a realignment team to revisit TAS's geographic footprint and the allocation of staffing, considering population shifts and geographic centers with emerging issues. The team reviewed whether taxpayer access to TAS resources was sufficient and analyzed whether TAS could improve advocacy by realigning its staffing to better position offices for anticipated work due to strategic decisions the IRS is making.

In addition to reviewing its existing staffing footprint, TAS analyzed population totals, primary demographics (*e.g.*, education levels and poverty rates), English as a Second Language (ESL) taxpayers, military populations, and congressional districts. TAS weighed Metropolitan Statistical Area data within each state, as delineated by the Office of Management and Budget for collecting, tabulating, and publishing federal statistics. TAS considered the location of existing TAS offices, availability of walk-in service, public transportation, and access to LITCs. TAS also reviewed existing case advocate staffing, case receipts, capacity to work cases, and other factors, including how the future Taxpayer Advocate Service Integrated System (TASIS) environment will route cases.<sup>7</sup>

The National Taxpayer Advocate's plan is to realign staffing through attrition. TAS identified several underserved regions across the country. As part of a longer-term staffing initiative, TAS will expand its footprint in underserved areas, while shrinking existing staffing through attrition in certain other locations. TAS will be able to update the model to reflect future staffing needs, as significant changes occur. Accordingly, TAS opened a new office in San Jose, California in October 2015 and is opening offices in San Diego, California and St. Petersburg, Florida. The National Taxpayer Advocate initiated actions to fill the Local Taxpayer Advocate (LTA) positions for the three locations. TAS's realignment team continues to review other geographic areas for opportunities. TAS will proactively align future hiring and attrition to better serve its taxpayer base.

4 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.1, *TAS Case Criteria 1-4, Economic Burden* (Feb. 4, 2015).

5 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.3, *TAS Case Criteria 8, Best Interest of the Taxpayer* (Feb. 4, 2015). See TBOR, available at <http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights>.

6 IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.4, *TAS Case Criteria 9, TAS Public Policy* (Feb. 4, 2015). See, *e.g.*, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy*, TAS-13-1115-007 (Nov. 2, 2015).

7 TAS uses the Taxpayer Advocate Management Information System (TAMIS) to record, control, and process cases and to analyze the issues that bring taxpayers to TAS. TAS retrieved the data for this report on the first day of the month following the end of each fiscal year (FY). TAS is developing an updated case management system called TASIS. See National Taxpayer Advocate FY 2014 Objectives Report to Congress, Section VII for a full discussion of TASIS.

### *Centralized Case Intake (CCI)*

TAS has formally changed its approach to the case intake process as a step in its strategy to focus on its primary mission to serve the most vulnerable taxpayers. In FY 2014, TAS formed a partnership with the IRS's Wage and Investment (W&I) Business Operating Division (BOD) under the CCI Proof of Concept and expanded the process to all IRS employees staffing the National Taxpayer Advocate's toll-free line in FY 2015. Key objectives included:

- Creating the ability for taxpayers to speak directly with TAS employees on their issues;
- Providing more in-depth interviews with vulnerable taxpayers before bringing their cases into TAS;
- Educating and guiding taxpayers in resolving their issues; and
- Increasing the intake advocate workforce to handle call demand without limiting the time needed to help each taxpayer.

Previously, IRS employees dedicated to the NTA toll-free line<sup>8</sup> determined whether the taxpayers met TAS criteria, and, if appropriate, opened a case directly onto the TAMIS. Under the CCI, those IRS employees now transfer calls they believe meet TAS criteria directly to TAS intake advocates through the ASK-TAS1 toll-free line. The intake advocates on the TAS toll-free line create cases only after validating that the taxpayers meet TAS criteria.

Of the total calls answered by ASK-TAS1, the NTA toll-free line transferred in 62 percent (54,205) of the calls.<sup>9</sup> Of the transferred-in calls, nearly 83 percent (44,869) resulted in a TAS case created by the intake advocates.<sup>10</sup> Through this process, intake advocates addressed the taxpayers' concerns in the remaining 17 percent (9,336) of the contacts to avoid opening a new TAS case, allowing TAS to use its resources on more complex situations requiring its specialized skills.<sup>11</sup> In FY 2015, the total number of calls transferred to ASK-TAS1 almost tripled, and TAS helped almost 10,000 taxpayers without creating a case.

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8 This number is 1-877-777-4778.

9 See IRS, *Aspect Application Activity Report*, (Oct. 1, 2014-Sept. 30, 2015).

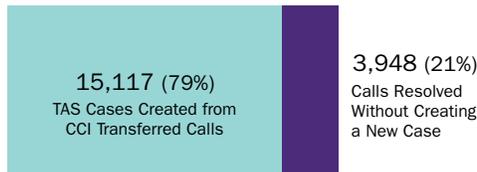
10 Data obtained from TAMIS (Oct. 1, 2015).

11 This reflects calls resolved between Oct. 1, 2014 and Sept. 30, 2015.

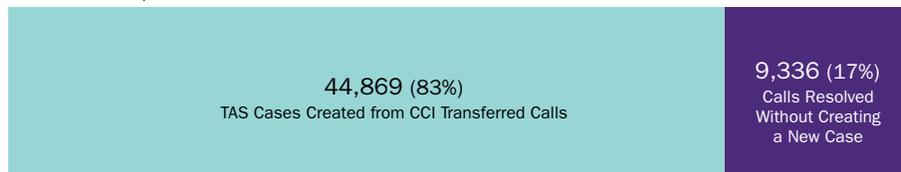
FIGURE 4.1.2<sup>12</sup>

### Phone Calls Transferred to the ASK-TAS1 Line and Resulting TAS Cases Created, FYs 2014–2015

FY 2014: 19,065 total calls



FY 2015: 54,205 total calls



#### *TAS Promotes the Use of Self-Help Tools to Resolve Taxpayers' Issues*

To ensure TAS is helping the most vulnerable taxpayers, intake advocates handling the initial contact with the taxpayer may direct taxpayers, who are able, to navigate automated self-help IRS tools on [irs.gov](http://irs.gov). Taxpayers may use the tools to resolve their issues independently and expeditiously. Some examples of the available tools are *Where's My Refund?*, *Where's My Amended Return?*, the *Online Payment Tool*, a withholding calculator, and tools to estimate benefits of the Affordable Care Act (ACA).

Additionally, TAS will identify and test self-help tools for taxpayers to resolve requests for expedited, returned, or stopped refunds and requests for copies of certain documents (*e.g.*, returns, reports, determination letters) to ease their economic burden and prevent adverse consequences. In FY 2015, TAS created a series of short videos for taxpayers, including:

- *What to Do if You Owe the IRS and Can't Pay:*
  - *Overview*;<sup>13</sup>
  - *Installment Agreement*;<sup>14</sup>
  - *Currently Not Collectible*;<sup>15</sup>
- *Injured Spouse*;<sup>16</sup> and
- *Held/Stopped Refunds*.<sup>17</sup>

<sup>12</sup> See IRS, *Aspect Application Activity Report*, (Oct. 1, 2014 – Sept. 30, 2015).

<sup>13</sup> Available at [http://www.youtube.com/watch?feature=player\\_embedded&v=AsOEVOrevVE](http://www.youtube.com/watch?feature=player_embedded&v=AsOEVOrevVE).

<sup>14</sup> Available at [http://www.youtube.com/watch?feature=player\\_embedded&v=\\_xTmF8GNos4](http://www.youtube.com/watch?feature=player_embedded&v=_xTmF8GNos4).

<sup>15</sup> Available at [http://www.youtube.com/watch?feature=player\\_embedded&v=Yxysf1p5lvo](http://www.youtube.com/watch?feature=player_embedded&v=Yxysf1p5lvo).

<sup>16</sup> Available at [http://www.youtube.com/watch?feature=player\\_embedded&v=qhVcm9Phi1c](http://www.youtube.com/watch?feature=player_embedded&v=qhVcm9Phi1c).

<sup>17</sup> Available at [http://www.youtube.com/watch?feature=player\\_embedded&v=cyF\\_mwPTsjY](http://www.youtube.com/watch?feature=player_embedded&v=cyF_mwPTsjY).

### *Employee Training and Education*

Throughout FY 2015, TAS employees received training on the TBOR provisions to enable them to incorporate taxpayer rights into their daily casework.<sup>18</sup> TAS employees will receive further education from the National Taxpayer Advocate's video presentation, *Using TBOR to Advocate for Taxpayers – Crosswalk*, at the all-employee symposium in FY 2016.

TAS is providing employees with enhanced guidance and detailed training on collection cases. During FY 2015, local offices included TAS Technical Advisors with collection backgrounds in staff meetings to discuss technical and procedural issues to improve advocacy efforts in collection cases. In response to TAS employees' concerns about workload distractions during training, TAS delivered "mini-symposiums" during the fall of 2015, taking employees off-line for two or three days, so they could concentrate on training. During TAS's FY 2016 symposium, all employees will watch a video featuring the National Taxpayer Advocate and T. Keith Fogg, the Acting Director of the Legal Services Center of Harvard Law School LITC, *Advocating When Working Collection Cases*. TAS delivered *Integrated Automation Technologies – Collection Suite Tools* to lead case advocates in FY 2015. All case advocates will receive the training as part of a financial analysis workshop in FY 2016. TAS will focus its resources further by releasing two videos in FY 2016: *TAS Awareness Training for Automated Collection System (ACS) Employees* and *TAS Awareness Training for Field Collection Employees*. The videos will improve the ability of IRS employees to recognize appropriate referrals to TAS, ensuring TAS assists taxpayers most in need of help.

### *Refinement of Quality Standards*

TAS plans to refine its quality standards to better focus on its role of advocating for the taxpayer. The revised standards more closely align with TAS's guiding principle of advocacy and will enable TAS to better measure and emphasize advocacy efforts, such as resolving taxpayers' issues, protecting taxpayers' rights, and keeping taxpayers informed with complete and accurate information.

In FY 2016, TAS will:

- Continue to expand the CCI and intake processes to increase the capability for intake advocates to address, resolve, and provide relief for less complex issues, allowing case advocates more time to work more complex cases;
- Propose the expansion of the CCI process to accept transferred calls from other IRS toll-free lines when the taxpayer meets TAS criteria and the IRS is unable to resolve the taxpayer's issue the same day;
- Identify additional opportunities where intake advocates can assist taxpayers in resolving their issues independently and expeditiously by directing them to self-help tools, videos, and other automated IRS tools without the need to create a TAS case; and
- Complete the TAS expansion effort in St. Petersburg, Florida and San Diego, California.

<sup>18</sup> IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.3, *TAS Case Criteria 8, Best Interest of the Taxpayer* (Feb. 4, 2015). See TBOR, available at <http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights>.

## CASE RECEIPT TRENDS IN FY 2015

The Case Advocacy function in TAS has primary responsibility for direct contact with taxpayers, their representatives, and congressional staffs. Information from these contacts and the case results are vital to TAS's statutory missions to propose changes in the IRS's administrative practices to alleviate taxpayers' problems and to identify potential legislative changes to relieve such problems. Case Advocacy's findings and results flow into TAS's Systemic Advocacy programs and form the basis for many of the Most Serious Problems and the Legislative Recommendations in this report.

### Volume of Cases

In FY 2015, TAS received 227,189 cases, a nearly five percent increase from FY 2014. TAS provided relief to taxpayers in approximately 78 percent of cases closed in FY 2015, consistent with FY 2014.<sup>19</sup> Figure 4.1.3 compares FY 2014 and FY 2015 case receipts and relief rates by case acceptance category.

**FIGURE 4.1.3, TAS Case Receipts and Relief Rates, FYs 2014–2015<sup>20</sup>**

Case Categories	Receipts FY 2014	Receipts FY 2015	Percent Change	Relief Rates FY 2014	Relief Rates FY 2015	Percent Change
Economic Burden	124,732	135,469	8.6%	75.4%	76.2%	1.0%
Systemic Burden	91,545	91,425	-0.1%	81.4%	81.7%	0.4%
Best Interest of Taxpayers	195	193	-1.0%	78.2%	75.9%	-3.0%
Public Policy	225	102	-54.7%	81.5%	76.9%	-5.6%
<b>Total Cases</b>	<b>216,697</b>	<b>227,189</b>	<b>4.8%</b>	<b>77.9%</b>	<b>78.4%</b>	<b>0.7%</b>

### Case Complexity

TAS monitors the complexity of its work to ensure it meets taxpayers' needs efficiently by assigning workload to match the skills of its employees, by identifying when additional resources may be needed, such as technical advisor assistance<sup>21</sup> or counsel advice,<sup>22</sup> and by balancing case inventory levels between TAS offices to ensure prompt action will occur. TAS measures case complexity in a number of ways, including whether a case involves multiple issues or multiple tax periods and whether technical advice is needed, thus requiring more resources to resolve the matter.<sup>23</sup> Whether the multiple case issues are linked

19 TAS determines relief rates based upon whether it 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 TAMIS (Oct. 1, 2015).

20 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

21 IRM 13.1.12.1.1, *Technical Advisors Roles and Responsibilities* (Nov. 13, 2009), states in part that "Technical Advisors are responsible for resolving the most technically complex or sensitive issues using effective research, communication, coordination, and negotiating skills."

22 TAS employees often need legal advice to resolve their cases. Attorneys in the Office of Chief Counsel provide legal advice on the correct interpretation of the IRC. See IRC § 7803(b)(2) and IRM 13.1.10.2, *Obtaining Legal Advice From Chief Counsel* (April 9, 2012).

23 IRM 13.4.5.4, *Case Factors Screen* (July 16, 2012). TAS uses a complexity factor screen in its case management system. This screen contains 24 factors, where the presence of any one of these factors indicates greater case complexity. For example, one factor is whether the case involves analysis of the assessment, collection, or refund statute date to determine if it is about to expire. TAS is using this data for purposes of developing TISIS and will use the factors to assign cases in TISIS.

or separate, the case advocate (CA) must resolve all issues before closing the case.<sup>24</sup> CAs must identify primary and secondary core issues on cases and record them in TAMIS.<sup>25</sup>

Figure 4.1.4 represents the top ten sources of TAS receipts by primary core issue code (PCIC) categories from all sources without regard to TAS criteria, comparing FY 2014 and FY 2015. The “Other TAS Receipts” category encompasses the remaining PCICs not in the top ten.

**FIGURE 4.1.4, Top 10 Issues for Cases Received in TAS, FYs 2014–2015<sup>26</sup>**

Rank	Issue Description	FY 2014	FY 2015	FY 2015 Percent of Total	Percent Change FY 2014 to FY 2015
1	Identity Theft	43,690	56,174	24.7%	28.6%
2	Pre-Refund Wage Verification Hold	35,220	40,633	17.9%	15.4%
3	Processing Amended Return	10,245	11,847	5.2%	15.6%
4	Earned Income Tax Credit (EITC)	13,450	10,880	4.8%	-19.1%
5	Levy	8,086	7,977	3.5%	-1.3%
6	Processing Original Return	7,664	7,148	3.1%	-6.7%
7	Reconsideration of Audit and Substitute for Return under IRC § 6020(b)	6,768	6,723	3.0%	-0.7%
8	Unpostable and Reject	3,751	6,057	2.7%	61.5%
9	Returned and Stopped Refund	3,271	4,612	2.0%	41.0%
10	Injured Spouse Claim	7,284	4,604	2.0%	-36.8%
	Other TAS Receipts	77,268	70,534	31.0%	-8.7%
<b>Total TAS Receipts</b>		<b>216,697</b>	<b>227,189</b>		<b>4.8%</b>

The top five primary issue codes were consistent between FY 2014 and FY 2015. However, TAS experienced a nearly 29 percent increase in identity theft (IDT) cases in FY 2015, approaching the FY 2013 level of 57,929 cases. TAS’s ongoing high volume of IDT cases and increased receipts in FY 2015 indicate that taxpayers continue to face sizeable, complex problems.<sup>27</sup> IDT cases remain the top source of TAS work.<sup>28</sup>

Erroneous information resulting from IDT can affect a victim’s account for multiple tax periods and cause multiple issues, affecting the Accounts Management, Examination, and Collection functions. Other complex cases include collection cases (levy releases with alternative collection solutions, return of levy proceeds, offers in compromise (OIC), or seizure prevention), examination cases with multiple periods

24 IRM 13.1.21.1.1, *Introduction* (Feb. 1, 2011).

25 IRM 13.1.16.13.1, *Issue Codes* (Feb. 1, 2011). IRM 13.1.16.13.1.2, *Primary Core Issue Code* (Feb. 1, 2011), states the PCIC is a three-digit code that defines the most significant issue, policy, or process within the IRS that needs to be resolved. IRM 13.1.16.13.1.3, *Secondary Core Issue Code* (Feb. 1, 2011), states that the Secondary Core Issue Code (SCIC) identifies secondary issues and is used when a case has multiple issues.

26 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

27 See Most Serious Problem: *Identity Theft (IDT): The IRS’s Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *supra*. National Taxpayer Advocate 2013 Annual Report to Congress 75-83 (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*) for a detailed discussion of the identity theft issues.

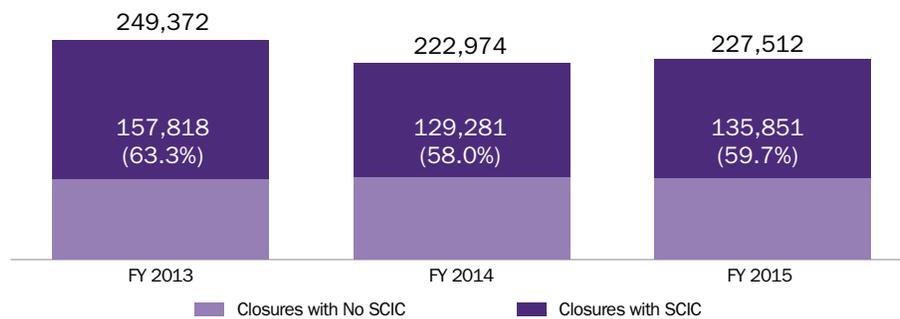
28 Data obtained from TAMIS (Oct. 1, 2015).

and technical issues, or income verification cases for self-employed persons with or without Earned Income Tax Credit (EITC) issues.

The percentage of cases that TAS closed with one or more SCICs increased slightly over the last year, from 58 percent in FY 2014 to 60 percent in FY 2015. These numbers indicate that a significant portion of TAS's inventory is complex, requiring more resources and time.<sup>29</sup>

**FIGURE 4.1.5**<sup>30</sup>

**Closed Cases and Closures With Secondary Issue Codes (SCICs),  
FYs 2013–2015**



In addition to cases with multiple issues, five percent of TAS closed cases in FY 2015 required the assistance of a technical advisor to understand and resolve the complexities of the cases.<sup>31</sup> Over 27 percent of TAS closed cases involved multiple tax periods.<sup>32</sup> Any of these factors can increase the time TAS spends resolving a taxpayer's overall issues.

### Economic Burden Cases

Economic burden cases often occur where IRS processes are not functioning smoothly or taxpayers experience other systemic problems. For the fourth consecutive fiscal year, more than half of TAS receipts involved taxpayers experiencing economic burden.<sup>33</sup> Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to work the cases using accelerated timeframes.<sup>34</sup>

<sup>29</sup> In FY 2013, of the 249,372 cases closed, 157,818 cases involved more than one issue. In FY 2014, of the 222,974 cases closed, 129,281 cases involved more than one issue. In FY 2015, of the 227,512 cases closed, 135,851 cases involved more than one issue code. Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

<sup>30</sup> *Id.*

<sup>31</sup> Data obtained from TAMIS (Oct. 1, 2015).

<sup>32</sup> *Id.*

<sup>33</sup> See National Taxpayer Advocate 2014 Annual Report to Congress 533 (TAS Case Advocacy), which reflects that 60.6 percent of TAS case receipts included economic burden factors in FY 2012.

<sup>34</sup> IRM 13.1.16.12(1), *Case Advocate Case Assignment* (March 23, 2011) (Upon acceptance into the TAS program, cases are ready for assignment to CAs within two workdays of the Taxpayer Advocate Received Date (TARD) for Criteria 1-4 cases and three workdays of the TARD for Criteria 5-9 cases). IRM 13.1.18.3(1), *Initial Contact* (February 1, 2011) (the CA is to contact the taxpayer or representative by telephone within three workdays of the TARD for criteria 1-4 cases and within five workdays of the TARD for criteria 5-9 cases to notify of TAS's involvement.)

FIGURE 4.1.6<sup>35</sup>

### TAS Economic Burden and Systemic Burden Receipts, FYs 2013–2015

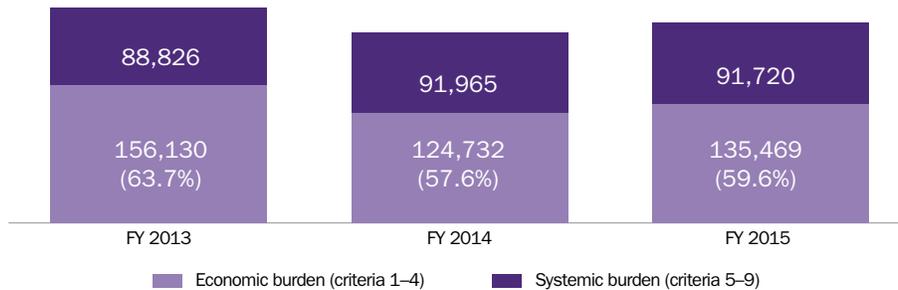


Figure 4.1.7 shows the top five issues driving economic burden receipts, which represent the bulk of the increase in economic burden cases. TAS dedicates significant resources to resolving the systemic causes of these issues, as discussed in the Most Serious Problems section of this and past reports.

FIGURE 4.1.7, Top Five Issues Causing Economic Burden (EB) Cases, FYs 2014–2015<sup>36</sup>

Rank	Issue Description	FY 2014	EB Receipts as % Total EB Receipts for Issue FY 2014	FY 2015	EB Receipts as % Total EB Receipts for Issue FY 2015	EB Percent Change FY 2014 to FY 2015
1	Identity Theft	31,160	25.0%	40,284	29.7%	29.3%
2	Pre-Refund Wage Verification Hold	20,917	16.8%	25,206	18.6%	20.5%
3	Earned Income Tax Credit (EITC)	10,519	8.4%	8,545	6.3%	-18.8%
4	Levy	7,206	5.8%	7,074	5.2%	-1.8%
5	Processing Amended Return	4,713	3.8%	5,331	3.9%	13.1%

#### Identity Theft

IDT, which occurs when an individual intentionally uses the personal identifying information of another person to file a false tax return with the intention of obtaining an unauthorized refund, continued as the number one reason taxpayers sought TAS's assistance.<sup>37</sup> In FY 2015, IDT receipts comprised 25 percent

<sup>35</sup> Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

<sup>36</sup> Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015). TAS computed the top five economic burden issue codes using only the PCIC. Often TAS cases involve more than one issue and TAS tracks this data; however, these are not included within this computation to avoid counting a case more than once.

<sup>37</sup> The IRS refers to this type of tax-related identity theft as "refund-related" identity theft. In "employment-related" IDT, an individual files a tax return using his or her own taxpayer identification number, but uses another individual's Social Security number (SSN) to obtain employment, and consequently, the wages are reported to the IRS under the SSN. IRM 25.23.1.4.1, *Identity Theft in Tax Administration* (Sept. 2, 2015). The IRS has procedures in place to minimize the tax administration impact to the victim in these employment-related identity theft situations. See IRM 25.23.2.20.5, *Employment-Related Identity Theft* (Sept. 8, 2015), for an example of those procedures. Accordingly, TAS will focus on refund-related IDT in this report.

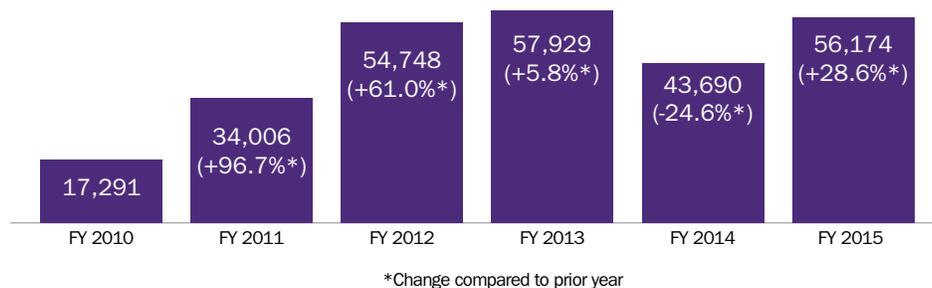
of all receipts and nearly 30 percent of economic burden receipts. The National Taxpayer Advocate first addressed the issue as a Most Serious Problem affecting taxpayers in 2004, identifying further problems and recommending solutions in subsequent reports.<sup>38</sup>

IDT victims often come to TAS when they are experiencing a hardship to obtain expedited resolution. Since 2010, TAS has helped over 263,000 IDT victims resolve their account problems.<sup>39</sup> In FY 2015, TAS obtained relief for a significant majority of taxpayers in IDT cases with about 80 percent of taxpayers receiving relief.<sup>40</sup> The FY 2015 average time to work an IDT case to its conclusion of 68 days is a 16 percent improvement from 81 days in FY 2014 and significantly less than the IRS's normal processing time of 180 days.<sup>41</sup> TAS closed 54,849 IDT cases in FY 2015, including about 72 percent with economic burden.<sup>42</sup>

As Figures 4.1.8 and 4.1.9 demonstrate, TAS's IDT inventories have increased from FY 2014 to FY 2015, while TAS's timeframes for completing IDT cases are improving over time.

**FIGURE 4.1.8**<sup>43</sup>

**TAS Identity Theft Case Receipts and Percentage Changes, FYs 2010–2015**



38 See Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *supra*; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67; National Taxpayer Advocate 2011 Annual Report to Congress 48-68; National Taxpayer Advocate 2009 Annual Report to Congress 307-11; National Taxpayer Advocate 2008 Annual Report to Congress 79-93; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 180-91; National Taxpayer Advocate 2004 Annual Report to Congress 133-36.

39 Data obtained from TAMIS (Oct. 1, 2015).

40 *Id.*

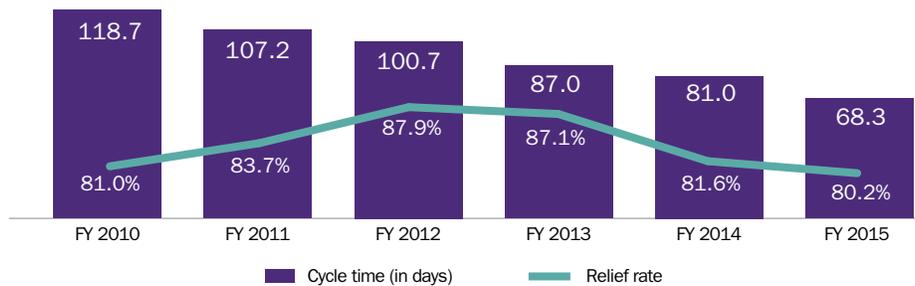
41 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

42 Data obtained from TAMIS (Oct. 1, 2015).

43 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct 1, 2014; Oct. 1, 2015).

FIGURE 4.1.9<sup>44</sup>

### Identity Theft Relief Rate and Cycle Time, FYs 2010–2015



### Pre-Refund Wage Verification Holds

The IRS employs various filters and data mining techniques in an attempt to prevent processing fraudulent returns and issuing fraudulent refunds. These preventive measures may also delay taxpayers' valid returns from timely processing, blocking timely receipt of refunds. When the IRS receives more questionable returns than it has resources to evaluate properly, it places holds on the associated refunds. In the past, the IRS's actions have raised significant taxpayer rights issues and brought increasing numbers of taxpayers to TAS.<sup>45</sup>

This year, as in the past, pre-refund wage verification holds under the Return Integrity and Compliance Services Program (RICS) constituted the second most frequent reason that taxpayers came to TAS for assistance. Pre-refund wage verification hold cases remained at nearly 18 percent of TAS's total inventory in FY 2015, after almost doubling between FYs 2012 and 2014. The volume of TAS cases reinforces the presence of significant systemic and procedural issues in the RICS program.<sup>46</sup>

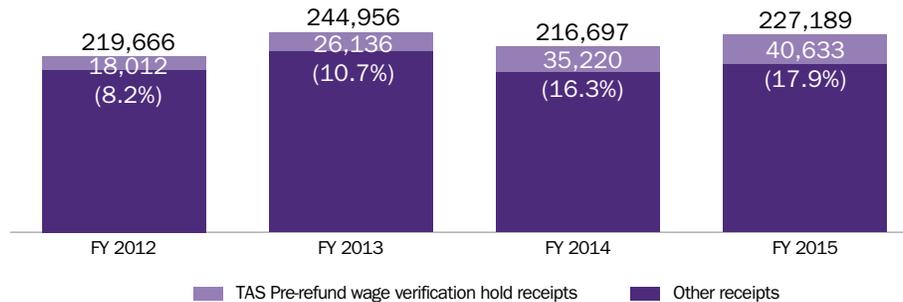
44 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct 1, 2014; Oct. 1, 2015).

45 See National Taxpayer Advocate 2005 Annual Report to Congress 25, addressing the IRS's Questionable Refund Program (subsequently called the RICS program) that failed to provide taxpayers with adequate due process protections and failed to maintain an adequate system to vet the IRS's concerns about taxpayer refund claims.

46 See Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*, *supra*. For additional discussion, see National Taxpayer Advocate FY 2015 Objectives Report to Congress 143-45 (*TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud*).

FIGURE 4.1.10<sup>47</sup>

### Pre-Refund Wage Verification Hold Receipts and Total Case Receipts, FYs 2012–2015



While the National Taxpayer Advocate makes recommendations to the IRS regarding improvements to the income verification programs,<sup>48</sup> TAS continues to provide advocacy to the taxpayers who come to TAS when the IRS delays their refunds under these programs. Generally, TAS achieves almost a 78 percent relief rate<sup>49</sup> and an 89 percent customer satisfaction rate in these cases.<sup>50</sup> The cycle time of these cases is about 58 days on average.<sup>51</sup>

### Earned Income Tax Credit Cases

The EITC is a refundable tax credit that provides an important economic benefit for low income taxpayers who have earned income.<sup>52</sup> TAS's FY 2015 EITC receipts were the fourth highest source of TAS's cases.<sup>53</sup> About 79 percent of the FY 2015 EITC cases involved taxpayers experiencing an economic burden.<sup>54</sup>

47 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

48 See Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*, *supra*.

49 Data obtained from TAMIS (Oct. 1, 2015).

50 TAS customer satisfaction is determined using a survey administered by a contractor. TAS measures customer satisfaction by the percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS. The FY 2015 year-to-date results are from the third quarter FY 2015 National Summary by PCICs from the contractor's results.

51 Data obtained from TAMIS (Oct. 1, 2015).

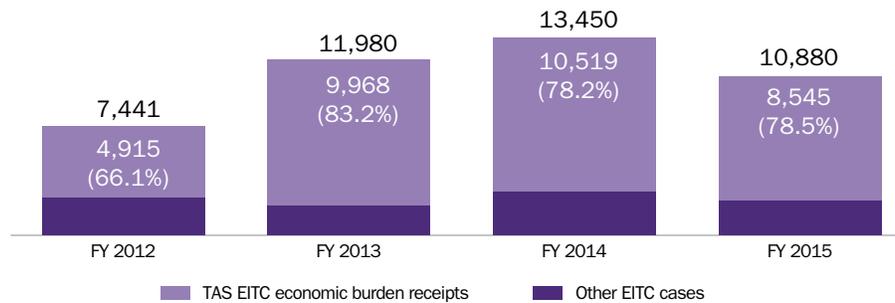
52 The benefit is available for low income taxpayers without children but is more significant for those with children. The maximum benefit for tax year 2014 (returns filed in 2015) was \$6,143 with three or more qualifying children and \$496 with no qualifying children. IRS Publication 596, *Earned Income Credit (EIC)*, 29-35 (Dec. 18, 2014).

53 See Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process as an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance*, *Most Serious Problem: Earned Income Tax Credit (EITC): The IRS Does Not Do Enough Taxpayer Education in the Pre-Filing Environment to Improve EITC Compliance and Should Establish a Telephone Helpline Dedicated to Answering Pre-filing Questions From Low Income Taxpayers About Their EITC Eligibility*; and *Most Serious Problem: Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*, *supra*. Data obtained from TAMIS (Oct. 1, 2014).

54 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

FIGURE 4.1.11<sup>55</sup>

## TAS EITC Economic Burden and Total Case Receipts, FYs 2012–2015



The EITC is complex yet its recipients are in the lower economic strata and often the least able to navigate complicated IRS processes. Low income taxpayers are found more frequently among the elderly, the disabled, Native Americans, and taxpayers with limited English proficiency.<sup>56</sup> TAS taxpayers typically face difficulty substantiating the EITC's residency and relationship requirements.<sup>57</sup> Taxpayers experiencing the most problems are those with non-traditional family relationships (where the child is not the biological child of the taxpayer claiming the credit) for whom documentation requirements can be overwhelming (e.g., the need to obtain birth certificates for various individuals to establish the required relationship for a niece, nephew, or other extended relative). Migratory living patterns, lack of education, lack of time (e.g., holding multiple jobs), lack of transportation, and limited access to technology (e.g., internet, fax) add to the difficulty of finding and submitting documents.<sup>58</sup>

TAS is engaging with W&I to develop more effective ways to administer EITC examinations.<sup>59</sup> TAS employees serve on the cross-functional EITC Audit Improvement Team and continue to recommend improvements to the document sent to taxpayers, Form 886-H-EIC, *Documents You Need to Prove You Can Claim an Earned Income Credit on the Basis of a Qualifying Child or Children*. In January 2015, the IRS implemented the team's suggestion to change the EITC script on the TeleTax Line to improve the service provided to EITC taxpayers. The team also developed a video to expand taxpayers' understanding of EITC requirements. The team currently is creating improved training for telephone assistants to promote meaningful conversations with taxpayers with EITC questions. The goal of the improved training is to

55 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

56 See National Taxpayer Advocate 2013 Annual Report to Congress 109; National Taxpayer Advocate 2011 Annual Report to Congress 296, 304; National Taxpayer Advocate 2009 Annual Report to Congress 110.

57 To claim a child for the EITC, the child must be a "qualifying child" and must meet three tests: age, relationship, and residency. Pursuant to IRC § 32(c)(3)(A), the EITC generally relies on the definition of qualifying child found in IRC § 152. The **Relationship** test requires that the child be the taxpayer's child (including an adopted child, stepchild, or eligible foster child), brother, sister, stepbrother, stepsister, or descendant of one of these relatives. See IRC §§ 152(c)(2) and 152(f)(1). The **Residency** test requires that the qualifying child must live with the taxpayer for more than half of the tax year (exceptions apply for temporary absences for special circumstances, e.g., children who were born or died during the year, children of divorced or separated parents, and kidnapped children). See IRC §§ 152(c)(1)(B), (e), (f)(6); and Treas. Reg. § 1.152-1(b). The **Age** test requires the child be younger than the taxpayer and fall under one of these age categories: under age 19, under age 24 and a full-time student, or a child of any age who is permanently and totally disabled. See IRC § 152(c)(3).

58 See National Taxpayer Advocate 2013 Annual Report to Congress, 109 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers From Claiming EITC*).

59 See Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process as an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance*, *supra*.

encourage a conversation between the IRS examiner and the taxpayer. The training will occur before the upcoming filing season.

TAS CAs are receiving further training on how best to serve the EITC taxpayer. These taxpayers rely on TAS for assistance to interpret the meaning of the letters received from the IRS, to assist in gathering documentation, or to deal with collection activities if the EITC taxpayer never received, or responded to, the IRS's correspondence.

The IRS primarily relies upon correspondence audits, which create problems for EITC taxpayers due to the characteristics of this population, as described above. To counter this, the CAs must communicate with the EITC taxpayer in a more complete and understandable manner than the IRS's correspondence when the EITC taxpayer contacts TAS for assistance. TAS is committed to training its CAs to improve communication with the EITC taxpayer. TAS initiatives to improve its own EITC casework include actions by an EITC subject matter expert to share best practices for better communication between the CA and the EITC taxpayer and emphasis on issue development through a more personalized approach. TAS tailors the approach to the particular needs of the EITC taxpayers, which may include assistance with the preparation of affidavits for the EITC taxpayer, the suggestion of alternative documentation when traditional documentation is not available, and direct contact with third parties.<sup>60</sup>

To open another avenue of communication with the EITC taxpayer, TAS participates in the IRS Digital Communications Project, which will allow non-traditional forms of communication between taxpayers and the IRS.<sup>61</sup> The National Taxpayer Advocate selected EITC taxpayers to be part of the trial to determine whether EITC taxpayers can effectively communicate digitally with their CAs once they have an open case in TAS. The non-traditional forms of communication may benefit the low income taxpayer, who may no longer have a landline telephone or access to a permanent address for mail. Instead of the necessity of copying a birth certificate and placing the copy in the mail to the IRS, which involves cost and time, an EITC taxpayer will be able to take a photo of the document with a cell phone and send it to the CA. Such innovations in communication are yet another method TAS is planning to use to better advocate for and educate EITC taxpayers.

As discussed in several Most Serious Problems in this report,<sup>62</sup> the National Taxpayer Advocate encourages the IRS to improve compliance through better taxpayer service and audit strategies, with the goal of educating the EITC taxpayer on the rules of the credit. CAs are part of the process as well. In EITC cases, the CA reminds the taxpayers of the rules for qualifying children, the necessity for documentation, and methods to show the IRS that they are entitled to the credit claimed. If taxpayers have improperly

60 EITC cases present TAS leadership with an improvement opportunity. In FY 2015, the average relief rate on EITC cases was over 63 percent compared to approximately 78 percent for all cases. 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 the cases may be worked in local offices, and EITC case reviews by TAS leadership to identify the aspects of the credit that require additional training.

61 See National Taxpayer Advocate 2014 Annual Report to Congress 161 (Most Serious Problem: *Virtual Service Delivery (VSD): Establish Targets and Deadlines for the Development and Implementation of VSD in Brick & Mortar Locations, in Mobile Tax Assistance Units, and Over the Internet Video Conferencing*).

62 See Most Serious Problem: *2015 EITC Introduction*; Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process as an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance*; Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Does Not Do Enough Taxpayer Education in the Pre-Filing Environment to Improve EITC Compliance and Should Establish a Telephone Helpline Dedicated to Answering Pre-filing Questions From Low Income Taxpayers About Their EITC Eligibility*; and Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*, *supra*.

claimed the EITC, CAs ensure that these taxpayers understand the rules and can use this knowledge in the future to be compliant with tax laws.

### Affordable Care Act

In FY 2015, TAS received 3,758 cases in which the taxpayer needed assistance with an aspect of the ACA.<sup>63</sup> While this was not a substantial source of cases, FY 2015 was the first year in which the IRS required taxpayers to report whether or not they had qualifying health insurance; thus, FY 2015 was the first year TAS received cases related to the ACA. Taxpayers who received insurance through the Health Insurance Marketplace<sup>64</sup> received Form 1095-A, *Health Insurance Marketplace Statement*, which provided information that many taxpayers needed to complete their tax returns accurately. Eligible taxpayers may have received the Premium Tax Credit (PTC)<sup>65</sup> to help offset the cost of health insurance purchased through the marketplace, and some may have received the PTC in advance, known as the Advanced Premium Tax Credit (APTC).<sup>66</sup> In both situations, the taxpayers had to file Form 8962, *Premium Tax Credit*, with their tax returns to reconcile their credits.

Of the taxpayers who came to TAS with ACA problems, over 72 percent were experiencing an economic burden.<sup>67</sup> In 88 percent of ACA cases, the taxpayers experienced a problem with the PTC.<sup>68</sup> Most taxpayers with PTC issues contacted TAS because the IRS delayed their returns and refunds due to:

- Third-party data matching problems;
- Missing a correct Form 8962 to reconcile the APTC;
- A programming problem that improperly offset refunds against Individual Shared Responsibility Payment (ISRP) balances;
- Delays in IRS processing of PTC claims selected for audit; and
- Issues with establishing the second lowest cost silver plan for taxpayers claiming the PTC on their tax return.

Because this was the first year the IRS was dealing with ACA cases, TAS was prepared to see a number of systemic issues that would lead to an influx of ACA cases. TAS created a Rapid Response Team — a cross-functional team of TAS employees — that worked together to immediately respond to potential ACA issues and identify where there was an issue it needed to elevate to the IRS. The team identified a number of processing problems and worked with the IRS to resolve them.<sup>69</sup> This proactive approach to a new issue allowed TAS to resolve issues quickly and prevent additional cases from coming to TAS.

63 Pub. L. No. 111-148, 124 Stat. 119 (March 23, 2010). See Most Serious Problem: *Affordable Care Act - Individuals: The IRS Is Compromising Taxpayer Rights as it Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*, *supra*.

64 The Health Insurance Marketplace, also called the “Exchange,” is a state or federally operated program where individuals can buy health care coverage. Coverage is available to people who are uninsured or who buy insurance on their own. See <http://www.irs.gov/uac/Newsroom/The-Health-Insurance-Marketplace>. IRC § 6055 and the regulations thereunder require every person (*i.e.*, health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage) that provides minimum essential coverage (as defined in IRC § 5000A(f)) to an individual to report to the IRS information about the coverage of each individual covered under the policy.

65 IRC § 36B.

66 Pub. L. No. 111-148, § 1412, 124 Stat. 119, 231 (March 23, 2010).

67 Data obtained from TAMIS (Oct. 1, 2015).

68 *Id.*

69 See National Taxpayer Advocate FY 2016 Objectives Report to Congress 38-47 (*The IRS’s Administration of the Affordable Care Act Has Done Well Over All, But Some Glitches Have Arisen*).

Additionally, TAS trained all employees in skills needed to work ACA cases. During FY 2015, TAS employees received an intensive week-long training on the ACA, which included advocacy points on the PTC and the ISRP. TAS also trained its technical advisors in ACA collection procedures at a technical symposium in FY 2015, and the material will be available to all TAS employees in FY 2016. In addition, CAs will receive just-in-time training on the Employer Shared Responsibility Payment (ESRP)<sup>70</sup> in FY 2016, prior to the start of the filing season when income tax returns will first include the ESRP.<sup>71</sup>

### Collection Cases

TAS's total case receipts with collection issues were 21,936 in FY 2014 and 22,084 in FY 2015, a change of less than one percent.<sup>72</sup> The IRS's use of levies and liens declined during these periods, as shown in Figures 4.1.12 and 4.1.13.<sup>73</sup> Despite the reduction in liens and levies issued, the IRS's use of them accounted for about 50 percent of TAS's contact from taxpayers with collection issues in FYs 2014-2015, with about 86 percent of those cases involving economic burden in both years.<sup>74</sup>

**FIGURE 4.1.12, IRS Levy Volume and TAS Levy Case Receipts, FYs 2010–2015<sup>75</sup>**

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
TAS Levy Receipts	18,015	15,466	11,419	8,829	8,086	7,977
IRS Levy Volume	3,606,818	3,748,884	2,961,162	1,855,095	1,995,987	1,464,026

**FIGURE 4.1.13, IRS Lien Volume and TAS Lien Case Receipts, FYs 2010–2015<sup>76</sup>**

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
TAS Lien Receipts	4,927	4,637	3,527	3,147	2,946	3,051
IRS Lien Volume	1,096,376	1,042,230	707,768	602,005	535,580	393,704

70 IRC § 4980H.

71 See Most Serious Problem: *Affordable Care Act (ACA) – Business: The IRS Faces Challenges in Implementing the Employer Provisions of the ACA While Protecting Taxpayer Rights and Minimizing Burden*, *supra*.

72 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

73 See Most Serious Problem: *Notices of Federal Tax Lien (NFTL): The IRS Files Most NFTLs Based on Arbitrary Dollar Thresholds Rather Than a Thorough Analysis of a Taxpayer's Financial Circumstances and the Impact on Future Compliance and Overall Revenue Collection*; and Most Serious Problem: *Levies on Assets in Retirement Accounts: Current IRS Guidance Regarding Levies on Retirement Accounts Does Not Adequately Protect Taxpayer Rights and Conflicts with Retirement Security Public Policy*, *supra*. In FY 2014, TAS's case receipts for all collection PCICs were 21,936. In FY 2015, they were 22,084, an increase of less than one percent. From FY 2010 to FY 2015, levies issued by the IRS decreased by almost 60 percent and lien filings decreased by 64 percent. IRS, *Collection Activity Reports*, NO-5000-24, *Levy and Seizure Report* (FYs 2010 to 2015); IRS, *Collection Activity Reports*, NO-5000-25, *Liens Report* (FYs 2010 to 2015).

74 Data obtained from TAMIS (Sept. 30, 2014; Oct. 1, 2015). In FY 2014, TAS had 8,086 levy cases and 2,946 lien cases, equaling 11,032 cases, or 50.3 percent of the total. Of the 11,032, 7,206 levy cases and 2,254 lien cases were economic burden, totaling 9,460, or 85.8 percent. In FY 2015, TAS had 7,977 levy cases and 3,051 lien cases for a total of 11,028 cases, or 49.9 percent of the total collection cases. Of the 11,028 cases, 7,074 levy cases and 2,372 lien cases were economic burden, or 85.7 percent.

75 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014, Oct. 1, 2015). IRS, 5000-23 *Collection Workload Indicators* (Mar. 22, 2011; Oct. 11, 2011); IRS, 5000-25 *Collection Activity Report* (Oct. 1, 2012; Sept. 30, 2013; Sept. 29, 2014, Oct. 9, 2015)

76 *Id.* IRS, 5000-24 *Collection Activity Report* (Oct. 9, 2012; Oct. 22, 2013); IRS, 5000-25 *Collection Activity Report* (Oct. 6, 2014, Oct. 7, 2015).

In FY 2015, collection issues accounted for almost 11 percent of all economic burden receipts and over ten percent of TAS's total caseload.<sup>77</sup> Collection issues are vitally important to affected taxpayers because while IRS collection tools (bank levies, wage levies, personal residence seizures, and the filing of Notices of Federal Tax Lien (NFTL)) significantly affect all taxpayers, they can have a particularly devastating impact on those with low incomes.

TAS provided relief in about 73 percent of these cases in FY 2015, compared to approximately 78 percent on all issues.<sup>78</sup> In FY 2015, TAS issued 30 Taxpayer Assistance Orders (TAOs)<sup>79</sup> in collection cases where the IRS did not agree with TAS's recommendations initially. Of these 30 TAOs, the IRS complied with 23 in an average of 14 days, meaning the IRS's negative responses to TAS's requests unnecessarily delayed resolution, adding to the harm to the taxpayers, when there was no material disagreement as to the resolution.<sup>80</sup>

TAS provided suggestions to the Office of Special Penalties (OSP) about the reasonable cause and evidence sections on its website. TAS is working with OSP to add an electronic penalty abatement request process to the existing electronic installment agreement request process to help taxpayers receive timelier penalty abatement responses.

### TAS Operations Assistance Request Trends

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 but allow TAS to resolve routine problems.<sup>81</sup> When TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, it works with the responsible IRS BOD or function to resolve the issue, a process necessary in 66 percent of all TAS cases closed in FY 2013, 67 percent in FY 2014, and 65 percent in FY 2015.<sup>82</sup> After independently reviewing the facts and circumstances of a case and communicating with the taxpayer, TAS uses Form 12412, *Operations Assistance Request*, to convey a recommendation or requested action for the IRS to resolve the issue, along with documentation. The Operations Assistance Request (OAR) also serves as an advocacy tool by:

- Giving the IRS a second chance to resolve the issue;
- Giving TAS and the BOD a chance to resolve the issue without having to elevate it; and
- Documenting systemic trends that could lead to improvements in IRS processes.

All BODs agreed to work TAS cases on a priority basis and expedite the process for taxpayers whose circumstances warrant immediate handling. The Service Level Agreements require the BODs to direct resources to process OARs. The OAR report alerts the BODs to the number of taxpayers who seek TAS assistance because they have not been able to resolve their problems through regular channels within the BODs' control and the types of issues. Form 12412 includes an "expedite" box that TAS CAs can check when the BOD needs to act immediately to relieve the taxpayer's hardship.

77 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

78 Data obtained from TAMIS (Oct. 1, 2015).

79 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, 2015.

80 Data obtained from TAMIS (Oct. 1, 2015).

81 IRM 1.2.50.3(1), *Delegation Order 13-2 (Rev. 1)* (March 3, 2008) Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions.

82 TAS closed 165,003 OARs in 2013; 149,484 OARs in FY 2014; and 148,305 OARs in FY 2015. Data obtained from TAMIS (Oct. 18, 2013; Oct. 6, 2014, and Oct. 5, 2015).

TAS generally sends one or more OARs on individual cases to secure action by the IRS, but TAS may use a single OAR to work the same issue for multiple taxpayers, which is called a “mass OAR.” During the 2015 filing season, TAS issued a mass OAR on behalf of 158 IDT victims who had unprotected but validated TAS taxpayer accounts.<sup>83</sup> TAS took this action to ensure timely marking of these accounts to allow the taxpayers to receive Identity Protection PINs (IP PIN).<sup>84</sup> TAS worked with the IRS to update the accounts quickly, allowing the taxpayers to file returns without having to worry that an identity thief would file first using their Social Security numbers, causing processing problems for the taxpayers.

Figure 4.1.14 reflects the number of OARs issued by BOD needing expedited action.

**FIGURE 4.1.14, Expedited and Non-Expedited OARs Issued by BOD, FY 2015<sup>85</sup>**

Business Operating Division	FY 2015 OARs Issued Requesting Expedite Action	FY 2015 OARs Issued without Expedite Request	FY 2015 Total OARs Issued
Appeals	243	509	752
Criminal Investigation	32	54	86
Large Business & International	188	442	630
Small Business/Self-Employed	16,665	23,712	40,377
Tax Exempt/Governmental Entity	528	863	1,391
Wage & Investment	113,703	97,732	211,435
<b>Total</b>	<b>131,359</b>	<b>123,312</b>	<b>254,671</b>

### TAS Uses Taxpayer Assistance Orders to Advocate Effectively

The TAO is a powerful statutory tool delegated by the National Taxpayer Advocate to the LTAs to resolve taxpayer cases.<sup>86</sup> An LTA may issue a TAO to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions.<sup>87</sup> 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.<sup>88</sup> When a taxpayer faces significant hardship and the facts support relief, an LTA may issue a TAO when the IRS refuses or otherwise fails to take the action TAS has requested to resolve the case.<sup>89</sup> Once TAS issues a TAO, the BOD must comply with the request or appeal the issue for resolution at higher levels.<sup>90</sup> The BOD cannot take action on the case while the TAO is on appeal.<sup>91</sup>

83 Data obtained from TAMIS (Oct. 1, 2015).

84 An IP PIN is a single-use six-digit identification number the IRS issues to IDT victims so that they can file their returns with the assurance that the identity thief cannot file first. The process of validating a taxpayer’s identity and marking the account must be complete before the IRS sends the IP PIN notices prior to the commencement of the filing season.

85 Data obtained from TAMIS (Oct. 1, 2015).

86 IRC § 7811(f) states that for purposes of this section, the term “National Taxpayer Advocate” includes any designee of the National Taxpayer Advocate. See IRM 1.2.50.2, *Delegation Order 13-1* (Rev. 1) (March 17, 2009).

87 IRC § 7811(b); Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, *Purpose of Taxpayer Assistance Orders* (Dec. 15, 2007).

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

89 IRC § 7811(a)(1); Treas. Reg. § 301.7811-1(a)(1) and (c).

90 IRM 13.1.20.5(2), *TAO Appeal Process* (Feb. 10, 2015).

91 IRC § 7811(c)(1) and Treas. Reg. § 301.7811-1(b).

In FY 2015, TAS issued 236 TAOs,<sup>92</sup> including 27 in cases where the IRS failed to respond to an OAR, further delaying relief to taxpayers. Of these 27 TAOs, the IRS complied with 23 in an average of 23 days, meaning the IRS did not have a significant disagreement as to the resolution and the taxpayers could have had relief sooner if the IRS had been more responsive to TAS.<sup>93</sup> Figure 4.1.15 reflects the results of all TAOs. Figure 4.1.16 shows the TAOs issued by fiscal year.

**FIGURE 4.1.15, Actions Taken on FY 2015 TAOs Issued**<sup>94</sup>

Action	Total
IRS Complied with the TAO	154
IRS Complied after the TAO was modified	0
TAS Rescinded the TAO	13
TAO Pending in Process	69
<b>Total</b>	<b>236</b>

**FIGURE 4.1.16, TAOs Issued to the IRS, FYs 2011–2015**<sup>95</sup>

Fiscal Year	TAOs Issued
2011	422
2012	434
2013	353
2014	362
2015	236

The LTAs have discretion to issue a TAO based on the facts and circumstances of each case. TAS leadership has review requirements geared toward prompt identification of situations in which a TAO is needed. In prior years, TAS encountered issues such as disaster area relief needs, the government shutdown, significant tax law changes such as the First-Time Homebuyer Credit, IRS procedural concerns such as the return preparer misconduct issue, or IRS processing glitches such as the First-Time Homebuyer Credit repayment that generated TAO issuances. In FY 2015, return preparer misconduct accounted for 43 TAOs.<sup>96</sup>

In FY 2015, TAS held discussions on the TAO process and its use during the Advocacy 360 leadership calls, which TAS initiated to emphasize all facets of advocacy beyond issuing TAOs and to strengthen awareness of situations needing a TAO. TAS leaders conducted Case Advocacy Leadership meetings in each TAS area, including a session emphasizing the TAO tool's use in resolving taxpayers' cases. These activities will continue in FY 2016.

92 Data obtained from TAMIS (Oct. 1, 2015).

93 *Id.*

94 *Id.*

95 Data obtained from TAMIS (Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

96 Data obtained from TAMIS (Oct. 1, 2015).

### *IRS Confusion About TAS's Role and Authority in the TAO Context*

FY 2015 was a particularly contentious year with respect to TAOs. IRS employees improperly delayed or placed conditions upon TAS and the National Taxpayer Advocate's access to case-specific information, which resulted in one or more TAOs that should not have been necessary.<sup>97</sup> For example, in cases involving taxpayers trying to settle with the IRS in connection with the Offshore Voluntary Disclosure (OVD) Program, IRS Revenue Agents (RAs) balked at providing TAS with access to: the taxpayer's administrative file, meetings with the taxpayer that the taxpayer requested that TAS attend, the RA's recommendations to the OVD review committee, and the committee's responses. In response to a TAO, even a head of office was confused about whether it was appropriate to allow TAS employees to attend meetings with a taxpayer that TAS was assisting.

In other cases, IRS employees attempted to take actions that the TAO specifically ordered the IRS not to take<sup>98</sup> while the TAO was on appeal. This is a violation of IRC § 7811.<sup>99</sup> IRS employees have also challenged whether a TAO was appropriate in some cases, alleging that the taxpayer was not suffering or about to suffer a "significant hardship." The determination of whether there is a significant hardship for purposes of issuing a TAO, however, can only be made by the National Taxpayer Advocate and her delegates, not other IRS employees. These problems illustrate the need for the IRS to work with TAS to deliver training to its employees so they understand TAS's role and its authorities, particularly in the context of a TAO issued to the IRS.

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 details of the fact patterns have been changed. In certain examples, TAS has obtained the written consent of the taxpayer to provide more detailed facts.

### *TAOs Involving Account Resolution*

As discussed above, IDT can adversely affect taxpayers. Approximately 74 percent of individual taxpayers filing returns claimed refunds, averaging about \$2,700.<sup>100</sup> In an IDT situation, where the IRS has processed a false return before the actual taxpayer files a return, the IRS will not issue a refund to the actual taxpayer until the IRS fully resolves the SSN ownership, which can take 180 days.<sup>101</sup> In FY 2015, TAS issued eight TAOs involving IDT. The IRS complied with five of these TAOs within an average of 13 days.<sup>102</sup> TAS issued six IDT-related TAOs in cases that met economic burden case criteria and thus

97 Like all IRS employees, TAS employees are authorized to access any information they need to do their jobs. See, e.g., IRC § 6103(h) ("Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.").

98 See IRC § 7811(b)(2).

99 IRC § 7811(c)(1) explicitly provides that only the National Taxpayer Advocate, the Commissioner, or Deputy Commissioner can rescind a TAO. The regulations clarify further that "a TAO is an order by the National Taxpayer Advocate to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the National Taxpayer Advocate, the Commissioner, or the Deputy Commissioner." Treas. Reg. § 301.7811-1(b).

100 IRS, 2015 IMF Filing Season Report, Week Ending May 15, 2015. Through May 15, 2015, the IRS received 138,209 million individual tax returns, of which 101,407 million claimed a refund averaging \$2,698.

101 IRM 25.23.3.2.2(f) *Tax-Related Identity Theft* (Oct 1, 2015).

102 Data obtained from TAMIS (Oct. 1, 2015).

needed expedited case handling.<sup>103</sup> Specific examples of hardships encountered by these taxpayers and exacerbated by IRS delays included:

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

TAS issued 81 TAOs involving account resolution for non-IDT, non-return preparer misconduct issues, and non-exam issues. Here are some examples:

- The taxpayer made a payment that did not post to the account. The taxpayer provided the cancelled check with a letter from the bank, confirming that the taxpayer paid the IRS, as well as Form 8109-B, *Federal Tax Deposit Coupon*, from the bank. The IRS would not credit the taxpayer's account. TAS issued a TAO, stating that the taxpayer substantiated the payment under the IRM procedures and that the IRS must credit the taxpayer's account.<sup>104</sup> The IRS located the misapplied payment and moved it to the correct account, complying with the TAO.<sup>105</sup>
- The taxpayer contacted TAS regarding an injured spouse refund.<sup>106</sup> The taxpayer's withholding was the sole source of the refund, and thus was entitled to a refund rather than having it applied to a liability of a former spouse. Once the IRS completed the actions to issue the injured spouse a refund, TAS asked for permission to do an expedited manual refund. Despite TAS's request, the IRS deposited the entire refund directly to a bank account solely belonging to the former spouse, who refused to give it to the TAS taxpayer. After issuing a TAO, Chief Counsel to the IRS supported TAS's position that the IRS made an erroneous refund.<sup>107</sup> As a result, the IRS correctly issued the refund to the TAS taxpayer.<sup>108</sup>
- The taxpayer filed a Form 1120-X, *Amended U.S. Corporation Income Tax Return*, to claim additional Foreign Tax Credit. The IRS processed it for \$200,000 more than what the taxpayer claimed, plus interest. The taxpayer promptly returned the excess amount. The IRS did not adjust the account correctly to show the correct credit or the returned refund. In the meantime, the refund statute expiration date (RSED) passed.<sup>109</sup> The taxpayer filed another Form 1120-X, based on a Competent Authority determination.<sup>110</sup> The IRS refused to process the second claim, citing the expired RSED and that the taxpayer already received an excess refund. The IRS ignored that the taxpayer returned the erroneous refund and that the Competent Authority ruling indicated

103 Data obtained from TAMIS (Oct. 1, 2015).

104 IRM 3.17.5.8, *Substantiation Process* (Aug. 31, 2015).

105 Release signed by the taxpayer dated July 24, 2015.

106 IRC § 6402. When a married couple files a joint 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. Form 8379, *Injured Spouse Allocation*, is the form the non-liable spouse uses to claim his or her share of the refund.

107 IRM 21.4.5.1, *Erroneous Refunds Overview* (June 25, 2013), defines an erroneous refund as the receipt of any money from the IRS to which the recipient is not entitled. This definition includes all erroneous refunds regardless of taxpayer intent or whether the error that caused the erroneous refund was made by the IRS, the taxpayer, or a third party.

108 Release signed by the taxpayer dated August 5, 2015.

109 IRC § 6511(a) states the general rule that no credit or refund shall be allowed or made more than three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid. If the claim for credit or refund is attributable to taxes paid or accrued to any foreign country, instead of the three-year period set by IRC § 6511(a), the taxpayer has ten years from the date prescribed by law for filing the return for the year in which those taxes were actually paid or accrued. IRC § 6511(d)(3)(A).

110 Rev. Proc. 2006-54, 2006-49 I.R.B. 1035; IRM 21.5.3.4.9, *Competent Authority Claims* (Aug. 4, 2010).

that the taxpayer's claim carried a ten-year statute of limitations. Subsequently, the IRS moved the returned refund to the excess collection account.<sup>111</sup> TAS repeatedly received the agreement of an IRS employee to correct the problems, only to have another employee stop the correction. Then, the IRS would not take corrective action, because the employee who made the original errors was no longer employed with the IRS, citing an IRM provision that says the person who made the error should correct the error, while disregarding the caution that the unit will act when the originating employee is "not available."<sup>112</sup> Once TAS issued the TAO, the IRS released the refund and fully corrected the account.<sup>113</sup>

- In 2012, the taxpayer contacted TAS about an IDT issue on his 2011 return. TAS worked through the issues, securing the full refund. Then, the IRS rejected the taxpayer's 2012 return. TAS again secured the full refund for the taxpayer. The taxpayer advised TAS that his 2010 refund offset to pay a debt he did not know he had, and TAS found another IDT problem. The taxpayer provided the needed documentation, and the IRS promptly adjusted the account but refused to release the refund because the RSED had passed. The IRS transferred the credit to the excess collection account from the taxpayer's account.<sup>114</sup> TAS argued that the refund offset from the taxpayer's timely filed 2010 return and should be moved back to 2010 with an open RSED and refunded. The IRS disagreed. TAS sought Counsel's opinion, and Counsel agreed with TAS. The IRS still refused to return the funds until after TAS issued a TAO.<sup>115</sup>

### *TAS Issues TAOs Where IRS Inaction Exacerbates Return Preparer Misconduct*

In the National Taxpayer Advocate's FY 2016 Objectives Report to Congress and in previous reports, she outlined the issues surrounding the IRS's current policy on assisting victims of tax return preparer misconduct.<sup>116</sup> 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.

111 IRM 3.17.220.2, *Excess Collections File* (Jan. 1, 2014). Monies are removed from accounts after the refund statute of limitations expires, as well as payments that could not be applied as intended for a variety of reasons, and placed in this general account.

112 IRM 25.6.1.10.2.2.3, *Correction of Erroneous Abatement Cases by the Originating Function* (Nov. 18, 2011), which states in part, "the originator of an erroneous abatement requiring reversal must initiate the corrective action whether or not assigned to Statute... **NOTE:** The originating function is responsible for corrective actions on cases where the originator is no longer working in the area where the erroneous abatement occurred. This is regardless of whether the assessment statute has/has not expired."

113 Release signed by the taxpayer dated Sept. 10, 2015.

114 IRM 3.17.220.2, *Excess Collections File* (Jan. 1, 2014). Monies are removed from accounts after the refund statute of limitations expires, as well as payments that could not be applied as intended for a variety of reasons, and placed in this general account.

115 Release signed by the taxpayer dated Sept. 11, 2015.

116 See National Taxpayer Advocate FY 2016 Objectives Report to Congress 34-7 (Area of Focus: *The IRS Agrees It Should Issue Refunds to Victims of Return Preparer Fraud, But It Has Been Slow to Develop Necessary Procedures*); National Taxpayer Advocate FY 2015 Objectives Report to Congress 4 (Preface: *The IRS is Actively Harming Victims of Return Preparer Fraud by Delaying the Release of Refunds for Years*); National Taxpayer Advocate FY 2015 Objectives Report to Congress 22-34 (*Return Preparer Fraud: A Sad Story*). National Taxpayer Advocate 2013 Annual Report to Congress 94-102; National Taxpayer Advocate 2012 Annual Report to Congress 68-94; National Taxpayer Advocate 2011 Annual Report to Congress 420-26.

In FY 2015, TAS continued to elevate the problem, issuing 43 TAOs due to return preparer misconduct.<sup>117</sup> Since FY 2010, 161 TAOs for this issue have been elevated to the National Taxpayer Advocate, and 25 of these were elevated to the Commissioner.<sup>118</sup> Taxpayers in these cases are usually low income and depend on their refunds to meet basic living expenses.<sup>119</sup> Some have been waiting for years to receive their proper refunds. At this time, the IRS has not finalized the procedures, while the taxpayers continue to be harmed.

### *TAOs to Examination Functions*

In FY 2014, TAS issued 35 TAOs to examination units in W&I and Small Business/Self-Employed (SB/SE) BODs for issues including return preparer misconduct, the EITC, audit reconsiderations, actions to complete open audits of original returns, penalty abatements, IDT, and appeal rights.<sup>120</sup>

EITC TAO cases involved hardships. An example follows:

- The taxpayer, who was elderly with health problems, had a disabled grown daughter. The taxpayer received Social Security benefits and worked part-time to meet basic living expenses. The taxpayer contacted TAS directly and through his Congressional representative after the IRS disallowed his dependent and the EITC, plus changed his filing status. The IRS repeatedly challenged the documents provided for proof of the daughter's disability, determining she was not a qualifying child for dependency exemption or EITC. The daughter enrolled in school, causing the IRS to determine that she was not impaired, contrary to her doctor's statement. The taxpayer explained that this was an online school with campuses in another state and that she did not physically attend a school with a campus. TAS issued a TAO with additional supporting documentation about the school attendance issue to firmly establish that she was a qualifying child. The IRS complied with the TAO to allow all items related to the taxpayer's dependent.<sup>121</sup>

Other examination TAO scenarios included:

- The taxpayers had a presidential memorabilia collection, which they exhibited until losing the IRC § 501(c)(3) status. The IRS audited them on issues related to the disposition of the collection. The taxpayers approached TAS, wanting aid to conclude the exam and to address concerns regarding their rights. Before coming to TAS, the taxpayers requested a copy of the examination file to assist in their appeal. The examiner told the taxpayers that they had to file a Freedom of Information Act Request to get this information, contrary to current guidance from the Privacy, Governmental Liaison and Disclosure Office. TAS issued a TAO to secure the file copy for the taxpayers, which the IRS provided.<sup>122</sup>

117 Data obtained from TAMIS (Oct. 1, 2015).

118 Data obtained from TAMIS (Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

119 National Taxpayer Advocate 2013 Annual Report to Congress 94-102; National Taxpayer Advocate 2012 Annual Report to Congress 68-94.

120 Data obtained from TAMIS (Oct. 1, 2015).

121 Release signed by the taxpayer dated July 31, 2015. In his last conversation with the CA, the taxpayer indicated that he did not claim his disabled daughter on the 2014 income tax return because he did not feel he could survive another audit experience, as it had negatively affected his health. He would not work with the CA to file a Form 1040X, *Amended Individual Income Tax Return*, to claim his daughter to receive the refund to which he was entitled.

122 Release signed by the taxpayers dated August 10, 2015.

- Taxpayers filed a return after an SFR assessment, and the IRS audited the return.<sup>123</sup> The taxpayers needed the refund for their support, as their Social Security benefits were insufficient. Without authority, one operating division of the IRS took incomplete action on the account. As a result, the function with the authority to correct it refused to act. The taxpayer was stuck between the two functions, and during this time, the refund statute expired. Then, the IRS argued that it could not issue the refund because the refund statute had expired.<sup>124</sup> TAS issued a TAO, and after the IRS operating division received an opinion from the Office of Chief Counsel upholding TAS's position, the IRS then corrected the account and released the refund.<sup>125</sup>
- A couple filed protective claims to file jointly, pending the U.S. Supreme Court's decision on the Defense of Marriage Act. Once the Court rendered its decision and the IRS published its procedures, the IRS did not process the claims. The taxpayers sought TAS's assistance, and the IRS processed the claims for three tax periods, but not the fourth. TAS issued a TAO to allow the fourth period due to the timely filed claim. The IRS issued refunds with interest for all four periods. The taxpayer received additional interest for the period of time during which the IRS delayed the resolution.<sup>126</sup>
- The taxpayer needed a penalty abated. He could not pay the \$5,000 penalty to appeal it. His sole sources of income were his Social Security benefits and a part-time job. He filed his return, as he always had, but made a simple mistake. The IRS deemed the return frivolous.<sup>127</sup> The IRS refused to abate the penalty, saying the taxpayer had to pay it in full and go to court. TAS issued a TAO, citing taxpayer burden and justifiable reasons about why he did not respond to the IRS's inquiry before the penalty was assessed. The IRS abated the penalty.<sup>128</sup>
- After the taxpayer fully paid the prior examination assessments for three tax years, he presented additional documents that resulted in a total abatement of the exam results. The IRS refunded the overpaid tax amounts. The IRS did not properly abate the associated penalties due to an omission on the exam report. When TAS requested that the IRS follow through to abate the penalties and to release the additional refunds, the IRS stated the refund statutes had expired between the initial refund and the time of the TAS request, ignoring the fact that the claim that caused the abatement of the tax and the penalties was timely. The IRS would not consider the correction of an error without the prior examination file, which it could not locate. Yet the IRS had abated the total tax, so it had to abate the penalties imposed as a result of the abated tax, making the need for the administrative file moot. TAS issued a TAO, directing abatement of the penalties and release of the refunds. The IRS took both actions. The taxpayer received additional interest from the government that accrued during the time that the IRS delayed this action.<sup>129</sup>

123 See Most Serious Problem: *Automated Substitute for Return (ASFR) Program: Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden*, *supra*. A substitute for return (SFR) 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. The taxpayer may reduce the SFR liability by filing an original return, reflecting allowable deductions and credits about which the IRS had no information at the time the SFR was prepared.

124 IRC § 6511.

125 Release signed by the taxpayers dated July 31, 2015.

126 Release signed by the taxpayers dated August 2, 2015.

127 IRC § 6702. A request is subject to the penalty, if any part of it "(i) is based on a position which the Secretary has identified as frivolous... or (ii) reflects a desire to delay or impede the administration of the Federal tax laws." Before asserting the penalty, the IRS must notify the taxpayer that it has determined that the taxpayer filed a frivolous tax return. The taxpayer then has 30 days to resubmit the return without the frivolous position to avoid the penalty.

128 Release signed by the taxpayer dated August 11, 2015.

129 Release signed by the taxpayer dated August 31, 2015.

### TAOs to Tax Exempt/Government Entities (TE/GE)

TE/GE cases present vitally important advocacy opportunities for TAS, both on substantive legal determinations and processing issues.<sup>130</sup> Tax-exempt organizations contribute religious, educational, scientific, social welfare, and other positive benefits to the public. Many of these exempt organizations (EOs) are small entities, staffed by volunteers.<sup>131</sup> Without the IRS's determination on the tax exemption, the entity will struggle to solicit funds from donors, who are motivated in part by the ability to deduct contributions made to an approved IRC § 501(c)(3) tax-exempt entity. While some EOs under IRC § 501(c) may operate without the need to seek an IRS determination, it is TAS's experience with IRC § 501(c) cases that many entities are reluctant to operate without formal IRS approval.<sup>132</sup>

In FY 2015, TAS did not issue any TAOs to the TE/GE operating division.<sup>133</sup> TAS's FY 2015 case receipts involving applications for exempt status decreased by about 74 percent from FY 2014.<sup>134</sup> Nearly 31 percent of the FY 2015 cases met economic burden criteria, and 55 percent were congressional referrals.<sup>135</sup> The decline in EO cases may be attributed to the introduction of the abbreviated Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Taxpayers have received the IRC § 501(c)(3) exemption approval more quickly, causing fewer to seek TAS's assistance. However, while this expedited process for obtaining tax exempt status has reduced TAS EO casework, it has created a significant compliance concern.<sup>136</sup> Overall, TAS provided some form of relief in 83 percent of cases (1,025 organizations) seeking to resolve exempt status application issues in FY 2015.<sup>137</sup> TAS resolved these cases in an average of 78 days, an improvement of over nine percent from FY 2014.<sup>138</sup>

### TAOs on Collection Issues

In FY 2015, levy issues were the fourth largest source of TAS economic burden receipts, as shown in Figure 4.1.7.<sup>139</sup> If the IRS does not act quickly in these cases, the taxpayer may experience even greater financial harm. TAS issued 21 TAOs on levy cases in FY 2015. The IRS complied with 17 of the 21 TAOs

130 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).

131 See National Taxpayer Advocate 2009 Annual Report to Congress 287, addressing the need for targeted research and increased collaboration to meet the needs of tax EOs; National Taxpayer Advocate 2005 Annual Report to Congress 293, discussing inadequate service to EOs 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).

132 Some organizations are not required to obtain formal recognition of tax-exempt status from the IRS but may obtain such recognition by submitting IRS Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. National Taxpayer Advocate Special Report to Congress, *Political Activity and the Rights of Applicants for Tax-Exempt Status* 3 (June 30, 2013), available at <http://www.taxpayeradvocate.irs.gov/2014ObjectivesReport/Special-Report>.

133 Data obtained from TAMIS (Oct. 1, 2015).

134 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

135 Data obtained from TAMIS (Oct. 1, 2015).

136 See Most Serious Problem: *Form 1023-EZ: Recognition as a Tax-Exempt Organization Is Now Virtually Automatic for Most Applicants, Which Invites Noncompliance, Diverts Tax Dollars and Taxpayer Donations, and Harms Organizations Later Determined to be Taxable*, *supra*; Vol. 2: *Study of Taxpayers That Obtained Recognition as IRC § 501(c)(3) Organizations on the Basis of Form 1023-EZ*, *infra*, noting that in a representative sample of organizations whose Form 1023-EZ application was approved, 37 percent did not meet the requirements for exempt status as a section 501(c)(3) organization as a matter of law.

137 Data obtained from TAMIS (Oct. 1, 2015).

138 Data obtained from TAMIS (Oct. 1, 2014; Oct. 1, 2015).

139 Data obtained from TAMIS (Oct. 1, 2015).

for levies in FY 2015.<sup>140</sup> Seventeen of the 21 levy-related TAOs requested the return of levy proceeds for taxpayers experiencing economic burden. TAS rescinded two and is processing two more. An example is:

- The IRS assessed a frivolous filer penalty based on a return filed under the taxpayer's SSN by an identity thief.<sup>141</sup> The taxpayer learned this when the IRS levied her Social Security benefits. The taxpayer immediately requested a return of the proceeds, but the IRS did not act on the request. The taxpayer then requested penalty abatement and received an approval letter from the IRS. After repeated failed attempts to get the account corrected and the levy proceeds returned, the taxpayer came to TAS. The IRS unit that approved the penalty abatement did not have the authority to do so. The correct unit did not agree with the decision, insisting the taxpayer had to full pay the penalty and pursue court action. TAS argued that the taxpayer should not be burdened, when she did not file the return that gave rise to the penalty. TAS issued a TAO. The IRS abated the penalty and returned the levy proceeds.<sup>142</sup>

TAS issued 25 TAOs to Collection functions for other issues, including:

- A taxpayer, who was approximately 50 years old, contacted TAS seeking release of a wage levy as well as a proposed levy on his Thrift Savings Plan (TSP) account. The TSP is a retirement savings and investment plan for federal employees and members of the uniformed services.<sup>143</sup> A recent change in the law now allows the IRS to take the entire contents of a TSP account, regardless of whether the taxpayer has a present right to withdraw from the account.<sup>144</sup> Under current internal guidance, the IRS is required to consider three issues before levying a retirement account: the availability of other assets, whether the taxpayer's conduct is flagrant, and whether the taxpayer currently relies (or will rely in the near future) on the funds in the retirement account.<sup>145</sup> Prior to coming to TAS, the taxpayer submitted an installment agreement, which remained unprocessed for almost one year because the IRS claimed that it had not been received. It was during this time that the IRS issued a levy on the taxpayer's wages and was in the process of levying his retirement account.<sup>146</sup> TAS issued a TAO seeking a release of the wage levy and return of levy proceeds, requesting the IRS forebear issuing a levy on the retirement account, and challenging the sufficiency of the pre-levy analysis required for the retirement levy, particularly in regard to the determination of flagrant conduct. In addition as part of the TAO, TAS ordered the IRS to consider an offer in compromise submitted by the taxpayer. The IRS Deputy Commissioner rescinded the TAO. As a result, the IRS did not release the wage levy and, in addition, levied the taxpayer's entire TSP account. The wage levy had been so severe that the taxpayer was paying his basic living expenses by credit card. Since the proceeds from the levy on the TSP account did not fully pay his tax liability, the taxpayer has subsequently entered into an installment agreement to satisfy the remaining balance of liability, and accordingly, the IRS has released the wage levy. He now has approximately a

140 Data obtained from TAMIS (Oct. 1, 2015).

141 IRC § 6702. A request is subject to the penalty, if any part of it "(i) is based on a position which the Secretary has identified as frivolous... or (ii) reflects a desire to delay or impede the administration of the Federal tax laws." Before asserting the penalty, the IRS must notify the taxpayer that it has determined that the taxpayer filed a frivolous tax return. The taxpayer then has 30 days to resubmit the return without the frivolous position to avoid the penalty.

142 Release signed by the taxpayer dated August 3, 2015.

143 TSP was established by Congress in the Federal Employees' Retirement System Act of 1986 and offers the same types of savings and tax benefits that many private corporations offer their employees under 401(k) plans

144 5 U.S.C. § 8437 (e)(3).

145 IRM 5.11.6.2(4)-(7), *Funds in Pension or Retirement Plans* (Sept. 26, 2014).

146 The IRS is prohibited from issuing a levy while an installment agreement is pending or in effect. IRC SS 6331(k).

decade to replenish his retirement account and may face financial instability in his retirement years. Last, the taxpayer incurred a tax liability since the distribution qualifies as gross income.<sup>147</sup>

- Taxpayers filed an OIC in 2012 for business taxes but withdrew it. They filed another OIC in 2014 for individual taxes owed. The LTA issued a TAO to expedite the OIC process due to the taxpayers' circumstances and to reduce the time the taxpayers had to wait for the IRS to assign the offer. The IRS complied by assigning and working the OIC.<sup>148</sup>
- Divorced spouses agreed to quit claim their interests in their respective houses to the other, so each alone had interest in their own properties. While the TAS taxpayer complied with the agreement, the former spouse did not. In the meantime, the former spouse who owed employment taxes passed away. The NFTL attached to the TAS taxpayer's property, because the decedent was still on the deed. Upon the death of the former spouse, his interest was extinguished. Furthermore, based on state law and the divorce decree, TAS showed that the decedent had no interest in the property. The LTA argued that, based on the ownership language in the deed, state law, and the divorce decree, the TAS taxpayer solely owned her home by virtue of the former spouse's death. The IRS could not place a lien or take any other action against her. The IRS did not agree, and TAS issued a TAO. Counsel concurred with TAS, at which point the IRS withdrew the lien and ceased action to collect the former husband's debt from the TAS taxpayer.<sup>149</sup>
- An identity thief filed a return claiming the First-Time Homebuyer Credit for which the IRS held the TAS taxpayer liable. The IRS filed a lien due to the IDT balance due, which was affecting the TAS taxpayer's credit. TAS identified two additional IDT years about which the taxpayer was unaware. TAS followed the IDT procedures to have all three years corrected. The IRS corrected the two most recent years but would not correct the tax year for which the taxpayer sought help. The LTA asked that the IRS look at the facts and the documents, rather than citing IRM procedures that were irrelevant due to the IDT facet. For example, the IRS insisted that it issued the statutory notice of deficiency to the address of record, which was from the identity thief's return, not the TAS taxpayer's return. TAS proved the taxpayer did not file the return. TAS issued a TAO to correct the account and release the refunds after reversing the offsets. The IRS complied. Rather than waiting for the exam decision, TAS sent an OAR for a lien withdrawal (citing the IDT), which was also successful.<sup>150</sup>

### *TAOs to Appeals*

TAS issued seven TAOs during FY 2015 to the Office of Appeals, and Appeals complied with one. TAS rescinded one at the taxpayer's request; five TAOs remain in process.

TAS has worked cooperatively with Appeals in many areas, primarily through the TAS-Appeals Advisory Board (TAAB), made up of senior leadership from both TAS and Appeals. For example, Appeals personnel briefed the TAAB on the Appeals Judicial Approach and Culture (AJAC) initiative.<sup>151</sup> TAS recorded an awareness video presentation about AJAC in May 2015, which it will require all CAs to view during the FY 2016 continuing education cycle. As stated previously, the National Taxpayer Advocate has

147 IRC § 408(d). Release signed by the taxpayer dated December 17, 2015.

148 Release signed by the taxpayer dated August 10, 2015.

149 Release signed by the taxpayer dated July 27, 2015.

150 Release signed by the taxpayer dated July 25, 2015.

151 See Most Serious Problem: Appeals: *The Appeals Judicial Approach and Culture Project is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*, *supra*.

concerns about the AJAC initiative.<sup>152</sup> Additionally, the National Taxpayer Advocate is concerned that the Collection Appeals Program (CAP) provides inadequate review and insufficient protections for taxpayers facing collection actions.<sup>153</sup>

### Congressional Case Trends

Taxpayers often turn to their congressional representatives when faced with IRS issues. The congressional representatives refer these taxpayers to TAS, which is responsible for responding to tax account inquiries sent to the IRS by members of Congress. Figure 4.1.17 reflects the total congressional case receipts and total TAS receipts from other contacts.

**FIGURE 4.1.17**<sup>154</sup>

**TAS Congressional Receipts and Total Case Receipts, FYs 2012–2015**

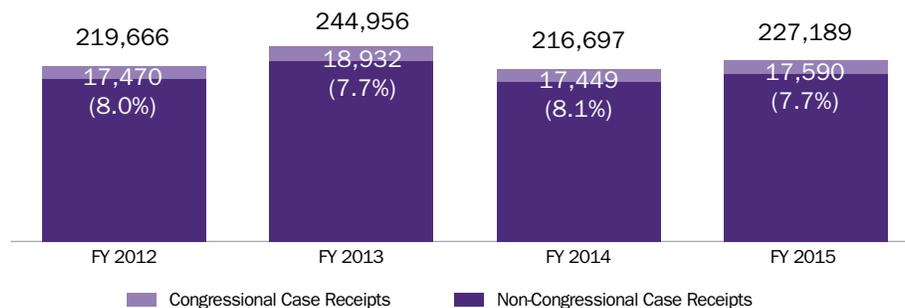


Figure 4.1.18 shows the top 10 PCICs causing taxpayers to seek the assistance of their congressional representatives. IDT receipts increased by 69 percent between FY 2014 and FY 2015 and Pre-Refund Wage Verification Holds increased by 21 percent. These mirror the top two issues for all receipts. Applications for Exempt Status cases from congressional referrals declined by about 80 percent, which was similar to the decline in TAS cases overall for this issue.<sup>155</sup>

152 See Most Serious Problem: *Appeals: The Appeals Judicial Approach and Culture Project is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*, *supra*.

153 See Most Serious Problem: *Collection Appeals Program (CAP): The CAP Provides Inadequate Review and Insufficient Protections for Taxpayers Facing Collection Actions*, *supra*.

154 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015).

155 PCIC 460 Application for Exempt Status cases from all sources, including congressional referrals, were 3,589 in FY 2014 and 931 in FY 2015, which was a decline of about 74 percent.

**FIGURE 4.1.18, TAS Top Ten Congressional Receipts by PCIC, FYs 2014–2015<sup>156</sup>**

Rank	Issue Category	FY 2014	FY 2015	Percent Change
1	Identity Theft	1,998	3,378	69.1%
2	Pre-Refund Wage Verification Hold	1,298	1,571	21.0%
3	Processing Original Return	880	871	-1.0%
4	Processing Amended Return	699	838	19.9%
5	Failure to File Penalty (FTF)/ Failure to Pay (FTP)	507	564	11.2%
6	Installment Agreements	423	528	24.8%
7	Levies	530	517	-2.5%
8	Application for Exempt Status (F.1023/1024)	2,645	512	-80.6%
9	Transcript Requests	427	502	17.6%
10	Other Refund Inquiries or Issues	401	417	4.0%
	Other Issues	7,641	7,892	3.3%
<b>Total Congressional Receipts</b>		<b>17,449</b>	<b>17,590</b>	<b>0.8%</b>

TAS continued to work many issues in FY 2015 after direct contact by taxpayers, their representatives' contacts, IRS employees' referrals, and congressional representatives' referrals. TAS acted to expedite the outcome of all cases but particularly those presented with economic burdens for the taxpayers.

<sup>156</sup> Data obtained from TAMIS (Oct. 1, 2015).