

TAS Case Advocacy

OFFICE OF THE TAXPAYER ADVOCATE

Under Internal Revenue Code (IRC) § 7803(c)(2)(A), the Office of the Taxpayer Advocate, known as the Taxpayer Advocate Service (TAS) and led by the National 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.¹

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 program² and oversees the Taxpayer Advocacy Panel (TAP).³

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 Low Income Taxpayer Clinic (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 Internal Revenue Code (IRC) § 7526.

3 The Taxpayer Advocacy Panel (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 (1972)) 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 (2001).

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.¹ TAS case acceptance criteria fall into four main categories.

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

1 Internal Revenue Code (IRC) § 7803(c)(2)(A)(i).

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

3 See IRM 13.1.7.2.3 (Feb. 4, 2015).

4 See Interim Guidance Memorandum (IGM) TAS-13-1116-009, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Nov. 14, 2016).

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.⁴ Best interest of the taxpayer (Criteria 8) includes breaches of the Taxpayer Bill of Rights (TBOR).⁵ 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 memorandum.⁶

REFINING TAS'S CASE ADVOCACY OPERATIONS

TAS has implemented multiple strategies to focus on effectively advocating for taxpayers.

TAS Initiative to Expand Local Offices in Underserved Communities

To improve its geographic footprint, TAS continued its focused staffing efforts by realigning resources to currently underserved populations. TAS is using analysis from an earlier review as a reference for future hiring, attrition, and realignment of staffing resources.⁷ This model is flexible, enabling TAS to adapt easily to significant IRS changes, changes in demographics, population shifts, and TAS case receipt variations by updating staffing needs on a regular basis. TAS expects its staffing to increase in some locations, but to shrink in others.

In fiscal year (FY) 2016, TAS opened two new offices - San Diego, California in October 2015 and St. Petersburg, Florida in May 2016. TAS consolidated two posts of duty in Austin, Texas in September 2016. Because TAS is increasingly the sole face-to-face option for taxpayers in many areas and familiarity with the community in which the taxpayer lives enhances advocacy, the TAS realignment team will continue to review and update data to reflect long-term staffing plans and needs within available TAS resources.⁸

TAS Intake Strategy

TAS formally changed its approach to the case intake process as a step in its strategy to focus on its primary mission to serve taxpayers who cannot otherwise resolve their issues with the IRS. Under the TAS Intake Strategy, all intake advocates (Centralized Case Intake (CCI) and field) conduct in-depth interviews with taxpayers to determine the correct disposition of their issue(s). They assist taxpayers with self-help options; take actions where possible to resolve the issue upfront, create cases after validating the taxpayer meets TAS criteria, or refer the taxpayer to the appropriate Business Operation Division (BOD) for assistance. In FY 2014, TAS also formed a partnership with the IRS's Wage and Investment (W&I) 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 2015.⁹ Under the CCI, IRS employees now transfer calls they believe meet TAS criteria directly to TAS intake advocates through the ASK-TAS1 toll-free line. The

4 IRC § 7803(c)(2)(C)(ii); Internal Revenue Manual (IRM) 13.1.7.2.1, *TAS Case Criteria 1-4, Economic Burden* (Feb. 4, 2015).

5 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.3, *TAS Case Criteria 8, Best Interest of the Taxpayer* (Feb. 4, 2015). See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the IRC. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

6 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.4, *TAS Case Criteria 9, TAS Public Policy* (Feb. 4, 2015). See Interim Guidance Memorandum (IGM) TAS-13-1116-009, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Nov. 14, 2016).

7 See National Taxpayer Advocate 2015 Annual Report to Congress 539.

8 See Most Serious Problem: *Geographic Focus: The IRS Lacks an Adequate Local Presence in Communities, Thereby Limiting Its Ability to Meet the Needs of Specific Taxpayer Populations and Improve Voluntary Compliance*, *supra*, for a discussion of the National Taxpayer Advocate's concerns about the shrinking IRS presence in communities.

9 The National Taxpayer Advocate's toll-free number is 1-877-777-4778.

intake advocates on the TAS toll-free line create cases only after validating that the taxpayers meet TAS criteria and after conducting a robust case intake interview.

In FY 2016, TAS progressed on key objectives to expand CCI, including:

- TAS successfully negotiated the new intake strategy with the National Treasury Employees Union and secured a Memorandum of Understanding (MOU) to move forward with all initiatives under the new strategy. As part of the strategy:
 - TAS successfully “stood-up” the CCI operation under the newly established Executive Director Case Advocacy, Intake and Technical Support (EDCA-ITS) organization; and
 - The EDCA-ITS coordinated live conference calls with all intake advocates and managers of intake advocates in all TAS offices to cover the MOU in its entirety and to address questions.
- The new intake strategy expanded delegated authorities to all intake advocates throughout TAS, granting them authority to resolve more types of taxpayer problems during initial contact, or to take additional actions to resolve or suspend actions before TAS establishes a case and assigns it to a case advocate.¹⁰
- To complete the rollout of the Intake Strategy to all intake advocates, the EDCA-ITS coordinated extensive training and on-the-job instruction (OJI) plans to support employees. As part of the strategy:
 - TAS committed the necessary resources for two four-day sessions for all intake advocates (CCI and field offices) to participate in face-to-face training on the new intake strategy, their new delegated authorities, and their expanded roles;
 - TAS provided an executive presence in all sessions, using the opportunity to speak with intake advocates about their role as the face of TAS and how they can make a difference for the taxpayer; and
 - TAS is creating a new section within Internal Revenue Manual (IRM) 13.1.16 to provide guidance specifically for all intake advocates.

In FY 2016, TAS intake advocates created cases on 71 percent (53,076 of 74,630) of calls transferred from the NTA toll-free line.¹¹ Through the CCI process, intake advocates addressed the taxpayers’ concerns in the remaining 29 percent (21,554) of the contacts to avoid opening a new TAS case, allowing TAS to use its specialized skills and resources on situations that are more complex. In FY 2016, the total number of calls transferred to CCI increased nearly 38 percent over FY 2015; however, case creation increased by only 18 percent.¹²

¹⁰ The National Taxpayer Advocate re-delegated certain authorities to intake advocates from Delegation Order 13-2 (Rev. 1).

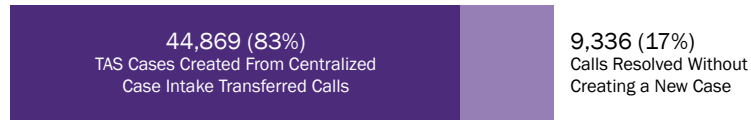
¹¹ See IRS, *Aspect Application Activity Report*, (Oct. 1, 2015 – Sept. 30, 2016). TAS uses the Taxpayer Advocate Management Information System (TAMIS) to record, control, and process cases and to analyze the issues that bring taxpayers to TAS. TAS retrieved the data for this report on the first day of the month following the end of each fiscal year. Data obtained from TAMIS (Oct. 1, 2016).

¹² See IRS, *Aspect Application Activity Report*, (Oct. 1, 2014 - Sept. 30, 2015, Oct. 1, 2015 - Sept. 30, 2016). Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

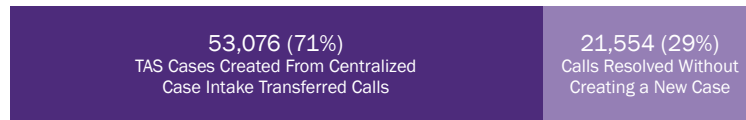
FIGURE 4.1.2¹³

Phone Calls Transferred to the Centralized Case Intake and Resulting TAS Cases Created, FYs 2015-2016

FY 2015: 54,205 Total Calls Answered



FY 2016: 74,630 Total Calls Answered



Taxpayer Digital Communication (TDC)

TAS is participating in the Taxpayer Digital Communications (TDC) Project,¹⁴ which will allow non-traditional forms of communication between taxpayers and the IRS in its Future State.¹⁵ The National Taxpayer Advocate selected Earned Income Tax Credit (EITC) for inclusion in the TDC to assure that the IRS can show through quantitative analysis that low income taxpayers can or cannot get through IRS systems before the IRS reduces person-to-person assistance in local Taxpayer Assistance Centers (TACs) in the Future State.

The four TAS offices participating in the TDC pilot in FY 2017 are:

- Cleveland, Ohio;
- New Orleans, Louisiana;
- Nashville, Tennessee; and
- Dallas, Texas.

CASE RECEIPT TRENDS IN FISCAL YEAR (FY) 2016

The Case Advocacy function in TAS has primary responsibility for direct contact with taxpayers, their representatives, and congressional staff. 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.

13 See IRS, *Aspect Application Activity Report*, (Oct. 1, 2014-Sept. 30, 2015, Oct. 1, 2015-Sept. 30, 2016). Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

14 See Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*, *supra*; Most Serious Problem: *Worldwide Taxpayer Service: The IRS Has Not Adopted "Best-in-Class" Taxpayer Service Despite Facing Many of the Same Challenges as Other Tax Administrations*, *supra*; and National Taxpayer Advocate 2017 Objectives Report to Congress 198 (*TAS Technology*).

15 TAS, *FY 2016 Program Letter 18* (2016).

Volume of Cases

In FY 2016, TAS received 209,509 cases, a decrease of nearly eight percent from FY 2015.¹⁶ TAS provided relief to taxpayers in approximately 78 percent of cases closed in FY 2016, consistent with FY 2015.¹⁷ Figure 4.1.3 compares FY 2015 and FY 2016 case receipts and relief rates by case acceptance category.

FIGURE 4.1.3, TAS Case Receipts and Relief Rates, FYs 2015–2016¹⁸

Case Categories	Receipts FY 2015	Receipts FY 2016	% Change	Relief Rates FY 2015	Relief Rates FY 2016	% Change
Economic Burden	135,469	119,324	-11.9%	76.2%	74.5%	-2.2%
Systemic Burden	91,425	89,681	-1.9%	81.7%	82.4%	0.9%
Best Interest of the Taxpayer	193	382	97.9%	75.9%	76.5%	0.8%
Public Policy	102	122	19.6%	76.9%	78.3%	1.8%
Total Cases	227,189	209,509	-7.8%	78.4%	77.9%	-0.6%

As noted earlier, in addition to the almost 210,000 cases received in FY 2016, TAS Centralized Intake Advocates addressed 21,554 taxpayer problems through the intake process. The intake strategy allows TAS Case Advocates to focus on the most complex or difficult cases, and those most in need of TAS assistance.¹⁹

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 case advocates need additional resources, such as technical advisor assistance²⁰ or Counsel advice,²¹ and by balancing case inventory levels between TAS offices to ensure prompt action. TAS measures case complexity in a number of ways, including whether a case involves multiple issues or multiple tax periods and whether case advocates need technical advice, thus requiring more resources to resolve the matter.²² The case advocate must resolve all issues before closing the case.²³ Case advocates must identify primary and secondary core issue codes

¹⁶ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

¹⁷ 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; Oct. 1, 2016).

¹⁸ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

¹⁹ IRS, *Aspect Application Activity Report*, (Oct. 1, 2015 – Sept. 30, 2016). Data obtained from TAMIS (Oct. 1, 2016).

²⁰ 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."

²¹ 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).

²² 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.

²³ IRM 13.1.21.1.1, *Introduction* (Feb. 1, 2011).

(PCIC and SCIC, respectively) on cases and record them in Taxpayer Advocate Management Information System (TAMIS), as a measure of complexity.²⁴

Figure 4.1.4 represents the top ten sources of TAS receipts by PCIC categories from all sources without regard to TAS criteria, comparing FY 2015 and FY 2016. The “Other TAS Receipts” category encompasses the remaining 118 PCICs not in the top ten.²⁵

FIGURE 4.1.4, Top 10 Issues for Cases Received in TAS in FYs 2015–2016²⁶

Rank	Issue Description	FY 2015	FY 2016	FY 2016 % of Total	% Change FY 2015-FY 2016
1	Identity Theft	56,174	41,819	20%	-25.6%
2	Pre-Refund Wage Verification Hold	40,633	29,174	13.9%	-28.2%
3	Earned Income Tax Credit (EITC)	10,880	11,378	5.4%	4.6%
4	Health Insurance Premium Tax Credit for Individuals Under IRC § 36B	3,318	10,910	5.2%	228.8%
5	Processing Amended Return	11,847	9,671	4.6%	-18.4%
6	Taxpayer Protection Program (TPP) Unpostables		7,160	3.4%	
7	Unpostable and Reject	6,057	6,938	3.3%	14.5%
8	Processing Original Return	7,148	6,325	3.0%	-11.5%
9	Reconsideration of Audits and Substitute for Return Under IRC § 6020(b)	6,723	6,264	3.0%	-6.8%
10	Levies	7,977	5,626	2.7%	-29.5%
	Other TAS Receipts	76,432	74,244	35.4%	-2.9%
	Total TAS Receipts	227,189	209,509	100.0%	-7.8%

Premium Tax Credit (PTC) issues entered the top ten PCICs this year, while levies dropped to the tenth most frequent issue. TAS’s ongoing high volume of Identity Theft (ID Theft) cases indicates that taxpayers continue to face sizeable, complex problems from ID Theft, despite a decline from the previous year.²⁷

Erroneous information resulting from ID Theft 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 release with alternative collection solutions, return of

24 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 primary core issue code (PCIC) is a three-digit code that defines the most significant issue, policy, or process within the IRS that needs to be resolved. 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.

25 TAMIS Coding Reference Guide (Nov. 14, 2016).

26 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

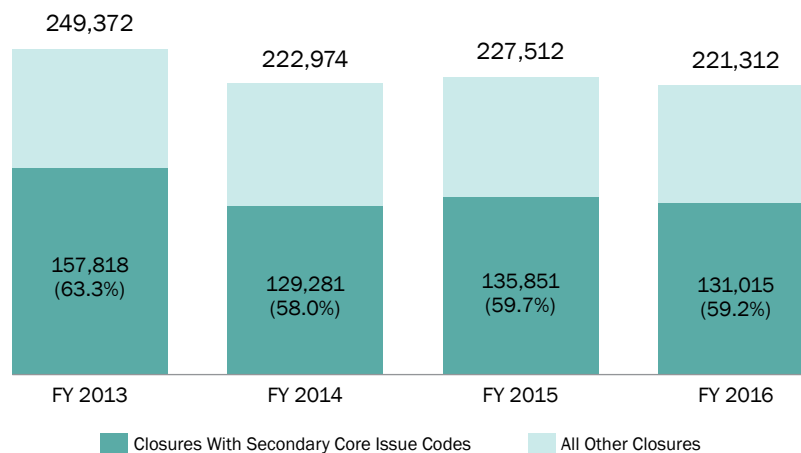
27 See Most Serious Problem: *Fraud Detection: The IRS’s Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*; National Taxpayer Advocate 2015 Annual Report to Congress 180-87 (Most Serious 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*); 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.

levy proceeds, offer in compromise (OIC), or seizure prevention), examination cases with multiple periods and technical issues, or income verification cases for self-employed persons with or without EITC issues.

The percentage of cases that TAS closed with one or more SCICs remained consistent over the last year at approximately 60 percent.²⁸ These numbers indicate that a significant portion of TAS's inventory is very complex, requiring more resources, training, and direct time.

FIGURE 4.1.5²⁹

Closed TAS Cases With Secondary Core Issue Codes



In addition to cases with multiple issues, TAS technical advisors assisted case advocates in understanding and resolving the complex issues in five percent of TAS closed cases in FY 2016.³⁰ Moreover, over 27 percent of TAS closed cases involved multiple tax periods.³¹ Any of these factors can increase the time TAS spends resolving a taxpayer's overall issues.

Economic Burden Cases

Economic burden (EB) cases often occur where IRS processes are not functioning smoothly or taxpayers experience other systemic problems. For the fifth consecutive fiscal year, more than half of TAS's case receipts involved taxpayers experiencing EB.³² Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to work the cases using accelerated timeframes.³³

²⁸ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

²⁹ Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

³⁰ Data obtained from TAMIS (Oct. 1, 2016).

³¹ *Id.*

³² See National Taxpayer Advocate 2012 Annual Report to Congress 533 (*TAS Case Advocacy*), which reflects that 60.6 percent of TAS case receipts included EB factors in FY 2012. Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

³³ IRM 13.1.16.12(1), *Case Advocate Case Assignment* (Mar. 23, 2011). Upon acceptance into the TAS program, cases are ready for assignment to case advocates 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* (May 5, 2016). The TAS employee 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.

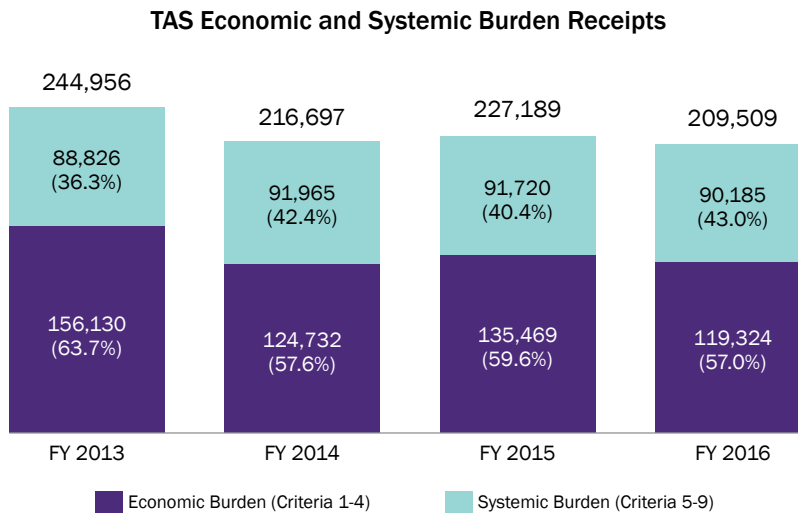
FIGURE 4.1.6³⁴

Figure 4.1.7 shows the top five issues driving EB receipts, which represent the bulk of EB case receipts. 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, FYs 2015–2016³⁵

Rank	Issue Description	FY 2015	EB Receipts As % Total EB Cases for Issue, FY 2015	FY 2016	EB Receipts As % Total EB Cases for Issue, FY 2016	EB % Change, FY 2015-FY 2016
1	Identity Theft	40,284	29.7%	26,710	22.4	-33.7%
2	Pre-Refund Wage Verification Hold	25,206	18.6%	16,442	13.8%	-34.8%
3	Earned Income Tax Credit	8,545	6.3%	8,790	7.4%	2.9%
4	Health Insurance Premium Tax Credit for Individuals Under IRC § 36B	2,454	1.8%	8,644	7.2%	252.2%
5	Taxpayer Protection Program Unpostables			5,679	4.8%	

³⁴ Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

³⁵ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016). 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.

Identity Theft (ID Theft)

The number one reason for which taxpayers sought assistance in FY 2016 was ID Theft issues.³⁶ While TAS experienced a decrease in ID Theft case receipts, the decrease is in part due to recording the Taxpayer Protection Program (TPP) cases under a separate issue code.³⁷ ID Theft cases can be complex, sometimes involving multiple issues, and spanning multiple years. Taxpayers may wait months to receive their tax refunds, and it may take years to work with the IRS to resolve ongoing tax account problems.³⁸ ID Theft victims often come to TAS to obtain expedited resolution when they are experiencing a hardship.

The National Taxpayer Advocate initially addressed ID Theft as a Most Serious Problem in the 2004 Annual Report to Congress,³⁹ and she further identified problems and recommended solutions in later reports.⁴⁰ Since 2010, TAS has helped over 300,000 ID Theft victims resolve their account problems.⁴¹ In FY 2016, TAS obtained relief for about 81 percent of taxpayers in ID Theft cases.⁴² In FY 2016, TAS worked ID Theft cases to their conclusions in 71 days on average, which is significantly less than the IRS's normal processing time of 120 days for most cases and as much as 180 days for more complex cases.⁴³ TAS closed 45,492 ID Theft cases in FY 2016, including 64 percent with EB.⁴⁴

As Figures 4.1.8 and 4.1.9 demonstrate, TAS had significant ID Theft receipts from FY 2010 to FY 2016, while TAS greatly improved its timeframes for completing ID Theft cases over time.⁴⁵ In FY 2016, ID Theft receipts comprised 20 percent of all receipts and over 22 percent of EB receipts.⁴⁶ While TAS's case receipts from ID Theft declined, the National Taxpayer Advocate continues to monitor any activities related to processing the returns or correcting the accounts of ID Theft victims.⁴⁷

36 Data obtained from TAMIS (Oct. 1, 2016).

37 See *Taxpayer Protection Program*, *infra*.

38 National Taxpayer Advocate 2012 Annual Report to Congress 42-67 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*).

39 See National Taxpayer Advocate 2004 Annual Report to Congress 132-42 (Most Serious Problem: *Inconsistent Campus Procedures*).

40 See Most Serious Problem: *Fraud Detection: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*; National Taxpayer Advocate 2015 Annual Report to Congress 180-87; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 44-55; 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.

41 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

42 Data obtained from TAMIS (Oct. 1, 2016).

43 IRM 25.23.2.10, *IDTVA Case Processing Time Frames* (Oct. 13, 2016). Data obtained from TAMIS (Oct. 1, 2016).

44 Data obtained from TAMIS (Oct. 1, 2016).

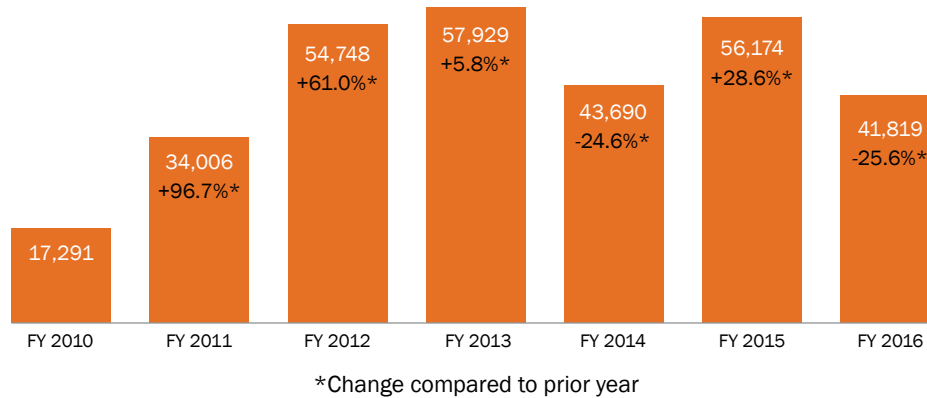
45 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

46 Data obtained from TAMIS (Oct. 1, 2016).

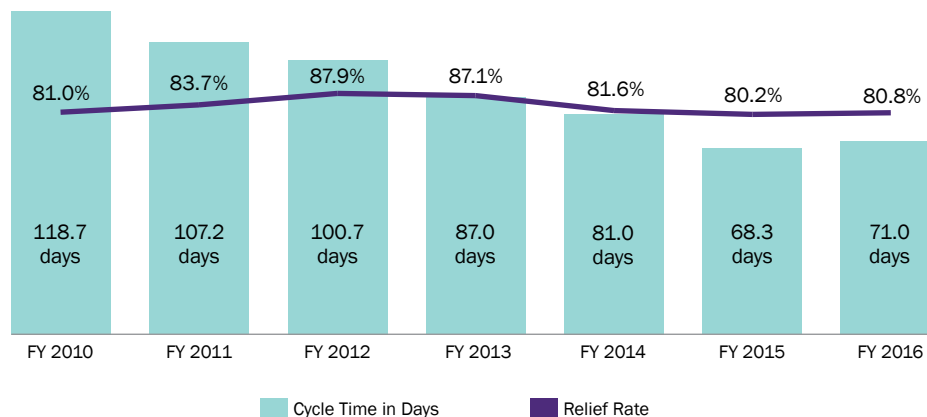
47 See National Taxpayer Advocate FY 2017 Objectives Report to Congress 119-22 (Area of Focus: *The IRS Re-Engineering of Its Identity Theft Victim Assistance Procedures Is a Step in the Right Direction But Does Not Go Far Enough*).

FIGURE 4.1.8⁴⁸

TAS Identity Theft Case Receipts, FYs 2010-2016

FIGURE 4.1.9⁴⁹

TAS Identity Theft Cycle Time and Relief Rate, FYs 2010-2016



Pre-Refund Wage Verification Holds

The IRS employs various models and data mining techniques in an attempt to prevent issuing fraudulent refunds. For example, the IRS uses the pre-refund wage verification hold (PRWVH) to delay refunds pending wage and withholding verification. 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.⁵⁰

48 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

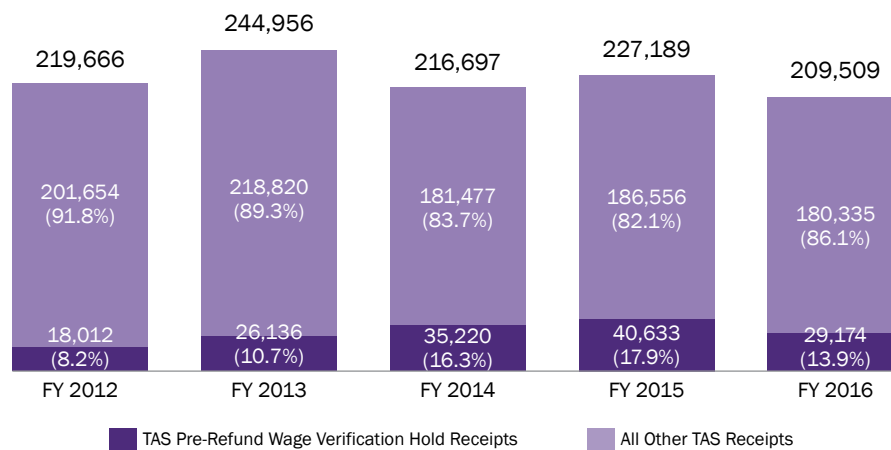
49 *Id.*

50 For a more detailed discussion of this issue, see Most Serious Problem: *Fraud Detection: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*; National Taxpayer Advocate 2005 Annual Report to Congress 25, addressing the IRS's Questionable Refund Program (subsequently called the Return Integrity and Compliance Services (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.

In FY 2016, while the TAS PRWVH cases declined 28 percent from FY 2015, they again constituted the second most frequent reason that taxpayers came to TAS for assistance. PRWVH cases were nearly 14 percent of TAS's total case receipts in FY 2016.⁵¹ The volume of TAS cases reinforces the concerns about significant systemic and procedural issues in the Return Integrity and Compliance Services (RICS) program.⁵²

FIGURE 4.1.10⁵³

Pre-Refund Wage Verification Hold Receipts, FYs 2012-2016



While the National Taxpayer Advocate made recommendations to the IRS regarding systemic improvements to the income verification programs,⁵⁴ TAS advocated for the taxpayers who came to TAS when the IRS delayed their refunds under these programs. In FY 2016, TAS achieved an almost 79 percent relief rate and the average cycle time was approximately 59 days.⁵⁵

51 Data obtained from TAMIS (Oct. 1, 2016).

52 See Most Serious Problem: *Fraud Detection: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*; National Taxpayer Advocate Annual 2015 Report to Congress 45-55 (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*). For additional discussion, see National Taxpayer Advocate FY 2016 Objectives Report to Congress 143-45 (Area of Focus: *TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud*).

53 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

54 The IRS is developing a new fraud detection system. The Return Review Program (RRP) will replace the current Electronic Fraud Detection System (EFDS). The IRS will use a combination of both systems to work the cases in the upcoming filing season due to programming issues. Once the IRS fully implements the RRP, the IRS states it will have the ability to adjust selection criteria in real time to better adapt to emerging patterns of fraud. However, see Most Serious Problem: *Fraud Detection: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*, and Literature Review: *Reducing "False Positive" Determinations in Fraud Detection*, vol 3, *infra*, for an in-depth discussion of the high false positive rates associated with these programs. See National Taxpayer Advocate 2015 Annual Report to Congress 45-55.

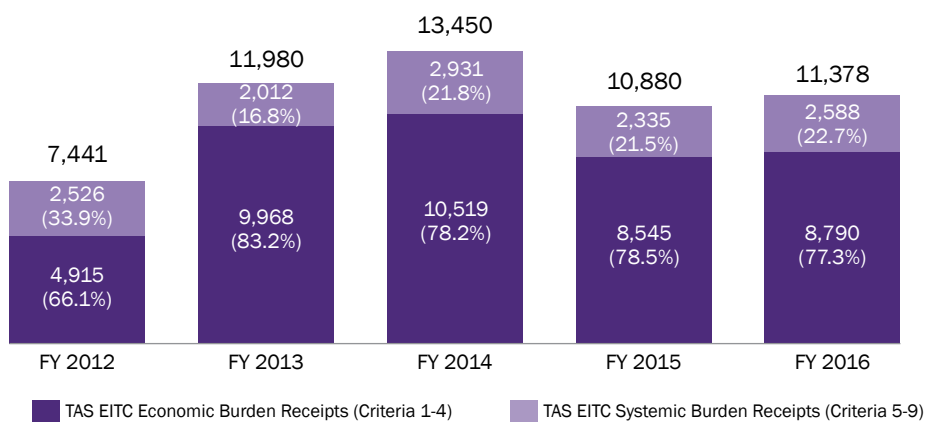
55 Data obtained from TAMIS (Oct. 1, 2016).

Earned Income Tax Credit (EITC) Cases

The EITC is a refundable tax credit that provides an economic benefit for low income taxpayers with earned income.⁵⁶ In FY 2016, TAS experienced an increase of nearly five percent in EITC receipts from FY 2015.⁵⁷ Over 77 percent of the FY 2016 EITC case receipts involved taxpayers experiencing an economic burden, a three percent increase compared to FY 2015.⁵⁸

FIGURE 4.1.11⁵⁹

TAS Earned Income Tax Credit (EITC) Economic and Systemic Burden Receipts, FYs 2012-2016



The EITC is a complex area of law.⁶⁰ The EITC involves eligibility rules based on a taxpayer's income, marital status, and parental or other caretaker arrangements, which can often change from year-to-year.⁶¹

56 The benefit is available for low income taxpayers without children, but is more significant for those with children. The maximum benefit for tax year 2015 (returns filed in 2016) was \$6,242 for married persons filing jointly with three or more qualifying children. Other filing statuses with no qualifying children could receive up to \$503. IRS Publication 596, *Earned Income Credit (EIC)*, 29-35 (Jan. 6, 2016).

57 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

58 *Id.* TAS received 8,545 EITC EB receipts in FY 2015 and 8,790 in FY 2016.

59 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

60 See Most Serious Problem: *Earned Income Tax Credit (EITC): The Future State's Reliance on Online Tools Will Harm EITC Taxpayers*, *supra*. See Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*, *supra*, for a legislative proposal to reform the EITC to reduce the complexity and minimize errors and fraud; National Taxpayer Advocate 2015 Annual Report to Congress 248-60 (Most Serious Problem: *EITC: The IRS Is Not Adequately Using the EITC Examination Process as an Education Tool and Is Not Auditing Returns with the Greatest Indirect Potential for Improving EITC Compliance*).

61 In order 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 as of the close of the calendar year: 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).

Taxpayers typically face difficulty when substantiating the residency and relationship requirements, which causes the taxpayers to turn to TAS for assistance. In these cases, 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).⁶² For these taxpayers, proving to the IRS that they are entitled to the EITC is challenging.

TAS has two advocacy opportunities for EITC taxpayers. First, TAS assists the taxpayers with gathering acceptable documentation to prove their EITC claim, and second, TAS educates the taxpayers about EITC rules. To fully advocate for the taxpayer, TAS trained and encouraged case advocates to think “outside the box” for adequate documentation. For example, if the taxpayer lived in several places throughout the year, the TAS case advocate spent time linking various leases, affidavits, and rental receipts to prove residency. For self-employed taxpayers, TAS spoke with third-party customers and secured affidavits when the taxpayer did not keep complete logs of customer service and billing to prove his or her earned self-employment income.⁶³ TAS urged case advocates to use technical advisors to help assemble the necessary EITC documentation and to assist with presenting a fully developed case to the IRS.

TAS continuously reviews how it advocates in EITC cases. In FY 2016, TAS had presentations on strategies to communicate with, and gather documentation from low income taxpayers, as well as how to present the cases to the IRS. These presentations stressed the benefits of live conversations, which include:

- Allowing interaction with the taxpayer to obtain full knowledge of the facts of the taxpayer’s situation;
- Providing the capability to offer more effective guidance for obtaining necessary documentation; and
- Offering the best delivery method for educating taxpayers about the EITC rules for eligibility and enabling taxpayers to seek clarification of the rules.

Taxpayer Protection Program (TPP)

The TPP was the sixth largest source of TAS cases overall and the fifth largest source of EB receipts.⁶⁴ The taxpayers typically need their refunds expedited to alleviate financial hardships. The IRS uses filters on refund returns to detect and suspend suspicious returns.⁶⁵ Through the TPP, the IRS intended to assist legitimate filers to authenticate their suspended returns,⁶⁶ while negating losses to the government due to ID Theft. A taxpayer must either call the TPP toll-free line or visit a TAC to verify his identity by answering a series of questions.⁶⁷

62 See National Taxpayer Advocate 2015 Annual Report to Congress 235; 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.

63 See National Taxpayer Advocate 2015 Annual Report to Congress 551 (TAS Case Advocacy: *Earned Income Tax Credit Cases*).

64 TAS did not record data on case receipts specifically from the TPP until January 2016, so TAS does not have FY 2015 data for comparison. Recording the cases separately accounted for a portion of the decrease in IDT case receipts in FY 2016.

65 See Most Serious Problem: *Fraud Detection: The IRS’s Failure to Establish Goals to Reduce High False Positive Rates for its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *supra*; National Taxpayer Advocate 2013 Annual Report to Congress 173-74. Based on prior years’ returns, including those involving “verified” fraud, models are built and implemented for detecting fraud. The IRS passes incoming returns requesting refunds through the knowledge base and scores them for likelihood of fraud. The IRS flags returns that it diverts into a workload for further inspection before it issues any refund. IRS, Kenneth A. Kaufman, *An Analysis of Data Mining in the Electronic Fraud Detection System* (Apr. 28, 2010).

66 IRM 25.25.6.1, *Taxpayer Protection Program* (Aug. 26, 2016).

67 IRM 25.25.6.1, *Taxpayer Protection Program* (May 26, 2015). Identity verification requires answering “Out of Wallet” questions, which are knowledge-based questions about private information not readily available that only the user should know.

In FY 2016, TAS received 7,160 TPP cases, including 5,679 with EB criteria, when taxpayers could not authenticate their identity with the IRS.⁶⁸ TAS provided taxpayers with instructions on the types of documents needed to authenticate his return in a TAC. TAS secured relief in 69 percent of TPP cases in an average of 40 days.⁶⁹

Affordable Care Act (ACA)

In FY 2015, TAS received 3,758 cases in which taxpayers needed assistance with an aspect of the ACA;⁷⁰ and it increased to 11,436 cases in FY 2016, more than a 204 percent increase.⁷¹ Of the total FY 2016 ACA receipts, about 95 percent were PTC cases, which accounted for most of the increase in ACA cases.⁷²

The majority (about 71 percent) of PTC cases consisted of Error Resolution System/Reject cases.⁷³ In addition, the FY 2016 Individual Shared Responsibility Payment (ISRP) receipts increased by nearly eleven percent.⁷⁴

TAS also worked cases that involved Form 1040-EZ, *Income Tax Return for Single and Joint Filers With No Dependents*, conversions, when the taxpayers sought assistance in filing the correct forms after they received notices from the IRS regarding errors in their Advanced Premium Tax Credit. TAS encountered cases in which unscrupulous preparers pocketed taxpayers' ISRP instead of transmitting the payments to the IRS.⁷⁵ The preparers used a variety of invalid reasons to persuade the taxpayers to deposit the ISRP into the preparers' accounts, such as promising lower ISRP amounts due if paid directly to the preparer. The preparers told some taxpayers that their immigration status did not qualify them for an ISRP exemption, when they actually were exempt and did not owe an ISRP.⁷⁶ TAS educated these taxpayers on ISRP and their rights.

68 Data obtained from TAMIS (Oct. 1, 2016).

69 *Id.*

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

71 Data obtained from TAMIS (Oct. 1, 2016).

72 For a full discussion of these issues, see Most Serious Problem: *Affordable Care Act (ACA): The IRS Has Made Progress in Implementing the Individual and Employer Provisions of the ACA But Challenges Remain, supra*. Data obtained from TAMIS (Oct. 1, 2016). TAS received 3,318 Premium Tax Credit (PTC) cases in FY 2015 and 10,910 in FY 2016.

73 Data obtained from TAMIS (Oct. 1, 2016).

74 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016). TAS received 352 Individual Shared Responsibility Payment (ISRP) cases in FY 2015 and 390 in FY 2016.

75 See National Taxpayer Advocate FY 2017 Objectives Report to Congress 139.

76 IRC § 5000A(d)(3). See also Instructions to Form 8965, *Health Coverage Exemptions*.

Foreign Account Tax Compliance Act (FATCA)

The IRS's approach to the Foreign Account Tax Compliance Act (FATCA)⁷⁷ implementation created significant compliance burdens for a variety of affected parties, including: nonresident aliens, U.S. citizens living abroad, and foreign financial institutions.⁷⁸ Taxpayers sought TAS's assistance for these issues.

*Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Issue*⁷⁹

The IRS froze the refunds of all taxpayers who filed a Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, reflecting amounts withheld pursuant to Chapter 3 and Chapter 4, even those supported by the requisite Form 1042-S, for up to 168 days while the IRS attempted to match applicable documentation and satisfy itself fraud had not occurred.⁸⁰ The IRS extended the hold timeframe to 12 months.⁸¹ Nevertheless, the IRS did not provide TAS with specific procedures or protocols to follow in order to assist taxpayers to release their refunds.⁸² TAS's FATCA withholding case receipts increased from 103 cases in FY 2015 to 774 cases in FY 2016 — an increase of about 650 percent.⁸³

Foreign students experienced difficulties in obtaining refunds of withholding tax reported on Form 1042-S.⁸⁴ TAS's efforts to assist these taxpayers were hampered by the lack of IRS guidance for over a year as to how the IRS would determine whether Form 1042-S withholding claimed on a tax return matched the Form 1042-S data filed with the IRS.⁸⁵

77 Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010).

78 See, e.g., *SIFMA, Comments on the Final FATCA Regulations* (Jun. 21, 2013), 2, <http://www.sifma.org/comment-letters/2013/sifma-submits-comments-to-the-us-department-of-treasury-and-the-irs-on-final-fatca-regulations/>; Treas. Reg. § 1.1474-1(f); Letter from American Citizens Abroad to Jacob Lew, Sec'y, Treasury, and John Koskinen, Cmm'r, IRS (Sept. 16, 2015), <https://www.americansabroad.org/media/files/files/f74d1b79/same-country-exemption-letter.pdf>. The hardships experienced by nonresident aliens occur most often under Chapter 3 of the IRC (IRC §§ 1441-1443), which is not part of FATCA. Nevertheless, as it went about implementing FATCA, the IRS determined that it would begin treating Chapter 3 refund claims synonymously with its treatment of Chapter 4 refunds. See Notice 2015-10, 2015-20 I.R.B. 965. As a result, the issues experienced by nonresident aliens when filing Forms 1040-NR, *U.S. Nonresident Alien Income Tax Return*, seeking amounts shown as withheld on Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, arose. See Most Serious Problem: *The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights*, *supra*.

79 See Most Serious Problem: *Foreign Account Tax Compliance Act (FATCA): The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights*, *supra*; National Taxpayer Advocate 2017 Objectives Report to Congress 80-84.

80 IRM 21.8.1.11.14.2, *FATCA — Programming Beginning January 2015 Affecting Certain Forms 1040-NR (TC 810-3-E Freeze)* (May 1, 2015) (August 1, 2016). See also IRS SERP Alert 15A0188 (Mar. 23, 2015). The IRS informed taxpayers that those who requested a refund of tax withheld on a Form 1042-S by filing a Form 1040-NR will have to wait up to six months from the original due date of the 1040-NR return or the date the 1040-NR was filed, whichever was later, to receive any refund due. As of June 30, 2016, overpayments created by Forms 1042-S credits taken on Forms 1040-NR are no longer systemically frozen.

81 SERP Alert 15A0416 (Sept. 11, 2015).

82 See National Taxpayer Advocate FY 2016 Objectives Report 48-52.

83 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

84 See Most Serious Problem: *Foreign Account Tax Compliance Act (FATCA): The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights*, *supra*; National Taxpayer Advocate 2017 Objectives Report to Congress 80-84. IRS, *IRS Takes Steps to Help Students; Outlines Interim Process for Obtaining Refunds of Withholding Tax Reported on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding* (June 6, 2016), <https://www.irs.gov/uac/irs-takes-steps-to-help-students-and-others-outlines-interim-process-for-obtaining-refunds-of-withholding-tax-reported-on-form-1042s-foreign-persons-us-source-income-subject-to-withholding>.

85 SERP Update 16U0135, *New 1042-S Validation Procedures* (Jan. 19, 2016).

TAS advocated for taxpayers experiencing problems from systemic Chapter 3 and Chapter 4 refund freezes.⁸⁶ TAS worked with the Large Business & International (LB&I) Operating Division to develop withholding verification procedures for taxpayers with TAS cases. TAS assigned all FATCA cases to two TAS offices with subject matter experts on international tax issues.⁸⁷ In June 2016, the IRS suspended all Form 1042-S processing.⁸⁸ LB&I did not have procedures to work the volume of cases, in addition to TAS's OARs.

TAS secured all original returns and performed extensive research before issuing the OARs. Withholding agents were frustrated, because no one could assist them with the errors. Taxpayers received balance due letters, some with intent to levy notices, because the proper withholding credits were not applied to their accounts. Some taxpayers waited more than a year to receive their refunds. In some cases, they received more than one refund, because of the systemic errors.

Eventually, after concerns were raised by the National Taxpayer Advocate and other stakeholders, the IRS announced that it would lift the freezes placed on refunds of withholding tax reported on Forms 1042-S and that it would discontinue its policy of instituting future freezes until it redesigned the process for examining such claims.⁸⁹ Nevertheless, some of the problems that had been created in the process required substantial time and effort to rectify. Further, the issues flowing from the use of systemic freezes in the context of refunds to nonresident aliens have not been resolved but simply put on hold.

*Bulk Operations Assistance Requests (OARs)*⁹⁰

U.S. withholding agents contacted TAS to help them resolve withholding mismatch problems affecting their payees. TAS informed LB&I of its intent to issue a bulk request for assistance for nearly 35,000 taxpayers; however, the temporary systemic solution by LB&I ultimately made the bulk OAR unnecessary. The IRS paid a refund with interest for 7,745 of these taxpayers' returns (37 percent).⁹¹ Of the taxpayers receiving refunds, 5,288 taxpayers waited 306 or more days for their refunds.⁹²

Difficulty Resolving Operations Assistance Requests (OARs)

TAS issued 88 percent more OARs to LB&I in FY 2016 compared to FY 2015, mainly because of LB&I's Form 1042-S withholding refund holds process.⁹³ More taxpayers sought TAS's assistance due to pre-refund compliance activities, which caused economic burden. When LB&I received an OAR seeking

86 See Most Serious Problem: *Foreign Account Tax Compliance Act (FATCA): The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights*, supra; National Taxpayer Advocate 2017 Objectives Report to Congress 80-84.

87 TAS assigned these case to its Philadelphia West and International – Puerto Rico offices.

88 SERP Alert 16A0187, *Suspend Processing of IMF Form 1042-S Credits and Denial Inquiries* (June 6, 2016) (rescinded Aug. 19, 2016).

89 IRS, *IRS Takes Steps to Help Students; Outlines Interim Process for Obtaining Refunds of Withholding Tax Reported on Form 1042-S*, Foreign Person's U.S. Source Income Subject to Withholding (June 6, 2016), <https://www.irs.gov/uac/irs-takes-steps-to-help-students-and-others-outlines-interim-process-for-obtaining-refunds-of-withholding-tax-reported-on-form-1042s-foreign-persons-us-source-income-subject-to-withholding>.

90 For an explanation of bulk Operations Assistance Order (OARs), see *TAS Operations Assistance Request Trends*, infra.

91 IRS CDW Individual Master File (IMF) Transaction History table, Individual Returns Transaction File (IRTF) Form 1040 table, TYs 2013–2014, cycle posted 201608. In Aug. 2016, TAS evaluated CDW data on the 36,842 taxpayers that received a 2014 Form 1042-S from payers that used the same software to provide the length of time the taxpayers had to wait and the dollar amounts of their refunds.

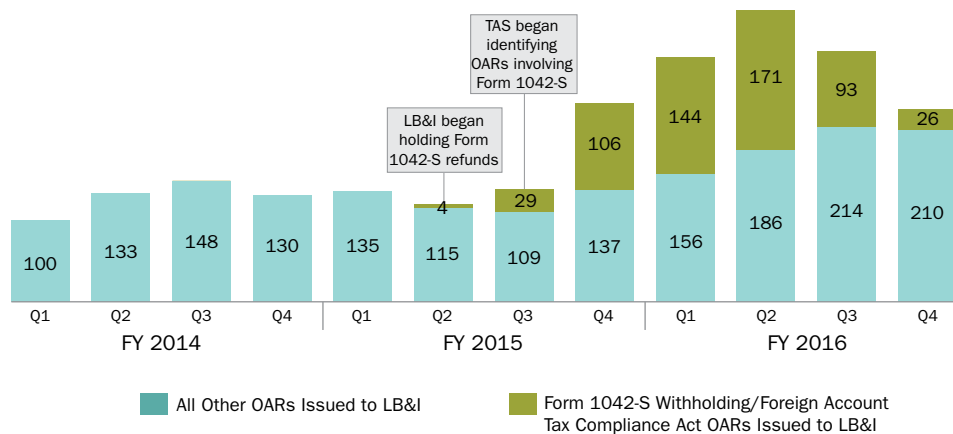
92 IRS CDW IMF Transaction History table, IRTF Form 1040 table, TYs 2013–2014, cycle posted 201608. In Aug. 2016, TAS evaluated CDW data on the 36,842 taxpayers that received a 2014 Form 1042-S from payers that used the same software to provide the length of time the taxpayers had to wait and the dollar amounts of their refunds.

93 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

withholding verification, it opened a control on its Audit Information Management System (AIMS). LB&I assured TAS that using AIMS to control the OARs would not increase the scrutiny these returns would undergo. LB&I added significantly to the time it needed to work these OARs by opening the AIMS controls. LB&I took 42 days on average to complete the actions TAS requested via OARs for the Form 1042-S withholding cases.

FIGURE 4.1.12⁹⁴

Operations Assistance Requests (OARs) Issued to Large Business & International (LB&I) Division, FYs 2014-2016 by Quarter



TAS Taxpayers Had a Higher Rate of Audit Selection

TAS identified taxpayers who filed TY 2013 or 2014 Forms 1040-NR or Forms 1040-NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, claiming refunds from Form 1042-S withholding.⁹⁵ TAS segmented this group by determining whether TAS assisted the taxpayer by sending an OAR to LB&I related to Form 1042-S withholding verification, and whether LB&I audited the taxpayer.⁹⁶ TAS found the IRS audited three percent of the non-TAS taxpayers, and 19 percent of the TAS taxpayers.⁹⁷ TAS gave the data and results to LB&I. LB&I immediately stopped gathering information that it did not need to perform withholding verification, but used to put the tax returns on AIMS. TAS received 774 FATCA withholding cases in FY 2016, including about 42 percent with economic burden.⁹⁸ In FY 2016, TAS obtained relief for over 81 percent of taxpayers in FATCA withholding cases.⁹⁹ TAS’s average time to conclude a FATCA withholding case in FY 2016

94 Data obtained from TAMIS (2014; 2015; 2016; data obtained on the date following the month ending).
 95 See National Taxpayer Advocate FY 2016 Objectives Report 48-52 (Area of Focus: *The IRS’s Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers*, Figure 3.4.1 - Noncompliance Rates for Form 8938 Filers vs. General Population Taxpayers).
 96 TAS counted the taxpayer as audited if the status code on AIMS indicated the return had advanced to or past the point where an audit started.
 97 IRS CDW, IMF Transaction History table, IRTF Form 1040 table, TYs 2013–2014, cycle posted 201608. 1,784 audited of 63,317 non-TAS taxpayers (three percent). Sixty-seven audited of 351 TAS taxpayers (19 percent). Data obtained from TAMIS (Apr. 30, 2016).
 98 Data obtained from TAMIS (Oct. 1, 2016).
 99 *Id.*

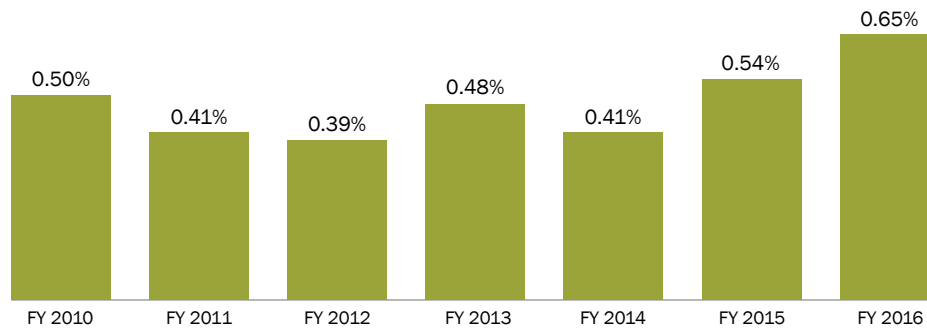
of about 89 days is significantly less than the IRS's published time of 168 days, or the extended time of 12 months.¹⁰⁰

Collection Cases

Though collection issues are not in the top five of economic burden case receipts, taxpayers face severe consequences when the IRS enforces collection by levies on income or other assets, liens on property, or seizure of property. TAS received 19,043 collection issue cases in FY 2016, a decrease of nearly 14 percent from FY 2015.¹⁰¹ The IRS's use of levies and liens declined during these periods.¹⁰² However, liens and levies account for about 46 percent of TAS's contact from taxpayers with collection issues in FY 2016, with nearly 83 percent of the lien and levy cases involving economic burden.¹⁰³

FIGURE 4.1.13¹⁰⁴

TAS Levy Cases as Percentage of IRS Levies Issued, FYs 2010-2016



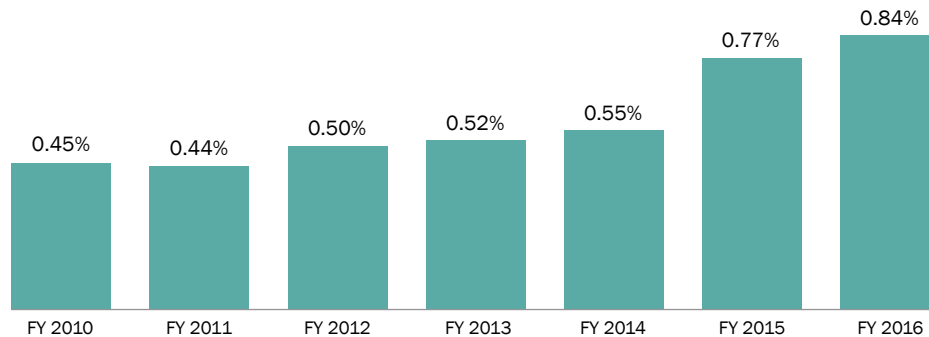
¹⁰⁰ IRM 21.8.1.11.14.2, *FATCA — Programming Beginning January 2015 Affecting Certain Forms 1040-NR (TC 810-3-E Freeze)* (May 1, 2015) (August 1, 2016). See also IRS SERP Alert 15A0188 (Mar. 23, 2015).

¹⁰¹ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

¹⁰² See National Taxpayer Advocate 2015 Annual Report to Congress 100-22. 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. In FY 2016, they were 19,043. From FY 2010 to FY 2016, levies issued by the IRS decreased by about 76 percent and lien filings decreased 67 percent. IRS, *Collection Activity Reports, NO-5000-24, Levy and Seizure Report* (FYs 2010 to 2016); IRS, *Collection Activity Reports, NO-5000-25, Liens Report* (FYs 2010 to 2016).

¹⁰³ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016). In FY 2015, TAS received 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. In FY 2016, TAS received 5,626 levy cases and 3,072 lien cases for a total of 8,698 cases, or 45.7 percent of the total collection cases. Of the 8,698 cases, 4,850 levy cases and 2,377 lien cases were economic burden, or 83.1 percent.

¹⁰⁴ Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016). 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; Oct. 19, 2016).

FIGURE 4.1.14¹⁰⁵**TAS Lien Cases as Percentage of IRS Liens Issued, FYs 2010-2016**

Despite a decline in the number of liens or levies being issued, as shown in Figures 4.1.13 and 4.1.14, taxpayers seeking TAS assistance with liens and levies issues increased from FY 2010 to FY 2016. The IRS is actually causing more harm to taxpayers while issuing fewer liens and levies. The National Taxpayer Advocate is concerned about whether the taxpayers' rights to privacy and to a fair and just tax system are being protected.

TAS provided relief in about 71 percent of collection cases in FY 2016, compared to approximately 78 percent on all issues.¹⁰⁶ In FY 2016, TAS issued 46 Taxpayer Assistance Orders (TAOs) in collection cases where the IRS did not agree with TAS's recommendations initially.¹⁰⁷ Of these 46 TAOs, the IRS complied with 30 in an average of 25 days, meaning the IRS's negative responses to TAS's requests unnecessarily delayed resolution, further harming the taxpayers, when there was no material disagreement on the resolution.¹⁰⁸

In FY 2016, TAS focused on the harm done by retirement account levies.¹⁰⁹ The examples presented in this report illustrate issues raised in cases handled by TAS. 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 modified or redacted. In certain examples, TAS has obtained the written consent of the taxpayer to provide more detailed facts.

¹⁰⁵ Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016). IRS, 5000-23 Collection Workload Indicators (Mar. 22, 2011; Oct. 11, 2011); IRS, 5000-24 Collection Activity Report (Oct. 9, 2012; Oct. 22, 2013); IRS, 5000-25 Collection Activity Report (Oct. 6, 2014; Oct. 7, 2015; Oct. 19, 2016). IRS liens may be placed on an account in one year but become a TAS case in a different year. For purposes of this chart, TAS divided the number of lien cases received by TAS in the given fiscal year by the number of liens issued by the IRS for the same fiscal year.

¹⁰⁶ Data obtained from TAMIS (Oct. 1, 2016).

¹⁰⁷ TAO compliance data is as of Oct. 1, 2016.

¹⁰⁸ Data obtained from TAMIS (Oct. 1, 2016).

¹⁰⁹ See National Taxpayer Advocate FY 2017 Objectives Report to Congress 94-101 (Area of Focus: *Despite Insufficient Internal Guidance, the IRS Continues to Levy on Retirement Accounts and Has Completed a Pilot for Levying on Thrift Savings Plan Accounts Through the Automated Collection System*).

The IRS assessed a Trust Fund Recovery Penalty (TFRP) against a taxpayer.¹¹⁰ An IRS employee previously declined to issue a levy, because the taxpayer was near retirement age and would rely on the funds in retirement, placing the taxpayer in currently not collectible (CNC) status.¹¹¹ Within 30 days of expiration of the Collection Statute Expiration Date (CSED),¹¹² the IRS issued a levy to seize the entire retirement account. The taxpayer sought TAS's assistance. After a detailed analysis of his financial information, including the poverty level and mortality rate calculation of funds needed for his anticipated life span, TAS determined the taxpayer still met the CNC requirements. TAS deemed that the taxpayer would depend on these retirement funds and did not find any "flagrant" conduct warranting this levy.¹¹³ The IRS acted solely due to the imminent CSED. TAS found that the IRS did not offer the taxpayer his right to an appeal, which is contrary to a taxpayer's *right to appeal an IRS decision in an independent forum*.¹¹⁴ Because minimal time remained before the financial institution released the levied funds, TAS issued an OAR to stop the release of funds pending review by TAS.¹¹⁵ The IRS responded that the levy was procedurally correct without addressing hardship or the taxpayer's future dependence on the retirement account. TAS issued a TAO.¹¹⁶ TAS noted that the law requires a levy release when the levy would create an economic hardship for the taxpayer.¹¹⁷ The IRS then granted the hold of the levied funds. TAS proved the hardship and demonstrated the flaws in the IRS's financial analysis. The IRS agreed not to levy on the retirement account.

In another case, the taxpayer's wife received a wage levy after the taxpayer incurred a tax debt as the result of withdrawing funds from her retirement account without adequately withholding for income taxes on the withdrawal.¹¹⁸ The taxpayers needed the funds to pay basic living expenses when taxpayer's husband lost his job. The IRS released the levy in response to an OAR. TAS learned that the taxpayers were divorcing and that taxpayer wife lost her job. The IRS still denied CNC, implying the IRS would levy the remaining balance in her retirement account, restating that the taxpayer's failure to have withholding caused the debt. The IRS did not complete the analysis required per its own guidance before it issued a levy on the retirement account. TAS issued a TAO to assure that the IRS properly considered the taxpayer's current situation, including job loss, age, and reliance on the retirement account in the near future, and again requested CNC treatment. By law, the IRS must release a levy on the property of a

110 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Aug. 11, 2016. IRC § 7501 provides that taxes withheld from others, which are to be paid to the United States, are held in a special fund in trust for the United States. The IRS refers to these taxes as "trust fund" taxes. Trust fund taxes include employment taxes, income tax withheld from employees' wages, and certain types of excise taxes. IRC § 6672 provides for the assessment of a Trust Fund Recovery Penalty (TFRP) against those deemed responsible persons when these monies are not paid as required. For a discussion of litigated TFRP cases see Most Litigated Issue: *Trust Fund Recovery Penalty (TFRP) Under Internal Revenue Code § 6672, supra*.

111 When a taxpayer has no assets or income, which are, by law, subject to levy, or it is determined that levy action would create a hardship, the IRS may report the liability as currently not collectible. A hardship exists if the levy action prevents the taxpayer from meeting necessary living expenses. IRM 1.2.14.1.14, *Policy Statement 5-71* (Nov. 19, 1980). See also Treas. Reg. 301.6343-1(b)(4).

112 IRC § 6502.

113 See National Taxpayer Advocate 2015 Annual Report to Congress 100-11 (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*).

114 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

115 See *TAS Operations Assistance Request Trends, infra*.

116 For a detailed discussion of TAOs, see *TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases, infra*.

117 IRC § 6343(a)(1)(D).

118 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Aug. 16, 2016.

taxpayer if the levy is creating an economic hardship due to the financial condition of the taxpayer.¹¹⁹ The IRS agreed not to pursue the levy because the additional income tax generated from a levy on the retirement account would create an economic hardship for the taxpayer and placed the taxpayer's account into CNC status.

TAS Operations Assistance Request (OAR) Trends

To assist taxpayers more efficiently, the Commissioner of Internal Revenue 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.¹²⁰ 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 67 percent of all TAS cases closed in FY 2014, 69 percent in FY 2015, and 68 percent in FY 2016.¹²¹ After independently reviewing the facts and circumstances of a case and communicating with the taxpayer, TAS issues OARs to convey a recommendation or request that the IRS take action to resolve the issue, and provides documentation that supports it. The 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 agree to work TAS cases on a priority basis and expedite the process for taxpayers whose circumstances warrant immediate handling. The Service Level Agreements (SLAs) require the BODs to direct resources to process OARs.¹²² 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, *Operations Assistance Request*, includes an "expedite" box that TAS case advocates may check when the BOD needs to act immediately to relieve the taxpayer's significant hardship.

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 TAS calls a "bulk OAR." During the 2016 filing season, TAS successfully implemented a bulk OAR process for cases involving Integrity and Verification Operations (IVO) Pre-Refund Wage Verification Holds. TAS and IVO used the new process for 16 weeks during the 2016 filing season and agreed to expand this process through December 31, 2016. Over 26 weeks, TAS sent 360 accounts to IVO on Bulk OARs. IVO quickly reviewed and took action to release refunds to taxpayers in two business days or less.¹²³ TAS and IVO will revisit and update the procedures for the 2017 filing season.

119 IRC § 6343(a)(1)(D). Economic hardship exists when an individual taxpayer is unable to pay his or her reasonable basic living expenses. Treas. Reg. § 301.6343-1(b)(4)(i).

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

121 TAS closed 149,484 cases with OARs in FY 2014; 156,273 in FY 2015; 149,739 in FY 2016. TAS can issue more than one OAR on a case. Data obtained from TAMIS (Oct. 6, 2014; Oct. 5, 2016; Oct. 3, 2016).

122 TAS has a Service Level Agreement (SLA) with each business operating division (BOD). Each SLA states the terms of engagement between TAS and the BODs, as agreed to by their respective executives, including timeframes and processes for communication in the OAR and TAO processes to assure that the IRS treats TAS cases with the agreed upon level of priority.

123 Data obtained from TAMIS (Oct. 1, 2016).

FIGURE 4.1.15, Expedited and Non-Expedited OARs Issued by BOD, FY 2016¹²⁴

Business Operating Division	FY 2016 OARs Issued Requesting Expedite Action	FY 2016 OARs Issued Without Expedite Request	FY 2016 Total OARs Issued
Appeals	260	555	815
Criminal Investigation	31	64	95
Large Business and International	343	841	1,184
Small Business/Self-Employed	20,561	26,169	46,730
Tax Exempt/Government Entities	264	400	664
Wage and Investment	97,425	90,451	187,876
Total	118,884	118,480	237,364

As depicted in Figure 4.1.15, TAS issues OARs across all IRS Business Operating Divisions and Functions. As described in previous Objectives Reports to Congress, TAS worked with the IRS Information Technology function and contractors to develop a replacement system known as the Taxpayer Advocate Service Integrated System (TASIS) that included functionality to electronically submit and track OARs.¹²⁵ The IRS halted TASIS development within an estimated six months of its completion in March 2014 due to budget constraints. Subsequently, the IRS launched a comprehensive project to create a servicewide Enterprise Case Management (ECM) solution. The ECM model would provide automation for OARs. However, at the time of this report, ECM planning has dropped electronic OARs from implementation plans through FY 2018.¹²⁶

TAS Uses Taxpayer Assistance Orders (TAOs) to Advocate Effectively

The TAO is a powerful statutory tool, delegated by the National Taxpayer Advocate to Local Taxpayer Advocates (LTAs), to resolve taxpayer cases.¹²⁷ LTAs issue TAOs to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions.¹²⁸ A TAO may also 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.¹²⁹ If a taxpayer faces significant hardship and the facts and law 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.¹³⁰ Once TAS issues a TAO, the BOD must comply with the request or appeal the issue for resolution at higher management levels.¹³¹ Only the National Taxpayer Advocate, Commissioner, or Deputy

¹²⁴ Data obtained from TAMIS (Oct. 1, 2016).

¹²⁵ For more information, see Most Serious Problem: *Enterprise Case Management (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Integrated System (TASIS) As a Quick Deliverable and Building Block for the Larger ECM Project*, *supra*; National Taxpayer Advocate 2017 Objectives Report to Congress 195-97 (TAS Technology: *TAS Focus on IRS Enterprise Case Management (ECM) and the Taxpayer Advocate Integrated System (TASIS)*); National Taxpayer Advocate 2016 Objectives Report to Congress 90-105 (TAS Technology: *TAS Remains Steadfast in the Search for Funding to Modernize Antiquated Systems*); and National Taxpayer Advocate 2015 Objectives Report to Congress 92-98 (Area of Focus: *IRS Funding Gap Creates Severe Risk to the Delivery of the Taxpayer Advocate Service Integrated System (TASIS)*).

¹²⁶ For more information, see Most Serious Problem: *Enterprise Case Management: The IRS's Enterprise Case Management Strategy Fails to Capitalize on TAS's Prior Case Management Efforts and Has the Potential for Waste and Duplication*, *supra*.

¹²⁷ 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)* (Mar. 17, 2009).

¹²⁸ IRC § 7811(b); Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, *Purpose of Taxpayer Assistance Orders* (Dec. 15, 2007).

¹²⁹ Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3 (Dec. 15, 2007).

¹³⁰ IRC § 7811(a)(1); Treas. Reg. § 301.7811-1(a)(1) and (c).

¹³¹ IRM 13.1.20.5(2), *TAO Appeal Process* (Dec. 9, 2015).

Commissioner may rescind a TAO, and until a TAO is rescinded, the Operating Division cannot take action on the case.¹³²

In FY 2016, TAS issued 144 TAOs,¹³³ including 13 in cases where the IRS failed to respond to an OAR, further delaying relief to taxpayers. Of these 13 TAOs, the IRS complied with eight TAOs in an average of 21 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.¹³⁴ Figure 4.1.16 reflects the results of all TAOs. Figure 4.1.17 shows the TAOs issued by fiscal year.

FIGURE 4.1.16, Actions Taken on FY 2016 TAOs Issued¹³⁵

Action	Total
IRS Complied With the TAO	92
IRS Complied After the TAO Was Modified	2
TAS Rescinded the TAO	14
TAO Pending in Process or on Appeal	36
Total	144

FIGURE 4.1.17, TAOs Issued to the IRS, FYs 2012–2016¹³⁶

Fiscal Year	TAOs Issued
2012	434
2013	353
2014	362
2015	236
2016	144

In January 2016, the IRS finally issued updated guidance, stating the circumstances in which qualifying taxpayers would be entitled to relief from the actions of unscrupulous return preparers and how to adjust taxpayer accounts. Since FY 2010, TAS issued 174 Return Preparer Misconduct (RPM) TAOs, including 13 issued in FY 2016 before the National Taxpayer Advocate issued guidance for TAS employees to implement the IRS guidance on the outstanding TAO cases.¹³⁷

TAS modified the TAOs per the new guidance to seek relief for the taxpayers. To date, the IRS complied with 78 of the modified TAOs by processing the taxpayers' corrected returns, eliminating any balances

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

133 Data obtained from TAMIS (Oct. 1, 2016).

134 *Id.*

135 *Id.*

136 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

137 See *Interim Guidance on Advocating for Taxpayers Impacted by Return Preparer Misconduct*, TAS-13-0916-007 (Sept. 5, 2016); *Interim Guidance on Allegations of Return Preparer Misconduct for the Identity Theft Victim Assistance – Compliance (IDTVA-C) Only for Tax Year 2013 and Prior (Suspended Cases Only)*, WI-25-1215-003 (Dec. 31, 2015); *Interim Guidance on Allegations of Return Preparer Misconduct for IDTVA RPM Accounts Management (AM) ONLY for Cases Tax Year 2013 (and prior) Received On or Before 12/31/2015*, WI-25-1215-004 (Dec. 31, 2015). Data obtained from TAMIS (Oct. 1, 2016).

caused by the preparers' actions, and releasing refunds to the taxpayers.¹³⁸ The IRS is still considering 38 of the modified TAOs.¹³⁹ TAS is actively developing 11 cases to meet the IRS's requirements.¹⁴⁰ TAS may elevate the modified TAOs, if TAS and the BOD do not reach agreement. TAS rescinded 39 of the TAOs without relief for the taxpayers, because the taxpayers were unable to secure the information that the IRS required in its new procedures.¹⁴¹ The taxpayers were hampered by the extensive time lapse between the National Taxpayer Advocate's elevation of this issue in 2011, subsequent debate with the IRS over the ensuing five years, and the IRS's final release of guidance. For example, taxpayers were unable to file police reports with local law enforcement agencies, because the incidents occurred more than three years ago. Others were not able to locate flyers, business cards, website pages, etc., to show that the individual presented himself as a preparer of returns at the time.

In FY 2016, TAS held discussions on the TAO process, and the use of TAOs during leadership calls, emphasizing all facets of advocacy and to strengthen awareness of situations needing a TAO. For example, TAS disseminated information in these calls about modifying the suspended RPM TAOs to secure final relief for qualifying taxpayers under the IRS's Interim Guidance Memorandum (IGM) and updated IRM procedures after the taxpayers patiently waited for years.¹⁴²

The following examples illustrate the use of TAOs to obtain taxpayer relief.

TAXPAYER ASSISTANCE ORDERS (TAOs) INVOLVING ACCOUNT RESOLUTION

As discussed above, ID Theft can adversely affect taxpayers. Approximately 74 percent of individual taxpayers filing returns claimed refunds, averaging about \$2,746.¹⁴³ In an ID Theft situation, where the IRS processed a false return before the actual taxpayer filed a return, the IRS will not issue a refund to the actual taxpayer until the IRS fully resolves the Social Security number ownership, which can take 180 days.¹⁴⁴ In FY 2016, TAS issued five TAOs involving ID theft.¹⁴⁵ The IRS complied with three of these TAOs; two are in process.¹⁴⁶ The taxpayers faced economic burden in three of these cases and thus needed expedited case handling.¹⁴⁷ 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 his car to get to work.

138 Data obtained from TAMIS (Nov. 29, 2016).

139 *Id.*

140 *Id.*

141 *Id.*

142 See *Interim Guidance on Advocating for Taxpayers Impacted by Return Preparer Misconduct*, TAS-13-0916-007 (Sept. 5, 2016); *Interim Guidance on Allegations of Return Preparer Misconduct for the Identity Theft Victim Assistance – Compliance (IDTVA-C) Only for Tax Year 2013 and Prior (Suspended Cases Only)*, WI-25-1215-003 (Dec. 31, 2015); *Interim Guidance on Allegations of Return Preparer Misconduct for IDTVA RPM Accounts Management (AM) ONLY for Cases Tax Year 2013 (and prior) Received On or Before 12/31/2015*, WI-25-1215-004 (Dec. 31, 2015).

143 IRS, 2015 SP Program Management, *Process Assurance Branch Filing Season Statistics Report*, Week Ending Aug. 20, 2016. Through Aug. 19, 2016, the IRS received 145,151 million individual tax returns, of which 107,696 million claimed a refund averaging \$2,746.

144 IRM 25.23.3.2.2(1)(f), *Tax-Related Identity Theft* (Oct. 1, 2016).

145 Data obtained from TAMIS (Oct. 1, 2016).

146 *Id.*

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

Examples of TAOs involving account resolution issues follow:

The taxpayer submitted his return with his correct bank account number for a direct deposit refund but never received his refund. Because the taxpayer filed the return with the correct account information, TAS requested that the IRS issue the taxpayer his refund. The IRS claimed it input the information from the taxpayer's return and the error was the taxpayer's.¹⁴⁸ TAS challenged this. The IRS provided an exact copy of the taxpayer's return, which contained a different direct deposit account than on the copy the taxpayer kept for his records. TAS confirmed that the account owner, not the taxpayer, withdrew the funds, so the bank could not return the funds to the IRS. TAS contacted the Treasury Inspector General for Tax Administration (TIGTA). Based on its investigation, TIGTA confirmed the return was altered after the IRS received it, which TIGTA pursued separately. TIGTA agreed the IRS should make the taxpayer whole. The IRS continued to refuse to release the refund. TAS issued a TAO to secure the refund. The IRS released the refund.¹⁴⁹

In another case, the taxpayer filed an injured spouse claim.¹⁵⁰ The IRS mailed the refund to the wrong address. When the refund was re-issued, the injured spouse coding was not re-input, so the refund offset against the debt of the spouse again. TAS had the refund returned from the other agency to the taxpayers' account and issued the refund a third time, but the check never arrived. TAS performed a refund trace and issued an OAR to re-issue the check after the postal service returned the check and the IRS posted the funds back to the account. The IRS did not respond to the OAR. When TAS followed up, the IRS said it was too busy with filing season phone duty. The IRS refused to work the case without a TAO, so TAS obliged.¹⁵¹ The IRS released the refund.¹⁵²

The taxpayer filed original income tax returns to correct his accounts after the IRS made substitute for return assessments (SFR).¹⁵³ The taxpayer stated that he would not actually owe any tax once the IRS processed the original returns. TAS wanted the IRS to cease collection action and process the returns. The IRS did not acknowledge receipt of one return and sent the other for statute clearance.¹⁵⁴ The IRS then said the SFR Unit had to address the problem. The IRS refused to engage in discussion at the next

148 IRM 21.4.1.4.7.5, *Non-Receipt of Direct Deposited Refunds — "Refund Inquiry Employees"* (Oct. 1, 2016 and Dec. 7, 2016).

149 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Aug. 1, 2016.

150 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.

151 TAS received this response repetitively from one unit on multiple cases, resulting in TAS issuing multiple TAOs. TAS elevated the situation to the Filing Season Readiness team for resolution to avoid further delays for additional taxpayers. The unit resumed working OARs promptly.

152 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Jul. 28, 2016.

153 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 whom the IRS 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.

154 IRM 25.6.1.2, *What Is a Statute of Limitation* (Oct. 1, 2001) states that "A statute of limitation is a time period established by law to review, analyze and resolve taxpayer and/or IRS tax related issues." The statute function reviews a return to assure that the IRS may process it, because the statute of limitations has not expired, which is called "clearance."

level, as required by the SLA.¹⁵⁵ TAS issued a TAO to each unit with which problems were occurring. The IRS promptly posted the returns, reversed the prior offsets of subsequent year refunds, and released the refunds, because the taxpayer did not owe a balance after the IRS took these actions.¹⁵⁶

A taxpayer came to TAS after waiting 30 weeks for the IRS to process his amended returns for two tax years, regarding Form 4361, *Application for Exemption from Self-Employment Tax for a Minister*. The normal processing time for amended returns is 16 weeks.¹⁵⁷ The normal processing time for the Form 4361 is 45 days.¹⁵⁸ TAS sent an OAR. The IRS did not acknowledge the OAR, or take other actions due to filing season phone duty. TAS issued a TAO. The IRS sent the refund to the wrong address, causing additional delay. The IRS placed a hold on the account.¹⁵⁹ TAS had the hold removed, as it was incorrect. The IRS released the refund.¹⁶⁰

Another taxpayer received an adjustment to his veteran's benefits due to exposure to Agent Orange. He filed a Form 1040-X, *Amended Individual Income Tax Return*, claiming an additional refund due to the tax-exempt nature of the payments. The IRS denied his request, saying the taxpayer filed after the refund statute expired, ignoring the specific extended statute of limitations period allowed for this issue.¹⁶¹ He received a Letter 105C, *Notice of Claim Disallowance*, to allow appeal rights. The IRS and Appeals said he did not make a timely appeals request. TAS disagreed with the IRS's and Appeals' determinations on the technical merits of the amended return and the taxpayer's timeliness to appeal. TAS secured a Form 843, *Claim for Refund*, to secure new appeal rights for the taxpayer. TAS sent an OAR with a full explanation about why the claim was allowable in full. Accounts Management (AM) allowed the claim and entered the adjustments. AM sent the Form 843 to the statute function of the IRS, as required, to review it to assure that the statute of limitations had not expired. The statute function ignored the exception to the statute of limitations for this issue and refused to release the hold on the account, preventing issue of the refund. The IRS would not issue a second Letter 105C, to allow appeal rights, again stating the taxpayer already received one and missed the date to appeal. TAS issued a TAO to pursue the release of the refund as allowed by AM, asserting that the statute function did not have the authority to override AM's

155 TAS has an SLA with each business operating division (BOD). Each SLA states: "The signatures of the NTA and the Commissioner, BOD reflect concurrence that TAS casework requires priority consideration and will receive that consideration within" the respective BOD. Later, the SLAs state: "If the BOD employee assigned to the OAR and the TAS employee cannot agree upon the appropriate resolution of the taxpayer's problem, the TAS employee and BOD employee will elevate this disagreement to their immediate managers. If an agreement on the appropriate resolution cannot be reached within three (3) workdays, the managers will elevate the issue through the appropriate management channels within TAS and the BOD for resolution or consideration of a Taxpayer Assistance Order by the LTA." The National Taxpayer Advocate's intent with this language is to reach expeditious resolutions to avoid further harm to the taxpayers.

156 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by taxpayer dated Jul. 31, 2016.

157 IRM 21.4.1.3(2), *Refund Inquiry Response Procedures* (Oct. 1, 2016).

158 IRM 3.30.123.15.2, Form 4361, *Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*, and Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits (Philadelphia Campus Only) Processing Specifications* (Jan. 1, 2014).

159 IRM 21.5.6.1(1), *Freeze Codes Overview* (Oct. 1, 2016) states that "Freeze conditions prevent the issuance of refunds, credit offsets, or the assessment of accrued interest and/or penalties." Some freeze codes prevent all action on an account until the cause of the freeze is resolved, while others indicate that research is needed prior to taking any action.

160 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Aug. 21, 2016.

161 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. However, Congress created an exception to the general rule for refund claims relating to disability determinations by the Department of Veterans Affairs. See IRC § 6511(D) and IRM 21.6.6.3.20.1, *Extension of the Statute of Limitations to File Claims for Refund Relating to Disability Determinations by the Department of Veterans Affairs (Section 106 of Public Law 110-245)* (Jul. 5, 2016).

technical decision and that the statute function erred in its decision that the claim was not filed timely. In the alternative, TAS wanted the Letter 105C issued based on the Form 843, not reliance on the prior Letter 105C from the Form 1040-X. The IRS released the \$450 refund with \$140.66 of interest. The IRS and TAS expended resources well in excess of this amount with interest accruing daily, while the IRS was technically and procedurally incorrect, and harmed a disabled veteran.¹⁶²

TAXPAYER ASSISTANCE ORDERS (TAOs) TO EXAMINATION FUNCTIONS

In FY 2016, TAS issued 18 TAOs to examination units in W&I, Small Business/Self-Employed (SB/SE), and LB&I BODs for issues including return preparer misconduct, the EITC, audit reconsiderations, actions to complete open audits of original returns, penalty abatements, and appeal rights.¹⁶³ For example:

A taxpayer came to TAS after the IRS denied his request for an audit reconsideration, citing the inability to locate the prior audit file. TAS secured the file and the taxpayer's documents. The IRS sent the file to an examination group. Once the IRS assigned the case, the examiner told the taxpayer that she would not work the case for at least six months, contrary to the SLA with TAS. TAS attempted discussion with the examination manager, who did not respond to any form of contact. The IRS requested a statute extension before they would proceed, which was unnecessary, because the tax was already assessed. TAS issued a TAO directing the IRS to follow the Internal Revenue Code, the IRM, and the SLA to complete the audit reconsideration process after the IRS's inactivity continued and it failed to respond to TAS's contacts. The IRS issued an audit report to the taxpayer, abating the prior assessments.¹⁶⁴

TAXPAYER ASSISTANCE ORDERS (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.¹⁶⁵ Tax-exempt organizations (EOs) contribute religious, educational, scientific, social welfare, and other positive benefits to the public. Many of these EOs are small entities, staffed by volunteers.¹⁶⁶ 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.¹⁶⁷

162 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Aug. 4, 2016.

163 Data obtained from TAMIS (Oct. 1, 2016).

164 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Jul. 30, 2016.

165 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* (Jun. 30, 2013).

166 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 Exempt Organizations (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* (Jun. 30, 2013).

167 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), www.taxpayeradvocate.irs.gov/2014ObjectivesReport/Special-Report.

In FY 2016, TAS did not issue any TAOs to the TE/GE BOD.¹⁶⁸ TAS's FY 2016 case receipts involving applications for exempt status decreased by about 48 percent from FY 2015.¹⁶⁹ Over 34 percent of the FY 2016 cases met economic burden criteria, and nearly 71 percent were congressional referrals.¹⁷⁰ 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.¹⁷¹ Overall, TAS provided some form of relief in nearly 81 percent of cases (549 organizations) seeking to resolve exempt status application issues in FY 2016.¹⁷² TAS resolved these cases in an average of 75 days.¹⁷³

TAXPAYER ASSISTANCE ORDERS (TAOs) ON COLLECTION ISSUES

TAS issued 17 TAOs on levy cases in FY 2016.¹⁷⁴ The IRS complied with 12 of the 17 TAOs for levies in FY 2016.¹⁷⁵ Eight of the 17 levy-related TAOs requested the return of levy proceeds for taxpayers experiencing economic burden.¹⁷⁶ TAS rescinded one and is processing four more.¹⁷⁷

TAS issued 29 TAOs to Collection functions for non-levy issues:¹⁷⁸

In one case, the taxpayer received back-up withholding (BWH) notices despite having reported all income.¹⁷⁹ TAS requested reversal of the BWH indicator before the April deadline, because the taxpayer was low income. There was unreported income in a prior year, but the taxpayer was compliant since that time. The taxpayer was on an installment agreement (IA) for \$25 per month, but she paid \$50 per month to expedite full payment, when she could not afford it.¹⁸⁰ TAS sent an OAR to stop the BWH. The IRS said the taxpayer was "only potentially liable" and it would not reverse the BWH indicator.

168 Data obtained from TAMIS (Oct. 1, 2016).

169 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

170 Data obtained from TAMIS (Oct. 1, 2016).

171 See Most Serious Problem: *Form 1023-EZ: The IRS's Reliance on Form 1023-EZ Causes It To Erroneously Grant Internal Revenue Code § 501(c)(3) Status to Unqualified Organizations*, *supra*; National Taxpayer Advocate FY 2017 Objectives Report to Congress 181-83 (Area of Focus: *The IRS Is Aware that a Significant Proportion of Form 1023-EZ Applications It Approves Are Submitted by Organizations that Do Not Meet the Legal Requirements for IRC § 501(c)(3) Status, But It Has Not Acted to Correct Known Errors and Has Not Revised the Form to Prevent These Erroneous Approvals*); National Taxpayer Advocate 2015 Annual Report to Congress 36-44 (Most Serious Problem: *Exempt Organizations: 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*); National Taxpayer Advocate 2015 Annual Report to Congress vol. 2 3-32 (*Study of Taxpayers that Obtained Recognition as Section 501(c)(3) Organizations on the Basis of Form 1023-EZ*), 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.

172 Data obtained from TAMIS (Oct. 1, 2016).

173 *Id.*

174 *Id.*

175 *Id.*

176 *Id.*

177 *Id.*

178 *Id.*

179 IRC § 3406. IRM 5.19.3.1, *Backup Withholding ("B" and "C" Programs) Program Overview* (Nov. 5, 2015) states: "The objective of the Backup Withholding (BWH) program is to ensure payers withhold tax from certain Form 1099 income when taxpayers have underreported their income, or incorrectly reported a Taxpayer Identification Number (TIN) to the payer. IRC § 3406 authorizes the withholding of tax for the BWH program."

180 See Most Serious Problem: *Installment Agreements (IAs): The IRS Is Failing to Properly Evaluate Taxpayers' Living Expenses and Is Placing Taxpayers in IAs They Cannot Afford*, *supra*.

TAS responded with the guidance that stated what the IRS needed to do for “potential” situations. The collection manager said her decision was final and the OAR was closed “on their end” regardless of what TAS said, in violation of the SLA between TAS and the function. After TAS made multiple attempts to discuss the issue with multiple levels of IRS management without a response or with inappropriate responses, TAS issued a TAO to get the action completed. The IRS removed the BWH indicator. TAS had to follow-up due to an IRS error. Subsequently, the taxpayer completed her IA.¹⁸¹

A taxpayer came to TAS after the IRS offset the taxpayer’s refund to pay a prior year tax debt. TAS accepted the taxpayer’s oral testimony regarding financial hardship. The taxpayer was unemployed with medical issues and behind on bills. ACS would not accept TAS’s memorandum confirming the taxpayer’s financial hardship, saying the IRS allows only written proof from third parties. Per the Internal Revenue Manual, TAS may provide the memorandum, accepting oral testimony from the taxpayer or third parties.¹⁸² After TAS issued a TAO, the IRS allowed the refund.¹⁸³

TAXPAYER ASSISTANCE ORDERS (TAOs) TO APPEALS

TAS issued five TAOs during FY 2016 to the Office of Appeals, and Appeals complied with three.¹⁸⁴ TAS rescinded one at the taxpayer’s request; one TAO remains in process.¹⁸⁵

In the TAO that remains in process, the LTA had issued a TAO to the Appeals Supervisory Appeals Officer, who appealed it. The TAS Deputy Executive Director Case Advocacy then sustained the TAO, and the Director of Appeals Campus Operations again appealed the TAO. The National Taxpayer Advocate then sustained the TAO to the Chief of Appeals. The Chief of Appeals appealed the TAO, providing a written response explaining why Appeals refused to comply with the TAO. After reviewing the memorandum that accompanied the appealed TAO, the National Taxpayer Advocate re-issued the TAO to the Chief of Appeals. The reissued TAO ordered the Chief of Appeals to reconsider her decision and detailed additional facts and law in response to concerns the Chief of Appeals had raised in her memorandum appealing the TAO. The Chief of Appeals refused to consider the National Taxpayer Advocate’s second TAO, contending that there is no IRM authority for reconsideration of a TAO. Although there are no IRM procedures addressing the issue, the Office of Chief Counsel advised the Chief of Appeals that there was no legal bar to the National Taxpayer Advocate asking for such reconsideration. The Chief of Appeals still declined to reconsider based on the new information and analysis provided. The National Taxpayer Advocate then requested a legal opinion from the Office of Chief Counsel as to whether the National Taxpayer Advocate has the authority under IRC § 7811 to issue a TAO to request that an officer or employee of the IRS reconsider his or her response to an earlier TAO, if the second request is accompanied by a new memorandum addressing the concerns raised by that official in the request for appeal. Counsel opined that the National Taxpayer Advocate does have that

181 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer’s case. Release signed by the taxpayer dated Aug. 8, 2016.

182 IRM 13.1.18.6.1, *Reviewing and Requesting Information from Taxpayers* (May 5, 2016); IRM 3.17.79.3.3(2) *Issuing Hardship Refunds* (Sept. 15, 2015); IRM 3.17.79.6.4(2) *Certifying Automated Clearing House (ACH) Direct Deposit Refunds* (Jan. 1, 2016; June 15, 2016).

183 In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer’s case. Release signed by the taxpayer dated Jul. 29, 2016.

184 Data obtained from TAMIS (Oct. 1, 2016).

185 *Id.*

authority.¹⁸⁶ Thus, the refusal to reconsider the National Taxpayer Advocate's request was not supported by the law.

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 4.1.18 reflects the total congressional case receipts and total TAS receipts from other contacts.

FIGURE 4.1.18¹⁸⁷

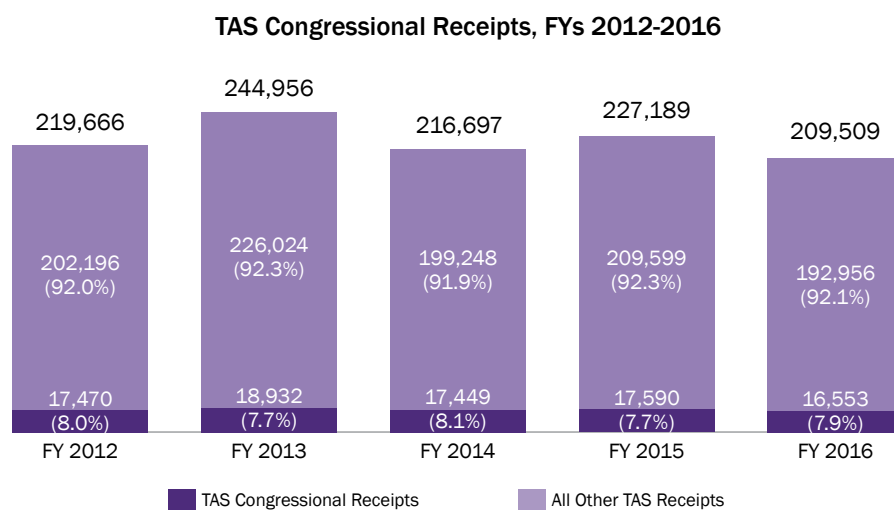


Figure 4.1.19 shows the top ten PCICs causing taxpayers to seek the assistance of their congressional representatives. Identity Theft receipts decreased by more than 24 percent between FY 2015 and FY 2016 and Pre-Refund Wage Verification Holds decreased by more than 32 percent.¹⁸⁸ These trends followed the overall TAS decrease in receipts for these issues. Congressional inquiries on behalf of constituents for Premium Tax Credit issues increased by about 104 percent, similarly to TAS receipts from other sources.¹⁸⁹ Applications for Exempt Status cases from congressional referrals declined by 33 percent, which was similar to the decline in TAS cases overall for this issue.¹⁹⁰

¹⁸⁶ Memorandum from Janice Feldman, Special Counsel to the National Taxpayer Advocate, Office of Chief Counsel, to Nina Olson, National Taxpayer Advocate (Nov. 17, 2016).

¹⁸⁷ Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016).

¹⁸⁸ Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).

¹⁸⁹ *Id.*

¹⁹⁰ PCIC 460 Application for Exempt Status cases from all sources, including congressional referrals, were 931 in FY 2015 and 486 in FY 2016, which was a decline of about 48 percent.

FIGURE 4.1.19, TAS Top Ten Congressional Receipts by Primary Core Issue Code, FYs 2015–2016¹⁹¹

Rank	Issue Description	FY 2015	FY 2016	Percent %
1	Identity Theft	3,378	2,556	-24.3%
2	Pre-Refund Wage Verification Hold	1,571	1,062	-32.4%
3	Processing Original Return	871	852	-2.2%
4	Processing Amended Return	838	731	-12.8%
5	Other Refund Inquiry/Issue	417	569	36.5%
6	Health Insurance Premium Tax Credit for Individuals Under IRC § 36B	278	568	104.3%
7	Transcript Request	502	517	3.0%
8	Installment Agreement	528	498	-5.7%
9	Unpostable and Rejects	308	492	59.7%
10	Failure to File Penalty (FTF)/Failure to Pay Penalty (FTP)	564	465	-17.6%
	Other Issues	8,335	8,243	-1.1%
	Total Congressional Receipts	17,590	16,553	-5.9%

191 Data obtained from TAMIS (Oct. 1, 2015; Oct. 1, 2016).