

Area of
Focus #11

The IRS Must Have a Comprehensive Review Process for Guidance and Other Documents to Protect Taxpayer Rights, Improve Customer Service, and Operate More Efficiently

TAXPAYER RIGHTS IMPACTED¹

- *The right to quality service*
- *The right to be informed*

An often overlooked, but critical, role of TAS is to review IRS guidance, notices, forms, publications, letters, and similar items prior to their release. IRS employees depend on accurate, up-to-date instructions to perform their duties and use the proper procedures. Similarly, taxpayers depend on guidance and publications from the IRS to help them understand their obligations and how to fulfill them. When the IRS updates its guidance or other documents, the authors must seek out and secure input from various reviewers (*e.g.*, TAS and Chief Counsel). This review – known as the Internal Management Documents/Single Point of Contact (IMD/SPOC) process – provides TAS with an opportunity to impact IRS policies prior to implementation, which benefits the IRS and taxpayers since the published instructions and guidance are essential to fulfillment of the taxpayer's *right to be informed*.² However, the IRS recently adopted a fragmented clearance approach that limits TAS's ability to provide comments and suggestions, minimize taxpayer burden, and protect taxpayer rights.³

To advocate effectively, TAS must have an opportunity to timely review IMDs and other documents. TAS receives letters from the Office of Taxpayer Correspondence (OTC) with as few as five business days to review. When TAS only has the opportunity late in the process to identify changes necessary for the protection of taxpayer rights, document owners have publishing deadlines to meet and are less inclined to discuss changes with TAS. In one instance, TAS input was largely ignored. By working with TAS from the beginning of the review process, IRS could put taxpayers first, improving the efficiency of its reviews, saving resources, and minimizing taxpayer burden.

An example of including TAS proactively involves the Tax Exempt/Government Entities (TE/GE) division, which revised its IRM guidance on how to update taxpayer letters. The guidance initially directed employees to gather suggestions from TAS after the revised letter was ready for publication. TAS recommended TE/GE change its guidance to include TAS earlier in the review process. TE/GE adopted the change and will now include TAS *before* it sends letters to the OTC, which is the last office to handle the document before publication.⁴ TAS now has an opportunity to advocate for taxpayers and negotiate any differences of opinion before TE/GE publishes the letters. TAS applauds TE/GE's common sense approach, and encourages other areas of the IRS to adopt these practices.

1 See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>.

2 For a full list of taxpayer rights, see <http://www.irs.gov/Taxpayer-Bill-of-Rights>. Additionally, for a full list and discussion of the ten core taxpayer rights, see National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration (Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights)* (Nov. 4, 2013), available at <http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf>.

3 See Internal Revenue Manual (IRM) 1.11.9.7(3), *Guidelines for Reviewers* (Dec. 4, 2014). During the clearance process, the IRS has restricted reviewers' comments. The reviewers are only allowed to comment on content that was revised by the author.

4 See TEGE-25-0215-0004 (IGM 25.1) *Interim Guidance for TE/GE Letter and Notice Procedures* (Feb. 27, 2015).

TAS recently raised several concerns on letters Small Business/Self Employed (SB/SE) Examination uses to communicate with taxpayers about the information exchanged during an audit.⁵ In particular, TAS was concerned with the 15-day condensed timeframe SB/SE Examination gave some taxpayers to respond to the IRS. Despite acknowledging TAS's concerns, the program owner proceeded with publication and did not make any additional efforts to reconcile TAS's differences. In this case, TAS did not get a chance to review these letters until after SB/SE submitted them to OTC, which called the letters "courtesy copies" and gave TAS five days to respond. After the letters generated public opposition, the IRS agreed to discontinue use of the letters. Had TAS received earlier notification and been granted more time to negotiate and elevate the use of the letters before publication, the IRS could have avoided embarrassment and taxpayers would not have been harmed.

The IRS has recently adopted changes that streamline the IMD review process,⁶ but these changes have substantially narrowed the scope of comments Operating Divisions (ODs) will accept during the clearance of their IRMs. Although these changes allow ODs to update their guidance and other documents faster, the new approach makes it more difficult for TAS to advocate for taxpayers and prevent problems arising from inappropriate or unclear guidance.

TAS has since worked collaboratively with the Tax Forms and Publications (TF&P) office to include TAS's suggestions during the update of key publications. We have also worked with the Servicewide Policy Directives and Electronic Research (SPDER) office to create guidance that gives all reviewers a way to send important comments to authors of IRMs. This new guidance recognizes the need to fully vet instructions and processes IRS uses. TAS will continue to advocate the IRS accept comments from internal stakeholders like TAS at the earliest opportunity and make a good faith effort to resolve differences of opinion.⁷

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- Collaborate with SPDER on implementing new guidance allowing all reviewers to provide comments to IRM authors;
- Seek out partners willing to revise guidance to include TAS earlier in the review process for letters and notices; and
- Reach out to the TF&P office to identify and implement ways to include TAS in the review process.

⁵ See Letter 5261, *Examination Report Transmittal - Additional Information Due (Claims for Refund)*, and Letter 5262A, *Examination Report Transmittal - Additional Information Due (No Change with Adjustments)*. For further discussion of the National Taxpayer Advocate's concerns, see Area of Focus: *Additional Requirement for Appeal Access and Compressed Case Timelines Impair the Fundamental Rights of Taxpayers*, *supra*.

⁶ See IRM 1.11.9.7(3), *Guidelines for Reviewers* (Dec. 4, 2014).

⁷ For information on how to fix this situation, see National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 97-8 (Area of Focus: *TAS Will Continue Advocating for a Servicewide Clearance Process for Tax Forms, Publications, Letters and Notices*).