MSP #12 COLLECTION PROCESS: IRS Collection Procedures Harm Business Taxpayers And Contribute To Substantial Amounts Of Lost Revenue

RESPONSIBLE OFFICIALS

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DEFINITION OF PROBLEM

The existing IRS collection strategy fails to recognize and meet the needs of business taxpayers in resolving collection issues.[1] The majority of business taxpayers working with the IRS are initially routed through collection units that have neither the authority nor the expertise to fully resolve their problems. Consequently, in fiscal year (FY) 2013, approximately 60 percent of the collection "final" notices involving business-related "trust fund" taxes were not resolved through the notice process.[2] In FY 2013, approximately 3.7 times more delinquent trust fund dollars passed through the Automated Collection System (ACS) with unresolved cases than the ACS actually collected (including refund offsets and installment agreements).[3] As a result, the resolution of these collection accounts is unnecessarily delayed, which contributes to additional tax delinquencies and the rapid accumulation of penalties and interest — factors that increase the risk these taxpayers may never pay the taxes or get back into compliance.

Alternative collection solutions for business taxpayers, *e.g.*, installment agreements (IAs) and offers in compromise (OICs), are exceptionally rare. The IRS's reluctance or failure to proactively consider these options for in-business, trust fund (IBTF) taxpayers contributes to unnecessary delays in resolving their accounts. As a result, at the conclusion of FY 2013:

- Approximately three quarters of the open inventory of trust fund tax cases involved multiple tax delinquencies;[4]
- Almost half involved four or more delinquent tax periods;[5] and

1 In this report, the term "business taxpayers" refers to taxpayers with tax obligations that are tracked by the IRS on the Business Master File (BMF), *e.g.*, employment taxes, corporate income taxes, and partnership returns. The majority of IRS collection cases that pertain to BMF liabilities are associated with small business taxpayers, defined by the IRS as businesses reporting assets of less than $10 million. For example, in FY 2013, 94 percent of the "final" notices issued on Form 941/944 delinquencies involved small business entities. IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Account Receivable Notices* (Sept. 2013).

2 IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Accounts Report, Part 2 Account Receivable Notices* (Sept. 2013). A "trust fund" tax is money withheld from an employee's wages (income tax, social security, and Medicare taxes) by an employer and held in trust until paid to the Treasury. Definition found at IRS, Businesses-&-Self-Employed/Trust-Fund-Taxes, www.irs.gov/Businesses/Small (last visited Aug. 9, 2013.).

3 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013). In FY 2013, ACS transferred $1.202 billion in trust fund delinquencies to the Queue (the Queue is an inventory of Taxpayer Delinquent Accounts (TDAs) that are active, but unassigned), $396 million to the Collection Field function (CFf), and reported $20 million as "shelved" (currently not collectible). ACS reported $243 million as collected on open trust fund accounts, $67 million collected through offsets, and $128 million collected on installment agreements established by ACS on BMF accounts.

4 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013). As of Sept. 2013, 75 percent of the trust fund cases in inventory involved more than one TDA.

5 *Id*. As of Sept. 2013, 44 percent of the trust fund cases in inventory involved four or more TDAs.

- Over 70 percent of the delinquent trust fund inventory involved debts for tax years at least three years old.[6]

Therefore, it should come as no surprise that from FY 2010 to FY 2013, the IRS has reported as uncollectible an average of $4.2 billion per year in trust fund tax debts — or roughly 1 ½ times the amount the IRS managed to collect on these accounts, including refund offsets and installment agreements.[7]

The National Taxpayer Advocate is troubled by the high percentage of business taxpayers who are unable to resolve their tax problems in response to IRS collection notices or contacts with ACS, noting that:

- The withholding and payment of trust fund taxes are vital components of the voluntary tax system;
- Trust fund tax delinquencies can quickly become unmanageable for business taxpayers;
- The IRS provides inadequate attention and service for emerging trust fund collection cases;
- The IRS insists on assigning trust fund tax cases to employees who are not fully equipped to provide the services needed to resolve them; and
- The full range of collection options are often not available to business taxpayers until the tax debts have become uncollectible.

The IRS could be much more successful in resolving many of these accounts by taking a more proactive, service-oriented approach to these cases. By not providing reasonable, timely solutions for business taxpayers, the IRS is losing opportunities to improve compliance, collect more revenue, and support the nation's economy.

6 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013). In FY 2013, the IRS reported in inventory 1,197,082 TDAs involving trust fund taxes associated with tax years 2010 and prior, or 71.2 percent of the total.

7 *Id*; see also IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013). The IRS reported $4.158 billion, $5.091 billion, $4.149 billion, and $3.586 billion in trust fund taxes as currently not collectible in FYs 2010, 2011, 2012, and 2013, respectively. The IRS reported dollars collected/offset on trust fund TDA accounts as $2.192 billion, $2.344 billion, $1.925 billion, and $1.808 billion for FYs 2010, 2011, 2012, and 2013, respectively. The IRS reported $625 million, $728 million, $857 million, and $875 million collected from installment agreements on BMF accounts during FYs 2010, 2011, 2012, and 2013, respectively. Note: the installment agreement figures include all payments on all BMF accounts — not only those involving trust fund taxes.

ANALYSIS OF PROBLEM

The withholding of employment taxes by business taxpayers is a vital component of the voluntary compliance tax system.

Taxpayer businesses contribute to the administration of the nation's voluntary tax system through the withholding and payment of employment-related "trust fund" taxes. IRS studies have confirmed that taxpayers subject to trust fund tax withholding maintain the highest levels of voluntary compliance.[8] In FY 2012, trust fund taxes comprised approximately 70 percent of the total tax revenues collected by the IRS.[9] In a very real sense, trust fund taxes collected by employers help form the "backbone" of the nation's tax system.

By not providing reasonable, timely solutions for business taxpayers, the IRS is losing opportunities to improve compliance, collect more revenue, and support the nation's economy.

Trust fund tax delinquencies are "high risk" debts, which can quickly become unmanageable for business taxpayers.

Bureau of Labor Statistics data reveal that over half of newly established businesses fail within the first five years of operation,[10] and only about a third survive ten years or more.[11] It is not uncommon for a financially struggling business to fail to meet its trust fund tax obligations. Without adequate attention, these debts can multiply rapidly and quickly become very difficult for the taxpayer to resolve. In FY 2013, the IRS reported in inventory over 450,000 taxpayer cases involving delinquent trust fund taxes.[12] As shown in Figure X, of these accounts, 75 percent involved more than one delinquent tax period, and 44 percent involved four or more.[13] These cases accounted for over $14 billion in delinquent trust fund taxes.[14] Consequently, the IRS has traditionally categorized trust fund tax delinquencies as "high risk" debts.[15]

8 IRS, IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study* (Jan. 6, 2012). The IRS reports that compliance is highest where there is third-party information reporting and/or withholding. For example, most wages and salaries are reported by employers to the IRS on Forms W-2 and are subject to withholding. As a result, a net of only one percent of wage and salary income was misreported in 2006. In contrast, amounts subject to little or no information reporting had a 56 percent net misreporting rate.

9 IRS, Internal Revenue Service Data Book (October 1, 2011, to September 30, 2012).

10 U.S. Bureau of Labor Statistics, Business Employment Dynamics, www.bls.gov/bdm/entrepreneurship/bdm_chart 3.htm (last visited Aug. 7, 2013).

11 *Id*.

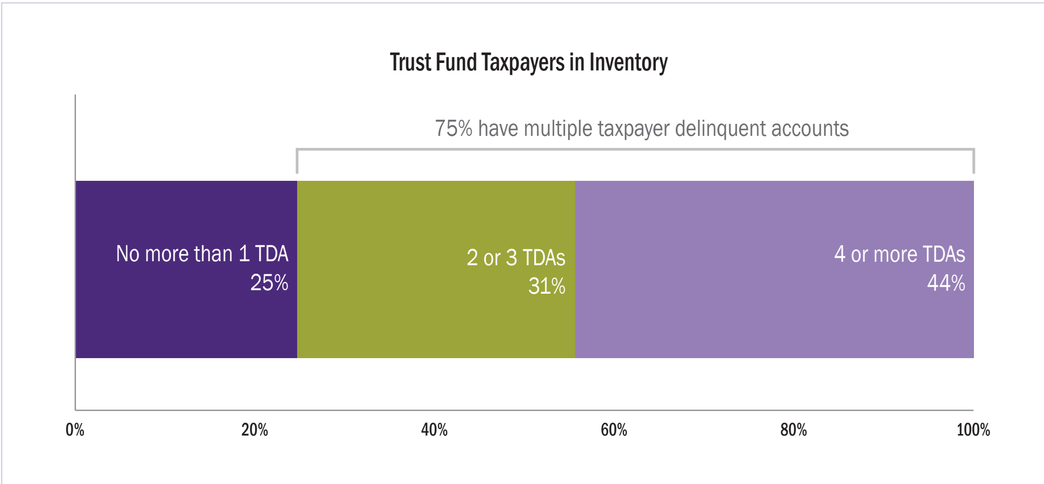
12 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 2013). The IRS reported 451,861 taxpayer cases in inventory that included trust fund taxes.

13 *Id*. The IRS reported 338,431 taxpayer cases involving more than one delinquent trust fund period, and 198,529 involving four or more such periods.

14 *Id*. The IRS reported in inventory $14,018,345,606 in delinquent trust fund taxes at the conclusion of FY 2013.

15 Internal Revenue Manual (IRM) 5.3.1.2.3, *Case Codes and Subcodes* (Feb. 22, 2012).

FIGURE 1.12.1, Trust Fund Taxpayers in Inventory – 75 Percent Have Multiple Taxpayer Delinquent Accounts[16]



The IRS collection strategy does not adequately recognize and address "high risk" trust fund tax cases in a timely, effective manner.

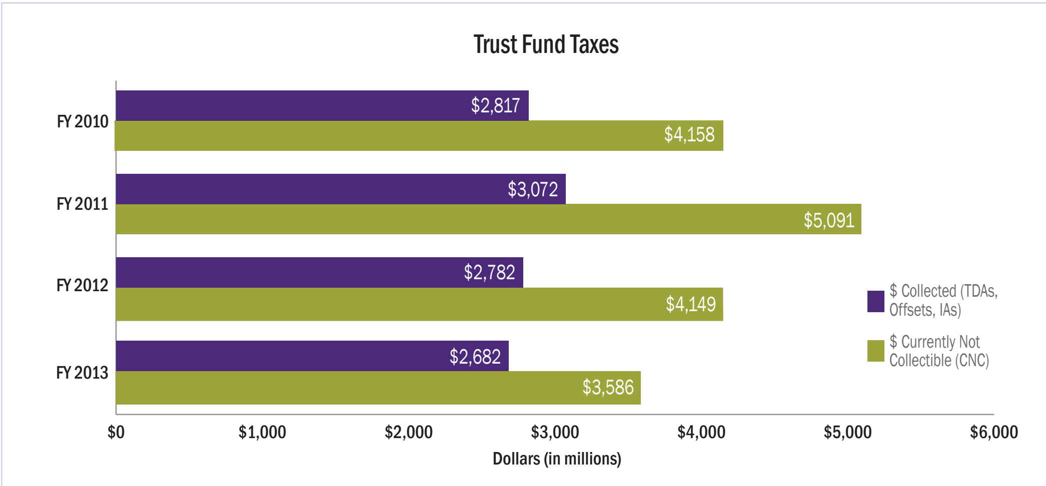
In recent years, the National Taxpayer Advocate has expressed concerns that despite the high-risk nature of cases involving trust fund taxes, the IRS has consistently failed to interact with these taxpayers with a proper sense of immediacy.[17] The IRS continues to view emerging trust fund tax problems as relatively simple cases that do not warrant early intervention by field-based revenue officers. Almost all trust fund tax cases are initially addressed through collection notices and IRS call centers, even though employees in these areas are not trained or empowered to resolve many of these accounts. Consequently, the IRS has lost billions in tax revenues by failing to employ an effective collection strategy for this important taxpayer segment. *From FY 2010 through FY 2013, the IRS reported as uncollectible an average of approximately $4.2 billion per year in trust fund tax debts — or roughly 1 ½ times the amount the IRS collected on these TDA accounts, including refund offsets and installment agreements.*[18]

16 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 2013).

17 For an in-depth discussion of these issues, see National Taxpayer Advocate 2010 Annual Report to Congress, vol. 2, 39-70 (*An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission*) and National Taxpayer Advocate 2012 Annual Report to Congress 358-380 (Most Serious Problem: *The Diminishing Role of the Revenue Officer Has Been Detrimental to the Overall Effectiveness of IRS Collection Operations*).

18 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 2013); IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013). The IRS reported $4.158 billion, $5.091 billion, $4.149 billion, and $3.586 billion in trust fund taxes as currently not collectible in FYs 2010, 2011, 2012, and 2013, respectively. The IRS reported dollars collected/offset on trust fund TDA accounts as $2.192 billion, $2.344 billion, $1.925 billion, and $1.807 billion for FYs 2010, 2011, 2012, and 2013, respectively. The IRS reported $625 million, $728 million, $857 million, and $875 million collected from installment agreements on BMF accounts during FYs 2010, 2011, 2012, and 2013, respectively. Note: the installment agreement figures include all payments on all BMF accounts — not only those involving trust fund taxes.

FIGURE 1.12.2, Substantial Amounts of Trust Fund Taxes are Reported as Currently Not Collectible (CNC) Each Year[19]



The IRS provides inadequate service and attention to emerging trust fund tax cases, especially when the debts are new and easier to resolve.

In virtually all IRS tax delinquency cases, the collection activity starts with the IRS sending notices to the taxpayer. Generally, delinquencies involving trust fund taxes receive two collection notices. While a significant number of taxpayers resolve debts in response to these notices, the majority of this population does not.

In FY 2013, the IRS issued approximately 1.5 million "final notices" (CP 504B) to small business taxpayers, representing approximately $7.2 billion in unpaid trust fund taxes.[20] About 38.8 percent of these notices were resolved by full payments (37.2 percent) or IAs (1.6 percent).[21] The IRS collected $740 million in response to these notices, or 10.3 percent of the balances due.[22] On the other hand, approximately $5.7 billion in employment tax debts — over 60 percent of the "final" notice accounts went forward in the collecting process as TDAs because the taxpayers did not successfully resolve the balances due after the IRS issued the "final" collection notice.[23]

19 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 2013); IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013).

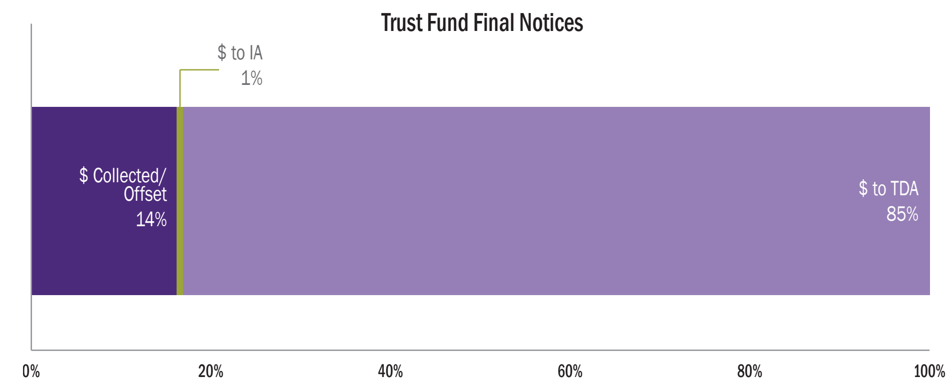
20 IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Accounts Report, Part 2 Account Receivable Notices* (Sept. 2013).

21 *Id.*

22 *Id.*

23 *Id.*

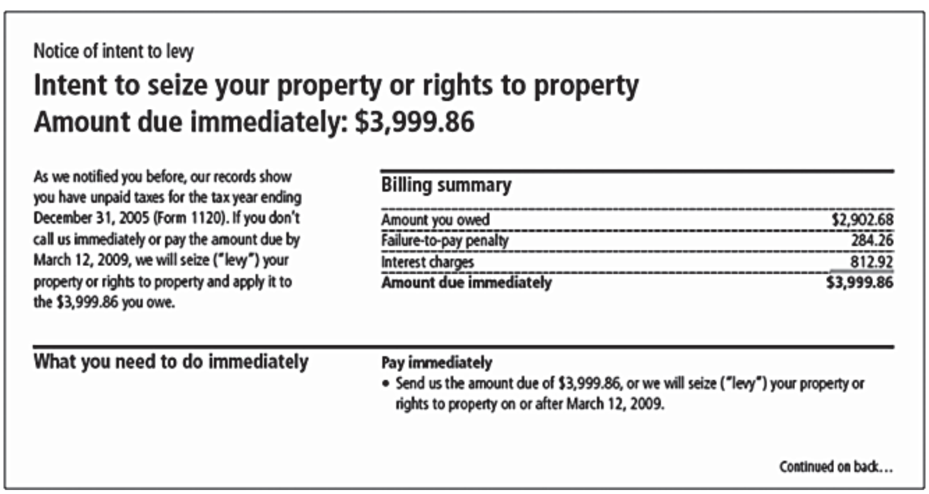
FIGURE 1.12.3, Most Delinquent Trust Fund Taxes are Not Collected Via Final Notices[24]



Collection notices to business taxpayers convey a blunt message that may discourage some from even attempting contact with the IRS.

The first notice (CP 14) issued to delinquent taxpayers employs a curt, matter-of-fact tone, which informs the taxpayer of unpaid taxes, and emphasizes that the taxpayer needs to pay the full amount immediately (in big bold letters). While the second page of the notice does provide information about contacting the IRS to discuss payment arrangements, the front page clearly stresses the message of "full pay now!"

However, if the taxpayer does not respond within five weeks, the final notice (CP 504B) is issued, and the tone is even more harsh.



Notice of intent to levy

Intent to seize your property or rights to property
Amount due immediately: $3,999.86

As we notified you before, our records show you have unpaid taxes for the tax year ending December 31, 2005 (Form 1120). If you don't call us immediately or pay the amount due by March 12, 2009, we will seize ("levy") your property or rights to property and apply it to the $3,999.86 you owe.

Billing summary

Amount you owed	$2,902.68
Failure-to-pay penalty	284.26
Interest charges	812.92
Amount due immediately	**$3,999.86**

What you need to do immediately

Pay immediately
- Send us the amount due of $3,999.86, or we will seize ("levy") your property or rights to property on or after March 12, 2009.

Continued on back…

24 IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Accounts Report, Part 2 Account Receivable Notices* (Sept. 2013). See also IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013). In FY 2013, the IRS reported approximately $935 million as collected or offset from final notices involving business trust fund taxes. Another $84 million in delinquencies were included in installment agreements, and $5.659 billion moved on in the collecting process as TDAs.

Once again, information regarding alternative payment options can be found in the fine print of the second page. Clearly, this notice was designed to encourage taxpayers to take action. However, the front page does little to encourage a financially struggling taxpayer to contact the IRS, especially if he or she cannot "pay immediately." The notice does not even acknowledge the possibility that the business may want to comply but is facing some financial difficulties. In the section "What you need to do immediately," the only option is to pay in full.

Taxpayer responses to collection notices are handled by IRS employees who are not fully equipped to resolve trust fund tax cases.

Business taxpayers responding to collection notices are directed to call an IRS toll-free number, serviced by customer service representatives (CSRs) in the Accounts Management (AM) operation of the Wage and Investment (W&I) operating division. Written responses are worked by tax examiners (TEs) in the Compliance Services Collection Operation (CSCO) of the Small Business/Self-Employed (SB/SE) operating division. However, the IRS imposes significant limitations on the abilities of these employees to provide full service to taxpayers with trust fund tax debts.

Punting a noncompliant taxpayer downstream, when that taxpayer has reached out to the IRS, is foolhardy and costly.

Accounts Management and CSCO employees receive no formal training in performing financial analysis on business cases and have very limited authorities to place taxpayers with trust fund tax debts into installment agreements.[25] For example, AM employees are only authorized to enter into an IA that meets the "streamlined" IA criteria established for AM, limited to cases with balances due of $10,000 or less and payment terms of no more than 24 months.[26] AM employees may not allow any short-term payment extensions to IBTF taxpayers.[27] If the taxpayer owes more than $25,000, or cannot pay in full within 24 months, AM will advise the taxpayer the account is being assigned for a field contact by a revenue officer.[28] If the taxpayer is not in full filing compliance, AM advises the taxpayer to file the delinquent return and call back within 30 days.[29]

Although virtually all collection notices instruct taxpayers to call AM for assistance in resolving delinquent accounts, IBTF taxpayers who do not meet AM's strict criteria for streamlined IAs will generally not succeed in their attempts to resolve their tax liability at the first point of contact, and will be passed on to the next step of the collecting process.[30] The abysmal collection statistics cited above show the consequences of the IRS's failure to work with the taxpayer at the first point of contact. Punting a noncompliant taxpayer downstream, when that taxpayer has reached out to the IRS, is foolhardy and costly.

25 IRS response to TAS information request (Sept. 13, 2012).

26 IRM 21.3.12.4.7, *In-Business Trust Fund (IBTF) Express Agreement Criteria* (Oct. 1, 2012). AM employees are authorized to establish IBTF Express Agreements up to the aggregate assessed balance (CC SUMRY) of $10,000. The entire liability, including accruals, must be paid within 24 months, or before the collection statute expiration date, whichever is earlier. In order to qualify, the taxpayer must be in full filing compliance and current on federal tax deposits (FTDs). If the taxpayer owes more than $10,000 but less than $25,000, the IA request is forwarded to CSCO.

27 IRM 21.3.12.4.2, *Taxpayer Can Full Pay Within 11 to 59 Days - IMF, BMF Out-of-Business or BMF In-Business Non-Trust Fund Accounts* (Oct. 1, 2012) and IRM 21.3.12.4.3, *Taxpayer Can Full Pay Within 60 to 120 Days - IMF, BMF Out-of-Business or BMF In-Business Non-Trust Fund Accounts* (Mar. 27, 2013).

28 IRM 21.3.12.4.7, *In-Business Trust Fund (IBTF) Express Agreement Criteria* (Oct. 1, 2012).

29 *Id*.

30 Note: Written responses from taxpayers are worked in the SB/SE CSCO operation. CSCO has similar restrictions in providing service on IBTF accounts, but works with expanded criteria for considering IBTF Express IAs, *i.e.*, tax balances of $25,000 or less.

The Automated Collection System (ACS) frequently fails to resolve trust fund tax delinquency problems; yet the IRS still assigns almost all business cases to ACS.

When not resolved by notices, almost all business cases involving trust fund taxes are initially assigned to ACS. However, in their efforts to assist these taxpayers, ACS employees are hampered by the same training limitations and procedural restrictions as employees working collection notices. For example, ACS employees do not have the authority to grant extensions to pay on IBTF accounts,[31] will not discuss alternative payment options if the taxpayer has an unfiled return,[32] and are not trained or authorized to enter into non-streamlined IAs for accounts involving business taxes.[33]

In light of these restrictions, ACS has limited success in resolving business cases involving trust fund taxes.

- Of the trust fund cases processed through ACS, approximately 65 percent left ACS as unresolved cases, *i.e.*, transfers to the Queue[34] (52 percent), transfers to the Field (eight percent), or cases that were deferred or shelved (five percent).[35]
- ACS received approximately $2.9 billion in trust fund accounts, but reported only $310 million — or 11 percent — as collected or offset while the accounts were in ACS.[36]
- Of the trust fund dollars that passed through ACS, $1.6 billion left ACS with unresolved accounts, including $1.2 billion transferred to the Queue.[37]
- Including revenue collected through installment agreements and offsets, approximately 3.7 times as many delinquent trust fund dollars left ACS with unresolved cases as were collected by ACS.[38]

31 IRM 5.19.1.5.3, *Full Pay Within 60 or 120 Day Agreement* (Oct. 18, 2013) ("This type of agreement **cannot** be granted for **any** In-Business Trust Fund (IBTF) taxpayer. Any taxpayer with an open employment tax filing requirement is considered in-business and is **not** eligible for this type of agreement.").

32 IRM 5.19.1.5.4.2, *IA Requirements, IBTF Express Agreement* (Oct. 18, 2013) ("Taxpayers must be in filing compliance. If not, the IA will not be granted.").

33 IRS response to TAS information request (Sept. 13, 2012).

34 The Collection Queue is an inventory of TDA accounts that are active, but unassigned to the ACS or CFf functions. *See* IRM 5.1.20.2, *Collection Inventory Management* (May 27, 2008). IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013). At the conclusion of FY 2013, 230,550 trust fund taxpayer cases, including 928,472 trust fund TDA modules were assigned to the Queue inventory.

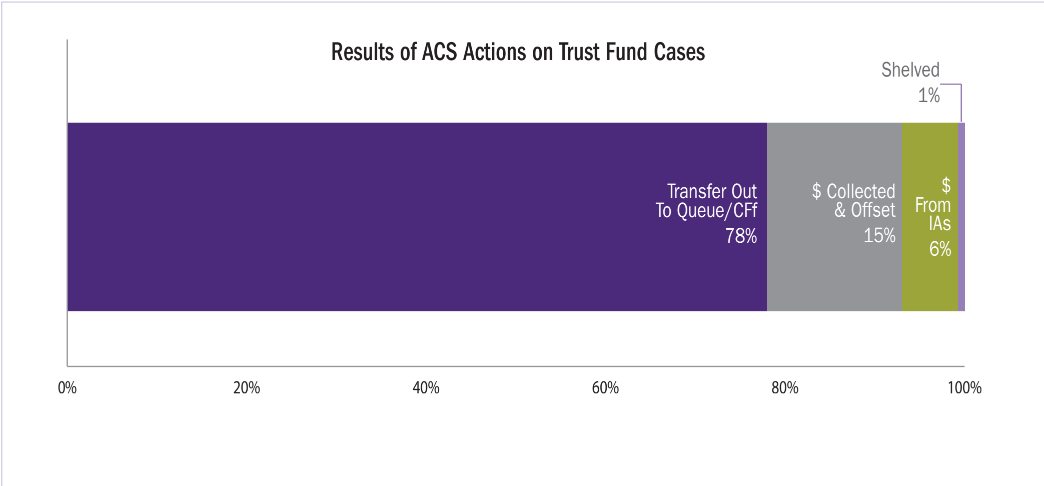
35 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013).

36 *Id*.

37 *Id*.

38 *Id*.

FIGURE 1.12.4, ACS is Usually Not Successful in Collecting Trust Fund Dollars[39]



"Full service" collection options are often not available until the tax has become uncollectible.

Despite the high risk nature of trust fund tax debts, the IRS collecting process does not allow taxpayers timely access to the services and payment options that can only be provided by revenue officers in the Collection Field operation. IRS focus group participants have indicated that the main reason business taxpayers do not pay their payroll taxes is because "they do not see the immediate consequences of noncompliance."[40] When asked how the IRS could help these taxpayers, the number one strategy participants recommended was "the need for the IRS to react faster."[41] They stated, "The main problem is that many taxpayers are buried too deep by the time the IRS gets involved."[42]

Unfortunately, "reacting faster" from the taxpayer's perspective is not a key component of the IRS collection strategy and "getting involved" is too often limited to issuing collection notices, and restricting the subsequent taxpayer contacts to untrained and unempowered employees. Delays in service delivery are further exacerbated by the IRS's practice of assigning most trust fund cases that are not resolved through the notice process or ACS into the Collection Queue. These questionable assignment practices promote the pyramiding of additional trust fund tax liabilities, and the aging of IRS accounts receivable. At the end of FY 2013, 55 percent of these high risk cases were assigned to the Queue.[43] *Not surprisingly, approximately 71 percent of the current trust fund TDA inventory involved debts for tax years at least three years old.*[44] Studies conducted by the IRS recognize the "collectibility curve" that becomes apparent as delinquent accounts age. This "curve" indicates that after three years of becoming overdue, these accounts

39 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report (Sept. 2013).* See also IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013).

40 IRS, SB/SE Research, *Your Clients and the Economy – How Can the IRS Help*, 4 (Jan. 2010).

41 *Id*.

42 *Id*.

43 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013).

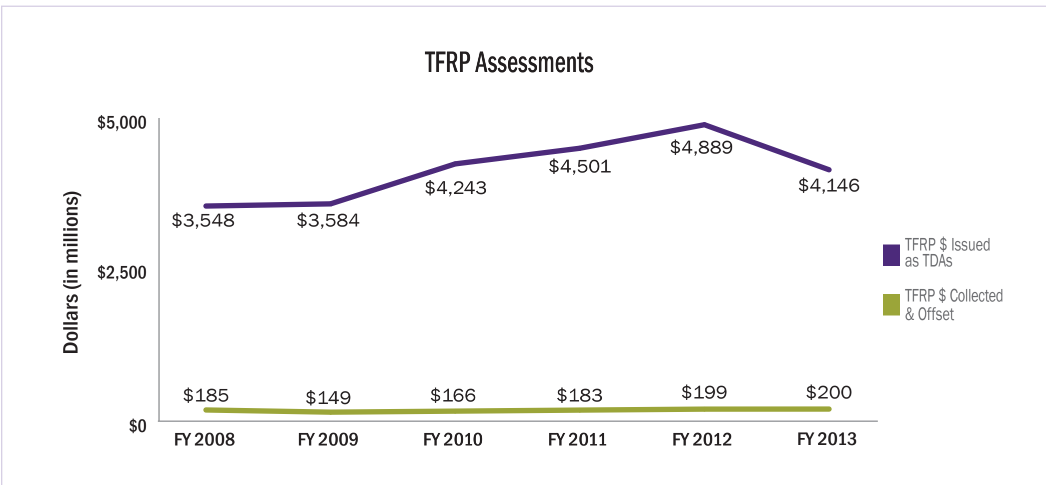
44 *Id*. At the conclusion of FY 2013, the IRS reported in inventory 1,197,082 trust fund TDA accounts related to tax years 2010 and prior.

produce minimal collections.[45] Yet clearly, the assignment practices employed by the IRS for IBTF cases ignore this critically important collecting principle.

The current use of the Collection Field operation does little to improve revenue collection or taxpayer compliance.

The IRS's strategy for dealing with the large, aged inventory of high risk trust fund cases emphasizes the use of the Trust Fund Recovery Penalty (TFRP).[46] However, IRS data indicates the escalating use of TFRP investigations and assessments has been an unproductive use of valuable collection resources. From FY 2007 to FY 2012, the dollar value of TFRP assessments issued as TDAs increased by 61 percent, but TFRP dollars collected actually *decreased* by seven percent.[47] Although $4.9 billion in TFRP assessments were issued as TDAs in FY 2012, only $199 million was collected (including offsets) — about four percent of the dollars issued.[48] Moreover, the IRS's increasing emphasis on the use of the TFRP indicates the IRS is aware that many trust fund tax cases assigned to the CFf are likely to be uncollectible. Nevertheless, the IRS continues to resist changing its collection strategy for servicing these accounts.

FIGURE 1.12.5, Only A Small Portion of TFRP Assessments Is Actually Collected[49]



45 IRS, TACT: *Collection Team VSM Decision Paper* I (July 8, 2009).

46 IRM 5.7.3.1, *Introduction* (Nov. 12, 2010). The TFRP is a penalty provided by Internal Revenue Code § 6672 against any person required to collect, account for, and pay over taxes held in trust who willfully fails to perform any of these activities. The penalty is equal to the total amount of tax evaded, not collected, or not accounted for and paid over.

47 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2012).

48 *Id*. Note: in FY 2013, the IRS issued $4.146 billion in TFRP TDA assessments — a significant decrease from FY 2012, and reported $200 million collected on TFRP accounts. While a trend is not yet evident, the decrease in TFRP dollars issued is noteworthy. However, the dollars collected on TFRP accounts remains a very small percentage of TFRP dollars issued — five percent in FY 2013.

49 IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2012).

Further, the IRS places very little emphasis on pre-delinquency education, early intervention on emerging delinquencies, or post-delinquency prevention on recidivists. The use of Federal Tax Deposit (FTD) Alerts and other field contacts on relatively small balance due employment tax accounts is rare.[50] Further, the IRS already has procedures in place that facilitate early intervention by revenue officers in cases where the taxpayers have had prior accounts in TDA status, *i.e.*, very high risk, repeat delinquents. The issuance and delivery of the Letter 903, *You Haven't Deposited Federal Employment Taxes,* systemically generates coding to the IRS computer system, which provides for systemic control and subsequent follow-up on these accounts. If a subsequent TDA, return delinquency, or FTD Alert is issued, it will be accelerated to the field for an early intervention by a revenue officer. However, these procedures are not commonly used.[51]

Improved use of collection payment options, including installment agreements and offers in compromise, employed earlier in the collecting process, would improve revenue collected, reduce revenue loss, and promote compliance within the business community.

The use of IAs and OICs to assist in the collection of trust fund tax delinquencies is astonishingly rare.[52] While the IRS does not track the number of IAs or OICs granted to IBTF taxpayers, it does report the overall numbers of IAs involving taxes reported on the business master file (BMF). The IRS issued 87,875 BMF IAs through September 2013, a 17 percent decline from the same period in FY 2011,[53] the year in which the IRS "Fresh Start" initiative brought more flexibility into the "IBTF Express" IA criteria.[54] Of particular concern is that in FY 2013, only 24,415 trust fund accounts receiving the CP 504B "final notice" were resolved with IAs — only 1.6 percent of the final notices issued — even though 97 percent of these notices met the new "IBTF Express" criteria.[55] Likewise, once cases left the notice stream and moved on in the collecting process, ACS issued only 29,246 BMF installment agreements, representing only 5.5 percent of the BMF taxpayer cases received by ACS during FY 2013.[56]

50 IRM 5.7.1.1, *Federal Tax Deposit FTD Alerts* (May 15, 2012). The FTD Alert process identifies, at an early stage (*i.e.*, before the return is due), taxpayers who have fallen behind in their deposits. FTD Alerts determine an employer's compliance with employment tax deposit requirements for the quarter of Alert issuance, and for subsequent quarters until the taxpayer is brought into full compliance. In FY 2012, the IRS issued 5,217 FTD Alerts to revenue officers in the CFf, a 37 percent reduction from FY 2009. IRS response to information request (Sept. 9, 2013).

51 IRM 5.7.2.2, *Issuance of Letter 903* (Sept. 28, 2012). Issuance of the Letter 903, *You Haven't Deposited Federal Employment Taxes*, systemically generates TC 148-09 to the IDRS database. If a subsequent balance due, return delinquency, or FTD Alert is issued, it will be coded with an "L" and it will be accelerated to the field. IRS data reveals that as of July 2013, the IRS had only 717 taxpayer cases in inventory where issuance of the L-903 had generated the TC 148-09 coding. IRS, Business Return Transaction File (July 2013).

52 IRS response to information request (Sept. 9, 2013). The IRS acknowledges that the number of IAs, SLIAs, and OICs granted to IBTF taxpayers is not systemically tracked. In FY 2012, the IRS reports that 1,376 offers were accepted that included any type of BMF tax delinquency, including those from business taxpayers who were no longer operating at the time the offers were accepted.

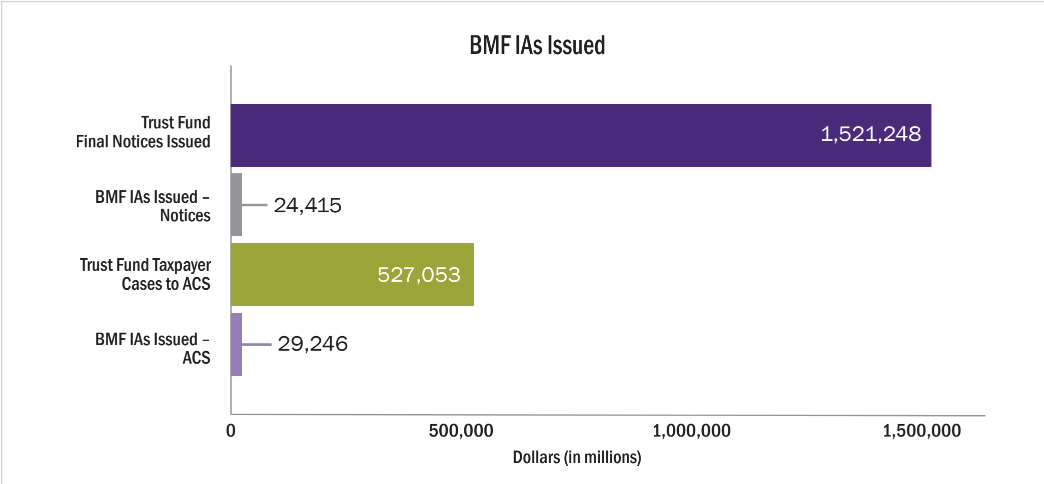
53 IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013).

54 IBTF Express IAs may be granted if the entire liability, including accruals total $25,000 or less, and the taxes will be fully paid within 24 months. (Note: AM employees working notice responses on the toll-free phone lines may only issue IBTF Express IAs on liabilities of $10,000 or less.)

55 IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Accounts Report, Part 2 Account Receivable Notices* (Sept. 2013).

56 IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013); IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013).

FIGURE 1.12.6, BMF IAS Issued By AM, CSCO and ACS Are Rare[57]



A significant contributing factor to the astonishingly low number of BMF IAs issued for collection notice and ACS accounts is the IRS's hard policy of not even discussing the possibility of payment options with a taxpayer who has an unfiled return at the time contact is made with the IRS. The policy guidance provided to AM, CSCO and ACS employees places a great deal of emphasis on taxpayers being "in compliance" before the employees can consider payment options.[58] From the taxpayer's perspective, this IRS position can be confusing, and frustrating. *All collection cases*, by definition, involve taxpayers who are not "in compliance." The unfiled returns are simply part of the problem that these taxpayers need to resolve. However, turning away taxpayers in this manner, while they are attempting to come forward and work out reasonable payment solutions, is remarkably bad taxpayer service. Doing so in high risk trust fund compliance cases is simply irresponsible tax administration.

57 IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* (Sept. 2013); IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Accounts Report* (Sept. 2013); IRS, Collection Activity Report, NO-5000-2/242, *Taxpayer Delinquent Accounts Report*, *Part 2 Account Receivable Notices* (Sept. 2013).

58 Throughout IRM 21 and IRM 5.19, the IRS prohibits the issuance of an IA to any taxpayer with unfiled returns.

CONCLUSION

For case assignment purposes, the IRS collection strategy categorizes collection cases involving business taxpayers with trust fund tax debts as relatively simple delinquencies that do not warrant immediate assignment to revenue officers. Yet, the IRS also views these cases as "high risk," and significantly restricts the ability of employees to provide the services needed to resolve the majority of these accounts. For many business taxpayers, the result is the IRS version of the proverbial "runaround." The delays in providing adequate service for these taxpayers result in not only poor service for business taxpayers, but also billions of dollars of lost revenue.

RECOMMENDATIONS

To improve service delivery for business taxpayers with tax debts, the National Taxpayer Advocate recommends that the IRS:

1. Must reconcile its case assignment practices involving IBTF tax delinquencies with the authorities delegated to employees assigned to work these accounts. Trust fund tax delinquencies should not be assigned to employees who are not fully empowered to resolve them. Current IRS practices create undue burden on taxpayers and contribute to significant delays in case resolution.
2. Should develop and test a new "second" notice for business taxpayers with trust fund tax debts, with an expanded focus on the availability of collection payment options. The notice should proactively invite taxpayers who have not acted since receiving the first notice or who are experiencing financial difficulties to contact the IRS to discuss payment options and should provide more information about the options that may be available. This information should be on the front page of the notice.
3. Should develop and implement an initiative to test the benefits that may be obtained through continued efforts to reach out to IBTF taxpayers whose accounts have been assigned to the Collection Queue. Through regularly issued "reminder" notices, similar to the new notice described in Recommendation 2 above, the IRS may encourage taxpayers to self-correct delinquencies on accounts that would otherwise sit inactive in the Queue.
4. Should allow "conditional IAs" for business taxpayers with trust fund tax debts. These IA procedures would allow ACS, CSCO, and AM to set up IAs for taxpayers' unfiled returns, with a requirement to file the returns included as a condition of finalizing the agreement within a reasonable period.
5. Should revise the collection procedures detailed in IRM 5.7.2.2, *Issuance of Letter 903*, and expand the use of the L-903 process to serve as a delinquency prevention tool. This practice would allow the IRS to clearly identify high-risk, repeat delinquents, and expedite these cases to Revenue Officers for appropriate attention.