

TAS CASE ADVOCACY

FUNCTIONS OF THE OFFICE OF THE TAXPAYER ADVOCATE

The National Taxpayer Advocate leads TAS in all aspects of its statutory mission. Under Internal Revenue Code (IRC) § 7803(c)(2)(A), the Office of the Taxpayer Advocate has four principal functions:

- Assist taxpayers in resolving problems with the IRS;
- Identify areas in which taxpayers are experiencing problems with the IRS;
- Propose changes in the administrative practices of the IRS to mitigate problems taxpayers are experiencing with the IRS; and
- Identify potential legislative changes that may be appropriate to mitigate such problems.

The first function described in the statute relates to TAS's case advocacy, which involves assisting taxpayers with their cases. The next three functions involve identifying and proposing changes to systemic problems affecting taxpayers. In addition to helping taxpayers resolve specific cases and individual problems, TAS employees advocate systemically by

- Identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden; and
- Recommending solutions, 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 viewpoint 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.

1 Taxpayers and practitioners can use the Systemic Advocacy Management System (SAMS) to submit systemic issues to TAS at <http://www.irs.gov/Advocate/Systemic-Advocacy-Management-System-SAMS>.

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

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

TAS generally accepts cases in four categories: economic burden, systemic burden, best interests of the taxpayer, and public policy.

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

In many of these cases, time is 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

2. **Systemic Burden** – Systemic burden cases involve situations where:
 - a) A taxpayer has experienced a delay of more than 30 days to resolve a tax account problem;
 - b) A taxpayer has not received a response by the date promised; or
 - c) A system or procedure has either failed to operate as intended or failed to resolve the taxpayer's problem or dispute within the IRS.⁵
3. **Best Interest of the Taxpayer** – Best interest of the taxpayer cases involve situations where the manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair a taxpayer's rights.⁶ On June 10, 2014, the National Taxpayer Advocate incorporated violations of the Taxpayer Bill of Rights into this criterion.⁷
4. **Public Policy** – Public policy cases are those where the National Taxpayer Advocate has determined that compelling public policy warrants assistance to an individual or group of taxpayers. The National Taxpayer Advocate has the sole authority to determine which issues are included in this criterion and will designate them by memorandum.⁸

Revised Case Acceptance Criteria to Focus on TAS's Core Mission

To ensure that it has adequate resources to address its inventory and effectively advocate for taxpayers, TAS identified certain types of systemic burden cases that the IRS usually resolves without the need for TAS engagement. In fiscal year (FY) 2011, TAS suspended acceptance of original return processing, amended return processing, injured spouse claims, and unpostable/rejected return cases. This guidance remains in effect, so that TAS can provide effective and timely service to taxpayers who are in most need of assistance.⁹

⁴ IRC § 7803(c)(2)(A)(i); Internal Revenue Manual (IRM) 13.1.7.2.1, *TAS Case Criteria 1-4, Economic Burden* (Aug. 24, 2007).

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

⁶ IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.3 (July 23, 2007).

⁷ TAS Interim Guidance Memo (IGM), TAS-13-0614-005, *Interim Guidance on Accepting Cases Under Taxpayer Advocate Service (TAS) Case Criteria 8, Best Interest of the Taxpayer* (June 10, 2014).

⁸ IRC § 7803(c)(2)(A)(i); IRM 13.1.7.2.4 (Apr. 26, 2011). The current memo that sets forth the Case Criteria 9 can be found at TAS IGM, TAS-13-0414-001, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Apr. 2, 2014).

⁹ In September 2012, TAS reissued the interim guidance memorandum (IGM) to reiterate the changes to TAS case-acceptance criteria – 16M TAS-13-0912-019 (Sept. 25, 2012). In September 2013, TAS again reissued the guidance – 16M TAS-13-0913-009 (Sept. 27, 2013). This guidance will be incorporated into IRM Part 13 during FY 2015.

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

- Is suffering an economic burden;
- Has related issues (*e.g.*, needs an amended return processed quickly to eliminate or minimize the tax liability to alleviate or avoid collection activity);¹⁰
- Is referred by a Congressional office; or
- Specifically requests TAS assistance.

The change in case acceptance criteria was the first step in a long-term strategy to strengthen our focus on our primary mission and to serve the most vulnerable taxpayers. TAS must continually adjust to limited resources, growing case complexity, an increase in economic burden cases, and the IRS's inability, on occasion, to address taxpayer issues timely and effectively. The next phase of TAS's strategy is exploring new approaches and alternative services on certain issues, to allow TAS to continue providing vital service to those suffering economic burden and preventing negative consequences. This strategy will involve identifying and testing self-help tools for taxpayers in resolving requests for expedited refunds, returned or stopped refunds, and requests for copies of certain documents (returns, reports, determination letters, etc.).

For example, TAS will release *Guaranteed Installment Agreements*, the first in a series of short videos for taxpayers with downloadable forms and simple guidelines for taxpayers in early FY 2015. Also, the strategy will include identifying opportunities where intake advocates (TAS employees who handle the initial contact with the taxpayer) can direct taxpayers to automated IRS tools, so they can resolve their issues independently and expeditiously.

TAS RECEIPT TRENDS

Although the number of TAS case receipts decreased, the number, complexity, and urgency of issues has increased.

Volume of Cases

In FY 2014, TAS received 216,697 cases of all types, a nearly 12 percent decrease from FY 2013. TAS provided relief to taxpayers in approximately 78 percent of cases closed in FY 2014, which was consistent with FY 2013.¹¹ Figure 4.1 below compares FY 2013 and FY 2014 receipts and relief rates by case acceptance category.

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

¹¹ TAS determines relief rates based upon whether TAS can provide full or partial relief or assistance on the issue initially identified by the taxpayer. Because TAS frequently provides relief on issues that differ from the ones initially identified, the relief rate as calculated is understated. Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2014). TAS uses TAMIS to record, control, and process cases, and analyze the issues that bring taxpayers to TAS.

FIGURE 4.1, TAS case receipts and relief rates, FYs 2013–2014¹²

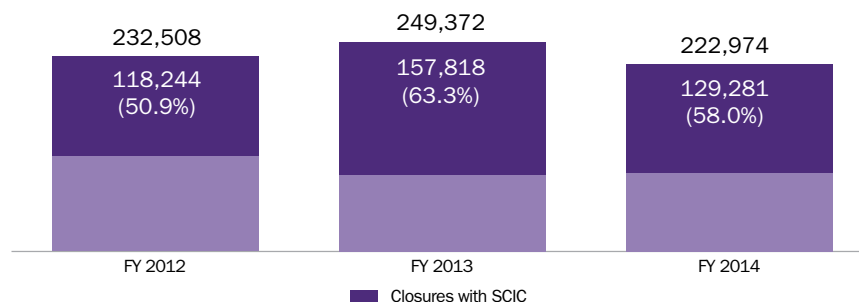
Case Categories	Receipts FY 2013	Receipts FY 2014	Relief Rates FY 2013	Relief Rates FY 2014
Economic Burden	156,130	124,732	77.1%	75.4%
Systemic Burden	88,598	91,545	81.3%	81.4%
Best Interest of Taxpayers	160	195	70.6%	77.9%
Public Policy	68	225	70.8%	81.5%
Total Cases	244,956	216,697	78.5%	77.9%

Complexity

TAS measures case complexity in a number of ways, including whether a case involves multiple issues or multiple tax periods and whether technical advice is needed,¹³ thus requiring more resources to resolve the matter.¹⁴ Whether the case issues are linked or separate, the case advocate must resolve all issues before closing the case.¹⁵ Case advocates must identify primary and secondary issues on cases, which they record in TAMIS.¹⁶ Fifty-eight percent of all closed cases in FY 2014 involved two or more issues, as shown in Figure 4.2.¹⁷

FIGURE 4.2¹⁸

**Closed cases and closures with secondary core issue codes (SCICs),
FYs 2012-2014**



12 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014).

13 IRM 13.1.12.1.1 (Mar. 1, 2012) 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.”

14 In 2010, TAS implemented a complexity factor screen to its case management system. This screen contains 24 factors, where the presence of any one of these factors indicates greater case complexity. For example, one factor is whether the case involves analysis of the assessment, collection, or refund statute date to determine if it is about to expire. TAS is using this data for purposes of developing its new case management system, Taxpayer Advocate Service Integrated System (TASIS), and will use the factors to assign cases. See National Taxpayer Advocate FY 2014 Objectives Report to Congress, Section VII for a full discussion of TASIS.

15 IRM 13.1.21.1.1 (Aug. 24, 2012).

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

17 Data obtained from TAMIS (Oct. 1, 2014).

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

While the percentage of cases with secondary issue codes TAS closed declined over the last year, from 63 percent in FY 2013 to 58 percent in FY 2014, these cases are still a significant portion of TAS's inventory.¹⁹

In addition to cases with multiple issues, six percent of TAS closed cases in FY 2014 required the assistance of a technical advisor to understand and resolve the complexities of the case.²⁰ Finally, in FY 2014, nearly 28 percent of TAS closed cases involved multiple tax periods, compared to 25 percent in FY 2013.²¹ Any one of these factors can increase the time TAS spends resolving a taxpayer's overall issue.

For example, identity theft cases, which are inherently complex,²² remain the top source of TAS work, accounting for one-fifth of total receipts in FY 2014, as reflected in Figure 4.4 below.²³ Erroneous information resulting from identity theft can affect a victim's account for multiple tax periods and cause multiple issues, impacting the Accounts Management, Examination, and Collection functions. Other complex cases include collection cases (such as levy release with an alternative collection solution, return of the levy proceeds, offers in compromise (OIC), or seizure prevention), examination cases with multiple periods, or income verification cases for self-employed persons with or without Earned Income Tax Credit (EITC) issues.

Economic Burden Cases

Economic burden cases often occur where IRS processes are not functioning smoothly, or taxpayers experience other systemic problems. For the third consecutive fiscal year, more than half of TAS receipts involved taxpayers experiencing economic burden, as shown by Figure 4.3 below. Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to work the cases using accelerated timeframes.²⁴

19 In FY 2013, of the 249,372 cases closed, 157,818 cases involved more than one issue. In FY 2014, of the 222,974 cases closed, 129,281 cases involved more than one issue. Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014).

20 Data obtained from TAMIS (Dec. 17, 2014).

21 *Id.*

22 See 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.

23 Data obtained from TAMIS (Oct. 1, 2014).

24 IRM 13.1.16.12(1) (Mar. 23, 2011) (Upon acceptance into the TAS program, cases are ready for assignment to Case Advocates. Assign cases 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) (Feb. 1, 2011) (CA (Case Advocate) to contact the taxpayer or representative by telephone within 3 workdays of the TARD for criteria 1-4 cases, and within 5 workdays of the TARD for criteria 5-9 cases to notify of TAS's involvement.).

FIGURE 4.3²⁵

TAS economic burden and systemic burden receipts, FYs 2012–2014

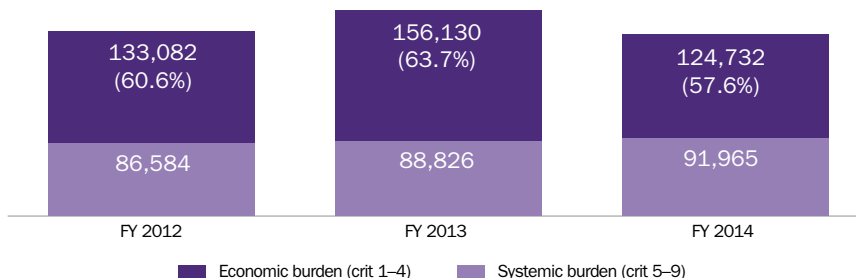


Figure 4.4 below represents the top ten sources of TAS receipts by PCIC categories from all sources without regard to TAS criteria, comparing FY 2013 and FY 2014. “Other TAS Receipts” encompasses the remaining PCICs not in the top ten.

FIGURE 4.4, Top 10 issues for cases received in TAS, FYs 2013-2014, cumulative²⁶

Rank	Issue Description	FY 2013	FY 2014	FY 2014 Percent of Total	Percent Change FY 2013 to FY 2014
1	Identity Theft	57,929	43,690	20.2%	-24.6%
2	Pre-Refund Wage Verification Hold	26,136	35,220	16.3%	34.8%
3	Earned Income Tax Credit (EITC)	11,980	13,450	6.2%	12.3%
4	Processing Amended Return	10,441	10,245	4.7%	-1.9%
5	Levies (Including Federal Levy Payment Program)	8,829	8,086	3.7%	-8.4%
6	Processing Original Return	8,714	7,664	3.5%	-12.0%
7	Injured Spouse Claim	8,021	7,284	3.4%	-9.2%
8	Reconsideration of Audits and Substitute for Return under IRC § 6020(b)	7,527	6,768	3.1%	-10.1%
9	Open Audit (Not EITC)	6,734	5,302	2.5%	-21.3%
10	IRS Offset	4,992	4,789	2.2%	-4.1%
	Other TAS Receipts	93,653	74,199	34.2%	-20.8%
Total TAS Receipts		244,956	216,697		-11.5%

While identity theft cases account for more than 20 percent of all TAS cases, TAS received over 14,000 fewer cases in FY 2014 compared to FY 2013. However, TAS received slightly over 9,000 additional pre-refund wage verification hold cases in FY 2014 compared to FY 2013, an indication that while the IRS’s identity theft processes are improving, its ability to handle pre-refund wage verification hold cases is declining.

25 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014). TAS retrieved the data on the first day of the month following the end of each fiscal year.

26 Data obtained from TAMIS (Oct. 1, 2013; Oct 1, 2014).

Figure 4.5 below shows the top five issues driving economic burden receipts. These five issues represent the bulk of the increase in economic burden cases and overall caseloads.

FIGURE 4.5, Top five issues causing economic burden (EB) cases, FYs 2013–2014²⁷

Rank	Issue Description	FY 2013	EB Receipts as % Total EB Receipts for Issue FY 2013	FY 2014	EB Receipts as % Total EB Receipts for Issue FY 2014	EB Percent Change FY 2013 to FY 2014
1	Identity Theft	43,695	28.0%	31,160	25.0%	-28.7%
2	Pre-Refund Wage Verification Hold	18,200	11.7%	20,917	16.8%	14.9%
3	Earned Income Tax Credit	9,968	6.4%	10,519	8.4%	5.5%
4	Levies (Including Federal Levy Payment Program)	7,871	5.0%	7,206	5.8%	-8.4%
5	Injured Spouse Claim	7,015	4.5%	6,104	4.9%	-13.0%

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.

IDENTITY THEFT

Identity theft continued as the number one reason that taxpayers sought TAS assistance in FY 2014, comprising 20 percent of all receipts and 25 percent of economic burden receipts. The National Taxpayer Advocate first addressed the issue as a Most Serious Problem affecting taxpayers in 2005, identifying further problems and recommending solutions in subsequent reports.²⁸

The IRS's procedures for verifying the identity of the innocent taxpayer, moving the incorrect tax information off the account, and processing the innocent taxpayer's tax return are cumbersome. In addition, identity theft cases often involve related collection and examination issues, as well as multiple years. Victims often come to TAS when they are experiencing a hardship to obtain expedited resolution. In an effort to improve identity theft case-processing by achieving end-to-end accountability, the IRS is consolidating identity theft claims in Wage and Investment division (W&I) Accounts Management to assure timely and consistent case-handling following uniform guidance in a single IRM, while developing system enhancements to fine-tune case processing. As reported in this year's Volume 2, TAS has conducted a research study to identify those cases, resolution of which requires a single IRS employee assigned to the

27 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014). TAS computed the top five economic burden issue codes using only (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.

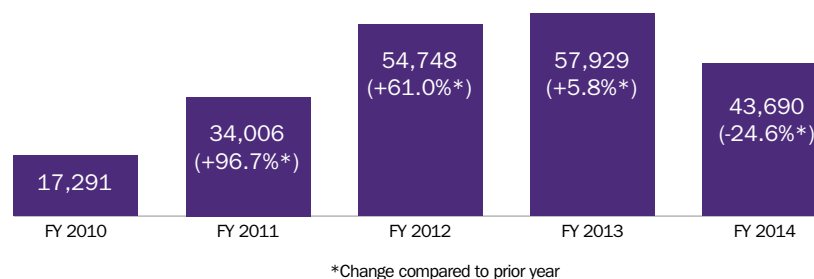
28 See National Taxpayer Advocate 2013 Annual Report to Congress 75-83 (Most Serious Problem: *IDENTITY THEFT: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers*); National Taxpayer Advocate 2012 Annual Report to Congress 42-67 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*); National Taxpayer Advocate 2011 Annual Report to Congress 48-68 (Most Serious Problem: *Tax Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and IRS*); National Taxpayer Advocate 2009 Annual Report to Congress 307-11 (Status Update: *IRS's Identity Theft Procedures Require Fine-Tuning*); National Taxpayer Advocate 2008 Annual Report to Congress 79-93 (Most Serious Problem: *IRS Process Improvements to Assist Victims of Identity Theft*); National Taxpayer Advocate 2007 Annual Report to Congress 96-115 (Most Serious Problem: *Identity Theft Procedures*); National Taxpayer Advocate 2005 Annual Report to Congress 180-91 (Most Serious Problem: *Identity Theft*).

case.²⁹ TAS will use the results of the study to engage the IRS on improving the process and ensuring the taxpayer’s ability to easily and independently navigate IRS processes.

In FY 2014, TAS obtained relief for a significant majority of taxpayers in identity theft cases. Nearly 82 percent of taxpayers received relief in these cases with an average timeframe of 81 days, which is a seven percent improvement from FY 2013. As Figures 4.6 and 4.7 below demonstrate, TAS inventories have declined from FY 2013 and FY 2014. TAS’s timeframes for completing identity theft cases are improving over time.

FIGURE 4.6³⁰

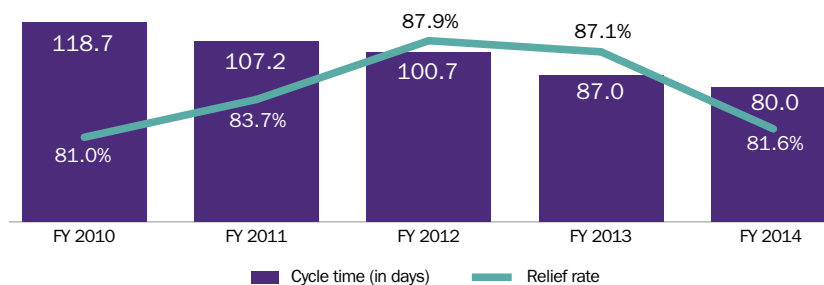
TAS identity theft case receipts and percentage increases, FY 2010–2014



Since 2010, TAS has helped over 207,000 identity theft victims resolve their account problems.

FIGURE 4.7³¹

Identity theft relief rate and cycle time, FYs 2010–2014



29 National Taxpayer Advocate 2014 Annual Report to Congress Vol. 2, *infra* (Identity Theft Case Review Report: A Statistical Analysis of IDT Cases Closed in June 2014).

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

31 *Id.*

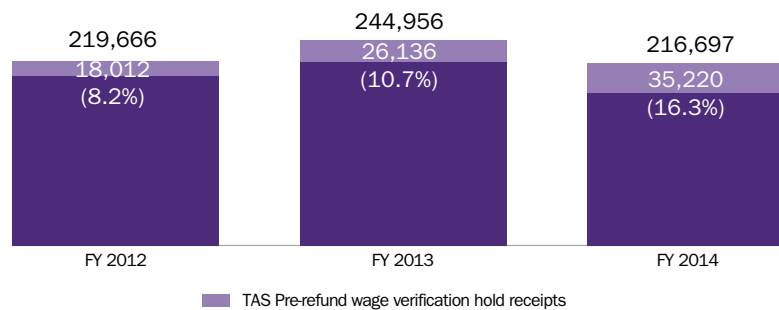
PRE-REFUND WAGE VERIFICATION HOLDS

The IRS employs various filters in an attempt to prevent fraudulent returns from being processed and refunds issued. These preventive measures also stop innocent taxpayers' returns from timely processing, preventing receipt of refunds. When the IRS receives more questionable returns than it has resources to evaluate properly, it places holds on the associated refunds. In the past, these efforts have raised significant taxpayer rights issues, and brought increasing numbers of taxpayers to TAS.³²

Pre-refund wage verification holds under the Return Integrity and Compliance Services Program (RICS) constitute the second most frequent reason that taxpayers come to TAS for assistance. This category experienced the largest volume increase in receipts in FY 2014. As noted above, the increase in TAS pre-refund wage verification hold case receipts has almost offset the decrease in identity theft receipts. Pre-refund wage verification hold cases almost doubled between FYs 2012 and 2014. These data indicate significant systemic and procedural issues in the RICS program.³³

FIGURE 4.8³⁴

Pre-refund wage verification hold receipts (Questionable Return Program receipts) and total case receipts, FYs 2012–2014



Generally, TAS achieves over a 75 percent relief rate³⁵ and a 92 percent customer satisfaction rate in these cases.³⁶

³² See National Taxpayer Advocate 2005 Annual Report to Congress 25, addressing the IRS's Questionable Refund Program (subsequently called the RICS program) that failed to provide taxpayers adequate due process protections and failed to maintain an adequate system to vet IRS concerns about taxpayer refund claims.

³³ For additional discussion, see National Taxpayer Advocate FY 2015 Objectives Report to Congress 143-45 (*TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud*).

³⁴ Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014).

³⁵ Data obtained from TAMIS (Oct. 1, 2014).

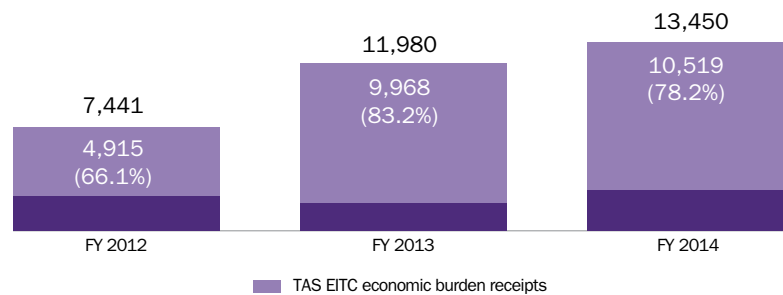
³⁶ TAS customer satisfaction is determined using a survey administered by a contractor. Customer satisfaction is measured by the percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS. The FY 2013 year-to-date results are from the Taxpayer Advocate Service National Report (June 2014).

EARNED INCOME TAX CREDIT CASES

The Earned Income Tax Credit is a refundable tax credit that provides an important economic benefit for low income taxpayers who have earned income.³⁷ TAS's FY 2014 EITC receipts issue codes showed the second highest upsurge, increasing by more than 12 percent over FY 2013 and more than 80 percent since FY 2012.³⁸ Over 78 percent of the FY 2014 cases involved taxpayers experiencing an economic burden, an increase of more than five percent from FY 2013.³⁹

FIGURE 4.9⁴⁰

TAS EITC economic burden and total case receipts, FYs 2012–2014



The EITC is complex, yet its recipients tend to be in the lower economic strata and often least able to navigate complicated processes. TAS taxpayers typically face difficulty substantiating the EITC's residency and relationship requirements.⁴¹ Taxpayers experiencing the most problems are those with non-traditional family relationships (where the child is not the biological child of the taxpayer claiming the credit), for whom documentation requirements can be overwhelming (*e.g.*, the need to obtain birth certificates for various individuals to establish the required relationship for a niece, nephew, or other extended relative).⁴²

37 The benefit is available for low income taxpayers without children, but is more significant for those with children. The maximum benefit for 2013 was \$6,044 with three or more qualifying children and only \$487 with no qualifying children. IRS Publication 596, *Earned Income Credit (EIC)*, 26-34 (Nov. 20, 2013).

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

39 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014).

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

41 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); Treas. Reg. § 1.152-1(b). The **Age** test requires the child be younger than the taxpayer and fall under one of these age categories: under age 19, under age 24 and a full-time student, or a child of any age who is permanently and totally disabled. See IRC § 152(c)(3).

42 National Taxpayer Advocate 2005 Annual Report to Congress 94-122 (Most Serious Problem: *Earned Income Credit Exam Issues*); Taxpayer Advocate Service, *Challenges for Taxpayers Claiming the Earned Income Tax Credit (EITC)*, From Interviews with Low Income Tax Clinics (Sept. 2005). See *supra* note 2, for further description of the LITC program.

TAS studies demonstrate the importance of timely and clear communications to enable taxpayers to claim and to receive the EITC to which they are entitled.⁴³ TAS is improving its own EITC casework through a number of initiatives, as well as engaging W&I to develop more effective ways to administer EITC examinations.⁴⁴ In addition, TAS members serve on the cross-functional EITC Audit Improvement Team to recommend improvements to the EITC verification request document sent to taxpayers (Form 886-H-EIC). This team revised the format of the document to make it easily understandable, as well as to specify the documents a taxpayer could submit to show qualification for the credit under each of the tests.⁴⁵ The team also proposed changes to the tele-tax script to assure its clarity and recorded a video to expand taxpayers' understanding of EITC requirements, with a planned release in early FY 2015.

TAS continues to pursue its advocacy with the IRS to promote acceptance of TAS's comprehensive list of alternative documentation from third parties that taxpayers can use in lieu of the more restrictive IRS approach.⁴⁶ TAS also continues to advocate for the adoption and implementation of the Affidavit form, in which a third party attests under penalties of perjury as to his or her knowledge (personal or through records) of the principal residence of the child.⁴⁷

An emerging EITC issue involves the IRS banning a taxpayer from claiming EITC on future income tax returns. When the IRS determines that a taxpayer has made a prior fraudulent or reckless EITC claim, the IRS may ban the taxpayer from claiming EITC for two years if the IRS determines the taxpayers claim was due to reckless or intentional disregard of the rules and regulations (but not due to fraud) or ten years if the taxpayer's EITC claim was fraudulent.⁴⁸ IRS procedures used to determine when to apply a ban are not clear and could result in a determination to impose a ban where there is little or no evidence that the taxpayer acted with reckless or intentional disregard of the rules.⁴⁹

For example, the procedures state that an examiner should impose the two-year ban when the examiner "can determine the taxpayer's claim was due to reckless or intentional disregard rather than misunderstanding or confusion of the rule." However, there is no indication of what evidence the technician must consider to reach that conclusion.

43 For example, see National Taxpayer Advocate 2004 Annual Report to Congress, Vol. 2 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*). In a study of EITC audit reconsideration cases by TAS Research, 43 percent of taxpayers seeking audit reconsideration had a favorable outcome. This means that 43 percent of the taxpayers had valid (or at least partially valid) claims but could not successfully complete the examination process. The taxpayers received on average approximately 94 percent of the EITC originally claimed on their returns.

44 EITC cases present TAS leadership with an improvement opportunity. In FY 2014, the average relief rate on EITC cases was 65 percent compared to approximately 78 percent for all cases. TAS has taken a number of steps to improve its service to these taxpayers, including EITC training, led by the National Taxpayer Advocate, for field employees, decentralization of all EITC casework so these cases can be worked in local offices, and EITC case reviews by TAS leadership to identify which offices need additional training. Data obtained from TAMIS Oct. 1, 2014.

45 See *supra* note 41.

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

47 See National Taxpayer Advocate 2009 Annual Report to Congress, 97-98 (Most Serious Problem: *Running Social Programs Through the Tax System*), for a discussion of IRS studies of the use of an affidavit for verifying the principal residence of a qualifying child. See also National Taxpayer Advocate 2005 Annual Report to Congress, 106-08 (Most Serious Problem: *Earned Income Tax Credit (EITC) Exam Issues*).

48 IRC § 32(k)(1).

49 IRM 4.19.14.6.1 includes a table of "if-then" scenarios that the examiner should use as a starting point to help determine if the two-year ban is appropriate.

It is difficult for an examiner to assess whether a taxpayer knew or understood the rules, let alone to determine the taxpayer's state of mind or motivation. It is possible that the taxpayer understood the rules and made a good-faith attempt to follow them, but that the examiner would not accept the documents submitted as proof of EITC eligibility. This is just one example of the lack of clarity when implementing this ban. TAS provided case advocates with training on how to advocate for taxpayers where the IRS has or is considering applying the EITC ban at the beginning of FY 2014 and will continue to advocate extensively on behalf these taxpayers.

COLLECTION CASES

While still a significant source of cases, collection issues continued to decline between FY 2013 and FY 2014, in line with the decrease in the IRS's use of liens and levies during that period, as shown below.⁵⁰

FIGURE 4.10, IRS lien volume and TAS lien case receipts, FYs 2010–2014⁵¹

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

FIGURE 4.11, IRS levy volume and TAS levy case receipts, FYs 2010–2014⁵²

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

In FY 2014, collection issues accounted for more than 12 percent of all economic burden receipts and ten percent of TAS's total caseload.⁵³ These issues are vitally important to the affected taxpayers, because while IRS collection tools (bank levies, wage levies, personal residence seizures, and the filing of Notices of Federal Tax Lien) significantly affect all taxpayers, they can have a particularly devastating impact on those with low incomes.

Collection cases also present a challenge for TAS to undertake more effective advocacy on behalf of these taxpayers, as TAS provided relief in about 71 percent of these cases in FY 2014, compared to approximately 78 percent on all issues.⁵⁴ TAS is working to advocate better in collection cases through enhanced guidance and detailed training for employees. For example, in FY 2014, all case advocacy employees received the *Collection Case Study: Return of Levied Proceeds* training to improve development of requests

50 From FY 2010 to 2014, levies issued by the IRS decreased by 45 percent, and lien filings decreased by 51 percent. IRS, Collection Activity Reports, NO-5000-24, *Levy and Seizure Report* (FY 2010 to 2014); IRS, Collection Activity Reports, NO-5000-25, *Liens Report* (FY 2010 to 2014).

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

52 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014). 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, 5000-254 Collection Activity Report (Oct. 6, 2014).

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

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

for the return of levy proceeds. TAS issued 62 Taxpayer Assistance Orders (TAOs) on levy cases in FY 2014, compared to 20 or fewer in each of the three previous fiscal years. TAS leadership will conduct training for employees, using collection case studies in our effort to increase technical knowledge and enhance skills in advocating for taxpayers. In FY 2015, TAS will complete other face-to-face training on collection issues, including financial analysis. TAS provided four mandatory briefings to all case advocacy staff, stressing that liens and levies are not permissible to collect Shared Responsibility Payments (SRP) from taxpayers under the Affordable Care Act (ACA). TAS is also providing in-depth ACA training to all of its employees on how to handle ACA cases and advocate for taxpayers. Additional collection-focused training is forthcoming as the IRS develops its ACA collection policies.

In FY 2014, TAS issued 37 TAOs⁵⁵ in collection cases where the IRS did not agree with TAS's case-specific recommendations. Of these 37 TAOs, the IRS complied with 30 (including two where TAS modified the TAO), three are still in process, and TAS rescinded four after further discussion.⁵⁶ In two of the rescinded scenarios, Collection was taking the requested actions before TAS issued the TAO, but had not made TAS aware of its actions.

TAX-EXEMPT ORGANIZATIONS

TAS's FY 2014 cases involving applications for exempt status increased by almost 67 percent since FY 2012 and nearly 43 percent over FY 2013.⁵⁷ Nearly 25 percent of the FY 2014 cases met economic burden criteria, and almost 74 percent were Congressional referrals.⁵⁸ This continued growth in exempt organization (EO) cases demonstrates that the IRS's processes are creating significant hardship for both new organizations and those whose exempt status was automatically revoked. Overall, TAS provided relief to 3,467 organizations seeking to resolve exempt status application issues in FY 2014.⁵⁹ TAS resolved these cases in an average of 86 days and provided some form of relief in 85.3 percent of the cases, an increase of 7.6 percent from FY 2013.⁶⁰

TAS OPERATIONS ASSISTANCE REQUEST TRENDS FOR FY 2014

To serve taxpayers more efficiently, the Commissioner delegated to the National Taxpayer Advocate certain tax administration authorities that do not conflict with or undermine TAS's unique statutory mission but allow TAS to resolve routine problems.⁶¹ When TAS lacks the statutory or delegated authority to directly resolve a taxpayer's problem, it works with the responsible IRS operating division (OD) or function to resolve the issue, a process necessary in 66 percent of all TAS cases closed in FY 2012 and FY 2013 and 67 percent in FY 2014.⁶² After independently reviewing the facts and circumstances of the case and communicating with the taxpayer, TAS uses Form 12412, *Operations Assistance Request*, to

55 For a detailed discussion of TAOs, see *TAS Uses Taxpayer Assistance Orders to Advocate Effectively in Taxpayer Cases*, *infra*. TAO compliance data is as of Oct. 1, 2014.

56 Data obtained from TAMIS (Oct. 1, 2014).

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

58 Data obtained from TAMIS (Oct. 1, 2014).

59 *Id.*

60 Data obtained from TAMIS (Oct. 1, 2013; Oct 1, 2014).

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

62 TAS closed 152,775 cases requiring an OAR in FY 2012, 165,003 in 2013, and 149,484 in FY 2014. Data obtained from TAMIS (Oct. 18, 2013; Oct. 6, 2014).

convey a recommendation or requested action for the IRS to resolve the issue, along with documentation. The Operations Assistance Request (OAR) also serves as an advocacy tool by:

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

Each IRS Business Operating Division (BOD) has agreed to work TAS cases on a priority basis and expedite the process for taxpayers whose circumstances TAS has determined to warrant immediate handling. Service Level Agreements require the BODs to direct resources to process OARs. The OAR process 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 for what issues. Form 12412 also includes an "expedite" box that TAS case advocates can check when the BOD needs to act immediately to relieve the taxpayer's hardship. Figure 4.12 reflects the number of OARs issued by BOD needing expedited action.

FIGURE 4.12, Expedited and non-expedited OARs issued by BOD for FY 2014⁶³

Business Operating Division	FY 2014 OARs Issued Requesting Expedite Action	FY 2014 OARs Issued without Expedite Request	FY 2014 Total OARs Issued
Appeals	316	533	849
Criminal Investigation	37	58	95
Large Business & International	101	406	507
Small Business/Self-Employed	18,615	26,693	45,308
Tax Exempt/Governmental Entity	1,599	2,120	3,719
Wage & Investment	98,113	93,433	191,546
Total	118,781	123,243	242,024

TAS generally sends one or more OARs on individual cases to secure action by the IRS, but a single OAR may be used to work the same issue for multiple taxpayers, as previously described. For example, during the 2014 filing season, TAS issued a mass OAR on behalf of 803 identity theft victims, who had unprotected but validated TAS taxpayer accounts. TAS took this action to ensure timely marking of these accounts to allow the taxpayers to receive Identity Protection PINs.⁶⁴ TAS worked with the IRS to quickly update the 803 accounts, allowing the taxpayers to file returns without having to worry that an identity thief would file first using their Social Security numbers (SSNs), causing processing problems for the taxpayers.

⁶³ Data obtained from TAMIS (Oct. 1, 2014).

⁶⁴ *Id.* An IP PIN is a single-use six-digit identification number the IRS issues to ID theft victims so that they can file their returns with the assurance that the identity thief cannot file first. The process of validating a taxpayer's identity and marking the account must be complete before the IRS sends the IP PIN notices prior to the commencement of the filing season.

TAS USES TAXPAYER ASSISTANCE ORDERS TO ADVOCATE EFFECTIVELY

The TAO is a powerful statutory tool delegated by the National Taxpayer Advocate to the Local Taxpayer Advocates (LTAs) to resolve taxpayer cases.⁶⁵ An LTA may issue a TAO to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions.⁶⁶ A TAO may order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level.⁶⁷ When a taxpayer faces significant hardship and the facts support relief, an LTA may issue a TAO when the IRS refuses or otherwise fails to take the action TAS has requested to resolve the case.⁶⁸ Once TAS issues a TAO, the OD can comply with the request or appeal the issue for resolution at higher levels.⁶⁹

In FY 2014, TAS issued 362 TAOs,⁷⁰ including 44 in cases where the IRS failed to respond to an OAR. Of these 44 TAOs, the IRS complied with 41 in an average of 16 days.⁷¹ Figure 4.13 reflects the results of the TAOs. Figure 4.14 shows the TAOs issued by fiscal year.

FIGURE 4.13, Actions taken on FY 2014 TAOs issued⁷²

Action	Total
IRS Complied with the TAO	257
IRS Complied after the TAO was modified	17
TAS Rescinded the TAO	18
TAO Pending in Process	70
Total	362

FIGURE 4.14, TAOs issued to the IRS, FYs 2011–2014⁷³

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

The following examples illustrate the use of TAOs to obtain taxpayer relief. To comply with IRC § 6103, which generally requires the IRS to keep taxpayers' returns and return information confidential, the details of the fact patterns have been changed. In certain examples, TAS has obtained the written consent of the taxpayer to provide more detailed facts.

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

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

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

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

69 IRM 13.1.20.5(2) (Dec 15, 2007).

70 Data obtained from TAMIS (Oct. 1, 2014).

71 *Id.*

72 *Id.*

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

TAOs Involving Account Resolution

As discussed above, identity theft can adversely affect taxpayers. Approximately 75 percent of individual taxpayers filing returns claim refunds, averaging about \$2,700.⁷⁴ In an identity theft situation, where the IRS has processed a false return before the actual taxpayer files a return, the IRS will not issue a refund to the actual taxpayer until the IRS fully resolves the SSN ownership, which can take 180 days.⁷⁵ In FY 2014, TAS issued 33 TAOs involving identity theft, seven of which were issued because the IRS failed to respond to OARs by the negotiated completion date.⁷⁶ The IRS complied with all seven of these TAOs within an average of 11 days.⁷⁷ TAS issued 24 TAOs in cases that met economic burden case criteria and thus needed expedited case handling.⁷⁸ Specific examples of hardships encountered by these taxpayers, which were exacerbated by IRS delays, include:

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

TAS issued TAOs involving account resolution for other issues. One example is below:

Without the taxpayer's knowledge, his ex-spouse electronically filed joint returns and under-reported the taxpayer's income to receive the maximum EITC, which the ex-spouse kept. The taxpayer wanted to correct the accounts but the OD refused to process his single returns, citing the law that one cannot file separately after filing jointly after the April 15 filing deadline, which did not apply because the taxpayers were not married and he did not file the returns. TAS issued the TAO to obtain all account corrections flowing from the invalid joint returns, and place the total debt for the disallowed items on the ex-spouse's single account. The OD corrected the accounts and issued four refunds to the TAS taxpayer.⁷⁹

TAS Issues TAOs Where IRS Inaction Exacerbates Return Preparer Misconduct

As discussed in the National Taxpayer Advocate's preface to this report and in previous reports, we outlined the issues surrounding the IRS's current policy on assisting victims of tax return preparer misconduct.⁸⁰ Taxpayers seek TAS assistance when they become aware of preparer misconduct, which generally only happens after the IRS:

- Reviews or audits the return;
- Disallows the incorrect deductions, withholding, or credits;

74 IRS, 2014 IMF Filing Season Report, Week Ending May 30, 2014. Through May 31, 2013, the IRS received 136,090 million individual tax returns, of which 102,902 million claimed a refund averaging \$2,655. Through May 30, 2014, the IRS received 137,875 million individual tax returns, of which 103,232,000 claimed a refund averaging \$2,689.

75 IRM 21.9.2.2.1 (May 29, 2013).

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

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

78 *Id.*

79 Signed release from the taxpayer dated August 12, 2014.

80 See National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 4 (Preface: *The IRS is Actively Harming Victims of Return Preparer Fraud by Delaying the Release of Refunds for Years*); National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 22-34 (*Return Preparer Fraud: A Sad Story*). See also National Taxpayer Advocate 2013 Annual Report to Congress 94-102; National Taxpayer Advocate 2012 Annual Report to Congress 68-94 (Most Serious Problem: *The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully*); National Taxpayer Advocate 2011 Annual Report to Congress 420-26 (Most Serious Problem: *The IRS Procedures for Replacing Stolen Direct Deposit Refunds Are Not Adequate*).

- Holds the taxpayer liable for the resulting increased tax assessment; or
- Prevents the taxpayer from obtaining the portion of the refund he or she was entitled to and did not actually receive.

In FY 2014, TAS continued to raise the problem, issuing 51 TAOs due to return preparer misconduct.⁸¹ Since FY 2010, 118 TAOs for this issue have been elevated to the National Taxpayer Advocate and 25 of these were elevated to the Commissioner.⁸²

Taxpayers in these cases are usually low income⁸³ and depend on their refunds to meet basic living expenses. Some have been waiting years to receive their proper refunds. The following are typical examples of taxpayer experiences:

- The preparer altered the taxpayer's return to inflate the refund and re-directed it to his own account. The taxpayer filed an amended return, showing the correct tax liability, but the IRS still held the taxpayer liable for the false refund the preparer received. TAS had multiple cases in which this preparer defrauded taxpayers.
- After the taxpayer received a printed copy of his return that reflected his own bank account number, the preparer altered the direct deposit account on the return before filing it electronically. The bank confirmed that the account on the return was not the taxpayer's and no funds were present. TAS developed the facts about the return preparer fraud with a police report and full explanation.
- The IRS correctly stopped a refund from a false return. TAS secured account corrections to obtain the proper refund for the taxpayer, but the IRS did not update the direct deposit information, and wrongly released the taxpayer's true refund to the preparer's account. The IRS's failure to void the preparer's false Form 8888, *Allocation of Refund*, caused the loss of the funds. TAS advised this situation fell within W&I's guidance.⁸⁴

TAOs to Examination Functions

In FY 2014, TAS issued 69 TAOs to examination units for a variety of issues, including return preparer misconduct, the earned income tax credit (EITC), audit reconsiderations, actions to complete open audits of original returns, penalty abatements, identity theft, and appeal rights.

EITC cases involved a variety of hardships. Some examples follow:

- A taxpayer was a single parent with a utility shutoff looming, needing medication, living in public housing, and receiving food stamps. The IRS denied TAS's request, stating that the residency test was not met. TAS disagreed and issued a TAO, and the IRS accepted the documents and allowed the refund.
- To substantiate an EITC claim, TAS worked with a taxpayer to obtain a notarized statement from the property owner, signed under penalties of perjury, affirming who lived in the home and for

81 Data obtained from TAMIS (Oct. 1, 2014).

82 *Id.*

83 National Taxpayer Advocate 2013 Annual Report to Congress 94-102 (Most Serious Problem: *RETURN PREPARER FRAUD: The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds*); National Taxpayer Advocate 2012 Annual Report to Congress 68-94 (Most Serious Problem: *The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully*).

84 See Director, Accounts Management, *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0812-02 (Sept. 6, 2012), superseded by Director, Accounts Management, *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0813-02 (Aug. 5, 2013).

how long. The IRS challenged the landlord's statement. TAS confirmed through public records that the person who signed the statement was the property owner, and issued a TAO. The LTA spoke to the IRS manager, who felt she did not have the latitude to accept the landlord's statement. After seeking guidance from headquarters, the manager complied with the TAO.

- The taxpayer was unemployed, battling cancer, and needed money for medical treatment. TAS issued a TAO when the IRS did not accept documents proving the claimed children lived with the taxpayer. The IRS accepted the documents for the taxpayer's son, but not for an unrelated child. TAS agreed with this decision. The IRS complied with the modified TAO.
- The taxpayer was being evicted. TAS issued a TAO to avoid increased taxpayer burden and time delays. The IRS agreed that a statement from the public housing authority (corroborated by court documents) substantiated the residency requirement for the EITC. The IRS complied with the TAO.
- The taxpayer claimed her child and grandchildren as qualifying children for the EITC. The IRS determined the relationship tests were substantiated, but not the residency tests. In making the decision to disallow the children, the IRS ignored certain documents provided by the taxpayer. TAS issued a TAO that logically analyzed the facts and applied the law. After securing further guidance, the IRS complied with the TAO to allow the credits claimed on the return.

TAOs to TE/GE

Tax Exempt and Government Entity (TE/GE) cases present vitally important advocacy opportunities for TAS, both on substantive legal determinations and on processing issues.⁸⁵ Tax-exempt organizations contribute religious, educational, scientific, social welfare, and other positive benefits to the public good. Many of these exempt organizations are small entities, staffed by volunteers.⁸⁶ Entities pursuing tax exempt status under IRC § 501(c)(3) will often not operate in advance of IRS's approval of the organization's exempt status. Therefore, the timeliness of the application approval process is crucial to the goals of the organization. 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 exempt organizations under IRC § 501(c) may operate without the need to seek an IRS determination, it is TAS's experience with IRC § 501(c) cases that many entities are reluctant to operate without IRS approval.⁸⁷ TAS advocates for these taxpayers on both the procedural issues surrounding the application process and the substantive aspects of the determination process.

In FY 2014, TAS issued 19 TAOs to the TE/GE operating division, compared with three in FY 2011, six in FY 2012 (four of which were rescinded), and 42 in FY 2013.⁸⁸ Of the 19 TAOs issued to TE/GE in

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

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

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

88 Data obtained from TAMIS (Oct. 1, 2014).

FY 2014, four were due to TE/GE's failure to respond to TAS's OARs. Thirteen others involved untimely action or case assignment. Three also involved an apparent systemic issue on the Select Check system, which provides a list of IRS recognized tax-exempt organizations. TAS is investigating this systemic problem. The IRS complied with 16 of the 19 TAOs in FY 2014, in an average of 26 days.⁸⁹ TAS issued TAOs in FY 2014 primarily due to issues surrounding:

- Delays in processing Forms 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and Form 1024, *Application for Recognition of Exemption Under Section 501(a)*; and
- Automatic revocations of exempt status under the Pension Protection Act, which requires tax-exempt organizations to file an annual return or notice with the IRS or face revocation after three consecutive years of non-filing.⁹⁰

With respect to delays in processing, TAS has encountered problems with TE/GE understanding TAS's statutory authority. The National Taxpayer Advocate has written about these issues in the past.⁹¹ Despite improvements, TAS remains concerned about IRS treatment of taxpayers applying for exempt status. TAS's advocacy efforts are focused on ensuring that certain applications are worked based on taxpayer need.

The National Taxpayer Advocate discussed the numerous problems surrounding the automatic revocation requirement at length in last year's report.⁹² TAS advocacy in the typical fact pattern for an exempt organization revocation follows.

An exempt organization learns from its donors and grant-making foundations that it is no longer on the list of Exempt Organizations authorized to receive tax-deductible contributions, discovering the IRS revoked its exempt status. The organization files an application for reinstatement and pays the required user fee. The organization learns that the IRS has not reinstated its status when the organization applies for grants. The IRS responds to inquiries by informing the organization that IRS needs another six to eight weeks to respond. Often, the IRS makes multiple extensions when the organization seeks a status update. TAS conducts research to determine a recommended action, secures proof of grants that are being lost, and issues an OAR to the Exempt Organization OD, recommending that the IRS reinstate the exempt status promptly, due to the lost funding. If the OD does not respond within the established timeframe, TAS issues a TAO. The OD usually complies by reinstating the organization's exempt status.

TAOs on Collection Issues

In FY 2014, levy issues were the fourth-largest source of TAS economic burden receipts,⁹³ as shown in Figure 4.5 above. If the IRS does not act quickly in these cases, the taxpayer may experience even greater financial harm. TAS issued 62 TAOs on levy cases in FY 2014, compared to 20 in FY 2013, 17 in FY 2012, and 11 in FY 2011. The IRS complied with 55 of the 62 TAOs for levies in FY 2014.⁹⁴ TAS

89 *Id.*

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

91 National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 35-70; National Taxpayer Advocate Special Report to Congress, *Political Activity and the Rights of Applicants for Tax-Exempt Status* (June 30, 2013).

92 See National Taxpayer Advocate 2013 Annual Report to Congress 165-72 (Most Serious Problem: *EXEMPT ORGANIZATIONS: The IRS Continues To Struggle with Revocation Processes and Erroneous Revocations of Exempt Status*).

93 Data obtained from TAMIS (Sept 1, 2014).

94 Data obtained from TAMIS (Oct. 1, 2014).

issued 37 TAOs to obtain the return of levy proceeds for taxpayers experiencing economic burden. Some examples were:

- The taxpayer was two months behind on rent, according to the landlord. The IRS levied the taxpayer's pay. The employer sent an excess amount and refused to correct the error. The taxpayer sought the aid of her congressional representative and requested an IRS installment agreement (IA) for \$200 per month. TAS issued a TAO to secure a levy release, process the IA, and return the levy proceeds due to the taxpayer's hardship. The IRS complied.⁹⁵
- A business taxpayer provided Forms W-2, *Wage and Tax Statements*, and Form W-3, *Transmittal of Wage and Tax Statements*, to the IRS's Civil Penalty Unit (CPU), when notified that the IRS had not received the documents. However, the CPU never resolved the issue. While the matter was still open with the CPU, the IRS levied all the working capital from the business' bank account to pay the penalty assessments, preventing the taxpayer from paying its employees. The taxpayer's account did not show receipt of Forms W-2 or W-3, although another system indicated the IRS had them. TAS issued a TAO asking the IRS to reconsider its determination not to return the levy proceeds due to the hardship of the taxpayer not being able to meet its payroll. The IRS complied. TAS also secured abatement of the civil penalty, so the taxpayer no longer owed the debt.⁹⁶

Other examples of TAO situations in collection include:

- When the taxpayer came to TAS in 2014, he had lost his disability income, was only receiving Social Security Administration benefits, and was homeless. In April 2012, the taxpayer requested a direct debit installment agreement (DDIA) for \$100 per month. The taxpayer's collection information statement (CIS) showed he qualified for a currently not collectible (CNC) determination. However, the IRS processed the DDIA for \$420 per month, telling the taxpayer he had no choice but to accept that amount. The taxpayer made the payments until he depleted his funds, and the IRS defaulted the DDIA for insufficient payments. After TAS issued an OAR, the IRS placed the taxpayer's account in CNC status, but refused TAS's request to return the DDIA payments. TAS's position was that the agreement was illegal, because it forced the taxpayer into an economic hardship,⁹⁷ and all payments were improperly obtained. The IRS then removed the account from CNC status based on out-of-date data. TAS found several of the IRS's actions to be inconsistent with the IRM. Originally, the IRS coded the account to allow CNC status if a default occurred, an indication the IRS knew the DDIA was improper. When TAS advised that it would issue a TAO, the IRS placed the taxpayer's account in CNC status again but would not return any funds. After TAS issued the TAO, the first-level manager agreed to return the levy payments received after the default, but not the "voluntary" DDIA payments, stating the IRS had no authority to do so. TAS modified the TAO to secure the return of all the levied payments. The IRS complied.⁹⁸

95 Release signed by taxpayer dated April 9, 2014.

96 *Id.*

97 IRC § 6343(a)(1) states in part: "Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made that such levy has been released if... (D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer."

98 Release signed by the taxpayer on August 18, 2014. The National Taxpayer Advocate is investigating the legal authority to return the remaining payments.

- The IRS approved an offer in compromise for the taxpayer, but did not input the OIC coding correctly. As a result, the IRS applied a refund for a period after the year in which the OIC was approved to the compromised tax debt, an action that was not authorized under the OIC. The taxpayer, a single parent with three children, desperately needed the refund. The adjustment to correct the problem went unpostable multiple times. TAS issued a TAO. The IRS corrected the account and issued the refund.⁹⁹

TAOs to Appeals

TAS issued 13 TAOs on a variety of issues during FY 2014 to the Office of Appeals, which complied with eight of these TAOs. TAS rescinded one after further research by a TAS attorney advisor; four TAOs remain in process. TAS cases involving Appeals continue to reflect a misunderstanding on the part of Appeals employees about TAS's statutory authority to advocate for taxpayers.¹⁰⁰ Some Appeals employees attempted to limit TAS's actions on the taxpayer's behalf, believing incorrectly that communicating with TAS violated the prohibition on Appeals from "*ex parte* communications" with functions, that TAOs may violate Appeals' independence, or exceed the National Taxpayer Advocate's authority.¹⁰¹

Despite these difficulties, TAS worked cooperatively with Appeals in many areas through a team. For example, Appeals personnel briefed the team on the Appeals Judicial Approach and Culture (AJAC) initiative. TAS is developing an awareness video presentation about the AJAC for release early in FY 2015. However, as stated elsewhere in this report, the National Taxpayer Advocate has several concerns about the AJAC initiative and has designated it a Most Serious Problem for the 2015 Annual Report to Congress.¹⁰²

CONGRESSIONAL CASE TRENDS

TAS is responsible for responding to certain tax account inquiries sent to the IRS by members of Congress. As shown in Figure 4.15, entity, refund, and document processing issues made up the top three categories of congressional inquiries in FY 2014.¹⁰³

99 Release signed by the taxpayer dated August 17, 2014.

100 Data obtained from TAMIS (Oct. 1, 2014).

101 See Rev. Proc. 2012-18, 2012-10 I.R.B. 455. An "*ex parte* communication" is a communication that takes place between any Appeals employee and employees of other IRS functions without the taxpayer (or representative) being given an opportunity to participate in the communication. This Revenue Procedure expressly states that communications initiated by TAS to Appeals are permissible as it is presumed that the TAS employee is acting at the request of the taxpayer.

102 See Most Serious Problem: *COLLECTION DUE PROCESS: The IRS Needs Specific Procedures for Performing the Collection Due Process Balancing Test to Enhance Taxpayer Protections*, *supra*.

103 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014).

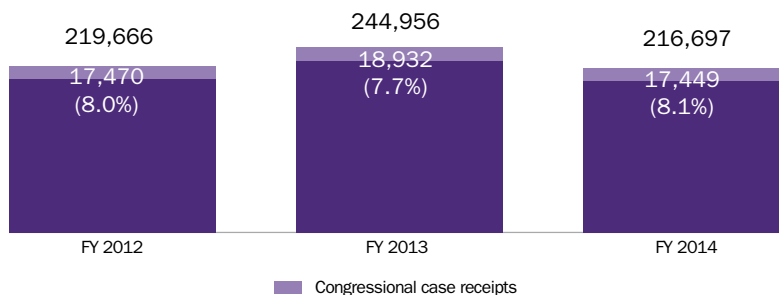
FIGURE 4.15, TAS congressional inquiries by issue group, FY 2013–2014 ¹⁰⁴

Issue Category	FY 2013	FY 2014	Percent Change
Entity Issues	5,558	5,022	-9.6%
Refund Issues	2,577	2,602	1.0%
Document Processing Issues	3,034	2,497	-17.7%
Audit Issues	2,258	2,166	-4.1%
Collection Issues	2,407	2,149	-10.7%
Technical, Procedural, or Statute Issues	1,322	1,306	-1.2%
Penalty Issues	989	964	-2.5%
Payment or Credit Issues	426	424	-0.5%
Appeals Issues	268	225	-16.0%
Other Issues	37	48	29.7%
Interest Issues	44	40	-9.1%
Criminal Investigation Issues	12	6	-50.0%
Totals	18,932	17,449	-7.8%

Figure 4.16 shows the total receipts from congressional offices.

FIGURE 4.16¹⁰⁵

TAS congressional receipts and total case receipts, FYs 2012–2014



104 Data obtained from TAMIS (Oct. 1, 2013; Sept. 1, 2014).

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