

**The National Taxpayer Advocate's**  
Fiscal Year 2005 Objectives Report to Congress

**June 30, 2004**

*Internal Revenue Service*



*Working to Put Service First*



# The National Taxpayer Advocate’s Report to Congress Fiscal Year 2005 Objectives

## Table of Contents

<b>INTRODUCTION.....</b>	<b>1</b>
THE ROLE OF THE TAXPAYER ADVOCATE SERVICE IN AN ENVIRONMENT OF INCREASED ENFORCEMENT ACTIVITY.....	1
TOWARD AGGRESSIVE PROTECTION OF TAXPAYER RIGHTS.....	2
<i>Taxpayer Rights Impact Statement</i> .....	2
<i>IRS Training Initiatives</i> .....	5
<i>Access to the Taxpayer Advocate Service</i> .....	5
CONCLUSION.....	6
<b>AREAS OF EMPHASIS.....</b>	<b>7</b>
OFFER IN COMPROMISE.....	7
<i>The Hidden Costs of OIC Returns and Rejections</i> .....	8
<i>Barriers to the OIC Program</i> .....	9
Clarity of the OIC Form.....	9
OIC User Fee.....	9
Barriers to OIC Processing.....	10
Offers in Bankruptcy Proceedings.....	10
Determination of an Acceptable Offer Amount.....	11
Calculating Reasonable Collection Potential (RCP).....	11
Summary Rejection of OICs if Taxpayer Qualifies for Extended Installment Agreement.....	12
Processing “Combination” Offers Backwards.....	13
Equity/Public Policy Offers.....	13
COLLECTION DUE PROCESS.....	15
ELECTRONIC FILING.....	17
<b>SYSTEMIC ADVOCACY.....</b>	<b>22</b>
BACKGROUND.....	22
INTEGRATING ADVOCACY.....	22
SYSTEMIC ADVOCACY SUBMISSIONS.....	23
ADVOCACY INITIATIVES.....	26
<i>Earned Income Tax Credit</i> .....	26
<i>Collection Statute Expiration Date</i> .....	30
<i>Face to Face Interaction</i> .....	32
<i>Non-Wage Withholding</i> .....	33
<i>Individual Taxpayer Identification Numbers</i> .....	34
<i>Campus Processes</i> .....	35
<i>Financial Literacy</i> .....	35
<i>Small Business Initiatives</i> .....	36
<b>TAS RESEARCH INITIATIVES.....</b>	<b>37</b>
ABUSIVE TAX SCHEMES: THE “TIPPING POINT” STUDY.....	37
THE IMPACT OF REPRESENTATION ON THE OUTCOME OF EITC AUDITS.....	38
FEDERAL CASE REGISTRY STUDY.....	39
EITC CERTIFICATION TEST.....	40
EITC PRECERTIFICATION TEST.....	40
EITC RECERTIFICATION.....	41
DOWNSTREAM EFFECTS OF COMPLIANCE INITIATIVES.....	41
<b>TAXPAYER ADVOCACY PANEL.....</b>	<b>42</b>
BACKGROUND.....	42

FISCAL YEAR 2005 STRATEGY.....	42
TAP MARKETING STRATEGY .....	43
OPPORTUNITIES FOR NETWORKING.....	43
TAP COMMITTEE STRUCTURE .....	43
TAP ANNUAL REPORT .....	45
<b>LOW INCOME TAXPAYER CLINICS .....</b>	<b>45</b>
BACKGROUND.....	45
2004 GRANT AWARDS.....	46
LITC WORK GROUPS AND SITE ASSISTANCE VISITS.....	47
<b>CASE ADVOCACY.....</b>	<b>48</b>
INTRODUCTION.....	48
TAS CASE QUALITY.....	49
CASE PROCESSING.....	51
<i>Introduction.....</i>	<i>51</i>
<i>Receipts.....</i>	<i>51</i>
<i>Complexity of TAS Casework.....</i>	<i>53</i>
<i>Sources of TAS Casework.....</i>	<i>56</i>
<i>Closures.....</i>	<i>57</i>
<i>Taxpayer Assistance Orders.....</i>	<i>58</i>
<i>Service Level Agreements.....</i>	<i>59</i>
<i>Operations Assistance Requests.....</i>	<i>60</i>
<i>Taxpayer Advocate Management Information System.....</i>	<i>61</i>
<i>Downstream impact of compliance initiatives.....</i>	<i>62</i>
TRAINING.....	63
<i>Four-Year Training Plan.....</i>	<i>63</i>
<i>TAS Training Program.....</i>	<i>64</i>
<i>Other Ongoing Training Activities.....</i>	<i>66</i>
<i>Leadership Training.....</i>	<i>66</i>
OUTREACH STRATEGY .....	67
<b>APPENDIX I: EVOLUTION OF THE OFFICE OF THE TAXPAYER ADVOCATE .....</b>	<b>I-1</b>
<b>APPENDIX II: TAXPAYER ADVOCATE SERVICE SIGNIFICANT HARDSHIP CRITERIA ..</b>	<b>II-1</b>
<b>APPENDIX III: TAS PARTICIPATION ON IRS TASK FORCES .....</b>	<b>III-1</b>
SIMPLIFICATION OF THE EXTENSION TO FILE PROCESS .....	III-1
PENALTY ADMINISTRATION TEAM.....	III-2
940 REDESIGN TEAM.....	III-3
941 ANNUALIZATION TASKFORCE.....	III-3
FEDERAL TAX DEPOSIT PENALTY TASK FORCE.....	III-4
<b>APPENDIX IV: LISTING OF LOW INCOME TAXPAYER CLINICS (LITCS) .....</b>	<b>IV-1</b>
<b>APPENDIX V: TAXPAYER ADVOCATE SERVICE IMPROVEMENT INITIATIVES .....</b>	<b>V-1</b>
CONFIDENTIALITY.....	V-1
DELEGATED AUTHORITIES.....	V-1
SIGNIFICANT HARDSHIP .....	V-2
WORKLOAD INTAKE TEAM.....	V-2
INTAKE ADVOCATE.....	V-3
CASE ADVOCATES.....	V-3
TECHNICAL ADVISOR PROGRAM.....	V-4
<b>APPENDIX VI: TAS MAJOR STRATEGIES, OPERATIONAL PRIORITIES, AND</b>	
<b>IMPROVEMENT PROJECTS FOR 2004-2005.....</b>	<b>VI-1</b>
<b>APPENDIX VII – TAS CLOSED CASE REPORTS BY IRS OPERATING DIVISION.....</b>	<b>VII-1</b>

## **INTRODUCTION**

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.<sup>1</sup> The reports must be submitted directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, any other officer or employee of the Department of Treasury, the IRS Oversight Board, or the Office of Management and Budget. The first report, to be submitted by June 30 of each year, must identify the objectives of the Taxpayer Advocate Service for the fiscal year beginning in that calendar year.

This year's Objectives Report focuses on the protection of taxpayer rights as a mandatory component of tax administration. Aggressive enforcement of taxpayer rights assures taxpayers that the IRS' aggressive enforcement of the tax laws will be balanced and fair.

## **THE ROLE OF THE TAXPAYER ADVOCATE SERVICE IN AN ENVIRONMENT OF INCREASED ENFORCEMENT ACTIVITY**

Today, the IRS is correctly focused on enforcing the tax laws against those taxpayers who actively shirk their responsibilities and obligations to the tax system. As Commissioner Everson states in the 2005-2009 IRS Strategic Plan, "Our enforcement programs must rest on a sound foundation of taxpayer rights.... At all times, we will strive to provide excellent service as we enforce the tax laws fairly and professionally. In other words, we can and must have balance."<sup>2</sup> This is as it should be. In an environment of aggressive tax enforcement, there should be no question about protecting taxpayer rights. Aggressive enforcement action requires aggressive protection of taxpayer rights. Otherwise, the system fails.

Almost six years ago, it was just such a failure that led Congress to enact, and the President to sign, the IRS Restructuring and Reform Act of 1998 (RRA 98).<sup>3</sup> We learned, in the years leading up to and during RRA 98 that the tax system can fail in its mission by a death of a thousand cuts. The drive for "better" business results, more "efficient" procedures, more case closures, and shorter cycle times was not balanced with an equally strong vigilance in protecting taxpayer rights. Small oversights and minor decisions made each day by perfectly reasonable executives, managers, and employees, in individual cases or entire programs and procedures, added up, over time, to the taxpaying

---

<sup>1</sup> IRC § 7803(c)(2)(B).

<sup>2</sup> 2005-2009 IRS Strategic Plan, Publication 3744 (Rev. 6-2004), p.3.

<sup>3</sup> Pub. L. No. 105-206 (July 22, 1998).

public's sense that the IRS cared more about enforcement results than about helping taxpayers become or remain in compliance with the tax laws.

In response to these perceived and real failures on the part of the IRS to effectively balance tax law enforcement with respect for taxpayer rights, Congress strengthened the Office of the Taxpayer Advocate and created the Taxpayer Advocate Service (TAS). TAS was specifically intended by Congress to act as a safety valve when institutional tendencies within the IRS might create a drift back to inappropriate practices once enforcement activities resumed after the 1998 reorganization.

The Taxpayer Advocate Service enables the IRS to design procedures and systems that will work fairly well for most taxpayers most of the time, although they may not work well for a few taxpayers some of the time. This latter group of taxpayers can and should receive assistance from TAS. If TAS functions effectively in its role as a safety valve for the tax system, both with respect to specific taxpayer cases and systemic problems, there should be no concern about "pendulum swings" as the IRS increases its enforcement activity. It is TAS' job to remind the IRS to maintain respect for taxpayer rights and provide quality service while enforcing the tax laws.<sup>4</sup>

## **TOWARD AGGRESSIVE PROTECTION OF TAXPAYER RIGHTS**

For the IRS to achieve a balance between enforcement and taxpayer rights, it must incorporate the protection of these rights, including meaningful customer service, into its programs, from initial planning stages to implementation to evaluation. It must institutionalize a way of thinking about taxpayer rights in its daily operations.

It is TAS' missions to help the IRS integrate fundamental taxpayer rights into everyday practice. Three key routes to achieving this integration are the Taxpayer Rights Impact Statement, IRS training initiatives, and offering access to the Taxpayer Advocate Service.

### **Taxpayer Rights Impact Statement**

The IRS often implements new procedures, guidelines, and requirements which are perfectly aligned with its organizational goals but may place an unacceptable

---

<sup>4</sup> The IRS Oversight Board, the Treasury Inspector General for Tax Administration, and the General Accounting Office each have an extremely important role to play in this process. As part of the IRS, however, TAS receives information about cases and programs firsthand and at the earliest stages. What distinguishes TAS from external oversight is that TAS must work with the IRS. We are part of the active solution to problems, and our goal is to identify potential problems before they arise or actual problems before they become so significant as to merit an oversight agency's attention.

strain on taxpayers' time, rights, or privacy. Although the IRS currently staffs an Office of Burden Reduction in the Small Business/Self-Employed Operating Division (whose efforts we applaud), the IRS must look beyond mere burden (or its definition of it) to the other factors we have cited.

In my 2002 Annual Report to Congress,<sup>5</sup> I discussed the taxpayer rights impact statement as one such tool that can assist the IRS in protecting taxpayer rights. The Taxpayer Rights Impact Statement is intended to help the IRS incorporate into its program planning and implementation an awareness and consideration of taxpayer rights. It is an assessment of an IRS program or policy, by the Taxpayer Advocate Service preferably undertaken at the IRS' request prior to program finalization and implementation. Where the IRS does not request an impact statement prior to program implementation, TAS will analyze the program on its own accord, when appropriate.

The Taxpayer Advocate Service's analysis of taxpayer rights impact for any IRS program will take into consideration the following concerns:

- What tax administration goal does the program serve? Is there an articulated purpose or policy that the program seeks to implement? Does this policy call for treatment of one group of taxpayers differently from others? If so, why? Is the difference in treatment fair and equitable?
- Where the IRS develops a compliance or enforcement initiative, has the IRS developed approaches that take into consideration the different reasons that taxpayers fail to comply with the specific tax obligation, or has it adopted a "one-size-fits-all" approach?
- Does the program design take into account the specific barriers for noncompliance, for example, cost, time, and burden to the taxpayer? Has it anticipated the barriers to taxpayers accurately responding to the IRS and does it seek to minimize those barriers?
- Does the program sufficiently protect the confidentiality of taxpayer and tax return information pursuant to IRC § 6103?
- Does the program incorporate a safety valve, whereby employees and managers have the discretion to identify and address cases presenting specific facts and circumstances? In implementing the program, do IRS employees receive training (specific to that program) about making referrals to the Taxpayer Advocate Service? Is there a mechanism for raising concerns about anomalous cases? Does the program design

---

<sup>5</sup> National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2002), p. 186; see also TAS Major Strategies, Operational Priorities, and Improvement Projects for 2004-2005, *infra* at Appendix VI, p. VI-1.

create disincentives for raising such cases or concerns to managers and executives?

- Will IRS employees know what they are being asked to do, and why they are doing it? Is this message communicated effectively within the IRS so IRS employees can properly implement the program as well as identify exceptions to the prescribed procedures?
- Are this program's procedures and purpose communicated to taxpayers, and does this communication strategy take into account the particular characteristics of the target audience? Does the communication plan allow for sufficient time for stakeholder concerns to surface and for effective saturation of the message before the program is implemented?
- Was the program vetted with internal and external stakeholders *before* final decisions and implementation? Were stakeholder concerns investigated and addressed?
- Are aspects of the program sufficiently complex, controversial, or doubtful that it would be appropriate to test the assumptions and expectations through a pilot prior to full implementation? If so, is there sufficient time to evaluate and improve the program design based upon findings from the pilot prior to full program implementation?
- Does the taxpayer have access to an administrative appeal of agency action? If so, is this right communicated effectively, and are the particular characteristics of the taxpayer population taken into consideration in designing these communications? Where the agency does not offer administrative appeal, does this denial withstand due process scrutiny? Are the reasons for denying such appeal clearly articulated and based upon sound policy reasons?
- Has the IRS developed quality measures that drive the appropriate IRS employee actions and behaviors, or do they encourage or reward inappropriate behavior or behavior that is likely to create either specific or systemic problems?

The answers to each of these questions will provide a framework for not only analyzing the specific merits of any one program but also comparing the level of taxpayer rights protection incorporated into otherwise successful initiatives. TAS will finalize the Taxpayer Rights Impact Statement in fiscal year 2004 and begin application in fiscal year 2005.



## **IRS Training Initiatives**

Over the next few years the IRS will be hiring thousands of new employees as part of its initiatives to increase its enforcement presence. For a workforce to be able to follow procedures and yet exercise the appropriate judgment and discretion, employees must be schooled in the foundational, technical, and behavioral aspects of tax administration. Further, without an understanding of why certain programs operate the way they do, employees will not be able to identify when a program has failed with respect to a particular taxpayer or group of taxpayers. Blind obedience and rote responses are inconsistent with taxpayer rights.

During fiscal year 2005, the Taxpayer Advocate Service will explore several aspects of the IRS's training program. Our objectives for this study are:

- To determine whether IRS operations have provided sufficient training to both newly hired and experienced employees to familiarize them with TAS, and with issues pertaining to protection of taxpayer rights;
- To assess whether the quality and depth of technical training promotes fair and consistent treatment of similarly situated taxpayers in enforcement actions while it permits the employee to acknowledge and work with a taxpayer's specific circumstances;
- To evaluate the impact of training on ensuring consistent application and interpretation of tax laws;
- To explore how the Service inculcates in its employees the principles of flexibility and judgment toward the taxpayers they serve; and
- To analyze how the various delivery methods used for technical training (e.g., classroom or E-learning) impact the students' ability to fairly and accurately discharge their duties.

## **Access to the Taxpayer Advocate Service**

The Taxpayer Advocate Service is frequently called the "best kept secret" in the IRS. Although TAS must be continually watchful that it is not becoming taxpayers' first choice for problem resolution, taxpayers must know that TAS is there as a safety valve when other approaches fail.

One recent study indicates that approximately 1.5 million taxpayers at any given time meet the statutory "significant hardship" test and thereby qualify for TAS

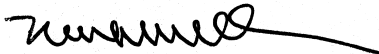
assistance.<sup>6</sup> Approximately 43 percent of these taxpayers feel intimidated about the IRS. These taxpayers, then, will never call the IRS and give it, or TAS, the opportunity to help. As their situation spirals out of control, they are in danger of becoming habitually noncompliant.

For this and other reasons, TAS has designed an outreach strategy to inform taxpayer populations who are most likely to have significant hardships, particularly economic hardships, about TAS and its ability to assist them in resolving their tax problem. We are also developing a mandatory e-learning training program for all IRS employees that will help them identify cases appropriate for referral to TAS and the nature and scope of TAS authorities.

## **CONCLUSION**

In the pages that follow, we describe the activities for the current fiscal year and our plans for fiscal year 2005. We bring particular attention to three programs that either impact significant numbers of taxpayers or require the IRS to recognize and accommodate key concepts of taxpayer rights. These programs – offer in compromise, collection due process, and electronic tax administration – will be the subjects of special TAS attention during fiscal year 2005. It is our intent that this report not only describes the specific activities and objectives of the Taxpayer Advocate Service but also provides greater transparency to the operations of the IRS itself.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
30 June 2004

---

<sup>6</sup> Russell Marketing Research, *Findings from Task 149 – The Taxpayer Advocate Service Research Program*, Sept. 2002, p. 21.

## AREAS OF EMPHASIS

### OFFER IN COMPROMISE

An offer-in-compromise is a collection alternative by which the IRS accepts an amount in compromise of the tax liability that is less than the legally owing tax liability. The IRS is authorized to accept offers on the basis of doubt as to collectibility (DATC), doubt as to liability (DATL), and effective tax administration (ETA).<sup>7</sup>

Offers enable the IRS to help taxpayers resolve difficult or longstanding collection problems with the IRS and obtain a “fresh start”.<sup>8</sup> This is an important tool for tax administration, where the sheer complexity of the tax code and procedures lead to IRS and taxpayer mistakes and problems. And for taxpayers, a compromise comes with a serious commitment – the taxpayer must remain in compliance for five years after the compromise is accepted, or the full tax liability will be reinstated.

The IRS has had difficulty in administering this program since its inception. This is due, in part, to the Service’s underlying uneasiness about permitting a taxpayer to be relieved of a legally due tax debt. The IRS appears to have difficulty with the exercise of discretion inherent in this determination, and is extremely fearful of “opening the floodgates” so that taxpayers en masse will stop paying taxes.

This reticence to decide cases on the basis of a taxpayer’s specific facts and circumstances has led the IRS to approach the offer program from the perspective of inventory management rather than problem resolution. Thus, the National Taxpayer Advocate continues to be concerned that the Offer-in-Compromise (OIC) program is not being operated in a manner consistent with either the IRS’ goals or Congress’s recent vision for the program.<sup>9</sup> Ideally, the

---

<sup>7</sup> IRC § 7122; Treas. Reg. § 301.7122-1(b).

<sup>8</sup> See S. Rep. No. 105-174, at 90 (1998); Policy Statement P-5-100, IRM § 1.2.1.5.18 (Rev. 1-30-1992) (providing that the OIC program should provide taxpayers with “fresh start toward compliance with all future filing and payment requirements”).

<sup>9</sup> See Policy Statement P-5-100, IRM § 1.2.1.5.18 (Rev. 1-30-1992). See also, H.R. Conf. Rep. No. 105-599, at 289 (1998) (stating that “the conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements.”); S. Rep. No. 105-174, at 90 (1998) (stating that “it is anticipated that the IRS will adopt a liberal acceptance policy for offers-in-compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes.”).

barriers to submitting an offer for consideration should be minimal, and the IRS should realistically evaluate each offer based upon its unique facts, looking for ways to accept reasonable offers rather than for ways to reject or return them.

During fiscal year (FY) 2004, the IRS Small Business/Self-Employed (SB/SE) Operating Division has maintained a current OIC inventory. March 2004 data indicate that case dispositions exceeded receipts, in part because of a decline in OIC receipts and the continuing shift of OIC processing from the field to the Campuses. At the same time, the percentage of OIC investigations completed within 0-6 months increased from 53 percent to 60 percent.<sup>10</sup>

These processing improvements deserve recognition. Although opinions differ on how the OIC program should be administered, SB/SE has made TAS an active partner in improvement efforts. For example, TAS is participating in a review of ETA cases. TAS was asked for comments regarding revisions to Internal Revenue Manual (IRM) OIC provisions (IRM section 5.8) as well as the OIC application form (Form 656). We commend SB/SE for its willingness to discuss and improve the OIC program.

During the remainder of this and the next fiscal year, TAS will continue to work with SB/SE to address the numerous policy and procedural problems that we have raised in prior reports.<sup>11</sup> We believe that the IRS can enhance program efficiency without sacrificing taxpayer rights or case decision quality.

## **The Hidden Costs of OIC Returns and Rejections**

The Service's current processes continue to prevent taxpayers from utilizing the program by imposing barriers to entry, unnecessarily returning offers, and unreasonably rejecting many of the offers that make it into the program.<sup>12</sup> As a result of these practices, eligible taxpayers may be discouraged from utilizing the offer program at all.<sup>13</sup> Such limits are inconsistent with Congress's goal of

---

<sup>10</sup> Executive Summary for the Oversight Board, March 2004 Collection Report, CAR 5000-108 (comparing OIC activity for the six-month periods ending March 31, 2003 and March 31, 2004). The IRS is also spending less time analyzing each offer than in the past and the percentage of offers accepted has declined since 2001. The direct time spent on each OIC went from about 3 hours in 2001 to about 0.6 hours in 2004, and the OIC acceptance rate has declined from about 40 percent in 2001 to about 22 percent in 2004. [Data source: IRS Business Measures DataMart].

<sup>11</sup> See National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), pp. 99-112; National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2002), pp. 15-24.

<sup>12</sup> The IRS returns OIC applications without appeal rights (before or after acceptance for processing) in nearly 60 percent of all OIC dispositions. Another 20 percent, approximately, are rejected with appeal rights. [Data source: IRS Business Measures DataMart].

<sup>13</sup> A 2003 IRS focus group found that "virtually all the practitioners believe that the Offer in Compromise program is not working." 2003 Nationwide Tax Forum, Focus Groups, *Customer*

making it “easier for taxpayers to enter into OIC agreements”<sup>14</sup> and are unlikely to be cost effective because of the hidden costs associated with returns and rejections.

The costs of processing OIC rejections in Appeals or in the courts is significant. The Chief of Appeals recently reported that 86 percent of all rejected offers are appealed.<sup>15</sup> SB/SE maintains that only 57 percent of rejected offers are appealed and that 29 percent of those are accepted in Appeals. Regardless of which numbers one accepts, many of these cases could be resolved by OIC personnel without the additional costs to taxpayers and the IRS attributable to an administrative appeal. Taxpayers who are attempting to fulfill their obligations via the OIC process, notwithstanding their financial difficulties, deserve a better OIC program that is designed to accept all reasonable offers.

## **Barriers to the OIC Program**

In addition to the general concerns discussed above, the National Taxpayer Advocate has identified several processing issues that impede a taxpayer’s ability to have to an offer accepted. We highlight here the problems we intend to intensely focus on over the next fiscal year in an attempt to drive significant improvement in the offer program.

### **Clarity of the OIC Form**

A taxpayer’s first hurdle in the OIC process is completing the OIC application form (Form 656). Although SB/SE has made many improvements in a recent redesign of Form 656, the instructions and worksheets for Form 656 are still too complicated. Additional improvements must be made so that the average taxpayer can properly submit a processible offer. TAS will review the impact of the new Form 656, once it becomes available, and will work with SB/SE to make further improvements to the Form 656 package.

### **OIC User Fee**

Since October 2003, the IRS has required most taxpayers submitting DATC offers to pay a \$150 user fee. During FY 2005, we will review the impact of this fee on taxpayers’ ability to submit offers, particularly with respect to low income taxpayers. In some cases, the IRS is retaining the user fee even when the offer is returned without appeal rights to the taxpayer as “not processible”. Further,

---

*Satisfaction Issues of Practitioners*, Project 01.08.005.03 (consisting of focus groups at six Tax Forum sites with eight to thirteen participants from a wide geographic area, each screened by SB/SE Research staff).

<sup>14</sup> See H.R. Conf. Rep. No. 105-599, at 289 (1998).

<sup>15</sup> Appeals Division Strong, IRS Official Says, 2004 TNT 113-3 (June 11, 2004).

inappropriate or purely formalistic rejections can result in a taxpayer unnecessarily paying multiple user fees.

### **Barriers to OIC Processing**

Taxpayers and practitioners complain that artificial barriers often prevent offer processing. For example, we hear that offers are being rejected or returned based upon a taxpayer's failure to have filed tax returns, even for years in which no tax return was required or where the tax return in question was attached to the offer submission.<sup>16</sup> A recent court decision suggests that the IRS policy of using a taxpayer's non-compliance as a basis to return an OIC unprocessed may not be permissible since taxpayer compliance is a factor that the IRS must consider in determining whether to accept certain offers.<sup>17</sup> TAS will be looking into these issues in FY 2005.

### **Offers in Bankruptcy Proceedings**

It is SB/SE's current policy not to process offers from taxpayers who are in bankruptcy.<sup>18</sup> Recent court decisions have rejected the IRS' position in certain instances.<sup>19</sup> This policy is inconsistent with the goal of providing taxpayers a "fresh start" as articulated in Policy Statement P-5-100 and the Bankruptcy Code. The Office of Chief Counsel has recently indicated that it is working with SB/SE on revising this policy to a limited extent. In FY 2005, we will work with the Office of Chief Counsel and SB/SE to determine the extent to which this policy should be revised.

---

<sup>16</sup> See IRM § 5.8.3.4.1 (Rev. 5-15-2004) (suggesting that an OIC may be nonprocessable based upon a failure to file returns even if the non-filing was based upon the determination that the taxpayer owed no tax).

<sup>17</sup> See *Chavez v. United States*, 93 A.F.T.R.2d 2004-2386 (W.D. Tex. 2004) (holding that a return of an effective tax administration offer based upon noncompliance is an abuse of discretion, and explaining that "if such a return were permissible, it would appear to preempt the fact-specific determination required by section 301.7122-1(c)(1), couching the response as a return rather than a rejection. It is not apparent how such a piecemeal approach would facilitate compromise, whereas the evident goal of section 301.7122-1 is to facilitate compromise where practicable. This provision has been construed as 'imply[ing] a mandate to negotiate, to make the effort, to explore the potential for compromise before deciding unilaterally whether or not to refer.' As such, the rejection would be characterized as clearly improper and thus an abuse of discretion." [citations omitted]).

<sup>18</sup> See Form 656, Offer in Compromise (Rev. 8-2001); IRM § 25.17.4.7 (Rev. 7-1-2002); IRM § 5.8.3.1 (Rev. 2-4-2000).

<sup>19</sup> See *In re Macher*, 303 B.R. 798 (W.D. Va. 2003); *In re Holmes*, 298 B.R. 477 (M.D. Ga. 2003), *aff'd*, 2004 WL 909456 (M.D. Ga. 2004); *In re Mills*, 240 B.R. 689 (S.D. W.V. 1999); *In re Chapman*, 84 A.F.T.R. 2d 99-5271, 99-2 U.S.T.C. ¶150,690 (Bankr. S.D. W.V. 1999).

## Determination of an Acceptable Offer Amount

Taxpayers and practitioners continue to complain that the IRS cannot correctly determine an acceptable offer amount on a consistent basis. SB/SE data confirm that this remains a serious problem.

Reliable quality measurement data are critical for evaluating and improving the OIC Program. SB/SE acknowledged last year that its system for quality measurement was inherently flawed and was in the process of redesign.<sup>20</sup> SB/SE has recently rolled out a new “embedded” quality review process for centralized OIC processing, which it will extend to the field offer program before the end of FY 2004. It has also developed new standards for measuring case quality, which will soon be available for review. During FY 2005, TAS will review the impact of the revised quality measurement system to assess whether it is accurate and provides the proper incentives for IRS employees to be flexible in properly addressing each taxpayer’s specific facts and circumstances.

## Calculating Reasonable Collection Potential (RCP)

In general, the IRS will not accept a DATC offer unless the taxpayer offers to pay his or her reasonable collection potential (RCP), absent special circumstances.<sup>21</sup> Employees in the OIC program must receive appropriate training and be encouraged to make decisions that result in realistic acceptable offers that are based on the unique circumstances of each taxpayer.<sup>22</sup>

Although the IRS’s use of unrealistic assumptions in calculating RCP is primarily a training issue, SB/SE’s recent revision of the OIC section of the Internal Revenue Manual (IRM)<sup>23</sup> was an opportunity for SB/SE to provide clear guidance for calculating RCP. Unfortunately, SB/SE did not take full advantage of this opportunity. For example, the IRM maintains a rigid income-averaging calculation as the basis for determining future income for sporadic earners, even though other estimates may prove to be more accurate.<sup>24</sup> That is, a taxpayer

---

<sup>20</sup> National Taxpayer Advocate, *Report to Congress, Fiscal Year 2004 Objectives*, Publication 4054 (Rev. 06-2003), p. 9-10.

<sup>21</sup> A taxpayer’s Reasonable Collection Potential equals the net equity in assets plus the amount the IRS could collect from the taxpayer’s future income (less necessary living expenses) over a set number of months (48 months for cash offers and 60 months for short-term deferred offers). See Form 656 (Rev. 5-2001) pp. 3, 8.

<sup>22</sup> See National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), p. 102.

<sup>23</sup> IRM § 5.8 (Rev. 5-15-2004).

<sup>24</sup> IRM § 5.8.5.5(5) (Rev. 5-15-2004); IRM § 5.8.5.5(6) (Rev. 5-15-2004). In many such cases, the use of collateral agreements is an appropriate alternative. A collateral agreement requires a taxpayer to provide additional consideration for an offer in compromise in the event that the taxpayer’s income exceeds agreed thresholds. See Form 2261 (Rev. 4-1995); IRM § 8.13.2.4.6 (Rev. 6-8-2000).

who is currently unemployed will be attributed with future earnings based on his or her past earning history, regardless of job market prospects or other external factors. TAS will continue to urge SB/SE to revise the IRM and provide training to make it clear that only realistic assumptions will be used in calculating RCP and that collateral agreements are an appropriate approach in reaching an acceptable offer.

### **Summary Rejection of OICs if Taxpayer Qualifies for Extended Installment Agreement**

When a taxpayer submits a DATC offer, the IRS first determines whether the taxpayer can “full pay” the outstanding liability, based on information provided by the taxpayer on financial statements. An offer will be summarily rejected if, based upon the IRS’s projections, the taxpayer’s future income will fully pay the liability over the original collection statute of limitations expiration period plus five years.<sup>25</sup> This approach forces taxpayers to utilize long-term installment agreements rather than the OIC process.

This policy needs to be re-examined. First, it is contrary to the IRS’ explicit policy that offers are an acceptable alternative to long-term installment agreements.<sup>26</sup> Second, it prevents many taxpayers from utilizing the OIC process,<sup>27</sup> yet the IRS has no data to support the assertion that rejecting an otherwise reasonable OIC on the basis that the taxpayer is eligible for an installment agreement, extended or otherwise, will result in greater collection by the IRS.

At the NTA’s request, SB/SE agreed to commission the IRS’s Office of Program Evaluation, Research, and Analysis (OPERA) to study the outcome of rejected offers. When this information is available, it is likely to reveal, that by rejecting OICs, the IRS is in many cases missing opportunities to collect at the earliest possible time and at the least cost to the government. It is also denying many taxpayers a fresh start and increasing the likelihood of ongoing noncompliance by the taxpayer, who may not be able to stay current on new taxes while paying old ones. TAS will continue to urge SB/SE to consider OICs based upon DATC from taxpayers who are eligible to enter into installment agreements (particularly

---

<sup>25</sup> See IRM § 5.8.1.1.3(2) (Rev. 5-15-2004) (stating: “[O]ffers will not be accepted if it is believed that the liability can be paid in full as a lump sum or under current installment agreement guidelines.”); IRM § 5.8.3.12(2) (Rev. 5-15-2004) (same); IRM § 5.14.2.1 (Rev. 3-30-2002) (providing that to be eligible for an installment agreement a taxpayer must full pay within the collection statute of limitations, which the IRS will extend for up to 5 years); IRM § 25.6.18.2 (Rev. 10-1-2002) (same).

<sup>26</sup> See Policy Statement P-5-100, IRM § 1.2.1.5.18 (Rev. 1-30-1992) (providing that “[A]n offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement).

<sup>27</sup> See National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), p. 101.



extended agreements). TAS will also work with SB/SE and other operating divisions to reassess the current installment agreement guidelines.

### **Processing “Combination” Offers Backwards**

Where an OIC is submitted on the grounds of both DATL and DATC, IRS policy requires that the DATC claim be processed first.<sup>28</sup> This approach is logically backwards. Any dispute over liability should be resolved first. It makes little sense to negotiate over collectibility if it may later be determined that no liability or less liability exists.

SB/SE has advised TAS that the IRS historically addressed combination offers in this manner because it was more efficient to do so. As a result of further discussions, SB/SE has committed to addressing this problem so that the IRS compromises what is truly owed. However, it has not acknowledged that DATL should be worked before or at the same time as DATC. During FY 2005, TAS will work with SB/SE to resolve this issue.

### **Equity/Public Policy Offers**

In 1998, Congress directed the Secretary to consider offers based on hardship, equity and public policy grounds.<sup>29</sup> The IRS’s processing of these “effective tax administration” (ETA) offers is also troubling. For example, the IRS generally believes that ETA is not an appropriate vehicle for compromising penalties or interest where relief is not available under the Code’s specific interest or penalty relief provisions.<sup>30</sup> We understand the underlying concern that limitations on penalty and interest relief provided elsewhere in the Code might be inappropriately circumvented if ETA relief were available in circumstances where the interest and penalty relief provisions of the Code do not apply. ETA relief, however, is only available if no other basis for compromise exists.<sup>31</sup> Therefore, if the IRS’ reasoning is accepted, ETA relief will *never* be available to compromise interest or penalties under any circumstances, notwithstanding express legislative history to the contrary.<sup>32</sup>

---

<sup>28</sup> See IRM § 5.8.4.10(3) (Rev. 5-15-2004).

<sup>29</sup> See H.R. Conf. Rep. No. 105-599, at 289 (1998) (stating that “the conferees expect that the present regulations will be expanded so as to permit the IRS, in certain circumstances, to consider additional factors (*i.e.*, factors other than doubt as to liability or collectibility) in determining whether to compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer’s income tax liability would promote effective tax administration.”).

<sup>30</sup> See, *e.g.*, IRM § 5.8.11.2.2(4) (Rev. 5-15-2004).

<sup>31</sup> Treas. Reg. § 301.7122-1(b)(3)(ii).

<sup>32</sup> See H.R. Conf. Rep. No. 105-599, at 289 (1998) (stating that “the conferees anticipate that, among other situations, the IRS may utilize this new [ETA] authority to resolve longstanding

The IRS follows a similar rationale to reject ETA offers involving alternative minimum tax (AMT) issues. The IRS summarily rejects ETA offers in cases where one of the inequities faced by the taxpayer is an “unfair” operation of the AMT. The IRS reasons that a compromise of AMT liabilities would circumvent the will of Congress.<sup>33</sup> However, this position overlooks the possibility that the “unfair” operation of the tax rules may be one of many factors that may justify the acceptance of an ETA offer based upon the unique circumstances of a particular taxpayer.

In addition, the IRS is, perhaps understandably, reluctant to consider ETA relief for taxpayers who have invested in a tax shelter or have any history of non-compliance. However, in some cases these investors thought they were investing in legitimate tax planning investment opportunities because the shelter promoter actively deceived them. It appears that these ETA offers are being rejected, regardless of any other facts that would suggest that a non-hardship ETA compromise might be appropriate.

Taxpayers who have been deceived by a third party, including other branches of government, also appear to be unable to obtain ETA relief. The reasoning behind this seems to be a view that the IRS would become a *de facto* insurer against third-party bad acts if relief were available in such circumstances. TAS will continue to urge the IRS to evaluate all of the facts and circumstances of every case even after it is determined that a taxpayer invested in a tax shelter, was subject to the AMT, or was a victim of third-party bad acts.

With urging from TAS, SB/SE dedicated a special group to work all non-hardship OICs (the equity/public policy offers) based on ETA. However, TAS is concerned that many non-hardship ETA offers may not be reaching the group because cases face a two-layered screening process. The National Taxpayer Advocate believes that this group should evaluate *all* offers involving non-hardship ETA issues, as well as DATC offers involving special circumstances that are based upon equity/public policy considerations. In addition, we understand that the group has not accepted many offers.

We are encouraged that representatives from SB/SE, Appeals and IRS Chief Counsel have initiated discussions with TAS regarding these issues. TAS will continue to monitor this initiative and participate in any multi-functional review established to assess the screening process or case outcomes from this group.

---

cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability.”).

<sup>33</sup> See IRM § 5.8.11.2.2(3) (Rev. 5-15-2004) (stating that “compromise on public policy or equity grounds is not authorized based solely on a taxpayer's belief that a provision of the tax law is itself unfair. Where a taxpayer is clearly liable for taxes, penalties, or interest due to operation of law, a finding that the law is unfair would undermine the will of Congress in imposing liability under those circumstances.”).

However, when Congress established non-hardship ETA as a basis for compromise, it intended that the IRS would use it.<sup>34</sup> As the program stands today, the IRS is unable to determine when, if ever, non-hardship ETA is appropriate or when it is used so rarely as to be virtually meaningless. In order to provide clearer guidance and direction to taxpayers and IRS employees about ETA relief, we have requested that an ETA regulation project be added to the Treasury and IRS business plan.

## **COLLECTION DUE PROCESS**

Collection Due Process (CDP) hearings can yield positive results when the hearings are properly structured and when taxpayers are effectively advised about the CDP hearing's purpose and procedure. Yet taxpayers and their representatives continue to express confusion concerning the CDP hearing process. Participants are unclear about fundamental items such as what a CDP hearing is, when the process starts and is completed, and what the hearing is meant to achieve. The National Taxpayer Advocate believes that the Office of Appeals should attempt to remedy this situation through increased and more effective communications with affected taxpayers. During FY 2005, TAS will work with Appeals to improve the effectiveness and clarity of its taxpayer communications.

The National Taxpayer Advocate also has a number of concerns about the hearing process itself. First, the CDP hearing process is too lengthy.<sup>35</sup> The process is hampered by built-in delays. For example, Internal Revenue Manual provisions permit Appeals to delay in assuming jurisdiction of the case while IRS collection representatives continue to contact the taxpayer after a CDP hearing has been requested.<sup>36</sup> These contacts result in lengthy delays between filing a CDP request and initial contact with an Appeals Officer and, if not properly handled, can undermine Appeals' role as an independent hearing officer. TAS will continue to work with the Offices of Chief Counsel and Appeals to improve administration of CDP hearings.

---

<sup>34</sup> See, e.g., S. Rep. No. 105-174, at 90 (1998) (stating that "it is anticipated that the IRS will adopt a liberal acceptance policy for offers-in-compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes.").

<sup>35</sup> The National Taxpayer Advocate identified the implementation of Collection Due Process hearings by Appeals as the fourth Most Serious Problem in 2003 focusing on, among other things, the delay in the process. National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), p. 38; see also Internal Revenue Service, Appeals Customer Satisfaction Survey, issued January 2004, indicating that delay is still an issue confronting taxpayers.

<sup>36</sup> After the taxpayer has filed Form 12153 (Request for Collection Due Process Hearing), the delay before a taxpayer is contacted by Appeals can be as much as 120 days. National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003). p. 42.

Second, the National Taxpayer Advocate is focusing on the lack of established procedures for CDP hearings. One troubling aspect of the hearing process is the extent to which the type of CDP hearing that a taxpayer receives is too dependent on the legal prowess of the taxpayer. For example, the taxpayer has a right to a face-to-face hearing;<sup>37</sup> however, the taxpayer will not receive a face-to-face hearing unless it is specifically requested.<sup>38</sup> A taxpayer has a right to record a CDP hearing;<sup>39</sup> however, the taxpayer is not specifically informed about this right or the implications of not exercising this right.<sup>40</sup> A taxpayer has the right to raise collection alternatives at the hearing;<sup>41</sup> yet the taxpayer is not provided with adequate, simple information about the universe of collection alternatives. The type of hearing that a taxpayer receives should not depend on the taxpayer's education level.

Third, the National Taxpayer Advocate is evaluating Appeals' implementation of a program to hear some CDP cases at the IRS campuses (service centers). With only ten campuses, this program may result in cases being sent to campuses which are not geographically close to taxpayers. We are concerned that this policy may result in further delays if the taxpayer subsequently requests a face-to-face hearing, thereby requiring the case file to be sent back to the local IRS Appeals office. More importantly, campus hearings may create a "second class" of CDP cases, in which low income taxpayers and taxpayers with so-called "simple" collection issues receive truncated hearings that do not fully address collection alternatives, resolve the taxpayer's collection problems, or the underlying substantive issue. A team of Local Taxpayer Advocates and Systemic Advocacy analysts will monitor Appeals' implementation of this initiative, including employee training, during FY 2005.

Finally, the National Taxpayer Advocate continues to be concerned about the level of information provided to CDP hearing recipients. As discussed in the 2003 Annual Report to Congress,<sup>42</sup> Appeals must develop clearer and simpler materials such as publications, forms, letters, and guidance to taxpayers explaining every step of the process from the CDP hearing to collection alternatives. Determination letters must clearly set out the issues considered

---

<sup>37</sup> Treasury Reg. § 301.6330-1(d)(2), Q-D7 & A-D7.

<sup>38</sup> Appeals Letter 3855.

<sup>39</sup> *Keene v. Comm'r*, 121 T.C. 8, 17 (2003).

<sup>40</sup> Not recording a CDP hearing can put the taxpayer in a procedural quandary for the following reason. Unless the taxpayer is able to argue the existence of the underlying liability, the standard of review of Appeals' decision is "abuse of discretion," which means the decision of Appeals will be sustained unless based on the record before the court it is clear that the Appeals Officer acted arbitrarily or without a sound basis in fact or law. *Woodral v. Comm'r*, 112 T.C. 19, 23 (1999). A recording can render an accurate picture of what transpired at the actual CDP hearing.

<sup>41</sup> IRC §§ 6320(c)(2) and 6330(c)(2).

<sup>42</sup> National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), p. 38.

during the hearing and specifically describe the basis on which collection alternatives were either accepted or rejected. During FY 2005, TAS will continue to work with Appeals to improve its notices, letters, and publications.

## **ELECTRONIC FILING**

In the IRS Restructuring and Reform Act of 1998 (“RRA 98”), Congress directed the IRS to work toward a goal of having 80 percent of all tax and information returns filed electronically by 2007.<sup>43</sup> As the Senate Finance Committee noted, e-filing brings benefits to both taxpayers and the IRS.<sup>44</sup> From a taxpayer perspective, e-filing eliminates the risk of IRS transcription errors, pre-screens returns to ensure that certain common errors are fixed before the return is accepted, and speeds the delivery of refunds. From an IRS perspective, e-filing eliminates the need for data transcribers to input return data manually (which could allow the IRS to shift resources to other high priority areas), allows the IRS to easily capture 100 percent of return data electronically, and enables the IRS to process and review returns more quickly. The IRS is devoting substantial resources toward meeting the 80-percent e-filing goal, and we applaud the IRS for the emphasis it is placing on this objective.

In order to meet its 80 percent goal, it is desirable and even necessary that the IRS develop and maintain a positive working relationship with the private tax preparation software industry. In some cases, the IRS and private industry will have similar goals. But in the others, the private sector and the IRS have very different objectives. Where their differing objectives conflict, the IRS should strive to do what is best for taxpayers and the tax system. Inclusion of two consumer advocate representatives in membership of the Electronic Tax Administration Advisory Committee (ETAAC) will also help the IRS achieve a balanced approach to tax administration.

We have two principal concerns:

1. The IRS should make it possible for all taxpayers to file their returns electronically without cost. In the area of electronic filing, we think it is most appropriate to look for guidance to the rules that have governed the preparation and filing of tax returns in the paper-filing environment for decades. Those taxpayers who feel comfortable completing their returns on the basis of IRS forms, publications and telephone assistance may file their returns without incurring any charges (except for a postage stamp). Those taxpayers who prefer to obtain the assistance of a professional are free to do so and generally incur preparer fees.

---

<sup>43</sup> Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-206, § 2001(a)(2), 112 Stat. 685 (1998).

<sup>44</sup> See S. Rep. No. 105-174, at 39-40 (1998).

By analogy, we believe the IRS should place a template on its website that taxpayers who do not require professional assistance can use to complete and file their tax returns. The template would allow taxpayers to enter data (e.g., enter total wages on line 7 of Form 1040), would tabulate basic entries, and would link to form instructions and IRS publications, but it would not otherwise be interactive. Just as in the paper environment, a taxpayer could use this template without cost. On the other hand, those taxpayers who do not find a template sufficient and would prefer to take advantage of the additional benefits of a sophisticated software program would be free to do so.

There are strong policy reasons for developing a template. First, there is no public policy justification for requiring taxpayers who do not need tax advice to pay a fee to a private company to file their tax returns electronically. Second, the fact that all taxpayers may now file paper returns without charge but many must pay a fee to file their returns electronically provides precisely the opposite incentive one would expect if the IRS is serious about achieving the 80-percent e-filing goal by 2007. The IRS should be trying to make e-filing less expensive -- not more expensive. Indeed, Russell Marketing Research conducted a study for the IRS in 2003 which found that 11 percent of paper-return filers avoid e-filing because of cost.<sup>45</sup> Thus, an electronic template would both put e-filing on a par with paper filing conceptually and increase the attractiveness of e-filing by reducing the cost.

The software industry, and to some extent the IRS, opposes the availability of a basic template. They make two central arguments. One argument is that publishing a template would improperly place the IRS in the position of competing with private industry. This argument lacks merit. As discussed above, the basic template in the e-filing world is akin to the forms and instructions the IRS publishes in the paper-filing environment – both allow taxpayers who feel comfortable completing their returns without outside advice to do so without charge. If paper-based return preparers lobbied to prohibit the IRS from making forms and publications available to the public on the grounds that the IRS was competing with private industry, people would laugh. The notion that the IRS should not make a template available to persons who want to prepare their returns electronically without commercial assistance is equally unreasonable.

A second argument is that the cost to the IRS of creating and maintaining the template would be excessive. We think the benefits of providing a mechanism for taxpayers to fulfill their tax obligations without incurring fees are paramount, and we believe the costs should be manageable. Several private companies already make basic templates, so the IRS could choose an outside vendor to provide and maintain the template. A somewhat greater challenge would be

---

<sup>45</sup> Russell Marketing Research, "Findings From The 2003 Wave Of *e-file* Taxpayer & Preparer Satisfaction Research," Presentation at the 2003 IRS Research Integration Meetings, screen 37 (July 2003).

making the website sufficiently secure to protect information transmitted by taxpayers. However, the IRS *already* electronically receives about 50 individual million tax returns – and millions more information returns and employment tax returns -- and it is *already* able to receive them all and provide adequate security. The additional work and cost required to receive returns from taxpayers directly should be manageable and achievable within the next few years.

Those who oppose IRS' provision of a template frequently cite language in the RRA 98 conference report which states that the conferees want the IRS and Treasury "to press for robust private sector competition"<sup>46</sup> and the position of the Treasury Department that the IRS should not "get into the software business."<sup>47</sup> However, neither Congress nor the Treasury Department has ever opposed the provision of free e-filing options to all taxpayers. To the contrary, the RRA 98 conference report states that "the conferees also intend that the IRS should continue to offer and improve its Telefile program and make available a comparable program on the Internet,"<sup>48</sup> and former Treasury Secretary Paul O'Neill stated that "we need to reduce the burden on taxpayers in the short term by rapidly expanding opportunities such as e-filing, and making it free to those who choose it. No one should be forced to pay extra just to file his or her tax return."<sup>49</sup> In short, there are compelling policy reasons to make free electronic preparation and filing available to all taxpayers and general legislative and administrative support for doing so.

2. The IRS should require that an electronic tag be placed on all returns submitted through the Free File program. In 2002, the IRS entered into a three-year agreement with a consortium of private tax preparation software companies (the "Free File Alliance" or "Free File") under which the companies agreed, in the aggregate, to provide free tax preparation services for at least 60 percent of individual taxpayers. The IRS's purpose for entering into the agreement was to try to boost the number of taxpayers who file their returns electronically to help meet the 80-percent e-filing goal. During the 2003 filing season, a reported 2.8 million taxpayers used Free File.<sup>50</sup> During the 2004 filing season, a reported 3.4 million taxpayers used Free File.<sup>51</sup> At present, however, the IRS has no way of knowing how many of those users were attracted to e-filing by Free File (which

---

<sup>46</sup> H.R. Conf. Rep. No. 105-599, at 235 (1998).

<sup>47</sup> Press Release, U.S. Department of the Treasury, "Treasury, IRS Announce New Efforts to Expand E-Filing," Treas. PO-964 (Jan. 30, 2002) (emphasis added).

<sup>48</sup> H.R. Conf. Rep. No. 105-599, at 235 (1998). Telefile is a program akin to a basic template that allows taxpayers to file certain returns without charge.

<sup>49</sup> Press Release, U.S. Department of the Treasury, "Treasury, IRS Announce New Efforts to Expand E-Filing," Treas. PO-964 (Jan. 30, 2002) (emphasis added).

<sup>50</sup> Internal Revenue Service, *Report to House Committee on Ways and Means and Senate Finance Committee on Electronic Account Access*, at 3 (December 2003).

<sup>51</sup> Press Release, Internal Revenue Service, "Strong Filing Season Produces E-File Records," IR 2004-65 (May 10, 2004).

would further the IRS's purpose of boosting the number of taxpayers who e-file their returns) and how many taxpayers had previously filed their returns electronically and simply shifted to Free File to avoid fees (which would not further this IRS purpose). This is an important tax administration issue. We note that the increase in taxpayers using Free File in 2004 as compared with 2003 was considerably less than one million – and of those, we have no idea how many were first-time e-filers. If the Free File program is not attracting sufficient numbers of taxpayers to electronic filing, the IRS needs to look for better solutions. If the IRS had information about the types of taxpayers who are using Free File, it also could better target its advertising to increase participation in the program.

Last year, the IRS requested that the participating companies place an electronic tag (a "Free File indicator") on all returns filed through Free File. If the IRS can identify which returns are Free File returns, it could run a search to determine how many taxpayers using Free File were filing their returns electronically for the first time. The Free File Alliance strongly opposed this request and the IRS ultimately did not pursue the matter.

Two principal arguments were raised in opposition to the Free File indicator. It was argued that the indicator would undermine taxpayer privacy. Our office yields to no one in our zealous advocacy of taxpayer privacy rights, but we think this argument is baseless. The IRS already knows which returns are filed on paper and which returns are filed electronically. The IRS already knows which electronic return originator (ERO) submits each electronically filed return. And the IRS already has the ability to search fields on returns electronically to identify high-risk items. The IRS would not obtain any additional information if electronically filed returns contained a Free File indicator that would prejudice the rights of taxpayers. It will simply be able to better evaluate the Free File program.

It was also argued that the Free File Alliance initially committed only to provide the IRS with aggregate data, rather than company-specific data, and that a Free File indicator would inform the IRS which Free File returns come from which company. The Alliance argued that, particularly if the IRS compiles data by company, a competitor might be able to obtain the data by filing a Freedom of Information Act (FOIA) request, and the disclosed data could provide the competitor with proprietary information not available from other sources.

We do not find this argument persuasive for several reasons. First, there is a legitimate question about the significance of the data. As noted, the IRS already knows which returns are submitted through which company. Therefore, if the IRS wished to determine the ages or incomes of taxpayers using the services of a particular company, it already has the ability to do so. And if a competitor wishes to obtain that information under FOIA and no exceptions apply, it already may do so.



Second, FOIA contains exemptions for proprietary data.<sup>52</sup> Therefore, if the information at issue is found to be proprietary, it would not be subject to disclosure. Third, data is only obtainable under FOIA if the agency to which a request is directed maintains the data in a “readily reproducible” form.<sup>53</sup> The IRS has stated that it does not intend to compile company-specific information. Unless the agency can easily produce the data, it would not be obtainable under FOIA.

Finally, and most important, the government has a compelling interest in determining whether its decision to enter into a “partnership” with private companies is achieving its intended goal. Having abandoned the goal of a Free File indicator, the IRS is now asking Free File members to include a voluntary questionnaire on each return that would ask taxpayers to indicate, among other things, whether they are first-time e-filers. We do not believe the information collected under this procedure would be as complete and accurate. Accordingly, we again urge the IRS to push for inclusion of an indicator on all returns filed through Free File.

In the coming year, TAS will continue to explore ways to make e-filing available without cost to all taxpayers, particularly since the existing Free File agreement will expire after the 2005 filing season and the IRS will have an opportunity to consider what approaches it wishes to pursue at that time.

There are two additional e-filing issues that we will monitor. We will continue to work with the IRS Office of Chief Counsel and the Treasury Department on revisions to the regulations under IRC § 7216, relating to the use and disclosure of tax return information by tax returns preparers (including EROs). We understand that the IRS is considering a proposal to scale back the Telefile program. While the IRS is concerned that the costs of the Telefile program may be excessive in light of the number of users, the program does provide important benefits to those taxpayers who do chose to use it and the RRA 98 conference report directed the IRS to “continue to offer and improve its Telefile program.” If the program is scaled back, we will work with the IRS to try to ensure that the needs of the Telefiler population are met through other means.

---

<sup>52</sup> 5 U.S.C. § 552(b)(4).

<sup>53</sup> 5 U.S.C. § 552(a)(3)(B).

# **SYSTEMIC ADVOCACY**

## **BACKGROUND**

The Office of Systemic Advocacy is responsible for identifying and resolving issues that pertain to extensive taxpayer segments rather than a TAS case-specific problem, and are burdensome or impact taxpayer rights. These problems are generally identified and worked during routine and daily interaction with IRS. The most significant issues are discussed in the National Taxpayer Advocate's December Annual Report to Congress.

Systemic issues pertain to individual taxpayers, small and large businesses, non-profits and other entities, and the tax system overall. The breadth and complexity of problems have increased in FY 2004 and are expected to continue for FY 2005. To this end, the National Taxpayer Advocate hired additional legal staff to strengthen the analysis and resolution of issues. The Systemic Advocacy Management System (SAMS) will be used to report, analyze, track, and work the systemic problems.

TAS employees provide a unique perspective when they participate in IRS teams and task forces by ensuring that the taxpayers' perspective is considered. The results of our efforts are evident in many IRS programs highlighted below. Further, the Office of Systemic Advocacy will be integral in the successful implementation and oversight of the Integrating Advocacy concept within TAS. This approach will maximize and leverage the existing technical expertise of the Local Taxpayer Advocates by including them in the identification and resolution of systemic issues at the earliest point of intervention. These initiatives should have significant impact in FY 2005 as the National Taxpayer Advocate's concepts for integrating advocacy become reality. A discussion of systemic advocacy initiatives follows.

## **INTEGRATING ADVOCACY**

Effective coordination with field components of TAS is the key to developing successful advocacy initiatives. The National Taxpayer Advocate is realigning staffing from systemic advocacy to support the work of Local Taxpayer Advocates and area directors to create an environment wherein front-line systemic advocates work with case advocates, IRS personnel, Low Income Taxpayer Clinic workgroups, and Taxpayer Advocacy Panel issue committees on real-time identification and resolution of IRS systemic problems. In her FY 2004 objectives report the National Taxpayer Advocate noted that "advocacy is a

continuous process and is the responsibility of each TAS employee".<sup>54</sup> By integrating systemic advocacy into the very fiber of field operations, she is reinforcing this obligation.

The integration of systemic and case advocacy in the field will promote the following goals:

Enhanced role for Local Taxpayer Advocates

By assigning issues of national import to Local Taxpayer Advocates (LTAs), TAS is able to leverage the experience, expertise, and field contacts of these invaluable resources. During FY 2004, TAS convened a task force to examine its current processes. The task force recommended the creation of a portfolio management approach to enable the assignment, development, and completion of systemic issues in concert with case advocacy. Each LTA has now been assigned a customized advocacy portfolio, for which he or she will serve as subject matter expert. Typically, portfolio issues include such important topics as collection due process, abusive trusts, and earned income tax credits. Local Taxpayer Advocates will also be available to represent the National Taxpayer Advocate on selected task forces and issue committees, and to participate in the formulation of the Annual Report to Congress.

Early identification of systemic issues

Many systemic problems surface in field locations (including campuses). Integrating advocacy will facilitate both awareness of such issues and rapid response to correcting them. Case advocates, analysts, technical advisors, and LTAs are expected to identify and raise systemic problems as well as suggest approaches for resolution. As noted above, LTAs will work some of the identified issues. The Systemic Advocacy headquarters staff, consisting of highly technical employees, will work in teams with attorney advisors and managers to address the most complex problems besetting the tax system. Issues input into the SAMS system, Taxpayer Advocate Management Information System (TAMIS) data, and matters of interest to the National Taxpayer Advocate will form the basis of the systemic advocacy workload.

## **SYSTEMIC ADVOCACY SUBMISSIONS**

The Systemic Advocacy Management System (SAMS) allows IRS employees and external stakeholders to submit advocacy issues to the TAS office of Systemic Advocacy for review, analysis and potential development as advocacy projects. SAMS also provides a means of creating, working, and monitoring these projects. SAMS became available to IRS employees in FY 2003. The

---

<sup>54</sup> National Taxpayer Advocate, *Report to Congress, Fiscal Year 2004 Objectives*, Publication 4054 (Rev. 06-2003) p. 6.

TAS Office of Systemic Advocacy significantly upgraded and refined SAMS in FY 2004 by delivery of a web-based public portal complete with a pre-screening process. These improvements enable the public, including taxpayers and their representatives, to submit perceived systemic problems directly to the TAS office of Systemic Advocacy.

A public, web-based version of SAMS became available on [www.irs.gov](http://www.irs.gov) in November 2003, simplifying the submission process for Internet users and providing TAS with an automated approach to receiving and assigning work while protecting the confidentiality and security of the primary SAMS database. In recognition of the central role of SAMS as a major TAS system, the National Taxpayer Advocate initiated its transfer to the TAS Office of Program Planning and Quality. The shift in responsibility includes the creation of a SAMS Advisory Board (with National Treasury Employees Union representation) and a Program Manager position similar to those in place for the Taxpayer Advocate Management Information System (TAMIS).

Additional plans have been developed for other enhancements in FY 2005 including:

- a method of reporting constituents' issues to congressional representatives;
- the ability to balance each analyst's workload based upon his or her skills and current inventory;
- the development of a unique SAMS capacity for the citizen volunteer Taxpayer Advocacy Panels (TAP); and
- a time reporting system for each assigned advocacy project.

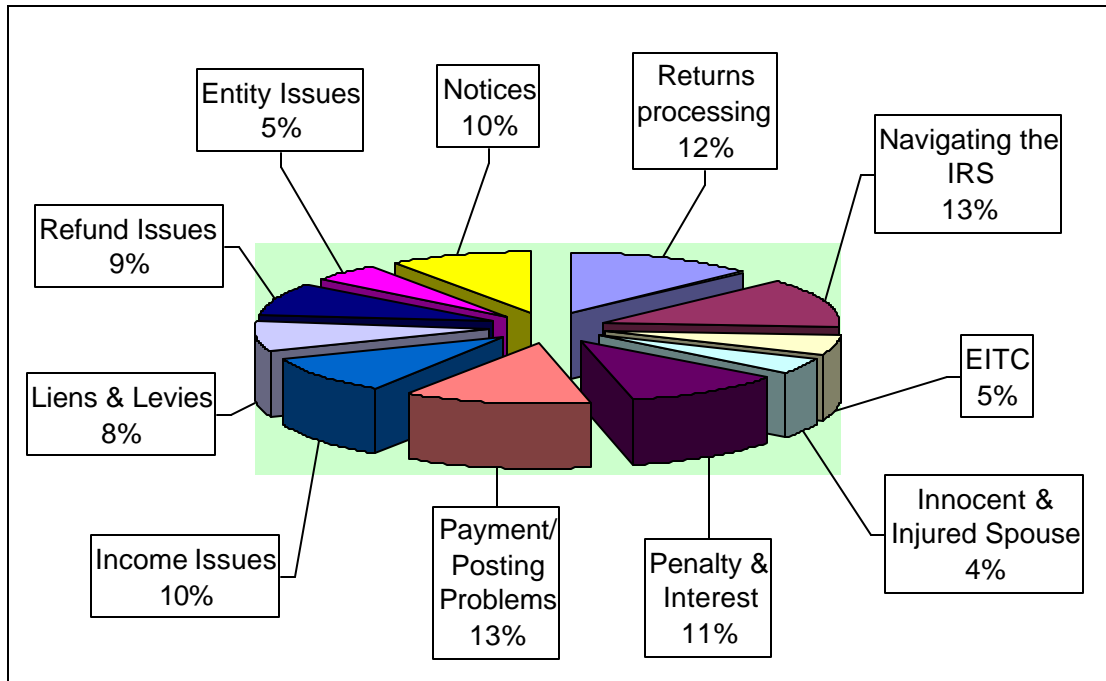
### **Systemic Advocacy Receipts**

Receipts in SAMS have increased by 69 percent over the same period last year. The following issues were among the most frequently submitted via SAMS during the first six months of both FY 2003 and FY 2004.

- Offers in Compromise
- Penalties
- Examination Issues
- Earned Income Credit
- Navigating the IRS
- Employment Tax Issues

The following chart illustrates the top issues received in the TAS Office of Systemic Advocacy through SAMS.

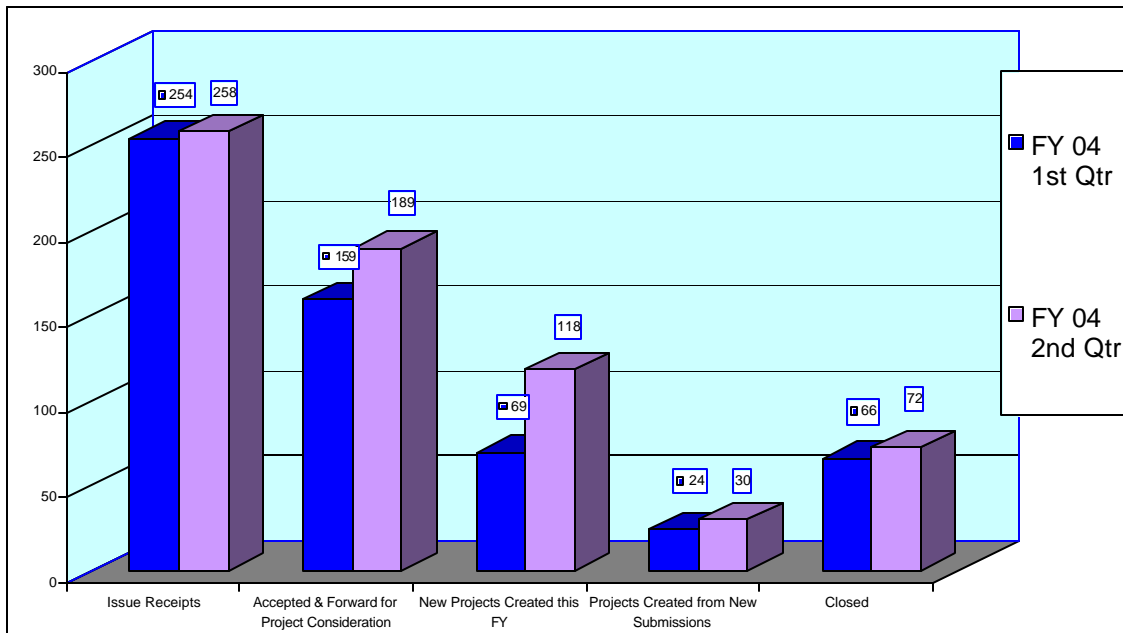
SAMS – Top Issues Report, October 1, 2003 – April 30, 2004



SAMS issue submissions are evaluated to determine whether a systemic problem exists and are then ranked using established criteria. Consideration is also given to emerging concerns. Projects are assigned to employees in the TAS Office of Systemic Advocacy, or are included in assigned advocacy portfolios. These projects frequently result in administrative remedies or legislative proposals.

The following chart depicts the number of issues received and subsequent advocacy projects assigned, worked, and closed during the first and second quarters in FY 2004.

## SAMS Data FY 2004 1<sup>st</sup> and 2<sup>nd</sup> Quarters – Receipts/Projects/Closed



## ADVOCACY INITIATIVES

Advocacy is a continuous process and the responsibility of each Taxpayer Advocate Service employee. The full scope of the Taxpayer Advocate Service's efforts cannot be recorded here. The National Taxpayer Advocate has designated the following issues as special priorities for TAS during FY 2005. Additional issues are discussed in Appendix III – TAS Participation on IRS Task Forces.

## Earned Income Tax Credit

The Earned Income Tax Credit (EITC) continues to be one of the most complicated tax provisions facing United States taxpayers. IRS Commissioner Everson has identified EITC administration as one of his highest priorities; we applaud his commitment. However, the National Taxpayer Advocate remains concerned about the burden imposed on taxpayers attempting to claim the credit.

For the 2004 filing season, the IRS instituted a pilot program for EITC certification. This program involved 25,000 taxpayers who were asked to provide documentation establishing that each qualifying child, claimed for purposes of the EITC, met the residency requirements. This information was to accompany the tax return of those taxpayers involved in the pilot program and was designed to reduce noncompliance while improving the administration of the credit.

Currently, the results of the pilot are still being compiled; a preliminary report is expected in July 2004.

The National Taxpayer Advocate is extremely interested in the results of the certification pilot. TAS will continue to work with the EITC Program Office to ensure that any issues raised by the pilot program are addressed, including taxpayer burden in complying with the certification requirements. As controversy cases arising out of the certification pilot emerge, the Low Income Taxpayer Clinics (LITCs) and the Taxpayer Advocacy Panel (TAP) EITC Issue committee will be encouraged to provide comments and suggested improvements to the certification process. Should the certification pilot be expanded, the IRS must ensure that the program uses the most effective and least intrusive methods of gathering the required data. The National Taxpayer Advocate continues to support a precertification test which would allow taxpayers to provide the necessary documentation in advance of the filing season, thereby preventing taxpayers from having their refunds held up while the required documentation is obtained. The Office of the Taxpayer Advocate will continue to work with the EITC Program Office to ensure that this research test is designed and implemented in a manner that will advance our knowledge of what approaches help taxpayers understand and prove their eligibility for the EITC and do not deter eligible taxpayers from claiming the credit.

The provisions of the EITC are unduly complex. One such example is the “cares for” standard applied to foster children.<sup>55</sup> The National Taxpayer Advocate is working with the IRS and the Office of Chief Counsel, as well as with the LITCs and the TAP, to develop guidance or training for IRS employees to be used in applying this standard. It must be recognized that cultural differences among taxpayers make it inappropriate to establish a bright line rule on what it means to care for a child. Rather, IRS employees must be given flexible guidelines to consider when applying this standard.

TAS will also continue to work to ensure that the notices sent to taxpayers regarding the EITC are clear and easily understood. The inability of taxpayers to understand the information requested of them by the IRS continues to hamper compliance efforts. The Taxpayer Advocate Service will continue to ensure that issues surrounding the clarity of IRS notices are addressed.

### **EITC Notice Improvement Team**

The Earned Income Tax Credit notice improvement initiative is a part of the Commissioner's five point strategy to improve service, fairness and compliance in EITC processing. The EITC Notice Redesign Team was created to make recommendations to improve the EITC notices and EITC notice processes. The Taxpayer Advocate Service as well as the IRS Wage and Investment (W&I) and

---

<sup>55</sup> IRC § 32(c)(3)(B)(iii).

Small Business/Self-Employed (SB/SE) Operating Divisions and the Office of Appeals are represented on the EITC Notice Redesign Team. The objective of the team is to simplify the EITC Examination process through revisions, elimination, or improvement of notices and letters. The goal of these improvements is to educate the taxpayer, reduce processing time, make the examination process less burdensome to the taxpayer, and improve the effectiveness of the EITC audit.

The team analyzed EITC notices for report form, content, and clarity. The group expanded its review to include cover enclosures, (such as including document requests (Form 886H), and other types of enclosures (such as publications)). The team incorporated into its recommendations information obtained through interviews with directors of Low Income Taxpayer Clinics, the Taxpayer Advocacy Panel committee assigned to the EITC, and an independent taxpayer focus group on notice clarity.

One of the National Taxpayer Advocate's primary concerns was the issuance the "30-day" notice at the time of first contact with the taxpayer (the "Combo Letter"). The 30-day notice gives the taxpayer 30 days to request an appeal within the IRS. Since the taxpayer has not yet responded to the IRS request for information, it would be premature for them to request an appeal. After much deliberation on the matter, the EITC program office has agreed, and the Deputy Commissioner (Services and Enforcement) has approved, a proposal to issue two notices; the initial contact letter requesting documentation and providing the taxpayer with their legal rights, followed by the 30-day letter if the taxpayer does not reply within the specified time. We applaud Wage and Investment's willingness to work with us on this important issue and the efforts it has expended to make this proposal a reality for the 2005 filing season.

Major changes in the notice program include informing taxpayers that they are under examination in the first notice, using the proper internal coding to show the examination has begun, providing the initial request for information in the first contact along with a clear and easy to read publication detailing taxpayer rights, and including information about the Low Income Taxpayer Clinics. The group also proposed to revise the document requests that are sent to the taxpayers to secure information – making these document requests easier to read and only requesting information that is necessary and that the IRS cannot obtain elsewhere. Additionally, the group recommended that IRS provide taxpayers with a "tear-off" coupon to request an appeal as part of the 30-day letter. These recommendations are pending approval and are proposed for implementation in FY 2005.

During FY 2005, TAS will monitor the status and implementation of the EITC Notice Improvement Team recommendations. We will also advocate for elimination of combo letters in other correspondence examinations and for



expanded use of a “tear off” coupon on the 30-day letter with which taxpayers can request an appeal.

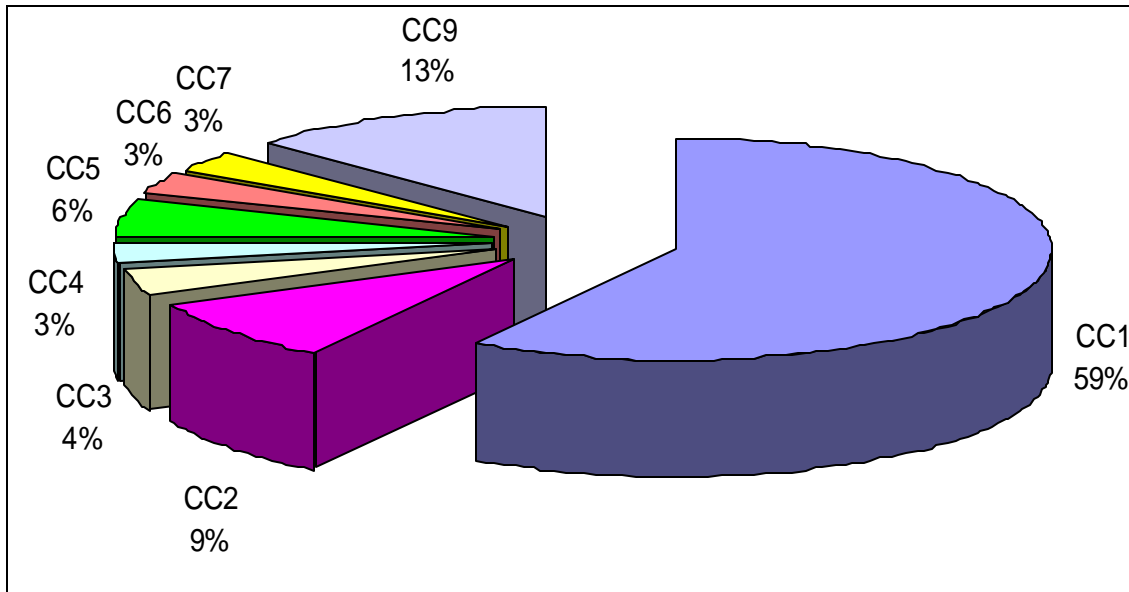
As noted previously, the complexity of the EITC creates a number of issues for taxpayers. In addition, the differing eligibility requirements of the Child Tax Credit and Dependency Exemption, which are often claimed by individuals who are eligible for the EITC, add further complexity for taxpayers. In the past, the National Taxpayer Advocate has vigorously advocated for a uniform definition of a qualifying child. Such a definition would go far in reducing the current complexity surrounding the EITC. In addition, this year the National Taxpayer Advocate will begin looking at the possibility of a Unified Family Credit. Such a credit will combine the provisions of the EITC, Child Tax Credit, and Dependency Exemption, thereby further reducing taxpayer compliance burdens associated with claiming these provisions.

### **EITC Certification Pilot – Looking back**

TAS has been an integral partner in the IRS EITC Certification pilot since its inception. The EITC Certification pilot targeted two segments of taxpayers; those who need to certify a qualifying child (25,000 taxpayers), and those who need to certify filing status (36,000 taxpayers). TAS established specific case codes to track TAS cases resulting from this IRS pilot. These cases are worked exclusively in the Kansas City TAS office.

The IRS began mailing EITC Certification notices in December of 2003, and TAS received its first cases in January of 2004. As of May 26, 2004, TAS has received 709 cases involving EITC Certification issues, approximately one percent of all EITC Certification cases. Of the 709 cases, 35 percent (249) involved certifying a qualifying child and 65 percent (460) involved certifying the filing status. The chart below highlights the TAS criteria for the 709 cases received. For these cases, 75 percent involve economic hardship, as opposed to 20 percent economic hardship in the general TAS case receipt population. Additional information on EITC Certification and Precertification is presented in the *TAS Research Initiatives* section of this report.

## TAS Case Receipts involving EITC Certification Issues through May 26, 2004



- CC 1: TP suffering or about to suffer a significant hardship
- CC 2: TP facing threat of adverse action
- CC 3: TP will incur significant costs if relief is not granted
- CC 4: TP will suffer irreparable injury, or long term adverse impact
- CC 5: TP experienced a delay of more than 30 days to resolve tax account problem
- CC 6: TP has not received a response by the date promised
- CC 7: A system(s) or procedure(s) has either failed to operate as intended or failed to resolve the taxpayer's problem
- CC 9: Any case not meeting TAS criteria, but kept in the TAS office to be worked

## Collection Statute Expiration Date

In FY 2004, the Office of the Taxpayer Advocate identified a systemic problem relating to incorrect collection statute expiration dates (CSEDs) on taxpayer accounts. The Internal Revenue Code provides for a 10 year period for collecting tax running from the date on which a tax is assessed against a taxpayer.<sup>56</sup> A CSED is the date beyond which the taxpayer is no longer obligated on a tax debt and the IRS must cease its collection efforts.<sup>57</sup> The task of computing a CSED is complicated because the law provides for suspension of the running of the statutory period under certain circumstances. For example, the 10 year statute of limitations period is suspended while a taxpayer's Offer-in-Compromise is pending with the IRS plus an additional 30 days.<sup>58</sup> If the taxpayer files a bankruptcy petition, the statute of limitations period is suspended while the

<sup>56</sup> IRC § 6502(a)(1).

<sup>57</sup> *Id.*

<sup>58</sup> IRC § 6331(i)(5).

case is pending plus an additional six months.<sup>59</sup> The statute of limitations period must also be suspended if the taxpayer:

- Requests a Collection Due Process (CDP) hearing or seeks judicial review of the results of a CDP hearing;<sup>60</sup>
- Seeks protection from a joint income tax liability;<sup>61</sup>
- Requests an installment agreement or appeals the rejection of an agreement request;<sup>62</sup> and
- Files a Request for Taxpayer Assistance Order (TAO) with the Office of the Taxpayer Advocate.<sup>63</sup>

All of these events require that taxpayer CSEDs be adjusted on the Individual Master File (IMF) or Business Master File (BMF), as appropriate, to reflect the fact that the suspension period has extended the CSED. However, changes in the tax laws over the past six years have added an additional layer to CSED calculations, making the process even more difficult.<sup>64</sup>

TAS has worked to resolve numerous cases involving taxpayers with incorrect CSEDs. Few of these taxpayers know what a CSED is, and even fewer are aware that the dates may be incorrectly computed. Taxpayers usually come to TAS with other complaints about IRS collection efforts. Only upon a detailed review of the taxpayer's account do TAS case advocates realize the IRS is attempting to collect on a debt after the CSED has expired. The CSED problems that TAS has encountered fall primarily into two categories: (1) miscalculated CSEDs when taxpayers submit Offers-in-Compromise to settle outstanding tax liabilities, and (2) miscalculated CSEDs in cases where the IRS filed a substitute

---

<sup>59</sup> IRC § 6503(h).

<sup>60</sup> IRC § 6330(e)(1).

<sup>61</sup> IRC § 6015(e)(2).

<sup>62</sup> IRC § 6331(k)(2).

<sup>63</sup> IRC § 7811(d).

<sup>64</sup> The Restructuring and Reform Act of 1998 (RRA 98) included a number of provisions affecting CSEDs, including § 3461 and § 3462. Pursuant to § 3461(c)(2) of RRA 98, Congress restricted the extent to which the IRS could secure waivers of the statute of limitations by providing that where a taxpayer agreed to waive the statute of limitations prior to December 31, 1999 any such extension will terminate on the latest of (i) the last date of the normal 10 year statutory period, (ii) December 31, 2002, (iii) in the case of an extension entered into in connection with an installment agreement, the 90<sup>th</sup> day after the end of the extension period. The practical effect of this change was that Offers-in-Compromise granted in conjunction with waivers that extended the statute of limitations beyond December 31, 2002 had incorrect CSED dates requiring adjustment. Pursuant to § 3462 of RRA 98, Congress provided that effective January 1, 2000 the suspension period during which the IRS reviews an Offers-in-Compromise equals the processing time of the Offers-in-Compromise plus 30 days. Prior to this change, the IRS corrected CSEDs for taxpayer submitting Offers-in-Compromise by adding the time required to process the Offer-in-Compromise plus one year.

for return (SFR) for the taxpayer, after which the taxpayer submitted an original return showing a lesser amount due.<sup>65</sup>

TAS has uncovered numerous instances where taxpayers defaulted on Offers-in-Compromise and the IRS reassessed the remaining amounts owed with a new 10 year collection period, in contravention of IRC § 6502. In other cases, Offers-in-Compromise were submitted in conjunction with additional circumstances such as bankruptcy, and the IRS database failed to process the correct CSED.

Changing interpretations of the law regarding SFRs have led to inconsistency within the IRS operating divisions as to the correct date for the 10 year collection statute of limitations period to begin in cases where an SFR is filed on behalf of a taxpayer and the taxpayer's original tax return subsequently shows a smaller balance due.<sup>66</sup> TAS has a number of cases where the IRS incorrectly adjusted the statute of limitations to run from the date the taxpayer filed the original return rather than the SFR assessment date.

The fact that IRS campuses take different approaches to resolving CSED problems also complicates matters for taxpayers. Some of these processing centers make the necessary corrections, some require counsel opinions before making them, and others refuse to take any action at all.

TAS is working with representatives from the Small Business/Self-Employed (SB/SE) and Wage and Investment (W & I) Operating Division to try to determine the scope of the problem, ensure that systemic corrections are adopted and no new incorrect CSEDs are generated, and develop ways of searching IRS databases to correct CSEDs on the system. The IRS is taking positive steps to address this serious problem, and TAS will continue to carefully monitor these steps to ensure that taxpayers are adequately protected.

## **Face to Face Interaction**

In an effort to improve quality and efficiency, the Office of Field Assistance within the IRS Wage and Investment Operating Division has expanded the various taxpayer assistance services provided through electronic means. Because the Office of Field Assistance has limited resources, the initiative to allocate resources to electronic services has resulted in a reduction of the amount of resources allocated to Taxpayer Assistance Centers (TACs). This reduction of

---

<sup>65</sup> IRC § 6020(b) authorizes the IRS to file a substitute for return when the taxpayer has failed to timely file a tax return.

<sup>66</sup> See CCA 200139018, dated July 10, 2001 which concluded that the assessment date is the date of the return filed by the taxpayer; this conclusion was reconsidered in CCA 2001149032, dated October 22, 2001, which concluded that the correct date for the running of the 10 year period is the SFR assessment date. The October 22, 2001 opinion was recently reaffirmed in IRS CCA 200421002, dated April 9, 2004.

resources has made it more difficult for taxpayers to obtain transcripts, Individual Taxpayer Identification Numbers (ITINs), and tax preparation services at the TACs. Furthermore, the IRS has decided to permanently or temporarily close certain centers and place kiosks in low-traffic areas.

IRS plans to encourage taxpayers to use its website, regular mail, or the IRS toll-free service, rather than TACs, to obtain services. However, through March 2004 the Taxpayer Advocate Service received 339 cases (a 23 percent increase compared to last fiscal year) because taxpayers were not able to obtain certain services at TACs. IRS needs to determine and understand the taxpayers who rely on the face to face interaction with the TACs to ensure these taxpayers are adequately served.

The National Taxpayer Advocate will continue to monitor and evaluate the initiatives of the Office of Field Assistance by paying particular attention to the increase in the level of taxpayer burden resulting from the reduction of resources allocated to TACs. While it is reasonable to strive for efficiency, the IRS should not place an undue burden on those taxpayers seeking the assistance and guidance of the IRS through face to face interaction.

During FY 2005, the Office of the Taxpayer Advocate will work with the IRS Wage and Investment Operating Division to ensure that any strategy regarding face to face interaction is soundly based on an identification and understanding of the population reliant on such personal interaction. Any services provided must be tailored to accommodate the taxpayers' needs. Further, the National Taxpayer Advocate will monitor the IRS plans to incorporate enforcement and compliance activities into TAC operations to ensure that such integration does not further reduce funding available for taxpayer services.

## **Non-Wage Withholding**

In her 2003 Annual Report to Congress, the National Taxpayer Advocate recommended that Congress enact withholding on non-wage workers.<sup>67</sup> This recommendation was intended to be a "starting point for discussions" about non-wage withholding and the more fundamental and disturbing issue of noncompliance by self-employed taxpayers.<sup>68</sup> The non-wage withholding recommendation has indeed generated much discussion. The National Taxpayer Advocate and her staff have met with many parties interested in this recommendation, including trade groups and associations representing the non-wage workforce and small business community, employment tax specialists within the Internal Revenue Service, the American Bar Association Tax Section's

---

<sup>67</sup> National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003), p. 256-269.

<sup>68</sup> *Id.* at v.

Employment Tax Committee, and staff from both the U.S. Senate Committee on Small Business and Entrepreneurship and the U.S. House of Representatives Committee on Small Business.

The National Taxpayer Advocate believes that these discussions have been productive and helpful in evaluating the potential impact of a non-wage withholding regime on both taxpayers and the tax system. The National Taxpayer Advocate and her staff continue to discuss non-wage withholding and self-employed noncompliance issues with interested constituencies.

The National Taxpayer Advocate plans to use the information obtained from these discussions, along with updated self-employed noncompliance and tax gap data, to present a revised non-wage withholding recommendation in her 2004 Annual Report to Congress.

### **Individual Taxpayer Identification Numbers**

The National Taxpayer Advocate will continue to address problems related to the issuance of individual taxpayer identification numbers (ITINs) in FY 2005. In December 2003, the Internal Revenue Service made significant changes to the ITIN program to address concerns regarding the issuance and misuse of ITINs. The National Taxpayer Advocate is actively involved in ensuring that revisions to the ITIN program are not overly burdensome to ITIN-eligible taxpayers, including undocumented workers, and do not impede their ability to comply with the United States tax laws.

The National Taxpayer Advocate is concerned about the number of ITIN applications that are routinely suspended or rejected. These rejections delay the issuance of tax refunds to individuals whose incomes are generally below the national poverty line. The Taxpayer Advocate Service will continue to work with the IRS to ensure that the IRS continues to improve the ITIN program in the areas of processing, outreach and education, and tax administration. To better gauge the impact of the revised ITIN procedures now and in the future, TAS has developed a major issue code for ITINs on the Taxpayer Advocate Management Information System (TAMIS). During FY 2005, TAS will work with the ITIN project office to develop cleaner and more effective notices and letters to ITIN applicants. We will ensure that Low Income Taxpayer Clinics and other stakeholders representing ITIN taxpayers are consulted about notice improvements and other procedural changes.

During FY 2005, the National Taxpayer Advocate will also encourage the IRS to develop a system to protect victims of identity theft from unwarranted, intrusive, and repetitive audits and collection activity attributable to the misreported income. TAS will work with the IRS to explore ways to use the Federal Trade Commission's identity theft database to provide administrative relief to victims of identity theft. One common form of identity theft occurs when taxpayers' Social

Security Numbers (SSN) on Forms W-2 do not match the ITINs used on tax returns. The National Taxpayer Advocate continues to support the development of a system to fence off the income misreported under a stolen or fabricated SSN in an SSN/ITIN mismatch scenario.

## **Campus Processes**

The Taxpayer Advocate Service is actively engaged with representatives from the IRS Campuses in reviewing procedures currently used for ten campus sites. The objective of this study is to identify issues that cause undue time or burden for taxpayers as a result of inconsistent processes among the sites. Initial research has shown that processing procedures vary dramatically among campuses. Although campus representatives uniformly cite adherence to current Internal Revenue Manual (IRM) requirements, there is apparent disparity in timely completion of work. During FY 2004, TAS collaborated with campus representatives and established liaisons to further investigate inconsistent procedures and recommend possible solutions, including acceptable timetables to implement improvements. The first phase of this project was completed and interim operating procedures were established. The first phase included inconsistencies identified in the submission processing function of the IRS.

The second phase of this project is currently underway and we anticipate interim operating procedures will be established in FY 2005. Systemic Advocacy is involved in two portions of this project. The first component is working with the Operating Divisions to make campus procedures uniform within the IRS. The second component is developing the background and facts, and identifying examples that relate to inconsistencies in campus processing so this information can be included in the Annual Report to Congress.

## **Financial Literacy**

The lack of financial literacy in America costs taxpayers not only money – by paying high fees to get refund anticipation loans, rather than use the IRS' direct deposit option – but also the opportunity to utilize low or no cost financial services to preserve, and perhaps improve, their economic status. The first step in resolving this problem is to ensure that all taxpayers possess a basic level of financial literacy sufficient to allow them to establish a relationship with a banking institution.

The National Taxpayer Advocate is continuing to advocate to outside groups, including community organizations, that they educate taxpayers about this important issue. TAS is studying the financial education programs that are already in place, both through LITCs and community-based organizations, and is examining both their effectiveness and their shortcomings. In addition, TAS is talking with a number of groups to determine what the Taxpayer Advocate

Service and the IRS can do to promote the availability of financial education for all taxpayers. TAS also continues to support the efforts of the IRS office of Stakeholder Partnerships, Education and Communication (SPEC) on this issue.

TAS' goal for FY 2005 is to develop materials that will encourage LITCs, volunteer return preparers, and other community groups to provide financial education to the taxpayers they serve. Our efforts will include educating these organizations about existing programs and how financial literacy impacts taxpayers. We will identify partners that are willing to work to develop or expand financial education services. We will also include examples of successful programs and instructions on how these initiatives can be incorporated into existing program services related to tax.

## **Small Business Initiatives**

### **Taxpayer Advocate Service Outreach to Small Business**

During FY 2005, the Taxpayer Advocate Service outreach efforts to small business taxpayers will include a campaign to educate small business owners about the TAS. This campaign is being tested in seven markets in FY 2004 – Buffalo, Tampa, Chicago, New Orleans, Detroit, Tucson, and Houston. TAS will continue its outreach to small business taxpayers in public presentations and speeches by the National Taxpayer Advocate, Small Business Liaison, Local Taxpayer Advocates, and other TAS officials. TAS outreach also includes attendance by TAS employees at trade shows, radio broadcasts, practitioner meetings, and presentations to civic and trade organizations. These small business groups include real estate agents, truckers, restaurateurs, small business forums, and Small Business Administration's (SBA) Reg-Fair Hearings.

The SBA Reg-Fair Hearings provide a public forum for small business owners and trade associations to bring their concerns to top level federal, state, and local government officials. The meetings are held throughout the country at various locations. More information about these events is posted on the SBA website <http://www.sba.gov>.

### **Office of Business Advocacy**

Through the Office of Business Advocacy, TAS is focused on specific advocacy issues relating to small business and self-employed taxpayers. Small business problems can be related to IRS processes, communications, policies, training, or the underlying tax law. Throughout FY 2004 and 2005, the National Taxpayer Advocate continues to address many issues impacting small business taxpayers. These efforts include working to make changes to the processing of amended returns, simplifying the automatic extension to file process, simplifying Form 941 filing requirements, and addressing penalty issues that impact small business.



More detail about the efforts of Business Advocacy can be found in Appendix III: TAS Participation on IRS Task Forces.

### **Small Business/Self-Employed Cognitive Study**

The Taxpayer Advocate Service and the Small Business/Self Employed Operating Division (SB/SE) are conducting this joint study to determine the underlying reasons that cause small businesses and self-employed taxpayers to seek the assistance of the TAS.

Processing Claims and Amended Returns has been identified as the single largest category of TAS work attributable to SB/SE taxpayers. The majority of these cases (55 percent) qualify for TAS special handling because they have experienced delays in the operating division. TAS and SB/SE will analyze the results of the survey, which will be conducted by the Gallup Organization, to identify problematic areas of the claims and amended return processes. Once the underlying causes of taxpayer problems are identified, changes to the procedures can be recommended that will reduce taxpayer burden, improve business results for SBSE, and reduce inappropriate and unnecessary referrals to TAS.

This study is in alignment with the IRS Strategic Plan for FY 2005-2009, which includes a goal to improve quality, efficiency, and service delivery through development of new and improved business processes. To achieve these objectives, the IRS is committed to addressing taxpayer problems as early in the process as possible, and to preventing problems wherever possible.

## **TAS RESEARCH INITIATIVES**

Following is a discussion of the research initiatives that TAS will sponsor or participate in for the remainder of FY 2004 and during FY 2005. These initiatives address issues of significant concern to the National Taxpayer Advocate.

### **ABUSIVE TAX SCHEMES: THE “TIPPING POINT” STUDY**

TAS is sponsoring research being conducted by the Office of Program Evaluation and Risk Analysis (OPERA) to identify what the IRS is doing to detect and combat emerging abusive tax schemes, such as abusive tax shelters, and the slavery reparations scheme. The research study is divided into two phases.

The objective of Phase I, which has been completed, was to identify the approaches, processes, and procedures the IRS has developed and/or implemented that:

- enable early identification of abusive tax avoidance schemes, and
- enable the IRS to mitigate the impact of these schemes before they proliferate.

The end product of Phase I was a comprehensive inventory of IRS activities in these areas.

Building upon the taxonomy of schemes developed in Phase I, the second phase of the study, which began in April 2004, will track the course of “infection” of certain schemes among the taxpayer public. The schemes chosen for analysis are the “home based business” and “claim of right” schemes.<sup>69</sup> The study will attempt to identify who were the key “agents” of the scheme, what paths provided the most fruitful dissemination, and what particular aspect of the scheme appealed to the population so that they were persuaded to participate.<sup>70</sup>

Statistical modeling techniques are being applied to IRS data sources to look for patterns within schemes. The goal is to identify any common characteristics among schemes, promoters, and participants that might assist with early identification of emerging tax schemes and mitigation of their impact on taxpayers and the IRS. The team will also consider the application of behavioral modeling techniques to supplement findings from the statistical modeling study currently being conducted.

## **THE IMPACT OF REPRESENTATION ON THE OUTCOME OF EITC AUDITS**

Although the tax year 1999 Earned Income Tax Credit compliance study indicated that a significant proportion of claimants have historically not been entitled to the EITC,<sup>71</sup> the National Taxpayer Advocate believes that the study overstated the overclaim rate because it relied exclusively on the outcome of EITC audits. TAS data suggests that audit outcomes are frequently incorrect and that a significant number of entitled taxpayers are being denied the credit in error.<sup>72</sup> Evidence also suggests that represented taxpayers fare considerably

---

<sup>69</sup> “Claim of Right” schemes consist of frivolous or fraudulent requests for refunds citing U.S.C. § 1341 – “Claim of Right” in which a taxpayer attempts to take a deduction equal to the entire amount of his wages. The taxpayer typically submits a 1040 or 1040X form reporting wage income and other income items, and attaches a Schedule A claiming a miscellaneous itemized deduction on the grounds that the wages are deductible because they are compensation for personal labor which is not taxable, or because there was an equal exchange of labor and/or services for the amount claimed.

<sup>70</sup> This aspect of the study relies heavily on the concept that an idea can act as an epidemic, as discussed in Malcolm Gladwell’s book, *The Tipping Point: How Little Things Can Make A Big Difference*, (2000).

<sup>71</sup> Department of the Treasury, Internal Revenue Service, *Compliance Estimates for Earned Income Tax Credit Claimed on 1999 Returns*, February 28, 2002.

<sup>72</sup> In FY 2002, TAS closed 30,554 cases involving EITC Revenue Protection Strategy examinations, which represent eight percent of total FY 2002 EITC correspondence examination

better than unrepresented taxpayers in the tax controversy dispute resolution process.<sup>73</sup> TAS therefore partnered with the IRS Office of Research in FY 2004 to design a study to evaluate the impact of representation on the ultimate outcome of EITC audits. TAS will track the outcomes of EITC audits conducted during the National Research Program (NRP) initiative.

The NRP is studying a representative national sample of tax returns to evaluate current compliance rates and to provide data for audit workload selection in the future. Some of these taxpayers are undergoing face-to-face or correspondence audits. At the request of TAS, these taxpayers received a stuffer with the “first contact” letter that informs them about the availability of free representation through the Low Income Taxpayer Clinic (LITC) program.

TAS personnel will use IRS computer systems to track the NRP EITC audit population throughout the audit process. This will include monitoring cases that go to Appeals, Tax Court, the Court of Claims, and District Court to obtain the ultimate disposition of each case. The outcome at each stage of this process will be noted, and results for represented taxpayers will be compared to results for taxpayers that did not have representation.

National Research Program data providing audit outcomes will be available during the first quarter of FY 2005. Subsequent activity of these taxpayers will be tracked for several years to capture outcomes from Appeals, Tax Court, the Court of Claims, and District Court.

## **FEDERAL CASE REGISTRY STUDY**

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) expanded IRS math error authority.<sup>74</sup> Under the EGTRRA, since January 2004 the IRS has been authorized to use math error procedures to deny the EITC to a taxpayer if the Federal Case Registry of Child Support Orders (FCR) indicates that the taxpayer is the non-custodial parent of the child with respect to whom the credit is claimed. Math error authority has not yet been implemented, however, pending an analysis of the results of the FCR study. The purpose of the FCR study is to evaluate the accuracy and timeliness of the data contained in the FCR/Dependent Database (DDB). This effort is being conducted under the auspices of the Department of Treasury in consultation with the National Taxpayer Advocate. The Earned Income Tax Credit Program Office, the Kansas

---

closures. In more than 50 percent of these cases, the IRS ultimately agreed to a change in the examination result.

<sup>73</sup> As reported by the National Taxpayer Advocate in her FY 2002 Annual Report to Congress, 26 percent of represented taxpayers prevailed in cases before the U.S. Tax Court, while only 15 percent of *pro se* taxpayers prevailed. National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2002) p. 253.

<sup>74</sup> Pub. L. No. 107-016, Title III, § 303; IRC § 6213(g)(2)(M).

City Campus, and Wage and Investment Research are providing primary IRS support.

To conduct the study, a sample of EITC taxpayers was selected for correspondence audit based on FCR custodial parent information. The audits were conducted at the Kansas City Campus and have been completed. A report on the results of this sample was prepared by IRS Wage and Investment Division (W&I) Research in July 2003, but has not been released. The report highlighted important deficiencies in the study methodology, and TAS believes additional deficiencies exist but were not included in the report. Treasury is currently conducting independent analyses of the study data.

During the course of this study, the Taxpayer Advocate Service has identified important limitations in the current FCR database that the National Taxpayer Advocate believes render it invalid as an *independent* basis for summary assessment as contemplated in IRC § 6213(g)(2)(M).<sup>75</sup> In the 2002 Annual Report to Congress, the National Taxpayer Advocate called for repeal of IRC § 6213(g)(2)(M);<sup>76</sup> during FY 2005, she will continue to advocate that the IRS not implement the math error authority for FCR.

## **EITC CERTIFICATION TEST**

Representatives from TAS are participating in the evaluation phase of the trial program to study the efficacy and impact on taxpayers of the EITC certification pilot program. The Wage and Investment Operating Division has principal responsibility for this program.

A sample of 25,000 taxpayers was asked to complete a certification process to establish that their EITC qualifying children resided with them for more than six months during the tax year. Only taxpayers who could not be systemically certified were asked to participate.

The IRS will issue a report of preliminary results to Congress on July 30, 2004. A final report will be issued on June 30, 2005.

## **EITC PRECERTIFICATION TEST**

The National Taxpayer Advocate and TAS representatives are participating in the design of a test program that will evaluate the effectiveness and impact on

---

<sup>75</sup> The National Taxpayer Advocate agrees that the FCR database is an appropriate tool for helping to identify cases for audit, when used in conjunction with other selection screening devices.

<sup>76</sup> National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2002), p. 185.

taxpayers of an EITC precertification process. The test is being conducting by the Wage and Investment Operating Division.

This process will be similar in design to the Certification Pilot process, except that taxpayers will be encouraged to complete it in the fall of 2004, before the next filing season. A sample of 25,000 taxpayers will be selected to participate in the test, which will begin in September 2004. They will be asked to complete a process to establish residency of their qualifying children prior to filing. Only taxpayers who cannot be systemically certified will be asked to participate. Subsets of the taxpayers will be subjected to different outreach and education approaches to test their impact.

## **EITC RECERTIFICATION**

TAS Systemic Advocacy participated with W&I research in a study to evaluate the reasons for increased rates of EITC recertification. The primary objective was to revise Form 8862, Information to Claim Earned Income Credit After Disallowance, to reduce taxpayer burden and improve communication. The study has been completed, and a simplified Form 8862 has been proposed for 2005, but the recommendations for form changes are still under review. TAS will continue to participate in the process until final recommendations are approved and implemented.

## **DOWNSTREAM EFFECTS OF COMPLIANCE INITIATIVES**

TAS will conduct a study to determine how operating division activities generate workload for TAS. We will coordinate our efforts with National Office Research and the Wage and Investment and Small Business/Self-Employed Research functions, and will invite them to partner with TAS in the study.

The analysis will entail breaking down the TAS case workload into components and analyzing the relationship between each component and Operating Division workload/activities. In addition to ongoing activities, such as typical collection and examination activities, several new initiatives, including the Revenue Protection Strategy audits, Collection Due Process, and the Criminal Investigation Division Fraud Detection Program refund freezes will be studied to see if their impact changes over time as the operating divisions make adjustments to handle the new workload more effectively.

The study goal is to develop algorithms that will enable TAS to project its future workload based on an analysis of operating division proposed work plans. If time and resources permit, TAS will also conduct a higher level analysis of the impact of operating division activities on Appeals and Chief Council.

# **TAXPAYER ADVOCACY PANEL**

## **BACKGROUND**

The Taxpayer Advocacy Panel (TAP) serves as an advisory body to the Secretary of the Treasury, the Commissioner of the Internal Revenue, the National Taxpayer Advocate, and the IRS Wage and Investment and Small Business/Self-Employed Operating Division Commissioners to improve IRS service and customer satisfaction. The TAP was initially established in 1998 as a federal volunteer advisory panel to identify “grass roots” issues and provide opportunities for taxpayers to make comments and suggestions on improvements within the IRS. As a result of taxpayer interest and involvement, the TAP has steadily increased to seven area committees and eight issue committees. Representatives are from all 50 states, Washington D.C., and in the 2004 recruitment, Puerto Rico will be represented. The TAP has been credited with making numerous documented recommendations to improve processes and procedures within the IRS.

On March 18, 2004 the TAP’s charter was renewed and approved by the IRS and Department of Treasury. This action will extend the current structure of the TAP through the year 2006 and is in direct accordance with the provisions of the Federal Advisory Committee Act, Pub, L. No. 92-463 (5 U.S.C. App).

## **FISCAL YEAR 2005 STRATEGY**

During FY 2005, the Taxpayer Advocate Service will continue to support and promote the Taxpayer Advocacy Panel and encourage the IRS Operating Divisions to utilize the TAP prior to making decisions on programs and issues being developed by the TAP.

One of the major challenges for the TAP since its inception is its ability to keep the nucleus of the membership intact while actively recruiting replacement members. During the 2005 recruitment period, we will implement a new recruitment strategy whereby TAP will fill approximately 33 percent of its vacancies. This effort has progressed from a 100 percent member recruitment requirement in 2003 and a 50 percent recruitment requirement in 2004. By maintaining a membership with 2/3 current members, we hope to see an increase in the overall effectiveness and purpose of the TAP.

The tenure for TAP members will be extended from a two-year to a three-year term. This action will result in a more stable and educated TAP committee membership. The members will ultimately have an opportunity to contribute to issues in a more efficient manner and the blending of experienced and novice members will reduce the high percentage of new members facing a steep

learning curve. Issues will continue to be worked even as new members are brought onboard and new members will be coached, educated, and mentored by the existing membership.

## **TAP MARKETING STRATEGY**

In an effort to strengthen its voice in the community, the TAP is developing and implementing a National Communication/Marketing Strategy. The TAP has partnered with the TAS Communications and Liaison Office to create a strategy that will serve as a template for current and future TAP members. The national strategy will enable TAP members to raise their profiles and help them in raising taxpayer issues related to IRS policies and procedures. The strategy is currently in its final phase of implementation. Once implemented, TAS management will be responsible for working with the TAP members to solidify their use of the strategy. The strategy is scheduled to be available to all TAP members by late summer of 2004. It is anticipated that by raising the TAP's profile and establishing "brand recognition," increased participation by taxpayers at open TAP meetings will occur and IRS will more readily accept input from TAP on procedural matters.

## **OPPORTUNITIES FOR NETWORKING**

The TAP is seeking out opportunities to share information about its activities with other IRS stakeholders. Contacts have or will be made with the:

- IRS Oversight Board;
- Internal Revenue Service Advisory Council (IRSAC);
- Information Reporting Program Advisory Committee (IRPAC);
- Electronic Tax Administration Advisory Committee (ETAAC); and
- IRS Tax Forums.

The entities serve as a foundation for future networking. It is anticipated that by establishing ongoing relations with these groups, TAP will be in a better position to partner and share information. This will result in a more robust mode of operation and the elimination of potentially redundant efforts by these individual entities. Informal communications have already commenced with these groups and a formal procedure will be established during FY 2005.

## **TAP COMMITTEE STRUCTURE**

Each TAP member serves on two committees: a geographic committee and a national issue committee. Geographic committees are designed so that members bring issues to the panel that are area specific and therefore can focus on the needs of the constituents that the members represent. Issues are

identified via a variety of sources that include input from the taxpaying public from open meetings, correspondence, telephonic contact, and outreach opportunities. Geographic committees are as follows:

- Area 1: Northeast
- Area 2: Mid-Atlantic
- Area 3: Southeast
- Area 4: Mid-States
- Area 5: Central
- Area 6: Mountain-Pacific
- Area 7: California

Issue Committees enable the operating divisions to utilize TAP members directly to collect information on numerous issues that affect taxpayers. Relations via liaison contacts exist with the Small Business/Self Employed and the Wage and Investment Operating Divisions. TAP members have offered comments as part of focus groups, forms certification, forms review, website review, and multilingual initiatives. The current Issue Committees consist of:

- Joint Committee;
- Ad Hoc Committee;
- Earned Income Tax Credit Committee;
- Notices Committee;
- Schedule C Non-Filer Committee;
- E-File Committee;
- Payroll Committee; and
- Multilingual Committee.

To date for FY 2004, TAP has made 20 proposals to the IRS. Issues elevated for consideration include:

1. Self-Employment tax for newspaper carriers;
2. Revision to Form 6251, Alternative Minimum Tax – Individuals;
3. Electronic deposit of form 1040X, Amended U.S. Individual Income Tax Return, refund;
4. Offer in Compromise processing problem;
5. Free File - notification of charges;
6. Free File - record retention;
7. Free File - eliminate refund anticipation loans (RALs);
8. Free File - filing state returns;
9. Free File - lack of feedback;
10. Taxpayer rights under the IRS Restructuring and Reform Act of 1998;
11. Financial literacy for taxpayers with limited English proficiency (LEP);
12. Earned Income Tax Credit (EITC) contact letter and examination report;
13. TAP marketing strategy;



14. Online toolkit for IRS Office of Stakeholder Partnerships, Education and Communication (SPEC) and partners;
15. EITC qualifying child residency test;
16. Immediate feedback on toll free;
17. Electronic Federal Tax Payment System (EFTPS) - clarification of tax year;
18. Qualifying child residency certification test;
19. Form W-4, Employee's Withholding Allowance Certificate , percentage option; and
20. Tax treatment of health benefits education.

## **TAP ANNUAL REPORT**

For the first time, the TAP created and disseminated its annual report. The “Taxpayer Advocacy Panel – 2003 Annual Report” serves as a compilation of the panel’s efforts during the 2003 fiscal year. The report consists of an Executive Summary, Area and Issue Committee reports, a list of all recommendations for 2003, structure, procedures, partnering, marketing, recruitment and a conclusion. The highlight of the report is an individual self-assessment of each committee that details:

- Recommendations submitted through the Joint Committee to the IRS,
- Issues currently under consideration, and
- Other Accomplishments.

This report provides a basis and structure for future iterations of this publication. It is available in printed format and also at the TAP website:

<http://www.improveirs.org>

## **LOW INCOME TAXPAYER CLINICS**

### **BACKGROUND**

The LITC grant program is entering its seventh year of operation. The program is designed to help organizations provide free or low-cost legal assistance to low income taxpayers in resolving tax disputes and inform taxpayers for whom English is a second language about their tax rights and responsibilities.<sup>77</sup>

TAS sees the concept of “access” as fundamental to universal achievement of taxpayer rights. For taxpayers to feel that they should comply with their tax obligations and tax responsibilities, they must have access to information, to the

---

<sup>77</sup> IRC § 7526.

IRS, to the Taxpayer Advocate Service, and to representation. Low income taxpayers lack the ability to pay for representation and are disadvantaged in obtaining access to competent assistance in meeting their tax obligations. LITCs reduce the level of taxpayer uncertainty and errors by clarifying tax laws and taxpayer responsibilities. LITCs resolve issues early in the process and offer effective communication and education through their outreach efforts. LITCs are a safety net which provides low income taxpayers assistance while ensuring their rights are protected and preserved.

## **2004 GRANT AWARDS**

In FY 2004, TAS awarded \$7.5 million in matching grants to 137 organizations that represent low income taxpayers involved in tax disputes with the IRS. Grants were also awarded to organizations that inform taxpayers for whom English is a second language, or who have limited English proficiency of their tax rights and responsibilities. A total of 212 organizations submitted grant applications for the 2004 grant cycle. This year, LITC grant recipients represent non-profit organizations and accredited academic institutions from 49 states plus the District of Columbia and Puerto Rico, with grants ranging from \$6,448 to \$85,000. For a complete listing of 2004 LITCs, see Appendix IV: Listing of Low Income Taxpayer Clinics (LITCs).

During 2004, TAS expanded the coverage of clinics into areas of the country where access for disadvantaged taxpayers was very limited, including rural areas. TAS was able to fund nine new clinics in these underrepresented areas. In FY 2005, TAS will continue to aggressively market and expand the coverage of clinics into areas of the country where access for disadvantage taxpayers is limited.

For FY 2005, several changes are underway to improve the understanding of and involvement with the technical components of the LITC program. We plan to share information, identify best practices and solve problems through work groups to develop more comprehensive program standards, improve communications, increase the controversy services, ensure quality in English as a second language (ESL) programs, and ensure ESL programs have a referral program/arrangement for controversy issues. We are requiring LITC grant applicants to provide us with separate program plans and budgets for each service they will offer so that the LITC Program Office can better assess the performance of each grantee.

TAS is committed to achieving the maximum access to representation for low income taxpayers possible under the terms of the LITC grant program. Thus, in awarding 2005 LITC grants, TAS established the following program goals:

- Each state must be served by at least one program;

- Controversy representation and English as a second language outreach and education should be available in each state: and
- Programs must demonstrate that they are situated in or serve areas that have sizable populations needing an LITC's services.

In addition, grant awards may be pro-rated based on the number of months during the grant year that the program operates (that is, if a program closes for three months out of a year, and would otherwise be eligible for a maximum grant award, the award may be reduced by 3/12s or 25 percent).

## **LITC WORK GROUPS AND SITE ASSISTANCE VISITS**

TAS has identified 17 LITC work groups that will focus on substantive, administrative, and procedural tax issues that impact low income and/or English as second language taxpayers. Work groups will share information, identify best practices and solve problems within their respective work group. Work groups include ITIN, Financial Literacy, Offers in Compromise, and Earned Income Tax Credit, as well as *pro bono* recruitment and standards of operation.

In FY 2004, TAS updated Publication 4134, Free/Nominal Cost Assistance Availability for Low Income Taxpayers, which lists all LITC locations, languages served, and telephone numbers. Publication 4134 is used to assist in LITC marketing and outreach efforts; TAS has had it translated into Spanish. We continue to educate low income taxpayers of the LITC program by providing Publication 4134 as a stuffer in National Research Program audits and in EITC certification test notices. For the 2005 filing season, Publication 4134 will be included in all EITC examination notices.

TAS Area Directors and Local Taxpayer Advocates attended a mandatory training session on LITCs during a continuing education program in January 2004. The training session defined program responsibilities, outreach requirements and standards for assistance visits. We are continuing our efforts to improve and define our guidance on site assistance visits and will continue to implement this aspect of LITC oversight in FY 2005.

TAS will periodically perform on-site assistance visits to selected clinics. Each new clinic can expect to receive a visit during its first year of operation. Returning and continuing clinics will also be selected, based on application, interim and final reports, LTA observations, and other criteria. The assistance visits may include reviews of intake procedures, referral record keeping systems, communications and publicity plans, and standards of operation. These visits will help to expand and improve communication channels between the LITCs, TAS, and the IRS.

The National Taxpayer Advocate will assemble an LITC grant application review panel to review all qualified applicants for the 2005 grant cycle. The panel will

make recommendations to the National Taxpayer Advocate on the 2005 applicants and the awarding of the grants. The panel will receive extensive training on the standards of operation and the ranking process.

## CASE ADVOCACY

### INTRODUCTION

During FY 2004 and 2005 TAS is undertaking significant efforts to improve its customer service, which are reflected in its customer satisfaction and case quality review measures. In February 2001, TAS began a telephone survey process to gauge the opinions of taxpayers and their representatives about a broad range of customer service issues (e.g., timeliness, accuracy and courtesy). To date, over 55,000 TAS customers have been interviewed. They have provided comprehensive feedback that enables TAS to better match its program deliverables to its customer expectations. TAS has developed a process to analyze the information, design initiatives and action plans to correct problems, communicate results, and ensure that its managers are accountable for achieving improvement on issues that are driven by customers' comments. The focus of our customer satisfaction improvement strategy is to incrementally improve the mean customer satisfaction score. The following table illustrates TAS' goals through FY 2010.

#### TAS Customer Satisfaction Goal

<b>Fiscal Year</b>	<b>Actual Measure</b>	<b>Proposed Goal</b>
2004 (*)	4.22	
2005		4.35
2006		4.40
2007		4.44
2008		4.49
2009		4.53
2010		4.58

\*data available only for the first quarter of FY 2004.

To a large degree, TAS represents the IRS' last chance to achieve satisfaction for taxpayers and representatives who have experienced problems in their dealings with IRS. Customer satisfaction literature strongly suggests that customers who have an effective "service recovery" experience often emerge with a higher opinion of an organization than customers who never experienced a problem at all.<sup>78</sup>

<sup>78</sup> See Thomas O. Jones and W. Earl Sasser, Jr., "Why Customers Defect," Harvard Business Review, November-December 1995, pp. 88; see also Richard A. Spreng, Gilbert D. Harrell,

In this respect, TAS' initial customer satisfaction survey results are impressive. In FY 2003, 84 percent of TAS' customers reported that they were either satisfied or very satisfied overall with TAS' services. Additionally, 57 percent of those surveyed indicated that their opinions of the IRS were more positive as a result of working with TAS.

Because the problems presented to TAS by taxpayers flow from issues with the IRS operating divisions, the data produced by TAS surveys portray the full customer service cycle. This information presents an opportunity for the IRS Operating Divisions to determine where their processes and procedures may have broken down or failed their clientele. In this respect, TAS has begun partnering with the IRS Operating Divisions to use our data to better understand the most significant subject areas and processes that require IRS improvement. This objective is consistent with TAS' FY 2005 objective to "partner/participate with operating divisions in examining opportunities for reducing inappropriate referrals to TAS."

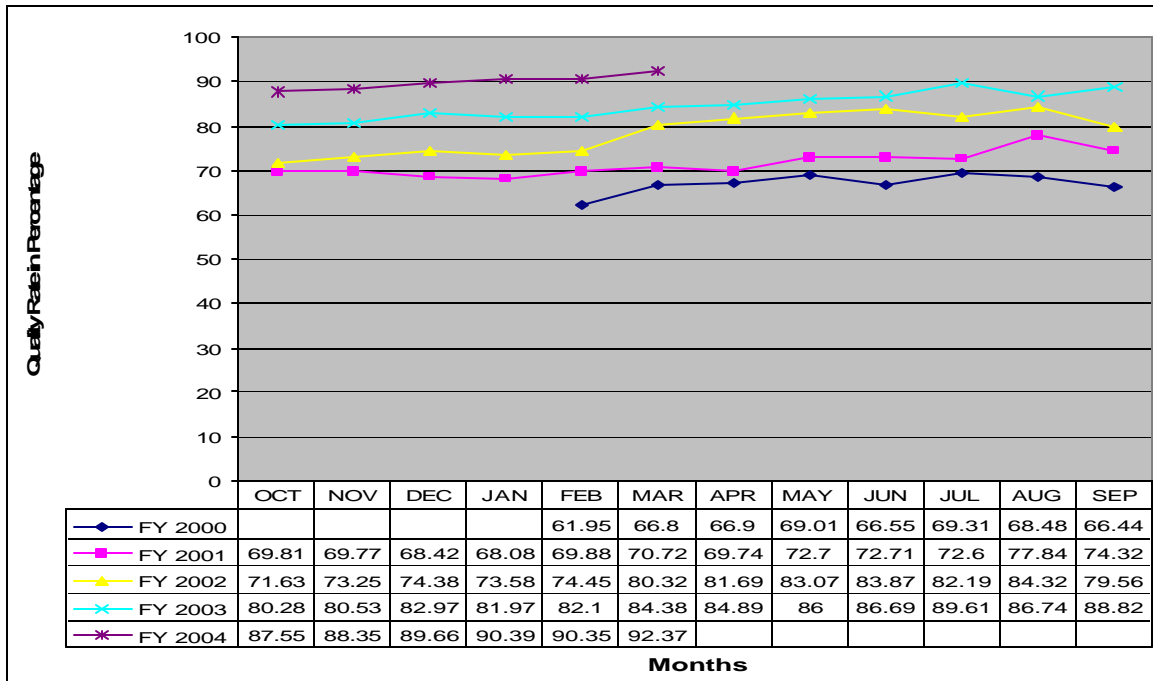
## **TAS CASE QUALITY**

As of April 2004, the Taxpayer Advocate Service's cumulative case quality index stands at 90.08 percent (+/- PM of .78 percent), compared to 84.74 percent at the end of FY 2003. This is up substantially from FY 2000 when quality was 67 percent. January – April 2004 monthly quality results have exceeded the FY 2004 goal of 90 percent (the first time ever) on a month-to-month basis. TAS is reviewing the previously stated long-term quality goal of 90 percent. We anticipate increasing the quality rate by one-half percent (.05%) on average each year. Our goal is to achieve a quality rate of 93 percent in FY 2009 and 95 percent in FY 2014. The following chart highlights improvements in TAS case quality rates.

---

Robert D. Mackoy, "Service recovery: Impact on Satisfaction and Intentions," *Journal of Services Marketing*, Vol. 9, No. 1, p. 15-23.

## TAS Monthly Case work Quality Index FYs 2000-2004



TAS measures its case quality according to eight standards:

1. Initial taxpayer contact timely (within three days from the Taxpayer Advocate received date for economic hardship cases and within seven days from the Taxpayer Advocate received date for systemic hardship cases);
2. Initial actions timely;
3. Subsequent actions timely;
4. Complete and correct resolution of taxpayer's problem;
5. Addressing related issues;
6. All actions were technically/procedurally correct;
7. Clear, complete, correct explanation to taxpayer at closing; and
8. Educating the taxpayer.

All eight quality standards have shown improvement. Standard 3 – “All subsequent actions made timely” – remains our greatest opportunity for improvement, followed by standard 6 – “Were all actions taken by TAS and by IRS operational/functional divisions technically and procedurally correct?” During FY 2004, TAS took the following actions to improve performance on these standards.

- A team addressing timely actions (Standard 3) has completed its study. Suggestions relating to communications and inventory management were shared with the field, with additional recommendations relating to

systematically tracking critical taxpayer promises and simplifying the timeliness standards provided to the National Taxpayer Advocate for consideration.

- A memorandum outlining responsibility and the most effective means to ensure taxpayers are authenticated upon contact as measured by Standard 6, was issued in January. We will monitor its impact through FY 2004 and FY 2005.
- A newly developed quarterly quality analysis report “At a Glance” helps quickly focus improvement initiatives.

During FY 2005, TAS' attention will continue to focus on service issues that are both important to our customers and present opportunities for improvement. For example, our customer satisfaction data indicates that taxpayers value the timeliness of actions taken to correct the problems they are having with the IRS. To address the timeliness of case advocate actions, we will implement a combination of remedies to ensure that the necessary support systems and personnel are in place to process cases as expeditiously as possible (e.g., designing and implementing a workload intake management strategy). We will use information reported in the customer satisfaction survey as one tool in evaluating of our quality improvement initiatives.

## **CASE PROCESSING**

### **Introduction**

The Taxpayer Advocate Service (TAS) operates independently within the IRS to help taxpayers resolve problems with the IRS and to address systemic issues that cause these problems. TAS case advocates work on taxpayer cases that meet our criteria for financial hardship<sup>79</sup> or systemic hardship.<sup>80</sup> A discussion of TAS case processing and plans for FY 2005 follows. Additional plans are discussed in Appendix V – Taxpayer Advocate Service Improvement Initiatives.

### **Receipts**

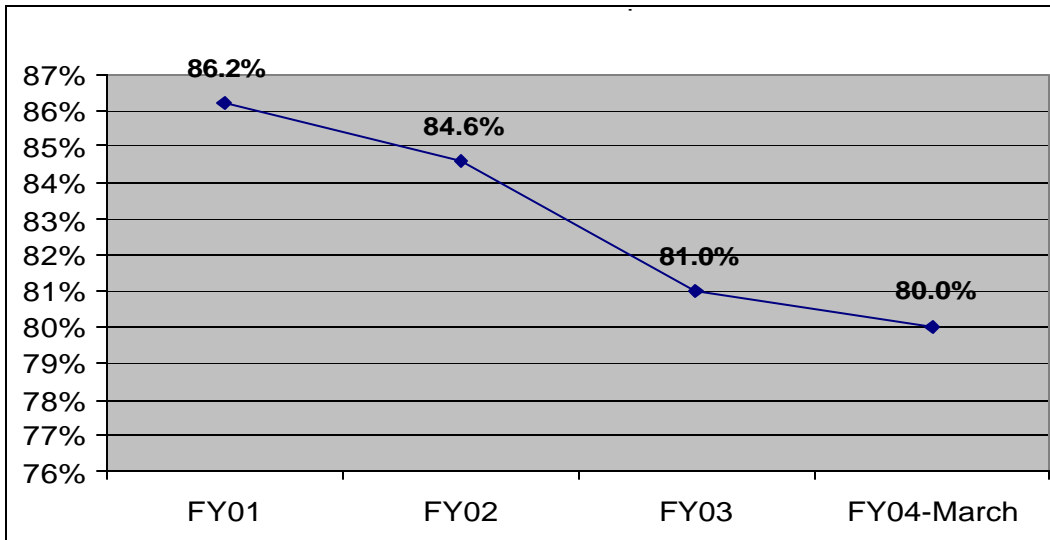
As of the end of March 2004, TAS received 74,974 regular criteria cases, a 15 percent decrease (13,543 cases) compared to the same period in FY 2003 (88,517 cases). Systemic hardship cases continue to account for the majority of the decrease. As of March 31, 2004, systemic hardship receipts decreased by almost 17 percent (12,042 cases) compared to the same period last year.

---

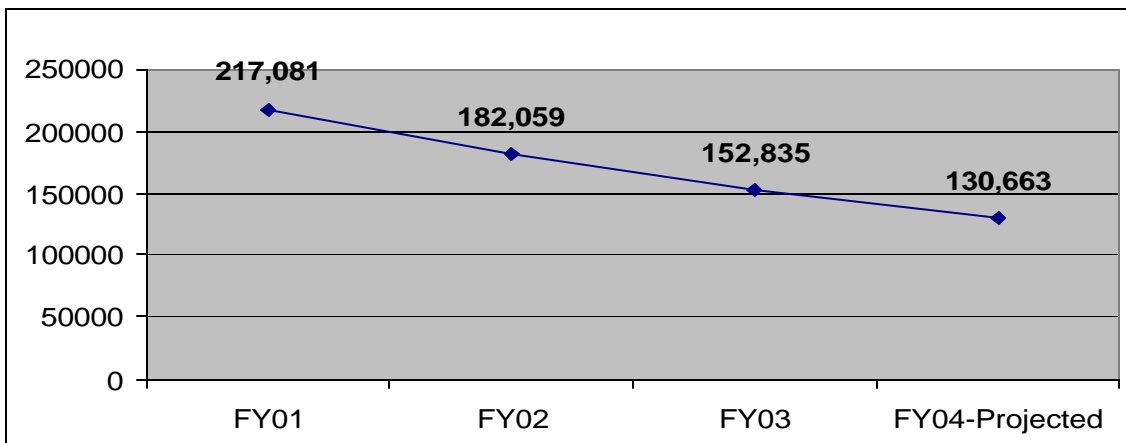
<sup>79</sup> IRC § 7811(a)(2)(A), (C), (D).

<sup>80</sup> IRC § 7811(a)(2)(B).

### TAS Systemic Hardship Case Receipts as a Percentage of Total TAS Receipts



### TAS Systemic Hardship Case Receipts



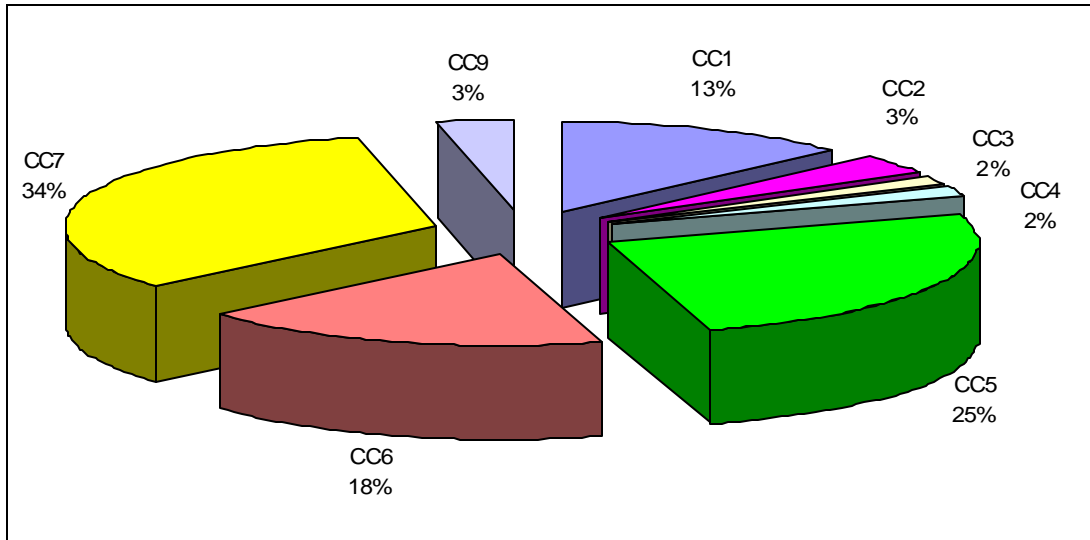
The two components of TAS' mission, casework and systemic advocacy, are complementary. By working individual cases, the Taxpayer Advocate Service often uncovers specific problems that affect large numbers of taxpayers and can only be solved by changing administrative policies or procedures or by changing the tax law itself. The efficiency of the Taxpayer Advocate Service can be measured by looking at the decreasing numbers of procedural or systemic hardship cases we receive each fiscal year. This efficiency measure is directly tied to our mission and strategic goals. The decreasing number of procedural or systemic hardship cases means the IRS is improving its processes and taxpayers are experiencing fewer systemic problems, in part, as a direct result of



TAS' advocacy efforts.<sup>81</sup> Our goal is to reduce the number of systemic hardship cases by 2.5 percent each year in FY 2005 and FY 2006.

The chart below illustrates the reasons for acceptance of TAS receipts for FY 2004 as of March 31, 2004.

FY 2004 Receipts by Criteria as of March 31, 2004



- CC 1: Taxpayer suffering or about to suffer a significant hardship
- CC 2: Taxpayer facing threat of adverse action
- CC 3: Taxpayer will incur significant costs if relief is not granted
- CC 4: Taxpayer will suffer irreparable injury, or long-term adverse impact
- CC 5: Taxpayer experienced a delay of more than 30 days to resolve tax account problem
- CC 6: Taxpayer has not received a response by the date promised
- CC 7: A system(s) or procedure(s) has either failed to operate as intended or failed to resolve the taxpayer's problem
- CC 9: Any case not meeting other TAS criteria, but kept in the TAS office to be worked, including duplicate congressionals

## Complexity of TAS Casework

While on the surface the absolute number of receipts has declined, TAS case complexity has escalated, often involving multiple issues and tax periods. For example, a taxpayer may contact TAS for a levy release due to an economic hardship; but he or she may also need TAS assistance in filing tax returns, securing an installment agreement or an offer in compromise, or in resolving an underlying examination issue.

<sup>81</sup> TAS cases involving *economic* hardship often arise from circumstances beyond the taxpayer's control, including medical conditions or natural disasters. These cases, therefore, are not the appropriate subject of an efficiency measure based on reduction in case inventory.

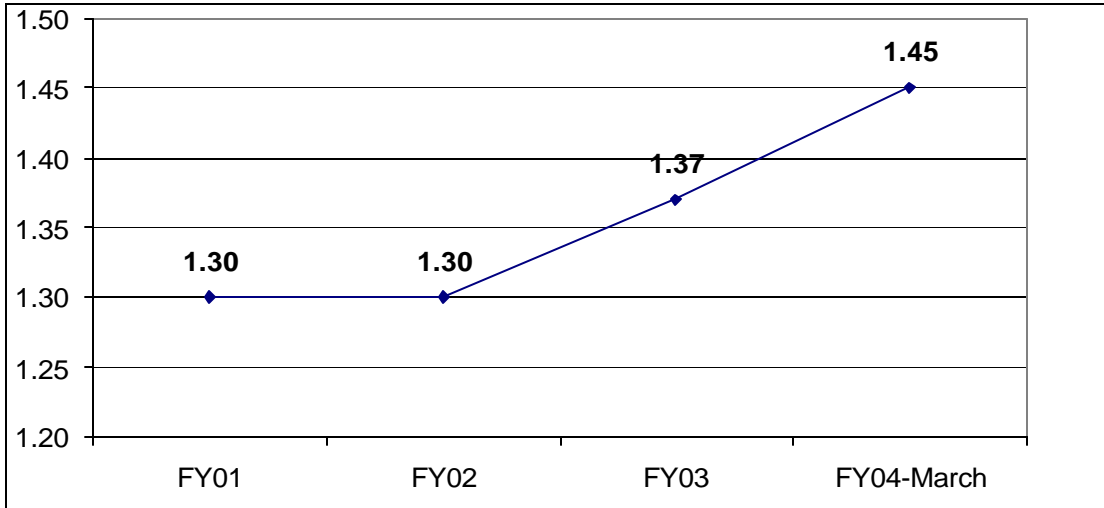
The chart below provides a comparison of the sources of TAS casework for fiscal years 2001 through 2004.

Source of TAS Casework- Top 15 Issues

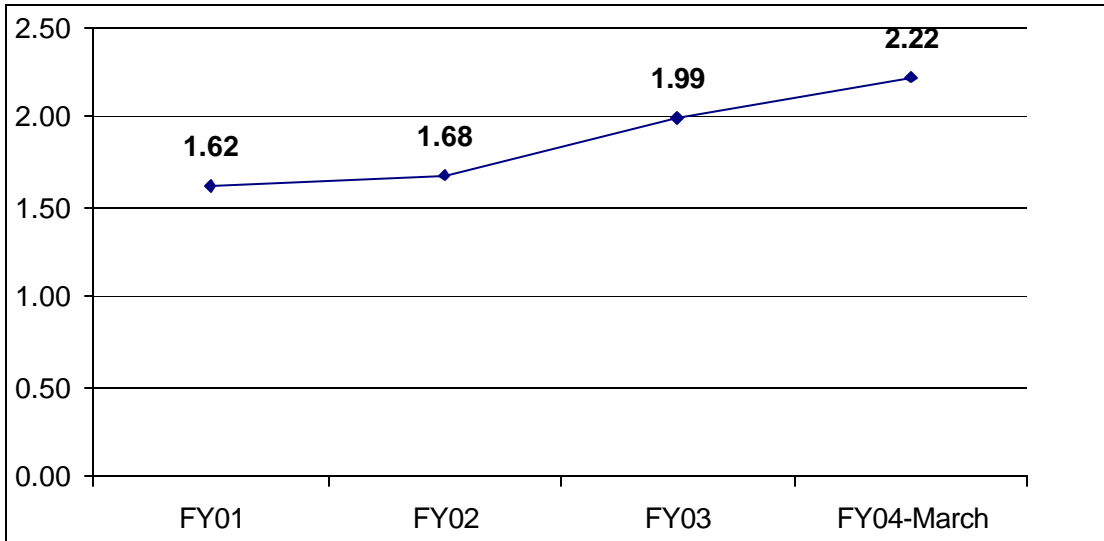
DESCRIPTION	RANKING			
	FY 04-March	FY03	FY02	FY01
Processing claims/amended returns	1	2	1	2
Refund inquiries/expedite refund request	2	3	3	3
EITC- Revenue Protection Strategy	3	1	2	1
Criminal Investigation	4	4	12	23
Audit Reconsideration	5	8	10	8
Levy	6	6	7	20
Penalties	7	7	5	5
Underreporter Process	8	9	9	10
Initial processing of individual returns	9	5	4	4
Problems w/payments & credits	10	10	6	6
Liens	11	15	18	26
Requests for forms/transcripts/returns	12	16	15	15
Offer in Compromise	13	14	14	17
Lost/stolen refund	14	13	8	11
Refund Offset	15	17	22	22

In addition to cases involving more complex issues, the average number of tax periods per case is increasing. The charts below show on average our cases involving individual income tax issues involve 1.45 years; on average our cases involving employment tax issues involve 2.22 quarters.

### Average Number of Tax Periods involved in an Individual Income Tax Case



### Average Number of Tax Periods Involved in an Employment Tax Case



EITC Revenue Protection Strategy (RPS) Examinations, Liens, Levies, and Offers in Compromise cases are but a few of the most complex cases worked in the Taxpayer Advocate Service. Based on an April 2004 skill and knowledge analysis conducted by TAS, these types of cases require significant knowledge, understanding and application of tax law, accounting principles, and financial analysis, in addition to interpretation and analysis of functional programs and policies within the IRS. Complex cases take longer to resolve because of the need for frequent and continuing taxpayer contact, intervention with IRS employees, and the multiple, intermingled, and dependent tax issues spanning several tax years or tax periods.

## Sources of TAS Casework

During the past year we have seen a decrease of about 5,000 TAS cases identified and referred by other IRS operating and functional divisions. This will be an area of focus through the remainder of FY 2004 and into FY 2005. TAS will continue to educate operating and functional division employees about how to correctly apply the TAS criteria in making appropriate referrals. For FY 2005, TAS has asked the Treasury inspector General for Tax Administration (TIGTA) to look into whether IRS employees are correctly identifying and referring cases to TAS.

In March 2004, TAS began testing a direct outreach campaign geared to surviving spouses and struggling low income families and individuals in seven markets – Buffalo, Tampa, Chicago, New Orleans, Detroit, Tucson, and Houston. Small businesses (i.e., companies with fewer than ten employees) and tax preparers are being reached through national efforts including the tax forums. These segments correspond directly to the statutory definition of significant hardship, particularly economic hardship. Over the long term, we anticipate an increase in telephone calls and cases as a result of our outreach to under-served segments.

Case receipts resulting from Criminal Investigation (CI) freezes continue to increase. TAS received 6,469 new CI cases for this fiscal year, through March 31, 2004. This represents an increase of 116 percent over the same period last year. Many of these cases involve unresolved CI issues on 2002 tax returns because CI gave taxpayers a 180-day response time and still has not resolved the issues.

The table below includes the top ten issues received in TAS cases in FY 2004 as of March 31, 2004.

Top Ten Issues Received in FY 2004 as of March 31, 2004

Rank	Description of Core Issue	Cases	% of Total
1	Criminal Investigation	6,469	8.3%
2	EITC Revenue Protection Strategy Examination	5,326	6.9%
3	Processing Amended Return	4,691	6.1%
4	Levy	4,063	5.2%
5	Expedite Refund Request	3,711	4.8%
6	Audit Reconsideration	3,472	4.5%
7	Processing Original Return	3,180	4.1%
8	Open Audit (Non RPS, EIC)	2,388	3.1%
9	Closed Automated Underreporter	2,199	2.8%
10	Injured Spouse Claim	2,076	2.7%

### Closures

The Taxpayer Advocate Service resolved 80,703 taxpayer cases through March 31, 2004 of this fiscal year. The following table describes the nature of relief provided in these cases:

#### Application for Taxpayer Assistance Order (ATAO) Disposition

	Volume	Percent of Total
Full Relief Granted	48,150	59.7%
Partial Relief Granted	5,163	6.4%
No Relief Granted-Advocate does not deem relief appropriate.	9,786	12.1%
No Relief Granted- No response from taxpayer.	10,213	12.7%
No Relief Granted- Hardship not validated or documentation/verification that the Advocate deems necessary not provided by taxpayer.	1,178	1.5%
No Relief Granted- Advocate determined relief appropriate, but current law prevents granting relief.	604	.7%
Advocate Relief Not Required- Relief provided by Operations prior to receipt of ATAO or relief determination.	3,614	4.5%
Advocate Relief Not Required- Taxpayer rescinds ATAO, no longer requires Advocate relief.	1,255	1.6%
Advocate Relief Not Required- Taxpayer hardship did not involve in any way the administration of internal revenue laws.	731	.9%
<b>Total</b>	<b>80,703</b>	<b>100%</b>

Our business results show continued improvement our case quality and a decrease in the length of time needed to resolve a taxpayer's problem. We plan to maintain our goal of achieving a 100 percent closure- to-receipt ratio in FY 2005 and through FY 2014.

## **Taxpayer Assistance Orders**

Internal Revenue Code section 7811 authorizes Local Taxpayer Advocates to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or about to suffer a significant hardship as a result of the IRS' administration of tax laws. TAS has two distinct categories of TAOs. The Direct TAO requires an IRS unit to take an action which is specifically authorized by IRC § 7811(b). A Review TAO requires an IRS unit to expedite consideration of a taxpayer's case, review and reconsider its own determination, or review the determination at a higher level in that unit.

As of March 31, 2004, TAS issued 14 Taxpayer Assistance Orders, an increase of 10 from the four TAOs issued during the same period in FY 2003. TAS employees evaluated 185 additional cases to date during FY 2004 for consideration as a TAO. The cases were either resolved as a result of TAS consideration or the involvement of higher level personnel in either TAS or the IRS business unit.

The increased TAO activity is a direct result of training delivered in FY 2004 by the National Taxpayer Advocate and Special Counsel to the National Taxpayer advocate to all TAS employees about the proper exercise of TAO authority under IRC § 7811.

The TAOs ordered the following actions:

- Expedited processing of an adjustment, specifically clearing the assessment statute expiration date, to correct tax accounts erroneously input.
- Correction of previously adjusted accounts that involved net operating losses.
- Correction of previously adjusted accounts to reflect correct dates credits were transferred.
- Expedited processing of an adjustment based on an Appeals Settlement Agreement.
- Processing of an Innocent Spouse determination.
- Reconsideration of an Innocent Spouse determination.
- Partial release of a bank levy (2 TAOs were issued).
- Reconsideration of a penalty abatement determination for failure to file and failure to pay.

- Processing of an Offer in Compromise and cease enforcement action in the interim.
- Reconsideration of an Offer in Compromise.
- Expedited processing of an amended tax return.
- Appeals review a denied amended tax return.
- Appeals reconsideration of an Offer in Compromise.

TAS issued three Direct TAOs and 11 Review TAOs pursuant to IRC § 7811(b). IRS completed the requested actions on 12 of the TAOs. TAS rescinded one of the TAOs because new information obtained after issuance eliminated the need for a TAO. As of June 2, 2004, one TAO is pending an Appeals decision.

Section 7811(b) further provides that the TAO may require the action(s) to be taken within a specified timeframe. Thirteen of the TAOs had specified timeframes, only six of which were complied with during the specified time frame. Two of the TAOs were complied with within 15 days of the specified time frame and three were complied with within 45 days of the specified time frame. The remaining TAO, which Operations complied with, took 110 days due to IRS processing problems and delays. The other TAO was rescinded and the timeframe requirement is therefore not applicable.

## **Service Level Agreements**

The national service level agreements (SLAs) between TAS and the four operating divisions (ODs) have been in effect for over a year. These agreements set forth the manner and timeframe in which the IRS will receive, acknowledge, and resolve taxpayer cases that require OD actions. As required in the agreements, TAS has held meetings with the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) Operating Divisions to review the procedures contained in the documents. The teams have completed the review for SB/SE and the draft revisions will be completed in the fourth quarter FY 2004. We have been working with Criminal Investigation (CI) on its agreement and should have an agreement signed in the fourth quarter FY 2004. We plan to host an interactive video training (IVT) session with CI to announce and discuss the agreement when it is completed. The CI SLA is one of our top priorities because case receipts resulting from CI freezing refunds continues to produce a large number of TAS cases.

The following issues are discussed at the annual SLA review meetings:

- Location of the correct operating/functional division (O/FD) unit to receive an Operations Assistance Request (OAR) from TAS requesting an action;
- Work process transition issues resulting from the IRS campus realignment initiatives;
- Number and frequency of changes to addenda listing contact personnel;
- Clarification of TAS authority issues;

- Structure of joint quarterly SLA meetings and data sharing including reports and analysis from TAMIS; and
- Implementation of Commissioner's requirement for ODs to include business assessments of their TAS casework in their business performance reviews.

Both SB/SE and W&I have agreed to develop an electronic tool to identify the correct location for routing OARs. The Automated Collection System has completed its tool, which uses the taxpayer's current address to determine proper routing. Development and implementation of tools such as this enable TAS and the IRS to provide taxpayers with prompt relief from their tax problem. Navigating the IRS, even within the IRS, continues to challenge the most experienced and knowledgeable employees. The development of new locator tools and refinements to existing locator tools will continue to be a priority in FY 2005.

TAS is working with SB/SE and W&I to further define the role and importance of the OAR liaison position. TAS has been struggling, especially in campuses, with the number of personnel changes in these positions and the lack of defined responsibilities. In some campuses the OD OAR liaison receives, tracks, monitors, and works all the cases sent for assistance. In FY 2005, we will develop and deliver to all liaison personnel, an electronic-based training module to explain the expectations, roles, and responsibilities of that position. Refinements to existing Service Level Agreements will bring attention to the need to stabilize liaison positions within the Service. Ongoing steering meetings will also direct attention to this need.

## **Operations Assistance Requests**

An Operations Assistance Request (OAR) is used by TAS to request assistance from an IRS operating division or function to complete an action on a TAS case. An OAR is necessary when TAS does not have the statutory and/or delegated authority to take the required action(s). On October 1, 2003, TAS implemented the electronic Form 12412, Operations Assistance Request, on the Taxpayer Advocate Management information System (TAMIS). All OARS are now generated through TAMIS and the information is stored in the TAMIS database. This allows TAS to generate reports for operating/functional divisions (O/FDs). Some of the data available includes:

- Location to which the OAR was routed;
- Name of the O/FD liaison;
- Dates the OAR was created, sent, acknowledged, and completed as well as actions taken;
- Major issue(s) that need to be resolved (e.g., audit reconsideration, levy); and
- Reasons OARS are returned/rejected by the O/FD.



Between October 1, 2003 and March 31, 2004, TAS issued over 44,000 OARs. The table below shows the volumes by O/FD.

Number of OARs by Operating/Functional Division

<b>Operating/Functional Division</b>	<b>Volume</b>
Appeals	654
Criminal Investigation	4,098
Large/Mid-size Business	77
Tax Exempt/Government Entities	224
Small Business/Self-Employed	21,446
Wage & Investment	18,070

TAS continues to develop OAR reports that will be shared with the O/FDs beginning in the fourth quarter of FY 2004. We are in the process of testing and loading reports on the TAS data portal for real-time availability for the O/FDs. Each O/FD will have a portal administrator who will assign logins to whoever requires access to the OAR reports which will be updated daily and will provide current information on OARs. During the fourth quarter of FY 2004 and through FY 2005, TAS will begin working with the O/FDs to develop and implement a process that will allow electronic routing of OARs. This feature is needed to complete the process for the OAR. Currently, our system generates a paper document, which then needs to be mailed or faxed to the appropriate IRS unit, adding time to the process of resolving the taxpayer's problem. The electronic routing, acknowledgment, and updating of the OAR will improve the process and eliminate unnecessary delays.

### **Taxpayer Advocate Management Information System**

In April 2003, TAS implemented a redesign and improved Taxpayer Advocate Management Information System (TAMIS) to better provide customer satisfaction, employee satisfaction, and improved business results. This fiscal year we will enhance the new system with additional checks and balances to improve the accuracy of the data; add additional features, suggested by employees and submitted through our TAMIS Advisory Board; add screens of information that will provide a more complete electronic copy of our cases; complete the on-line reports that help managers and employees manage inventories; add a consistent methodology to the documented decision whether to disclose taxpayer provided information; and begin the design for the automated case assignment of inventory.

## Downstream impact of compliance initiatives

### Liens and Levies

TAS continues to receive a large number of cases resulting from the IRS stepping up enforcement action. The table below highlights the number of levies and liens issued, compared to the number of TAS levy and lien receipts for the last three fiscal years.

#### Levy/Lien Comparison

	<b>FY01</b>	<b>FY02</b>	<b>FY03</b>
<b>Levies Issued by IRS</b>	694,746	1,308,365	1,680,844
<b>TAS Cases with Levy Issue</b>	3,574	8,571	9,228
<b>Liens Filed by IRS</b>	428,002	527,292	565,382
<b>TAS Cases with Lien Issue</b>	2,963	3,167	3,501

As the IRS plans to hire more employees and dedicate them to compliance initiatives, TAS is preparing for increased workload. We will continue to provide training to our Case Advocates on levy and lien issues and other compliance activities in order to prepare ourselves for the resulting shift in issues and workload.

### Criminal Investigation

TAS also continues to receive a large number of taxpayer cases resulting from the IRS' efforts to detect fraud, and we remain concerned with the number of taxpayers caught in this process. The Criminal Investigation (CI) function of the IRS is responsible for administering the fraud detection program in the ten IRS fraud detection centers. Taxpayer refunds are suspended from issuance pending a return verification process. If the income and tax withholding are verified, the refund is released and issued to the taxpayer. If the return is not verified as being an accurate return, the account is either referred to either a special agent to pursue a criminal case, or the examination function for audit.

In cases where the taxpayer's return has been verified as accurate, TAS has been successful in obtaining expedited refunds to those taxpayers experiencing financial or economic hardships. Once CI has concluded its determination of the accuracy of the return, we stay with the taxpayer through the examination process to ensure that it proceeds without delay and to the right conclusion.

The table below shows the number of TAS case receipts and closures involving CI issues.

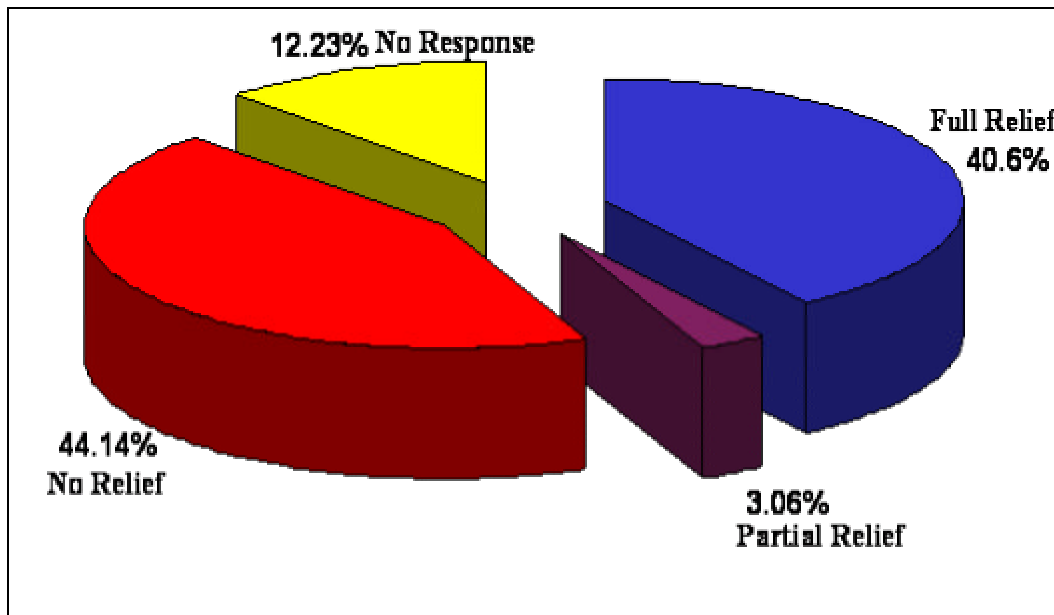
**TAS Cases Involving Criminal Investigation Issues**

	<b>Receipts</b>	<b>Closures</b>
<b>FY02</b>	5,721	5,295
<b>FY03</b>	15,959	15,145
<b>FY04- As of March 31</b>	6,649	5,853

TAS and CI are finalizing a service level agreement to allow TAS cases to receive priority treatment in CI and expedite relief determinations.

In reviewing the TAS case closures for FY 2004 through March 31, 2004, approximately 40 percent of the cases are closed with the taxpayers receiving full relief. The chart below illustrates the TAS CI case dispositions for this period.

**FY 2004 TAS Criminal Investigation Case Dispositions**



**TRAINING**

**Four-Year Training Plan**

The Taxpayer Advocate Service (TAS) completed the development of its comprehensive training plan, including the implementation of an ongoing four-

year occupation specific training plan within TAS. This plan allows each employee to chart his or her development and training needs via a web-based computer application. The Four-Year Training Plan focuses on competencies that all TAS employees share (TAS core topic areas), as well as those that are position specific. There are eight separate Professional Development Plans (PDPs) categorized by occupation. The occupations are Analyst, Case Advocate, Manager, Revenue Agent Technical Advisor, Revenue Officer Technical Advisor, Specialist/Other, Support Staff and Systemic Advocacy Analyst.

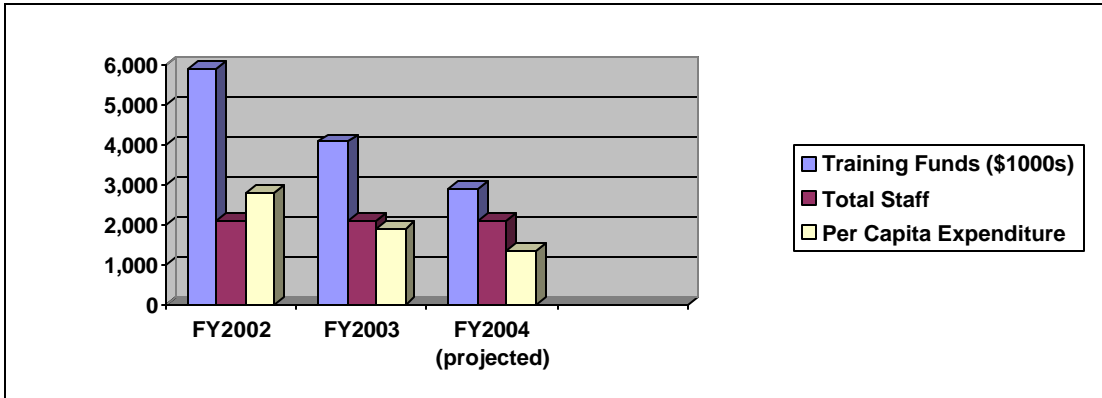
The overall goal of the TAS Four-Year Training plan is to provide TAS employees with an opportunity to acquire the skills and technical knowledge for their current jobs while developing themselves professionally for future jobs within TAS and the IRS. Employees, in consultation with their managers, will map out their plans choosing from a college-type catalog of required and developmental programs. In addition to clearly demonstrating that our employees' professional development matters, the Four-Year Training Plan provides TAS management with an effective, cost efficient way to achieve organizational goals.

TAS is preparing to conduct the pilot test of the TAS Four-Year Training Plan computer application in July 2004. The online computer application should be ready for TAS-wide implementation in FY 2005. TAS is also taking advantage of various methods of providing training including e-learning, Skillsoft, CENTRA, off the shelf vendor training, and Interactive Video Teletraining (IVT) as well as traditional face-to-face sessions.

## **TAS Training Program**

Over the past three years, the highest expenditure of TAS training funds in total dollars and per capita occurred in FY 2002. During that year, the National Taxpayer Advocate committed to the communication of key messages, building organizational identity, and training in new TAS authorities and procedures. The subsequent downward trend in expenditures is not from a decrease in commitment to training, but rather an increase in the use of technology enhanced learning (self-study via computer, videoconference, etc.) and improved efficiency in conducting face to face training events.

### Cost of Training- 3 year comparison



	FY2002	FY2003	FY2004 Projected
Training Funds (1,000s)	\$5,889	\$4,073	\$2,844
Total Staff	2,113	2,126	2,137
Per Capita Expenditure	\$2,787	\$1,916	\$1,331

The results of this commitment are validated by the responses relating to the training question in the Employee Satisfaction Survey. The following table illustrates that the average score has increased.

### Employee Satisfaction Survey

Question: I receive the training I need to perform my job effectively (classroom training, on-the-job training and workshops).

	FY 2001	FY 2002	FY2003	FY 2004
Average Score where 1=Strongly Disagree 5=Strongly Agree	3.19	3.13	3.47	3.66

TAS uses its automated registration database – TAS Training Registration System (TTRS) – for all major training initiatives. The system allows for class registration; course selection, recording of emergency contact and travel information; and identification of special accommodations. While participants register online from their office computers, a majority of information is captured from other IRS databases which limits the amount of information keyed in by the student. Calculating travel and subsistence estimates for participants increases the accuracy of the projections. By using this system, time normally required at training sessions for obtaining registration information can now be devoted to the actual training.

The TAS Training Advisory Board (TAB) was established to develop a collaborative approach to identify and address training needs of all TAS employees. The TAB reviews the TAS instructor selection process; FY 2005

training plan; web application for the four-year training plan; development of competencies for the case advocate position; development of a comprehensive leadership development plan including mentoring, front-line readiness, and senior management readiness programs.

## **Other Ongoing Training Activities**

TAS training staff provides expertise and support for a number of TAS initiatives such as:

- *Intake Advocate Team* – Develop a training curriculum and a plan for on-the-job instruction for this new TAS position. Classes are tentatively scheduled for summer 2004,
- *Low Income Taxpayer Clinics* – Develop and deliver materials for LITC assistance visits.
- *Workload Intake Team* – Assist with training needs for a new TAS process of case intake and assignment.
- *Document 11189, TAS Training Guide for Internal Revenue Service Employees, Certification Process* – IRC § 7803(c)(2)(C)(ii), requires TAS to develop guidance for all IRS employees outlining the criteria for referral of taxpayer inquiries to TAS. In the past, this was done using various methods. We are developing a mandatory web based training course and certification process for all IRS employees. This guide provides an overview of the roles and responsibilities of TAS such as case criteria, authorities, service level agreements, operations assistance request, taxpayer assistance orders, and systemic advocacy.

## **Leadership Training**

In accordance with IRC § (c)(2)(C)(iv), TAS has established career paths for Local Taxpayer Advocates choosing to make careers in the Office of the Taxpayer Advocate. TAS has established a link for the e-learning career development website which includes information on the TAS leadership career path. Career path positions are linked to the corresponding master position descriptions. Users of the site are guided through:

- Leadership career path within TAS;
- A listing of which positions are competitive for TAS leadership career paths;
- Key core leadership and technical competencies for front-line and senior manager positions; and
- Key experiences for developing and maintaining leadership competencies at the front line and senior manager levels.

## **OUTREACH STRATEGY**

The TAS outreach strategy began in February 2004 with a satellite media tour by the National Taxpayer Advocate to over 20 media market outlets, discussing the services of TAS and promoting the new TAS telephone number – 1-877-ASK-TAS-1. In addition, TAS is partnering with governmental agencies and non-profit organizations in Detroit, MI and Tampa, FL. Detroit partners include Department of Human Resources, Family Services, Inc., Westside Mothers, and Black Family Development. In Tampa, the partnership effort is with the Florida State Department of Revenue and the Tampa Chamber of Commerce. The goal of this strategy is to educate taxpayers about the availability of TAS, focusing on those taxpayers identified by research as most likely in need of TAS' help. If these strategies prove successful, this model will be rolled out to other TAS offices in FY 2005. As of June 1, 2004, TAS has received 104 taxpayer calls which have resulted in 13 TAS cases.

The new TAS outreach and education products are based on the quantitative and qualitative research conducted in 2002 and 2003 among targeted taxpayer groups and small business owners. The outreach strategy is geared to surviving spouses and struggling low income families and individuals in seven markets – Buffalo, Tampa, Chicago, New Orleans, Detroit, Tucson, and Houston. Small businesses (i.e., companies with fewer than ten employees) and tax preparers are being reached through national efforts including the tax forums. During FY 2005, TAS will analyze the results from the outreach strategy and make decisions about nationwide implementation.





## **APPENDIX I: EVOLUTION OF THE OFFICE OF THE TAXPAYER ADVOCATE**

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service in 1979 to serve as the *primary advocate*, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988, (TAMRA), Pub. L. 100-647. In TBOR 1, Congress granted the Ombudsman the statutory authority to issue a Taxpayer Assistance Order (TAO) if, “in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the internal revenue laws.”<sup>1</sup> Further, the Taxpayer Ombudsman and the Assistant Commissioner (Taxpayer Services) were directed to jointly make an annual report to the Congress about the quality of taxpayer services provided by the IRS. This report was made directly to the Senate Finance Committee and the House Committee on Ways and Means.<sup>2</sup>

Taxpayer Bill of Rights 2 (TBOR 2) replaced the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.<sup>3</sup> The Joint Committee on Taxation set forth the following reasons for change:

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is *not an independent advocate* for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.<sup>4</sup>

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate but also described its functions:

---

<sup>1</sup> TAMRA, Pub. L. No. 100-647, Section 6230, Conference Committee Report.

<sup>2</sup> TAMRA, Pub. L. No. 100-647, Title VI, Sec. 6235(b), Nov. 10, 1988, 102 Stat. 3737.

<sup>3</sup> Pub. Law 104-168, Sec. 101, July 30, 1996.

<sup>4</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress* (JCS-12-6), December 18, 1996, p. 20. (Emphasis added).

1. To assist taxpayers in resolving problems with the Internal Revenue Service;
2. To identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
3. To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
4. To identify potential legislative changes which may be appropriate to mitigate such problems.

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program. At the time of the enactment of TBOR 2, Congress believed that it was sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”<sup>5 6</sup>

TBOR 2 also replaced the joint Assistant Commissioner—Taxpayer Advocate report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate. The first report is to contain the objectives of the Taxpayer Advocate for the next calendar year. This report is to contain full and substantive analysis, in addition to statistical information and is due not later than June 30 of each year. The second report is on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order (TAO), describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and include other such information as the Taxpayer Advocate may deem advisable. The stated objective of these reports is “for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the

---

<sup>5</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress (JCS)-12-6*, December 18, 1996, p. 21.

<sup>6</sup> It is interesting to note that the proposed Revenue Bill of 1992 proposed that all problem resolution officers be part of the Office of Taxpayer Advocate within the IRS and be under the supervision and direction of the Taxpayer Advocate. (Revenue Act of 1992, H.R.11, 101 Cong. § 5001, Establishment of Position of Taxpayer Advocate within Internal Revenue.)

Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.”<sup>7</sup>

Finally, TBOR 2 extended the scope of the Taxpayer Assistance Order (TAO), by providing the Taxpayer Advocate with broader authority “to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws.”<sup>8</sup> For the first time, the TAO could specify a time period within which the IRS must act on the TAO. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner or the Deputy Commissioner could modify or rescind a TAO; and that any official who so modifies or rescinds a TAO must respond to the Taxpayer Advocate with his or her reasons for such action.

Thus, as a result of TBOR 2 changes, the Taxpayer Advocate was a career position within the IRS. Problem Resolution Officers and field employees who worked Problem Resolution cases did not report to the Taxpayer Advocate. In 1997, The National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the “voice of the taxpayer.” In its discussion of the office of the Taxpayer Advocate, the Commission noted:

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the national Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.<sup>9</sup>

In response to these concerns, in the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206 (July 22, 1998), Congress renamed the Taxpayer Advocate as the National Taxpayer Advocate and mandated that the NTA could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the NTA. (Service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision.)

The Restructuring and Reform Act provided for Local Taxpayer Advocates to be located in each state, and mandated a direct reporting structure for local taxpayer advocates to the National Taxpayer Advocate. As indicated in IRC §

---

<sup>7</sup> Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104<sup>th</sup> Congress* (JCS-12-6), December 18, 1996, p. 21.

<sup>8</sup> *Id.* at 22.

<sup>9</sup> Report of the Commission on Restructuring the Internal Revenue Service: *A Vision for a New IRS: Report of the National Commission on Restructuring the Internal Revenue Service*, June 25, 1997, p. 43.

7803(c)(4)(B), each Local Taxpayer Advocate must have phone, facsimile, electronic communication, and mailing address separate from those of the IRS. The Local Taxpayer Advocate must advise taxpayers at their first meeting of the fact that “the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.”<sup>10</sup> Congress also authorized the Local Taxpayer Advocates, at their discretion, to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.<sup>11</sup>

The definition of “significant hardship” in IRC § 7811 was expanded in 1998 to include four specific circumstances: (1) an immediate threat of adverse action; (2) a delay of more than 30 days in resolving taxpayer account problems; (3) the taxpayer’s incurring of significant costs (including professional services fees) if relief is not granted; and (4) the taxpayer will suffer irreparable injury or a long-term adverse impact. The committee reports make clear that this list is a non-exclusive list of what constitutes significant hardship.<sup>12</sup>

---

<sup>10</sup> IRC § 7803(c)(4)(A).

<sup>11</sup> *Id.*

<sup>12</sup> H.R. Conf. Rep. No. 105-599, at 26, 28 (1998).

## **APPENDIX II: TAXPAYER ADVOCATE SERVICE SIGNIFICANT HARDSHIP CRITERIA**

1. Taxpayer is suffering or about to suffer a significant hardship.
2. Taxpayer is facing an immediate threat of adverse action.
3. Taxpayer will incur significant costs if relief is not granted.
4. Taxpayer will suffer irreparable injury, or long term adverse impact.
5. Taxpayer experienced a delay of more than 30 calendar days in resolving an account-related problem or inquiry.
6. Taxpayer did not receive a response or resolution by the date promised.
7. A system or procedure has either failed to operate as intended or failed to resolve the taxpayer's problem.



## **APPENDIX III: TAS PARTICIPATION ON IRS TASK FORCES**

### **SIMPLIFICATION OF THE EXTENSION TO FILE PROCESS**

The current forms and procedures for seeking extensions of time to file tax returns are complex, costly, and place unnecessary burdens on taxpayers. Taxpayers are allowed up to a six month extension,<sup>1</sup> and for individual taxpayers, this requires two separate forms. Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, provides for an automatic four month extension, while Form 2868, Application for Additional Extension of Time to File U.S. Individual Tax Return, allows an additional two months, subject to approval.<sup>2</sup> The IRS estimates that it takes taxpayers 67 minutes to request the four-month extension, and 46 minutes to file for the two extra months.<sup>3</sup> This is a significant time investment for a taxpayer or preparer.

According to campus processing data, the IRS grants approximately 98 percent of the second extension requests (Forms 2868), rejecting only incomplete and/or late filed applications.<sup>4</sup> These forms cost one and one half times more to process than the automatic extension forms.<sup>5</sup> With those concepts in mind, a task force was formed to look at the feasibility of consolidating the extension forms.

The "Extension" task force is sponsored by the IRS Small Business/Self-Employed Operating Division (SB/SE) Office of Burden Reduction. The team is cross-functional with representatives from SB/SE, and the Large and Mid-Sized Business (LMSB) and Wage and Investment (W&I) Operating Divisions, Office of Chief Counsel, Office of Research, and the Taxpayer Advocate Service (TAS). The goal and objective of the "Extensions" project is to develop a simplified and less burdensome process for taxpayers to request an extension of time to file a return, and to increase efficiency in processing requests for extensions. This project will accomplish its objectives by: 1) Creating as much consistency in

---

<sup>1</sup> IRC§ 6081(a).

<sup>2</sup> Treas. Reg. § 1.6081-1(b)(5).

<sup>3</sup> Form 4868 (Application for Automatic Extension of Time to File U.S. Individual Income Tax Return), p.4; Form 2688 (Application for Additional Extension of Time to File U.S. Individual Income Tax Return), p.2.

<sup>4</sup> Internal Revenue Service, *Simplification of the Extension to File Process: Preliminary Business Case*, April 6, 2004, p. 5.

<sup>5</sup> *Id.* p. 9.

extension periods as possible; 2) Designing as few application forms as necessary; and 3) Centralizing the processing of applications.

To date, TAS participation with this team has had a positive impact on taxpayer fairness and protection of taxpayer rights. For example, the National Taxpayer Advocate opposes a proposal that would tie the validity of the individual automatic extension to sufficient payment of the tax liability rather than the timely filing of the extension form. The National Taxpayer Advocate also opposes an automatic six month extension for partnerships, pointing out that this would put partners in a worse position than they are in currently.<sup>6</sup>

## **PENALTY ADMINISTRATION TEAM**

The Large and Mid-Sized Business Operating Division (LMSB) sponsored a team to review penalty development, application, and resolution. Specifically, the team studied the “Accuracy-Related Penalty” (IRC § 6662) in the context of tax shelters. A subsequent phase of this effort will look at penalties more broadly, outside the tax shelter context. The team is cross-functional and includes SB/SE, Chief Counsel, Appeals and TAS.

The team identified seven strategies that promote consistency in penalty consideration and application. These strategies are:

1. IRS Managers and Examiners must be trained and knowledgeable on the criteria for penalty application;
2. IRS must strive for the consistent application of penalties;
3. IRS Examiners and Managers are not authorized to use penalties as a bargaining point when developing and processing cases;
4. IRS Examiners and Managers will fully consider and, when appropriate, develop penalties as a separate issue;
5. IRS Appeals and Chief Counsel will consider penalties as a separate issue;
6. IRS Examiners and Managers must be knowledgeable of Appeals’ and Counsel’s procedures and experiences regarding the sustention of penalties; and
7. IRS Examiners and Appeals Officers must have timely access to administrative tools.<sup>7</sup>

---

<sup>6</sup> Currently, the extended partnership return is due in July. Upon a second request the partnership may have up to an additional three months. Moving to an automatic six month extension would put the extended due date in October which would coincide with the extended due date of the individual return. This would put taxpayers who need K-1 information in a worse position than they currently are because there would be no time between receipt of the K-1 information and the filing due date of the individual tax return.

<sup>7</sup> Coordinated Issue Papers (CIPs) and Appeals Settlement Guidelines (ASGs). The CIPs and ASGs for listed and abusive tax shelter transactions address penalties which should be considered.



One of the goals of the team was to develop a communication strategy that would give examiners confidence that Appeals would sustain penalties applied by the field. LMSB management believes that examiners will be more apt to develop a penalty case if they believe their assessed penalty will be upheld in Appeals. The view of the National Taxpayer Advocate is that taxpayers must have the opportunity for an independent appeal of their case with an IRS Appeals Officer. Appeals should take a fresh look at each taxpayer's case. Each taxpayer's facts and circumstances must be considered when asserting penalties, sustaining, and possibly litigating penalty cases. TAS will continue to advocate this position during FY 2005.

## **940 REDESIGN TEAM**

The goal of the 940 Redesign Team is to have a new Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, available for the year 2006. Clarifying and simplifying both the form and instructions should benefit the taxpayer by reducing the time and resources necessary to complete the form. A reengineering effort in SB/SE Customer Account Services (CAS) will enable the new Form 940 to be scannable, with embedded barcodes allowing the IRS to automatically receive and route data to systems.

The 940 redesign team is tasked with:

- Creating an easier to understand form;
- Reducing the time it takes to fill out the form;
- Reducing the taxpayer's cost associated with preparing the form;
- Studying possible increased voluntary compliance with use of the new form;
- Evaluating the purpose behind each line on the form;
- Making the form scannable and easier to process thereby reducing overall costs to the IRS; and
- Analyzing risks that may affect implementation of a new Form 940.

Although this initiative has not been fully funded, TAS will continue to participate on the redesign team in FY 2005.

## **941 ANNUALIZATION TASKFORCE**

The Form 941 task force's objective is to reduce taxpayer burden by allowing certain employers to file an annual Form 941, Employer's Quarterly Federal Tax Return, while maintaining current payment compliance levels.

The benefits of an annual filing are that taxpayers will spend less time keeping records and preparing forms, and will not need to file "zero" returns (blank returns) for quarters in which they had no business activity. This will allow the IRS to save money on unnecessary mailings to taxpayers and processing costs.

However, there are concerns that annual filing could lead to misunderstandings about filing requirements. Inclusion in the program would be based on payroll amounts, which often fluctuate. This would require extensive new processes and procedures. Because not all business taxpayers will be allowed to use the new form, those who do not qualify to file annually might mistakenly believe they are not required to file quarterly. This means they could be subject to failure to file penalties, which would be an unfortunate outcome of an effort to reduce taxpayer burden. Further, changing the quarterly filing requirement to an annual one may confuse taxpayers into thinking they would only need to make one annual federal tax deposit (FTD) payment. For those with a tax liability, any failure to pay quarterly would once again trigger penalties.

TAS will continue to participate on this team in FY 2005. TAS remains concerned that this effort may be very confusing to business taxpayers, particularly if they move in and out of eligibility for participation in the program.

## **FEDERAL TAX DEPOSIT PENALTY TASK FORCE**

In the 2003 Annual Report to Congress, the National Taxpayer Advocate recommended the IRS assemble a team or group to perform a comprehensive analysis of the Federal Tax Deposit (FTD) system, identify problems encountered by taxpayers, and recommend measurable solutions that would lessen taxpayer burden.<sup>8</sup> The Program Manager of the Office of Penalties and Interest Administration within SB/SE agreed to convene a cross-functional group<sup>9</sup> to address systemic assessments and systemic abatements of FTD penalties.<sup>10</sup>

The task force's objectives are to analyze the systemic assessment and abatement of FTD penalties, identify causes for high systemic assessment and abatement rates, recommend measurable solutions, and support the Office of Penalties and Interest's initiatives to reduce taxpayer burden. TAS will continue to monitor the progress of this team and the timeliness of its activities during FY 2005.

---

<sup>8</sup> National Taxpayer Advocate, *Annual Report to Congress*, Publication 2104 (Rev. 12-2003) p. 205.

<sup>9</sup> The group is made up of representatives from: SB/SE Office of Penalties and Interest; SB/SE, Compliance Policy Employment Tax; SB/SE, Customer Account Services; SB/SE, Compliance Payment; SB/SE, Taxpayer Education and Communication; LMSB, Planning Quality and Assurance; TE/GE, Indian Tribal Government; TE/GE, Federal, State, and Local Government; and Taxpayer Advocate Service, Office of Systemic Advocacy.

<sup>10</sup> The Office of Penalties and Interest, housed in SB/SE under Compliance Policy, develops and implements Servicewide policies and strategies for penalties and interest. The Program Manager of Penalties and Interest has the objective of administering penalties and interest for all Business Operating Divisions in a manner that is consistent and accurate for all taxpayers.

**APPENDIX IV: LISTING OF LOW INCOME TAXPAYER  
CLINICS (LITCS)**







## **APPENDIX V: TAXPAYER ADVOCATE SERVICE IMPROVEMENT INITIATIVES**

### **CONFIDENTIALITY**

The Mechanics Team is a subcommittee of the Confidentiality Committee formed by the National Taxpayer Advocate to address issues arising from Internal Revenue Code Section 7803(c)(4)(A)(iv), which authorizes Local Taxpayer Advocates to not disclose to the IRS the fact that a taxpayer has called the Taxpayer Advocate Service (TAS) or any information provided to TAS by the taxpayer. Its charter is to review the administrative issues arising from implementing the confidentiality provisions of the law. These include the "marker" placed on the Integrated Data Retrieval System (IDRS) to identify an open case in TAS when a taxpayer contacts the Taxpayer Advocate Service, implementing changes to the Taxpayer Advocate Management Information System (TAMIS) to effect the analysis required by Case Advocates and the Local Taxpayer Advocate, to assist them in their determination whether disclosure of taxpayer information to other parts of the IRS is appropriate, and providing TAS employees with appropriate language about confidentiality in their discussions with taxpayers. We plan to fully implement these processes and systems in FY 2005.

### **DELEGATED AUTHORITIES**

In FY 2003, the National Taxpayer Advocate chartered a team composed of Taxpayer Advocate Service employees to study the authorities delegated to TAS in the Commissioner's January 17, 2001 memorandum. During FYs 2003 and 2004, the team has studied the authorities granted to TAS and conducted a review of closed TAS cases where a decision on the case could have resulted in a taxpayer appealing TAS' decision.

The team is now about to gain valuable information from a representative sample of TAS employees in offices throughout the country through focus group interviews that will take place in 31 locations. The information gained through these focus group interviews will help the team evaluate the feedback from TAS employees and put it into context with the information learned from their earlier analyses of the delegated authorities and case reviews.

During FY 2005, the team will pull all of its information together and formulate interim recommendations to the National Taxpayer Advocate. The team then intends to meet with representatives from the Operating and Functional Divisions to discuss these recommendations and assess the impact the recommendations may have on the Operating Divisions' resources and operations. It is the team's

expectation that their final recommendations will be delivered to the National Taxpayer Advocate by December 31, 2004. The accepted recommendations should then be implemented by the end of FY 2005.

## **SIGNIFICANT HARDSHIP**

The Significant Hardship Task force is continuing its work in examining the way TAS is applying the definition of significant hardship under IRC § 7811 and the Case Criteria TAS uses for acceptance of taxpayers into TAS for assistance in resolving problems with the IRS.

During FY 2004, the team developed revised criteria to ensure that TAS operates as Congress intended when it wrote “the Taxpayer Advocate serves an important role within the IRS in terms of preserving taxpayer rights and solving problems that taxpayers encounter in their dealings with the IRS.”<sup>1</sup> Case criteria determines whether a taxpayer’s problem or issue is accepted into the TAS program. Thus, it is crucial that the criteria be expansive enough to ensure those taxpayers that Congress envisioned as needing assistance actually receive the help Congress intended. The implementation plan for the revised criteria includes additional training on significant hardship determination and use of Taxpayer Assistance Order authority. Case Advocates will be required to make a Significant Hardship determination on each case. As these changes will have a Servicewide impact, the task force is currently working with subject matter experts to design an implementation plan to address all impacted areas. Training on these changes will begin in FY 2004. Implementation will continue through FY 2005.

## **WORKLOAD INTAKE TEAM**

The National Taxpayer Advocate commissioned a study of TAS’ current case processes with a goal to design an efficient workload intake and delivery system that promotes achievement of TAS objectives. The team held its first meeting in February 2004. This group will be looking at the ways work comes into TAS – via correspondence and telephone. The team will also be looking at the current National Taxpayer Advocate (NTA) toll-free system, a system to report direct time per case, and methods of balancing inventory between TAS offices.

As a first step in the study, the team is studying the use of TAS employees to answer the NTA toll-free line in two campus sites. The team is hoping to show possible benefits in the following areas:

- Enhanced confidentiality by limiting access to TAS data.
- Positive impact on TAS balanced measures.

---

<sup>1</sup> Internal Revenue Service Reform and Restructuring of 1998, S. Rep. 105-174



- Increased ability of TAS employees to identify systemic issues.
- Increased capability for taxpayers to talk to TAS on first contact.
- Improved identification of cases meeting TAS criteria.
- Enhanced ability to control staffing resources and workload distribution.
- Improved data by capturing same day closures.

In FY 2005, the Workload Intake Team plans to complete its study of using TAS employees to answer the NTA Toll-Free line and make recommendations on how best to manage this service. The team also plans to implement a time reporting system and begin development of a workload balancing process.

## **INTAKE ADVOCATE**

The Intake Advocate position will be dedicated solely to the receipt and control of work coming into the Taxpayer Advocate Service. The establishment of this position will free up resources to devote more time to cases. The Intake Advocate position will allow our Case Advocates (Associate Advocates and Senior Associate Advocates) to focus mainly on working technical issues and will alleviate the constant burden caused by numerous interruptions. This will benefit our employees as well as our customers. Pilot sites have recently been selected to implement the Intake Advocate position. The pilot is scheduled to begin in August of 2004 and conclude in July 2005. TAS will then develop an implementation plan for any recommendations resulting from the evaluation of the pilot.

## **CASE ADVOCATES**

The Taxpayer Advocate Service Vision and Strategy Implementation Board (VSIB) established the Case Advocate Sub-team in February 2003. The board chartered the team to develop the National Taxpayer Advocate's vision of the new case advocate (CA) position and the initial design of the casework degree of complexity concept as outlined in the FY 2004 Objectives Report to Congress.<sup>2</sup>

In FY 2004, TAS started the process of combining the requirements of these two positions into a case advocate position that creates a career ladder opportunity for employees. Standard position descriptions and critical job elements are being developed. In addition, the team is developing:

- A system for grading CA cases based on degree of case complexity;
- Case assignment guidelines;
- Recommended distribution of CAs by office; and
- Projected budget implications;

---

<sup>2</sup> National Taxpayer Advocate, *Report to Congress, Fiscal Year 2004 Objectives*, Publication 4054 (Rev. 06-2003) p. 41.

The final report is due to the TAS VSIB in the June 2004.

In FY 2005, the team will continue analyzing and developing the Case Advocate position and implement recommendations as they are approved by the National Taxpayer Advocate and funded.

## **TECHNICAL ADVISOR PROGRAM**

TAS technical advisors are employees who have extensive backgrounds in collection and examination. They provide advice to Local Taxpayer Advocates and case advocates on technical issues. The National Taxpayer Advocate commissioned the Technical Advisory Study team to study the feasibility of having technical advisors in the campus TAS offices (i.e., to provide technical assistance on campus processes) and to review the technical advisor program's structure and consistency of the use of these positions nationwide.

The team completed its review and issued a draft report which has been presented to the National Taxpayer Advocate and the Deputy National Taxpayer Advocate. The draft report included the following recommendations:

- Staff one technical advisor group manager in each TAS area.
- Staff one technical advisor position in each of the ten TAS campus offices.
- Provide program direction through the TAS office of Taxpayer Account Operations.
- Complete a study of the grade 12 Revenue Officer Technical Advisor positions.
- Develop a means to track time and activity reporting.

TAS expects to begin implementing approved recommendations in FY 2005.

## APPENDIX VI: TAS MAJOR STRATEGIES, OPERATIONAL PRIORITIES, AND IMPROVEMENT PROJECTS FOR 2004-2005

<b>TAS Major Strategies, Operational Priorities and Improvement Projects (FY 2004-2005)</b> Note: Italicized items are new for FY2004-2005.		
<b>MAJOR STRATEGIES</b>	<b>OPERATIONAL PRIORITIES</b>	<b>IMPROVEMENT PROJECTS</b>
<p>1. Advocate Changes in Tax Law or Procedures <i>That Protect Taxpayer Rights, Reduce Taxpayer Burden and Improve IRS Effectiveness</i></p>	<ul style="list-style-type: none"> <li>• Report to Congress on the most serious problems facing taxpayers.</li> <li>• Develop and recommend legislative proposals to address tax law complexity, equity, <i>taxpayer rights</i> and taxpayer burden.</li> <li>• Advise Congress' Joint Committee on Taxation on the complexity of legislation being considered.</li> <li>• Continue to work with operating divisions, <i>Treasury</i>, and Congress to achieve a less burdensome process in key areas of the tax law; assist in simplifying forms and instructions.</li> <li>• Systematically analyze the inventory of advocacy projects to improve overall IRS service to taxpayers and to reduce the number of cases coming to TAS.</li> </ul>	<ul style="list-style-type: none"> <li>• Partner with Research and/or W&amp;I on a study of the most significant errors on individual income tax returns; <i>partner with Research and W&amp;I/SBSE on a study of lack of response to taxpayer notices, including accounts, examination, collection, OIC.</i></li> <li>• Participate with W&amp;I to measure the impact of a more integrated approach to EITC and Innocent Spouse services.</li> <li>• Review the implementation of TAS' confidentiality/non-disclosure procedures.</li> <li>• <i>Promote the concept of establishing an organizational performance measure for taxpayer burden within each operating division that focuses on the most common problems presented by taxpayers and their representatives</i></li> <li>• <i>Implement the taxpayer rights impact statement service-wide</i></li> <li>• <i>Track IRS action plans on the National Taxpayer Advocate's Annual Report to Congress</i></li> <li>• <i>Monitor IRS' Implementation of IRS' Private Debt Collection Initiative</i></li> </ul>

**TAS Major Strategies, Operational Priorities and Improvement Projects  
(FY 2004-2005)** Note: Italicized items are new for FY2004-2005.

MAJOR STRATEGIES	OPERATIONAL PRIORITIES	IMPROVEMENT PROJECTS
<p>2. Improve TAS' Ability to Identify and Respond to Taxpayer Concerns</p>	<ul style="list-style-type: none"> <li>• Seek resource support through Research to develop an improved process for gathering and analyzing data to report to Congress on the top 20 taxpayer concerns.</li> <li>• Review/revise case criteria guidelines to ensure that TAS workload is focused on taxpayers with hardships.</li> <li>• Develop supporting information for legislative recommendations that address underlying causes of workload.</li> <li>• Increase public awareness of TAS.</li> <li>• <i>Examine expanded authorities and develop a clearer definition of 'significant hardship', especially economic hardship and taxpayer rights.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a quality assessment of campus/local office casework to determine why the Casework Quality Index scores of some offices are lower than others</li> <li>• Participate with SBSE on developing a cross-functional non-filer strategy</li> <li>• Participate with SBSE on providing enhanced education and outreach activities</li> <li>• <i>Continue implementation of the national outreach strategy which will include national implementation of a revised marketing campaign</i></li> <li>• Examine the root causes of incoming cases at the campus/local level.</li> <li>• <i>Promote the secure handling of taxpayer information to allay concerns about their privacy.</i></li> <li>• <i>Implement recommendation of task forces on quality standards, authorities and definition of significant hardship..</i></li> </ul>

**TAS Major Strategies, Operational Priorities and Improvement Projects**  
**(FY 2004-2005)** Note: Italicized items are new for FY2004-2005.

MAJOR STRATEGIES	OPERATIONAL PRIORITIES	IMPROVEMENT PROJECTS
<p>3. Identify Significant Sources of TAS Casework and Work With Operating Divisions on Strategies to Reduce Inappropriate TAS Workload</p>	<ul style="list-style-type: none"> <li>• Propose content for operating division procedures, manuals and training that leverages TAS experience.</li> <li>• Examine the sources of TAS casework to determine whether work being performed is in accord with TAS' legislative mandate.</li> <li>• Conduct ongoing TAS inventory study and consult regularly with Operating Divisions to analyze underlying causes of taxpayer problems and identify changes to mitigate those problems.</li> </ul>	<ul style="list-style-type: none"> <li>• Partner/participate with Operating Divisions in examining opportunities for reducing inappropriate referrals to TAS.</li> <li>• Participate in SBSE projects to improve Business Results through revamping SBSE Operational Practices and Processes.</li> <li>• <i>Partner with W&amp;I in implementing EITC precertification and examination/notice redesign</i></li> <li>• <i>Monitor the implementation of the Collection Contract Support Initiative, if authorized.</i></li> </ul>
<p>4. Ensure that the HR Component of TAS is adequate to meet its workload demands</p>	<ul style="list-style-type: none"> <li>• Ensure that the human resources component of the TAS organization is adequately sized, trained and supported.</li> <li>• Ensure continued alignment of TAS' multi-year training program with workload demands.</li> </ul>	<ul style="list-style-type: none"> <li>• Coordinate with operating divisions to cross-train TAS and OD employees during formal training sessions and CPE</li> <li>• Review intake and advocacy liaison positions</li> <li>• Complete implementation of changes to career path progression for case advocates</li> <li>• <i>Review process for providing new IT training to TAS employees</i></li> <li>• <i>Finalize plans for central intake and case allocation system.</i></li> <li>• <i>Develop system for measuring staff utilization of time</i></li> <li>• Begin to implement a process for assuring TAS employees have full access to TAS products.</li> </ul>



**APPENDIX VII – TAS CLOSED CASE REPORTS BY IRS  
OPERATING DIVISION**





























