

#43 **CODIFY THE NATIONAL TAXPAYER ADVOCATE’S AUTHORITY TO ISSUE TAXPAYER ADVOCATE DIRECTIVES**

Present Law

Under IRC § 7803(c)(2)(A), TAS is charged with advocating for taxpayers both in specific cases and systemically. With regard to “case advocacy,” TAS is directed to “assist taxpayers in resolving problems” with the IRS. With regard to “systemic advocacy,” TAS is directed to “identify areas in which taxpayers have problems” in dealings with the IRS and to make administrative and legislative recommendations to mitigate those problems.

To assist TAS with case advocacy, IRC § 7811 authorizes the National Taxpayer Advocate to issue Taxpayer Assistance Orders (TAOs) when a 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. TAOs may order the IRS to, within a specified time, cease certain actions, take certain actions permitted by law, or refrain from taking certain actions. Only the National Taxpayer Advocate (or her delegate), the Commissioner or Deputy Commissioner may modify or rescind a TAO. If the Commissioner or Deputy Commissioner rescinds a TAO, a written explanation of the reasons for the modification or rescission must be provided to the National Taxpayer Advocate. Thus, the TAO is a powerful tool to help ensure that important issues are appropriately elevated before final decisions are made. In addition, IRC § 7803(c)(2)(B)(ii)(VII) directs the National Taxpayer Advocate to “identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner” in her Annual Report to Congress.

The National Taxpayer Advocate has no comparable statutory authority to assist her in advocating for systemic change. To fill this gap, the Commissioner issued Delegation Order 13-3, which provides the National Taxpayer Advocate with the non-delegable authority to issue a Taxpayer Advocate Directive (TAD). A TAD may require an IRS unit to change procedures “to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.” As with a TAO, the Commissioner and the Deputy Commissioner both retain the authority to modify or rescind a TAD.

Reasons for Change

IRS business units periodically fail to address emerging problems or implement new programs or procedures that may have a significant adverse impact on taxpayers. When the National Taxpayer Advocate has responded by issuing TADs, IRS officials have not always complied with, or even timely responded to them. The fact that a TAD is not a statutory authority contributes to this problem. Moreover, it is not clear that the National Taxpayer Advocate has the authority to elevate TADs to the Commissioner or to require the IRS to provide a written explanation of the reasons for their modification or rescission.

Recommendations¹³⁷

Enact a new IRC § 7812 (modeled after existing IRC § 7811) to grant the National Taxpayer Advocate non-delegable authority to issue a TAD to mandate changes, within a specified period, to improve or preserve the operation of a functional process, grant relief to groups of taxpayers or all taxpayers, protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide or retain an essential service for taxpayers.¹³⁸

Amend IRC § 7803(c)(2)(B)(ii) to require the National Taxpayer Advocate in her Annual Reports to Congress to “identify any Taxpayer Advocate Directive which was not honored by the Internal Revenue Service in a timely manner.”

¹³⁷ Under this proposal and consistent with current administrative practice, a TAD would be issued initially to the head of a business unit or division. The recipient would be authorized to appeal a TAD by delivering a detailed written explanation that facilitates a full and fair consideration of the issues to the National Taxpayer Advocate and the Deputy Commissioner, either of whom would be authorized to modify or rescind the TAD. The Deputy Commissioner’s authority to modify or rescind a TAD would be conditioned on providing the National Taxpayer Advocate a detailed written explanation of the reasons for his or her determination. The National Taxpayer Advocate could elevate a TAD to the Commissioner for a final determination. In such cases, the Commissioner would be required to provide the National Taxpayer Advocate with a detailed written explanation of his or her determination within 90 days, unless the National Taxpayer Advocate determined that time was of the essence and great harm would occur absent a more expedited decision by the Commissioner.

¹³⁸ For additional background, see National Taxpayer Advocate 2016 Annual Report to Congress 39-40 (Special Focus: *Codify the Authority to Issue a Taxpayer Advocate Directive (TAD) and Clarify the Appeal Process Applicable to Taxpayer Assistance Orders (TAOs) and TADs*). For legislative language generally consistent with this recommendation, see Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 402 (2015) and S. 2333, 114th Cong. § 402 (2015). In addition, the Taxpayer First Act, H.R. 5444, 115th Cong. § 11402(a) (2018), is partially consistent with this recommendation. It would authorize the National Taxpayer Advocate to elevate TADs to the Commissioner, require the Commissioner to provide a detailed description of his reasoning in cases where he modifies or rescinds a TAD, and require the National Taxpayer Advocate to report to Congress on any TADs modified or rescinded by the Commissioner. Significantly, however, H.R. 5444 would not codify the foundational authority of the National Taxpayer Advocate to issue TADs. Instead, it cross references the Commissioner’s delegation of authority. We recommend that the National Taxpayer Advocate’s authority to issue TADs be codified in the same manner as the authority to issue TAOs. Otherwise, the Commissioner would be able to modify or revoke his delegation of authority at any time and thereby negate the other TAD provisions in the legislation.