

Area of Focus #7 **TAS Is Analyzing Its Cases to Identify Ways to Strengthen Earned Income Tax Credit (EITC) Advocacy and to Improve IRS EITC Audits**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Background

The Earned Income Tax Credit (EITC) is one of the primary forms of public assistance for low income working taxpayers. However, the EITC is a complex law that involves eligibility rules based on a taxpayer's income, marital status, and parental or other caretaker arrangements, which can often change on a year-to-year basis. The population claiming the EITC is also constantly in flux, with approximately one-third of the eligible population changing every year.² At the same time, the population of taxpayers who rely on the EITC often share a common set of characteristics, such as limited education and high transiency, which create challenges for taxpayer compliance.³ In this environment of complex eligibility rules and potentially vulnerable taxpayers, it is easy to see how some taxpayers claim the EITC incorrectly (or not at all).⁴

The IRS consistently approaches this problem by focusing on compliance efforts (audits). In fact, in fiscal year (FY) 2018, approximately *37 percent of all individual returns selected for audit were selected on the basis of an EITC claim.*⁵ This rate of audit selection occurs despite the fact that EITC returns account for approximately 18 percent of all individual returns filed in calendar year 2017.⁶ Also, EITC misreporting is a relatively small portion of the tax gap—six percent of the gross tax gap and ten percent of the tax gap attributable to individual income tax misreporting.⁷ To address EITC noncompliance in

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 IRS, *EITC [Earned Income Tax Credit] Fast Facts*, <https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts>.

3 National Taxpayer Advocate 2015 Annual Report to Congress 235-239.

4 For a thorough discussion of how a taxpayer could understandably claim a child incorrectly for the Earned Income Tax Credit (EITC), see *Cowan v. Commissioner*, T.C. Memo. 2015-85; National Taxpayer Advocate 2015 Annual Report to Congress 242.

5 IRS, *2018 Data Book*, table 9a (May 2019).

6 *Id.*

7 National Taxpayer Advocate 2018 Annual Report to Congress 98-99. The most recent estimate of the gross tax gap, based on data for tax years 2008-2010, is \$458 billion. A portion of the gross tax gap, \$264 billion, or 68 percent, is attributable to individual income tax misreporting. IRS, Research, Analysis & Statistics, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010*, Publication 1415, 1 (May 2016). Of the \$40 billion in misreported credits, \$26 billion is attributable to EITC misreporting. IRS, Research, Analysis & Statistics, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010*, Publication 1415, 19 (May 2016).

a *proportionate* manner, the IRS needs to adopt alternate strategies rather than just a disproportionate audit rate.⁸

To get a better understanding of how TAS can improve its advocacy for EITC taxpayers and how the IRS can better work its EITC cases, TAS plans to review 540 randomly selected EITC cases to identify points in the case history where advocacy opportunities were missed or places where TAS struggled to resolve the case with the IRS. By studying how TAS interacts with taxpayers and works its cases with the IRS, we will glean information about how EITC casework can be improved both by TAS and the IRS. Moreover by reviewing TAS cases we can identify areas of taxpayer confusion. With this knowledge, the IRS can do better education and outreach, including soft letters sent out before the filing season.⁹

TAS Is In a Unique Position to Study EITC Advocacy Opportunities

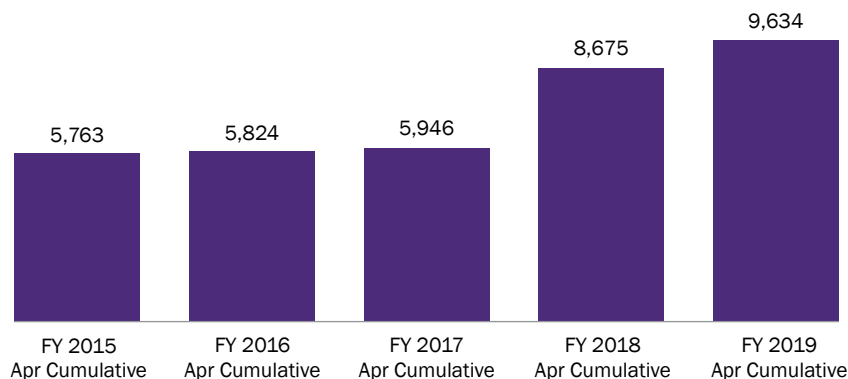
TAS case advocates (CAs) routinely work EITC cases. As Figure 4.7.1 shows, TAS receives a substantial number of EITC cases each year, a number which has grown in the last two years. In fact, *EITC cases make up the second highest cause of taxpayers coming to TAS in FY 2018 and through April FY 2019.*¹⁰ Through working EITC cases, TAS has been able to identify some issues facing taxpayers, such as extensive delays in evaluating documentation submitted by taxpayers.¹¹ And TAS improved its internal guidance in 2018 with Internal Revenue Manual (IRM) 13.1.24.4.1, which highlights EITC issues. In particular, IRM 13.1.24.4.1.1 now explains challenges faced by low income taxpayers, thereby alerting case advocates they may have to make extra efforts at communication and advocacy with this population.

8 For example, see National Taxpayer Advocate 2018 Annual Report to Congress 91-104; National Taxpayer Advocate 2017 Annual Report to Congress 141-150.

9 TAS Research has already shown the positive impact of sending educational notices to EITC taxpayers. See TAS Research Initiatives, *infra*; National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 14-40; National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 32-52.

10 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Apr. 1, 2018; Apr. 1, 2019).

11 National Taxpayer Advocate 2018 Annual Report to Congress 559-560.

FIGURE 4.7.1¹²**TAS Earned Income Credit (EIC) Receipts
FYs 2015 Through 2019 (Cumulative Through April)**

As for relief rates, the results are rather low, but improving slightly.¹³ Figure 4.7.2 shows the relief rate for TAS EITC cases between FYs 2015 and 2018, with FY 2019 cumulative through April. While the lowest relief rate, 60.6 percent, occurred in FY 2016, it has improved to a relief rate of 68.2 percent (for FY 2019 cumulative through April). If TAS is successfully advocating *and* educating taxpayers, we would hope to see this rate continue to improve. Improving this relief rate is a goal of the TAS case review.¹⁴

FIGURE 4.7.2, EITC Case Relief Rates, FYs 2015–2018, FY 2019 Cumulative Through April¹⁵

Fiscal Year	Relief Rate
2015	63.5%
2016	60.6%
2017	64.8%
2018	66.4%
2019	68.2%

¹² Data obtained from TAMIS (Apr. 1, 2015; Apr. 1, 2016; Apr. 1, 2017; Apr. 1, 2018; Apr. 1, 2019).

¹³ For information on TAS relief rates, see Internal Revenue Manual (IRM) 13.1.21.1.2.1.3, *TAO/Relief Assistance Codes* (Feb. 1, 2011).

¹⁴ A certain number of cases are closed each year because the case advocate (CA) could not provide relief or the taxpayer did not respond. In 2018, 27 percent of the EITC cases were closed for such reasons. While TAS could perhaps work to identify why taxpayers are unresponsive and improve this number, there will always be a population of cases that cannot obtain relief. Data obtained from TAMIS (Oct. 2, 2018).

¹⁵ In fiscal year (FY) 2015, TAS received 11,530 EITC cases and obtained relief in 7,319 cases. In FY 2016, TAS received 11,550 EITC cases and obtained relief in 7,003 cases. In FY 2017, TAS received 13,023 EITC cases and obtained relief in 8,441 cases. In FY 2018, TAS received 18,642 EITC cases and obtained relief in 12,377 cases. Data obtained from TAMIS (Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018, and Apr. 1, 2019).

Cycle time represents the amount of time it took for TAS to work a case from receipt to completion of all issues presented in the case. Figure 4.7.3 shows the average cycle time for EITC cases between FYs 2015 and 2019 (cumulative through April). Cycle time for TAS to work EITC cases has decreased in recent years. In FY 2015 the average amount of time to work a case was 80.2 days. This average has decreased to 69.6 days in FY 2018.

Extended cycle times may result from the time it takes for taxpayers to gather necessary documents or for the IRS to analyze the documents and make a decision. Any delay in case processing can be harmful to a low income taxpayer who relies on the EITC. New internal guidance for TAS employees should help CAs work with taxpayers to identify adequate documentation sooner in the process.¹⁶ Likewise, TAS is provided with an advocacy opportunity when the IRS is taking an extraordinary amount of time to analyze a taxpayer's submitted documents. This is something the TAS case review will observe.

FIGURE 4.7.3, EITC Case Cycle Time, Fiscal Years 2015-2018¹⁷

Fiscal Year	Average Cycle Time in Days
2015	80.2
2016	85.2
2017	69.8
2018	69.6

The TAS Case Advocacy Process

When TAS does not have authority to take specific actions necessary to resolve taxpayer issues on its own, TAS must use Form 12412, *Operations Assistance Request (OAR)* to request actions from the IRS.¹⁸ For the OAR to be effective, the TAS CA must fully explain the case facts and legal standard to the IRS and provide necessary documentation to build a persuasive case. Generally this requires communication with the taxpayer and research into the case and applicable laws. TAS has provided explicit information to CAs on how to draft effective OARs in IRM 13.1.24.4.1.5. If the IRS does not agree to take the actions discussed in the OAR, the CA must elevate the case to his or her manager, who will then continue to negotiate with the IRS and may consider the issuance of a Taxpayer Assistance Order (TAO).¹⁹

Each step in this process provides an opportunity for advocacy. These steps include: initial contact with taxpayer, research on the case, communication with the IRS, and elevated communications between managers, if necessary.

16 IRM 13.1.24.4.1.5 (May 11, 2018); IRM 13.1.24.4.1.3 (May 11, 2018).

17 FY 2019 data is not included in this analysis due to the government shutdown. It would be impossible to calculate what could have occurred with casework during this time. Data obtained from TAMIS (Apr. 1, 2015; Apr. 1, 2016; Apr. 1, 2017; Apr. 1, 2018; Apr. 1, 2019).

18 IRM 13.1.19.1 (Nov. 14, 2014).

19 IRC § 7811; IRM 13.1.19.6 (May 5, 2016); IRM 13.1.20.2 (Feb. 1, 2011).

The TAS Review of Cases

As noted above, TAS is reviewing a random sample of 540 EITC cases. Some things that will be considered in the review include:

- Contact made by TAS to the taxpayer via phone or mail;
- How did the TAS employee research and analyze the case;
- Did the TAS employee explore alternative documentation with the taxpayer;
- Did the IRS employee explain the reasons for disallowance, whether in whole or in part; and
- Did the IRS employee disallow documents not specifically mentioned in IRM 4.19.14?

CONCLUSION

TAS plays a critical role in the EITC audit process through its interactions with taxpayers and the IRS as it works its cases. However, the current TAS relief rate for EITC cases of about 68 percent indicates that TAS needs to shore up its advocacy efforts for EITC taxpayers. This is particularly important given the complex nature of the EITC and the unique attributes of the taxpayers claiming it. One solution is to increase the assistance and education that taxpayers claiming the EITC receive. Another solution is to improve the education TAS and IRS employees receive.

FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Complete its review of EITC cases and analyze the results;
- Based on the results of the analysis, identify shortcomings in training provided to IRS and TAS employees and design and deliver the training where necessary; and
- Consider changes to guidance provided to TAS employees when working EITC cases, such as having a specialized review prior to submitting a case to the IRS and enhanced training for managers that could include a guide to advocating in elevated EITC cases.