

TAS Case Advocacy

OFFICE OF THE TAXPAYER ADVOCATE

Under Internal Revenue Code (IRC) § 7803(c)(2)(A), the Office of the Taxpayer Advocate, known as the TAS, has four principal functions:

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

The first function described in the statute relates to TAS's case advocacy, which involves assisting taxpayers with their cases by protecting taxpayer rights and reducing taxpayer burden.¹ The TAS Case Advocacy function is primarily responsible for direct contact with individual taxpayers, business taxpayers, tax-exempt entities, their representatives, and Congressional staff to resolve specific problems they are experiencing with the IRS. Information from these contacts and case results are vital to TAS's statutory mission to propose changes in the IRS's administrative practices to alleviate taxpayers' problems and to identify potential legislative changes to relieve such problems.² This section of the report discusses how TAS fulfills its mission to assist taxpayers with their specific issues and concerns involving IRS systems and procedures.³

TAS CASE RECEIPT CRITERIA

Taxpayers typically seek TAS assistance with specific issues when:

- They experience a tax problem that causes financial difficulty;
- They are unable to resolve their issues directly with the IRS through normal channels; or
- An IRS action or inaction caused or will cause them to suffer a long-term adverse impact, including a violation of taxpayer rights.

TAS accepts cases in four categories: economic burden, systemic burden, best interest of the taxpayer, and public policy. See Figure 4.1.1, TAS Case Acceptance Criteria.

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 The National Taxpayer Advocate and her Attorney Advisors often use Case Advocacy's findings as the basis for many of the Most Serious Problems and Legislative Recommendations in the National Taxpayer Advocate's Annual Report to Congress.

3 TAS's other three functions involve identifying and proposing changes to systemic problems affecting taxpayers. TAS employees advocate systemically by: identifying IRS procedures that adversely affect taxpayer rights or create taxpayer burden; and recommending solutions, either administrative or legislative, to improve tax administration. (Note: taxpayers and practitioners can use the Systemic Advocacy Management System (SAMS) to submit systemic issues to TAS at www.taxpayeradvocate.irs.gov/SAMS).

FIGURE 4.1.1

TAS Case Acceptance Criteria

As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.¹ TAS case acceptance criteria fall into four main categories.

Economic Burden	Cases involving a financial difficulty to the taxpayer; an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.
Criteria 1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Criteria 2	The taxpayer is facing an immediate threat of adverse action.
Criteria 3	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
Criteria 4	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
Systemic Burden	Cases in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue. ²
Criteria 5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Criteria 6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Criteria 7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected. ³
Criteria 8	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair the taxpayer's rights.
Public Policy	TAS acceptance of cases under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers. ⁴
Criteria 9	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

1 Internal Revenue Code (IRC) § 7803(c)(2)(A)(i).

2 TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See IRM 13.1.7.3(d) (Feb. 4, 2015).

3 See IRM 13.1.7.2.3 (Feb. 4, 2015).

4 See Interim Guidance Memorandum (IGM) TAS-0317-008, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Mar. 22, 2017).

In many of the economic burden cases, time is critical. If the IRS does not act quickly (*e.g.*, to remove a levy or release a lien), the taxpayer will experience additional economic harm.⁴ Systemic burden cases include situations where an IRS process, system, or procedure has failed to resolve the taxpayer's issue.⁵ Best interest of the taxpayer (Criteria 8) includes violations of the Taxpayer Bill of Rights (TBOR).⁶

With respect to public policy cases (Criteria 9), the National Taxpayer Advocate has the sole authority to determine which issues are included in this criterion and will designate them by memorandum. The National Taxpayer Advocate issued an Interim Guidance Memorandum (IGM) on March 22, 2017 (effective until March 22, 2019) that designated Criteria 9 cases include private debt collection; passport denial, revocation, or limitation; automatic exempt organization revocations due to failure to file an annual return or notice; and Congressional referred tax account-related inquiries that do not fit into any other category.⁷

CASE RECEIPT TRENDS IN FISCAL YEAR 2018

In fiscal year (FY) 2018, TAS received 216,792 cases, over 49,000 more cases than received in FY 2017, an increase of almost 30 percent. TAS closed 198,820 cases. Of those closures, 1,119 were “quick closure” cases.⁸ Quick closure cases are those that are resolved the same day without being assigned to a Case Advocate. These quick closures allow Case Advocates to focus on more complex cases requiring more analysis and multiple actions to resolve. Intake Advocates also resolved another 32,521 taxpayer calls without the need to establish a TAS case. TAS provided relief to taxpayers in approximately 79 percent of closed cases.⁹ Another 10,866 taxpayers received relief directly from the IRS prior to TAS intervention.¹⁰ Figure 4.1.2 compares FY 2017 and FY 2018 case receipts and relief rates by case acceptance category.

4 IRC § 7803(c)(2)(C)(ii); Internal Revenue Manual (IRM) 13.1.7.2.1, *TAS Case Criteria 1-4, Economic Burden* (Feb. 4, 2015).

5 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.2, *TAS Case Criteria 5-7, Systemic Burden* (Feb. 4, 2015).

6 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.3, *TAS Case Criteria 8, Best Interest of the Taxpayer* (Feb. 4, 2015). See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

7 IRC § 7803(c)(2)(C)(ii); IRM 13.1.7.2.4, *TAS Case Criteria 9, TAS Public Policy* (Feb. 4, 2015). See IGM TAS-13-0317-008, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Mar. 22, 2017).

8 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2018).

9 *Id.*

10 *Id.*

FIGURE 4.1.2, TAS Case and Intake Receipts and Relief Rates, FY 2017–2018¹¹

Case Categories	Receipts FY 2017	Receipts FY 2018	Percent Change	Relief Rates FY 2017	Relief Rates FY 2018	Percent Change
Economic Burden	90,868	124,755	37.3%	75.3%	76.7%	1.8%
Systemic Burden	75,795	91,160	20.3%	83.1%	81.7%	-1.7%
Best Interest of the Taxpayer	448	577	28.8%	82.4%	82.3%	-0.1%
Public Policy	225	300	33.3%	79.8%	83.0%	4.0%
Subtotal	167,336	216,792	29.6%	78.9%	78.7%	-0.2%
Calls Resolved by Intake Advocates	20,690	32,521	57.2%			
Grand Total Receipts	188,026	249,313	32.6%			

Case Complexity

TAS monitors the complexity of its work to ensure it meets taxpayers' needs efficiently by assigning workload to match the skills of its employees. TAS measures case complexity in many ways, including whether a case involves multiple account-related issues or multiple tax periods and whether Case Advocates need technical advice, requiring more resources to resolve the matter.¹² TAS guidance requires Case Advocates to resolve all issues before closing a case.¹³

Case Advocates must identify primary and secondary core issue codes (PCIC and SCIC, respectively) on cases and record them in the Taxpayer Advocate Management Information System (TAMIS), to measure complexity.¹⁴ TAS closed over 100,000 cases (51 percent of all closures) with one or more SCICs in FY 2018, a decrease from last year.¹⁵ This decrease reflects a higher concentration of cases that generally involved a single issue, like wage verification, refund, and return processing issues, which usually involve a problem impacting a current year return only.¹⁶ However, TAS continues to work complex cases requiring more resources, training, and direct time. In addition to providing technical advice in cases with multiple issues, TAS Technical Advisors assisted Case Advocates in understanding and resolving complex issues in over 9,600 TAS closed cases during FY 2018.¹⁷

11 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

12 IRM 13.4.5.4, *Case Factors Screen* (Jul. 16, 2012). TAS uses a complexity factor screen in its case management system. This screen contains 24 factors, where the presence of any one of these factors indicates greater case complexity. For example, one factor is whether the case involves analysis of the assessment, collection, or refund statute date to determine if it is about to expire.

13 IRM 13.1.21.1.1, *Introduction* (Nov. 7, 2017).

14 IRM 13.1.16.13.1, *Issue Codes* (Mar. 28, 2017). IRM 13.1.16.13.1.2, *Primary Core Issue Code* (Mar. 28, 2017), states the primary core issue code (PCIC) is a three-digit code that defines the most significant issue, policy, or process within the IRS that underlies the cause of the taxpayer's problem. IRM 13.1.16.13.1.3, *Secondary Core Issue Code* (Mar. 28, 2017), states that the secondary core issue code (SCIC) identifies multiple issues involved in the case that TAS spent time researching or working to resolve. Additional factors may be identified as the case evolves.

15 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018). In fiscal year (FY) 2017, 56 percent of closed cases reflected multiple issues.

16 *Id.*

17 Data obtained from TAMIS (Oct. 2, 2018).

Most Prevalent Issues in TAS Cases, With a Focus on Economic Burden Cases

Figure 4.1.3 represents the top ten sources of TAS receipts by PCIC categories from all sources without regard to TAS criteria, comparing FY 2017 and FY 2018.¹⁸

FIGURE 4.1.3, Top 10 Issues for Cases Received in TAS in FYs 2017–2018¹⁹

Rank	Issue Description	FY 2017	FY 2018	FY 2018 Percent of Total	Percent Change FY 2017 to FY 2018
1	Pre-Refund Wage Verification Hold	20,014	66,048	30.5%	230.0%
2	Earned Income Tax Credit (EITC)	13,901	21,203	9.8%	52.5%
3	Identity Theft	23,248	13,787	6.4%	-40.7%
4	Processing Amended Returns	7,713	8,767	4.0%	13.7%
5	Unpostables and Rejects	4,942	8,673	4.0%	75.5%
6	Taxpayer Protection Program (TPP) Unpostables	6,906	7,947	3.7%	15.1%
7	Other Refund Inquiries and Issues	5,822	7,628	3.5%	31.0%
8	Open Audit (Not EITC)	3,959	5,823	2.7%	47.1%
9	Processing Original Returns	5,434	5,312	2.5%	-2.2%
10	Health Insurance Premium Tax Credit for Individuals under IRC § 36B	4,643	4,833	2.2%	4.1%
Other TAS Receipts ²⁰		70,754	66,771	30.8%	-5.6%
Total TAS Receipts		167,336	216,792		29.6%

Economic Burden Cases

Economic burden (EB) cases often occur where an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer. More than half of TAS's case receipts continue to involve taxpayers experiencing EB.²¹ Because these taxpayers face potential immediate adverse financial consequences, TAS requires employees to work the cases using accelerated timeframes.²²

Figure 4.1.4 shows the top five issues driving EB receipts. TAS dedicates significant resources to resolving the systemic causes of these issues, and as discussed in the Most Serious Problems section of this and past reports, provides recommendations to the IRS to improve processes that cause taxpayers to experience economic or systemic burden.²³

18 TAMIS Coding Reference Guide (Sept. 4, 2017).

19 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

20 The "Other TAS Receipts" category encompasses the remaining 118 PCICs not in the top ten.

21 For the seventh consecutive FY, more than half of TAS's case receipts involve taxpayers' experiencing Economic Burden (EB). Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018).

22 IRM 13.1.18.3(1), *Initial Contact* (May 5, 2016). The TAS employee is to contact the taxpayer or representative by telephone within three workdays of the taxpayer advocate received date (TARD) for criteria 1-4 cases and within five workdays of the TARD for criteria 5-9 cases to notify the taxpayer of TAS's involvement. Per IRM 13.1.18.1.1, *Working TAS Cases* (Feb. 1, 2011), TAS's policy is that cases involving EB will be worked sooner than other cases.

23 See Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*, *supra*.

FIGURE 4.1.4, Top Five Issues Causing Economic Burden, FY 2017–2018²⁴

Rank	Issue Description	FY 2017	EB Receipts as % Total EB Receipts for Issue FY 2017	FY 2018	EB Receipts as % Total EB Receipts for Issue FY 2018	EB Percent Change FY 2017 to FY 2018
1	Pre-Refund Wage Verification Hold	11,329	12.5%	45,834	36.7%	304.6%
2	Earned Income Tax Credit	10,937	12.0%	15,637	12.5%	43.0%
3	Identity Theft	13,360	14.7%	8,217	6.6%	-38.5%
4	Unpostables and Rejects	3,686	4.1%	5,947	4.8%	61.3%
5	Taxpayer Protection Program Unpostables	4,217	4.6%	5,237	4.2%	24.2%

Pre-Refund Wage Verification Hold (PRWVH)

In FY 2018, Pre-Refund Wage Verification Hold (PRWVH) issues replaced Identity Theft as the number one reason taxpayers seek TAS assistance and accounted for nearly 31 percent of TAS casework.²⁵ TAS experienced a 230 percent increase in PRWVH case receipts and a 305 percent increase in EB PRWVH case receipts compared to the same period in 2017.²⁶ Over 69 percent of TAS's PRWVH cases were taken into TAS inventory as an economic burden, cases requiring expedite handling.²⁷

To prevent issuing fraudulent refunds, the IRS employs various models and data mining techniques. The PRWVH is one of those techniques. Through that process, the IRS's Return Integrity Operations (RIO) organization delays issuing refunds until wage and withholding reported on the return can be verified. In the past, the IRS's actions have raised significant taxpayer rights issues and brought an increasing number of taxpayers to TAS.²⁸ In FY 2018, TAS experienced a surge in PRWVH cases as shown in Figure 4.1.5.

²⁴ Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

²⁵ *Id.*

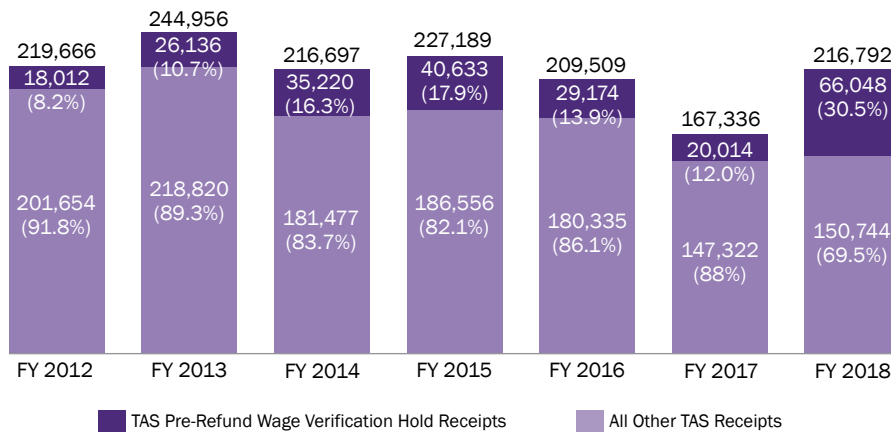
²⁶ *Id.* For a detailed discussion, see Most Serious Problem: *False Positive Rates: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers*, *supra*.

²⁷ Data obtained from TAMIS (Oct. 1, 2018).

²⁸ See also Most Serious Problem: *False Positives Rates: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers*, *supra*; National Taxpayer Advocate 2015 Annual Report to Congress 45–55 (Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*). For additional discussion, see National Taxpayer Advocate FY 2016 Objectives Report to Congress 143–145 (Area of Focus: *TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud*).

FIGURE 4.1.5²⁹

Pre-Refund Wage Verification Hold Receipts, FYs 2012-2018



When information reported on the taxpayer’s return closely matched income and credit information in IRS systems, TAS provided a weekly listing of the cases to RIO, requesting they be reviewed, and the refunds released. This process, known as a Bulk Operations Assistance Request (OAR) provided an efficient way to provide relief in simple cases.³⁰ TAS sent 3,275 cases to RIO on Bulk OARs. If the information reported on the taxpayer’s return did not match the information in IRS systems, TAS worked with the taxpayer and RIO to either confirm or correct the income reported on the return, using their existing procedures.³¹

TAS provided full or partial relief to taxpayers in 79 percent of PRWVH cases.³² However, during FY 2018, TAS had to issue 469 Taxpayer Assistance Orders (TAOs) in cases involving PRWVH issues when RIO was unable to keep up with the backlog of OARs sent by TAS on cases requiring verification or correction. Of the 469 TAOs issued, 461 were complied with and eight were rescinded. Without TAS intervention, these taxpayers may have waited months for their refunds to be released or adjusted. TAS continues to work with RIO to identify improvements to existing procedures and find more efficient treatment streams to provide relief to taxpayers.³³

29 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018).

30 For more information on how TAS uses OARs to resolve taxpayer issues, see TAS Operations Assistance Request (OAR) Trends, *infra*.

31 See IRM 25.25.3, *Revenue Protection Verification Procedures for Individual Master File Returns* (Sept. 17, 2018).

32 Data obtained from TAMIS (Oct. 1, 2018).

33 For additional information about fraud detection see Most Serious Problem: *False Positive Rates: The IRS’s Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers*, *supra*. See also Nina E. Olson, *IRS Fraud Detection – A Process That is Challenging for Taxpayers to Navigate with an Outdated Case Management System Resulting in Significant Delays of Legitimate Refunds, Part 1*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/nta-blog-irs-fraud-detection-process-is-challenging-for-taxpayers-to-navigate-part-1?category=Tax News>, (Dec. 6, 2018); Nina E. Olson, *IRS Fraud Detection – A Process That is Challenging for Taxpayers to Navigate with an Outdated Case Management System Resulting in Significant Delays of Legitimate Refunds, Part 2*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/nta-blog-irs-fraud-detection-process-is-challenging-for-taxpayers-to-navigate-part-2?category=Tax News>, (Dec. 12, 2018).

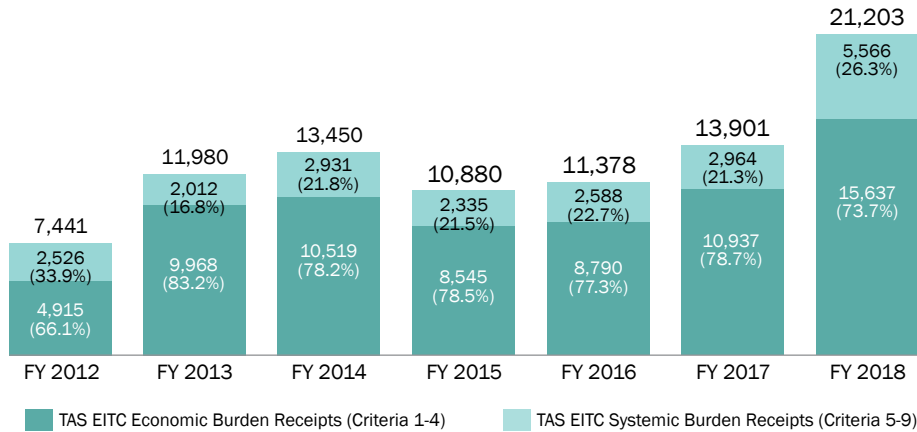
Earned Income Tax Credit (EITC) Cases

The Earned Income Tax Credit (EITC) is a complex refundable tax credit for working low income taxpayers.³⁴ Certain limitations apply to the EITC related to residency,³⁵ filing status,³⁶ certain foreign benefits,³⁷ and status as a qualifying child of another taxpayer.³⁸ The enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) required the IRS to hold the entire refund when any portion of the refund was composed of EITC to allow the IRS to verify internal data and information from the Social Security Administration—before paying out refunds.³⁹

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- 34 IRC § 32. The maximum amount of the credit is available to a taxpayer with three or more qualifying children. For Tax Year 2018, the maximum credit available for a taxpayer with one qualifying child is \$3,461, with two qualifying children is \$5,716, with three or more qualifying children is \$6,431, and with no qualifying children is \$519. Rev. Proc. 2017-58, 2017-45 I.R.B. 489. An individual must meet five tests in order to be a qualifying child under IRC § 152(c): relationship, age, residency, support, and no joint return filed with the individual's spouse. An individual meets the **relationship** test to be a qualifying child if the individual is a child of the taxpayer or a descendant of a child of the taxpayer or a brother, sister, stepbrother or stepsister of the taxpayer or a descendant of such a relative, IRC § 152(c)(2). The term "child" means an individual who is a son, daughter, stepson, or stepdaughter of the taxpayer or an eligible foster child of the taxpayer. IRC § 152(f)(1)(A). A child legally adopted by a taxpayer or a child lawfully placed with a taxpayer for legal adoption is treated as a child of the taxpayer by blood. IRC § 152(f)(1)(B). An eligible foster child means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. IRC § 152(f)(1)(C). The terms "brother" and "sister" include a half-brother or a half-sister. IRC § 152(f)(4). To meet the **age** requirement, to be a qualifying child, an individual must be under the age of 19 at the end of the year, under the age of 24 at the end of the year and a "student," as defined in IRC § 152(f)(2), or any age if "permanently and totally disabled," as defined in IRC § 22(e)(3). IRC § 152(c)(3). To meet the **residency** requirement to be a qualifying child, an individual must have the same principal place of abode as the taxpayer for more than half of the taxable year. IRC § 152(c)(1)(B). See, however, IRC § 152(e) for a special rule for a child of parents who are divorced or separated or who live apart and IRC § 152(f)(6) for rules on the treatment of missing children. See also the regulations under section 152 for rules on temporary absences, children who were placed with the taxpayer in foster care or for adoption during the taxable year, or children who were born or died during the taxable year. To meet the **support** test to be a qualifying child, an individual must not have provided more than one-half of his or her own support for the calendar year in which the taxable year of the taxpayer begins. IRC § 152(c)(1)(D). The individual must not have filed a joint return with the individual's spouse for the taxable year in question. IRC § 152(c)(1)(E). For additional information about the Earned Income Tax Credit (EITC), see Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*, *supra*.
- 35 A taxpayer is not eligible for the EITC if he or she is a nonresident alien for any portion of the taxable year, unless the taxpayer files a joint return with a spouse who is a United States citizen or resident alien. IRC § 32(c)(1)(D).
- 36 A taxpayer is not eligible for the EITC if he or she files married filing separately. IRC § 32(d).
- 37 A taxpayer is not eligible for the EITC if he or she claims a foreign earned income exclusion or deducts or excludes a foreign housing cost amount. IRC § 32(c)(1)(C).
- 38 A taxpayer is not eligible for the EITC if he or she is the qualifying child of another taxpayer. IRC § 32(c)(1)(B).
- 39 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, Title II, § 201(a), 129 Stat. 2242, 3076 (2015) (codified at IRC §§ 6071(c) and 6402(m)) accelerated the due dates for filing Forms W-2, *Wage and Tax Statement*, and 1099-MISC, *Miscellaneous Income* to January 31 of the year following the taxable year and mandated a delay of any refund that includes a claim for EITC until February 15 of the year following the taxable year.

FIGURE 4.1.6⁴⁰

TAS Earned Income Tax Credit Economic and Systemic Burden Case Receipts, FYs 2012-2018



Nearly ten percent of TAS case receipts involved EITC issues in FY 2018.⁴¹ TAS experienced a nearly 53 percent increase in EITC cases from FY 2017 to FY 2018.⁴² Over 73 percent of EITC cases were ones in which the taxpayer was experiencing EB. TAS analyzed the underlying cause for the increase in a study of TAS FY 2018 EITC case receipts through May 31, 2018,⁴³ and found the increase was primarily due to extensive delays in IRS evaluating the taxpayers’ documentation submitted during the audit process.

- In 32 percent of the tax years reviewed, RIO referred the returns to Examination after an inability to verify income in the PRWVH process.
- In 49 percent of the tax years reviewed, Examination selected the return to conduct a full scope pre-refund audit.⁴⁴

The IRS audit process generally establishes a 30-day time frame to respond to taxpayer correspondence.⁴⁵ TAS found:

- In at least 15 percent of the tax years reviewed, the taxpayers submitted correspondence to the IRS 65 or more days prior to contacting TAS with no Examination determination; and

40 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018).

41 Data obtained from TAMIS (Oct. 1, 2018). This is the second highest category of case receipts in FY 2018, after Pre-Refund Wage Verification Hold (PRWVH), eclipsing Identity Theft.

42 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

43 The study contained a population of 9,589 Open EITC Audit TAS case receipts. In some instances, the cases involved more than one tax year. TAS randomly selected 352 TAS case receipts (which involved 372 tax years). The random sample had a 95 percent confidence level with a confidence interval of +/- 5. Data obtained from TAMIS (June 1, 2018).

44 In 182 tax years, the cases had Audit Information Management System (AIMS) Project Codes 261, 289, and 623.

45 IRM 4.19.13.11, *Monitoring Overaged Replies* (Feb. 9, 2018).

- Taxpayers waited more than 106 days before the IRS reviewed their correspondence in nearly nine percent of tax years reviewed.⁴⁶

On September 1, 2017, the IRS released new guidance to permit Campus Examination Operations to increase the number of days to respond beyond the normal timeframes to taxpayer's correspondence. Prior to the new guidance, Exam issued Letter 3500, *Interim Letter to Correspondence from Taxpayer*, to notify taxpayers of the IRS's receipt of their mail and advise them that IRS will respond within 75 days from receipt of their correspondence.⁴⁷ During peak periods, Exam may now notify taxpayers of a response beyond 75 days using their reports on the average number of days to review taxpayer correspondence.⁴⁸ Since most EITC cases are EB receipts, 75 days is unacceptable and taxpayers should not have to wait additional days beyond the normal 30 day timeframe. Taxpayers have a right to quality service and a right to finality.⁴⁹ This modification in Examination guidance adds to the burden taxpayers already face with the hold on their refund until February 15, after Examination has been slow in selecting the return and after the taxpayer has sent the information. The Examination delays violate taxpayer rights and have the potential to cause more harm to taxpayers.

Identity Theft

In recent years, there has been a downward trend in individual taxpayers reporting that they have been victims of tax-related identity theft. As of September 30, 2018, the IRS-wide inventory of unresolved identity theft cases was just over 31,500, a 12 percent decrease from the previous year.⁵⁰ TAS has worked closely with the IRS to address and improve treatment of victims and implement processes designed to prevent fraudulent returns from posting to a victim's account, which has resulted in a steady decline in TAS case receipts.⁵¹ TAS's identity theft receipts have been on the decline since FY 2015, when TAS received 56,174 cases and took an average of 68 days to work a case. In FY 2018, TAS received 13,787 cases and took 79 days to work a case.⁵² While fewer taxpayers are coming to TAS seeking assistance with identity theft, those taxpayers that do seek our assistance face serious problems, leading to longer cycle times to resolve. Erroneous information resulting from identity theft can impact a victim's account for several tax periods, cause multiple issues, and can require coordinated actions by various IRS employees.

46 The EITC study found 343 tax years were open on the AIMS prior the TARD. Exam uses AIMS Status Codes to monitor the status of the audit. In 22 of the 343 tax years, the case had an AIMS Status Code 55, meaning the IRS received the taxpayer correspondence, but did not make a determination within 65 to 115 days. In 30 of the tax years, there was an AIMS Status Code 57, meaning the IRS received the taxpayer correspondence, but did not make a determination in more than 115 days.

47 IRM 4.19.13.10.1 (Sept. 1, 2017). The 75 days is calculated by adding 45 days to the normal 30-day time frame to respond to the taxpayer's correspondence.

48 IRM 4.19.13.10.1, Letter 3500, *Interim Letter, When Additional Time to Reply is Needed* (Sept. 1, 2017), renumbered to IRM 4.19.13.11.1 (Feb. 2, 2018).

49 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

50 IRS, *ID Theft Report* (Sept. 2018).

51 National Taxpayer Advocate 2015 Annual Report to Congress 180-187 (Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*).

52 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

EMERGING ISSUES

Taxpayers Continue to Face Serious Challenges When Requesting Individual Taxpayer Identification Numbers (ITIN)

For several years, the National Taxpayer Advocate has written about the problems created by the IRS's administration of the Individual Taxpayer Identification Numbers (ITIN) program.⁵³ In a recent blog, the National Taxpayer Advocate stated that, as a result of changes from the Tax Cuts and Jobs Act (TCJA),⁵⁴ the IRS has a major opportunity to make needed adjustments to the ITIN program.⁵⁵ First, the IRS could relax its strict requirement that taxpayers must apply for a new ITIN with a paper tax return during the filing season to show a tax administration purpose for the ITIN. Second, the IRS should reconsider its limitations on Certifying Acceptance Agents and Taxpayer Assistance Centers that prevent them from certifying all identification documents, so applicants could avoid sending original documents to the IRS, risking loss of documents. Finally, the IRS should reconsider the mail service it uses to return original identification documents since the number of ITIN applications is projected to plummet.

TAS has seen the devastating effects that requiring applicants to send original identification documents, and the potential loss of those documents, can have on taxpayers. TAS received a case from a parent who was a citizen of another country and was working in the U.S. on a visa.⁵⁶ The taxpayer applied for and was issued an ITIN for his young child but never received the child's passport and U.S. entry visa back from the IRS, leaving the child without legal identification and creating significant problems for the family. To apply for a new passport for the child, the parents and child would be required to travel back to their home country to receive a U.S. entry visa. Under the family's terms of admission into the U.S., they would have to leave the country and return in early 2019. The family had planned to take a short vacation to a contiguous country but without an entry visa for their child, they were required to return to their home country and go through the entire visa application and interview process again. Including airfare, accommodations, and living expenses, the estimated costs were approximately \$7,000, funds they did not have. This case shows how the IRS's mailing of original ID documents with no tracking system significantly harms taxpayers.⁵⁷

Unfortunately, this was not an isolated experience. TAS reviewed 1,738 cases received between March 15, 2015 and March 15, 2017 where taxpayers came to TAS asking for assistance with recovering their passports or other original documents submitted with Form W-7, *Application for IRS Individual Taxpayer Identification Number*.⁵⁸ In over 200 cases, the response from the ITIN unit was that the

53 An individual taxpayer identification number (ITIN) is a 9-digit number issued by the IRS to individuals who are not eligible for a Social Security number. For a discussion of how the IRS fails to analyze the unique characteristics of the ITIN population and understand their needs, see National Taxpayer Advocate 2017 Annual Report to Congress 181-194 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): The IRS's Failure to Understand and Effectively Communicate with the ITIN Population Imposes Unnecessary Burden and Hinders Compliance*).

54 Pub. L. No. 115-97, 131 Stat. 2054 (2017).

55 Nina E. Olson, *Now is the Perfect Time for the IRS to Make Improvements to the Individual Taxpayer Identification Number Program*, NTA BLOG, [https://taxpayeradvocate.irs.gov/news/nta-blog-ITIN-Improvements?category=Tax News](https://taxpayeradvocate.irs.gov/news/nta-blog-ITIN-Improvements?category=Tax+News) (Oct. 31, 2018).

56 In this instance, the taxpayer has provided written consent under IRC § 6103(c) for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer on Oct. 27, 2018 and on file with TAS.

57 Late in 2018, after nearly five months, two physical inspections of the IRS ITIN unit by TAS employees, and multiple records searches and Taxpayer Assistance Orders (TAOs), as well as TAS conversations with the Department of State and home country officials, inexplicably the taxpayer received the child's passport in the mail. However, because the passport was reported lost, the passport was cancelled and the taxpayer and family must still return to their home country for a new visa and passport.

58 Data obtained from TAMIS (Oct. 1, 2018).

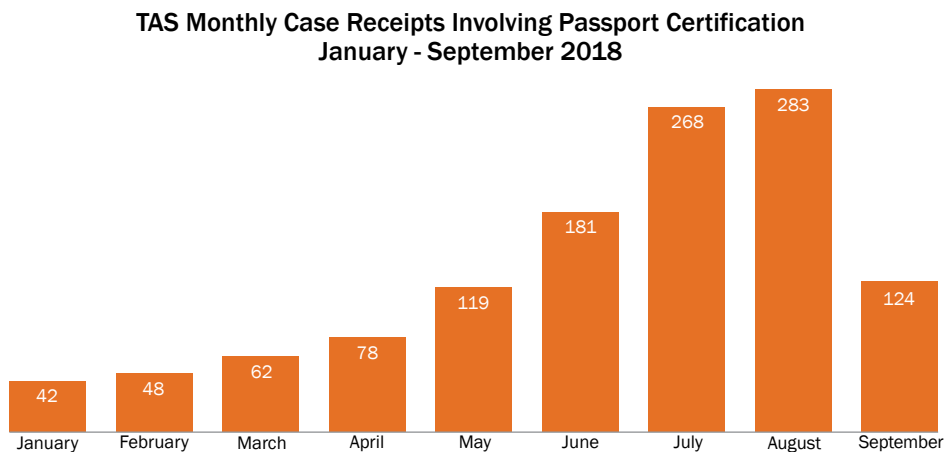
passport was not located or was already forwarded to the Embassy for the country of origin. There are likely more taxpayers who have been harmed and did not ask TAS for assistance. Through outreach efforts TAS will continuously work to reach underserved taxpayers and ensure that taxpayers have access to TAS at the earliest possible time.

Passport Certification Due to Seriously Delinquent Tax Debt

In 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act, which requires the Department of State to deny an individual's passport application and allows the Department of State to revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt.⁵⁹

The IRS began certifying taxpayers with seriously delinquent tax debt in January 2018. By October 5, 2018, the IRS had certified 290,181 taxpayers to the Department of State.⁶⁰ TAS case receipts involving passport issues rose and fell in tandem with taxpayers certified by the IRS.

FIGURE 4.1.7⁶¹



In April 2018, the National Taxpayer Advocate issued guidance to TAS employees on advocating for taxpayers with a seriously delinquent tax debt, including when and how to issue TAOs in appropriate cases.⁶² The guidance directs Local Taxpayer Advocates (LTAs) to issue TAOs in three situations:

- Delay the IRS from certifying an otherwise eligible taxpayer while TAS actively works with the taxpayer to resolve the debt;
- Resolve the taxpayer's seriously delinquent debt by meeting a certification exclusion, proving the certification was erroneous, or showing the taxpayer did not owe the liability; and

59 Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-1733 (2015) (codified as IRC § 7345).

60 Email from the IRS in response to a TAS data request (Oct. 4, 2018).

61 Data obtained from TAMIS (Oct. 1, 2018). Monthly passport cases include cases with passport certification as a secondary issue code, since TAS uses the debt resolution sought by the taxpayer as the primary issue.

62 TAS-13-0418-0001, *Advocating for Taxpayers Facing Passport Revocation/Denial*, https://www.irs.gov/pub/foia/ig/spder/tas-13-0418-0001_passport_igm.pdf (Apr. 26, 2018).

- Decertify the taxpayer when IRS systems fail to do so systemically or when the taxpayer has plans for foreign travel or other urgent need for their passport.

Figure 4.1.8 reflects the disposition of these three types of passport related TAOs TAS issued in FY 2018.

FIGURE 4.1.8, Dispositions of FY 2018 TAOs Issued for Passport Related Issues as of October 4, 2018⁶³

TAO Disposition/Type of TAO	TAO Blocks Certification While TAS Works with Taxpayer to Resolve Debt	TAO to Resolve Debt, Apply Exclusion, or Correct Error to Remove Taxpayer from Certification Criteria	TAO Orders Manual or Expedite Decertification	Total
IRS Complied with the TAO	740	9	12	761
IRS Complied After the TAO Was Modified	8	1	0	9
TAS Rescinded the TAO	4	3	3	10
TAS TAO Pending (in process)	24	6	4	34
Total	776	19	19	814

Included in the 776 TAOs to block certification are 753 TAOs issued by the National Taxpayer Advocate on January 16, 2018, ordering the IRS Small Business/Self-Employed Division (SB/SE) to apply its broad discretionary authority and proactively exclude from certification taxpayers who were already working with TAS to resolve their tax debt at the time of certification.⁶⁴

The National Taxpayer Advocate previously reported that the IRS is failing to provide adequate notice prior to certifying the taxpayer's seriously delinquent tax debt, which is an infringement on taxpayer rights and constitutional due process protections.⁶⁵ The National Taxpayer Advocate blogged about three examples from TAS cases that demonstrate the direct negative consequences of not providing a stand-alone notice prior to certification.⁶⁶

Form 4466 and Section 965 Transition Tax

Corporations, like individuals, must pre-pay their tax liabilities by making estimated tax payments throughout the year, but they frequently overpay for a variety of reasons, including to minimize the risk they may become liable for underpayment interest. If that happens, a corporation or an individual can file a return and claim a refund. However, unlike an individual, if the corporation needs the money before it has all of the information available to file its tax return it can file a Form 4466, *Corporation*

⁶³ Data obtained from TAMIS (Oct. 4, 2018).

⁶⁴ See National Taxpayer Advocate FY 2019 Objectives Report to Congress 80-113 (Area of Focus: *Some IRS Procedures for the Certification Program Related to Denial or Revocation of Passports Ignore Legislative Intent and Impair Taxpayer Rights*) for a more complete discussion of these TAOs and the Taxpayer Advocate Directive the Deputy Commissioner for Services and Enforcement rescinded on May 17, 2018 that would have precluded the need for these TAOs.

⁶⁵ National Taxpayer Advocate 2017 Annual Report to Congress 75-77 (Most Serious Problem: *Passport Denial and Revocation: The IRS's Plans for Certifying Seriously Delinquent Tax Debts Will Lead to Taxpayers Being Deprived of a Passport Without Regard to Taxpayer Rights*).

⁶⁶ Nina E. Olson, *TAS Cases Demonstrate the Harm Caused by IRS Policies on Passport Certification*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/nta-blog-tas-cases-demonstrate-the-harm-caused-by-irs-policies-on-passport-certification?category=Tax%20News> (Aug. 22, 2018).

*Application for Quick Refund of Overpayment of Estimated Tax.*⁶⁷ Because of the way the IRS issued information about and administered the so called “transition tax” that was enacted as part of the TCJA on December 22, 2017, and codified at IRC § 965, some corporations made extra payments for 2017 that they could not recover.⁶⁸ Under IRC § 965(h) taxpayers could elect to pay the transition tax over an eight-year period without interest. The IRS provided guidance about IRC § 965 by posting Frequently Asked Questions (FAQs) and Answers on its website. In mid-March, the IRS posted “FAQ 10,” advising taxpayers to pay 2017 transition tax liabilities separately from other liabilities. FAQ 10 prompted some who had already paid more than enough, to make extra transition tax payments, which they assumed they could recover just like any other estimated tax overpayments. In some cases, they had paid enough to satisfy their regular tax liability plus the entire transition tax. Approximately a month after issuing FAQ 10 and a few business days before the filing and estimated tax payment deadline, the IRS posted new “FAQs 13 and 14” clarifying that if a taxpayer made payments in excess of its regular tax liability plus the first installment of the transition tax, the IRS would treat the excess as a prepayment of future installments of the transition tax liability that the taxpayer had elected to pay in future years.⁶⁹ After the National Taxpayer Advocate questioned the reasons underlying FAQs 13 and 14, the IRS Office of Chief Counsel released a memorandum that supplied its reasoning.⁷⁰ The memo concluded that there was no overpayment for it to refund or credit unless and until the taxpayer’s payments exceed the entire 2017 liability, including the 2017 transition that the taxpayer had elected to pay in future years.

TAS learned that the IRS also planned to deny Form 4466 applications by corporations whose estimated tax payments did not exceed both their regular tax liability and their entire transition tax liability. TAS asked the IRS Office of Chief Counsel to address a different legal question—whether the IRS had the legal authority to refund amounts requested on Form 4466 before any assessment for 2017 had been made—before denying those applications.⁷¹ In TAS’s view the IRS had considerably more leeway to conclude that it was authorized to return funds when no tax or transition tax liability had been assessed. Moreover, a conclusion that it could not return them would run contrary to Congressional intent, which was to allow taxpayers to make transition tax payments over an eight-year period.⁷² According to the IRS’s interpretation, those corporations who paid enough to satisfy the entire transition tax liability will not receive any of the benefits Congress provided by enacting IRC § 965(h).

TAS issued eight TAOs on behalf of taxpayers who made the IRC § 965(h) election and filed Forms 4466.⁷³ The TAOs generally ordered the IRS to refrain from processing the taxpayer’s Form 4466 pending further discussions between TAS and the IRS. Several of the TAOs were elevated to the National Taxpayer Advocate. As a result of TAS’s advocacy in these cases, those at the highest levels of the IRS, the Office of Chief Counsel, and Treasury considered the matter and informed TAS that, in their view, the IRS was not authorized to pay the refunds. In that way, the IRS complied with the

67 Per IRC § 6425, the overpayment must be at least ten percent of the expected tax liability and at least \$500.

68 Pub. L. No. 115-97, § 14103, 131 Stat. 2054, 2195 (2017).

69 IRS, *Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns*, <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns> (FAQs 13 and 14, posted Apr. 13, 2018). Due to computer problems, the due date was extended to April 18. IR-2018-100 (Apr. 17, 2018).

70 See Program Manager Technical Assistance (PMTA) 2018-16 (Aug. 2, 2018), https://www.irs.gov/pub/iraoa/pmta_2018_16.pdf.

71 See Nina E. Olson, *IRS Administration of the Section 965 Transition Tax Contravenes Congressional Intent and Imposes Unintended Burden on Taxpayers*, NTA Blog, [https://taxpayeradvocate.irs.gov/news/nta-blog-irs-administration-of-the-section-965-transition-tax-contravenes-congressional-intent-and-imposes-unintended-burden-on-taxpayers?category=Tax News](https://taxpayeradvocate.irs.gov/news/nta-blog-irs-administration-of-the-section-965-transition-tax-contravenes-congressional-intent-and-imposes-unintended-burden-on-taxpayers?category=Tax%20News) (Aug. 16, 2018).

72 *Id.*

73 Data obtained from TAMIS (Oct. 1, 2018).

TAOs. On December 12, 2018, IRS issued FAQs clarifying how it will handle year two payments.⁷⁴ In FY 2019, TAS will continue to assist taxpayers who experience problems as a result of the way in which the IRS is administering IRC § 965(h).

Private Debt Collection

In December of 2017, TAS issued interim guidance on handling inquiries from taxpayers whose balance due accounts had been assigned to a Private Collection Agency (PCA).⁷⁵ In FY 2018, TAS closed 157 cases involving taxpayers whose debts had been assigned to PCAs.⁷⁶ The tax liability was eliminated or reduced in 36 of those cases (23 percent).⁷⁷ TAS advocated for the processing of amended returns, transfer of misapplied payments, penalty abatements, audit reconsiderations, and other corrections to resolve the accounts. In 38 of the closed cases (24 percent), TAS recommended the accounts be placed in a currently not collectible status due to the taxpayers' economic hardship.⁷⁸ This level of service and relief would not have been available to taxpayers had they continued to work directly with a PCA. TAS established installment agreements for taxpayers in another 25 of the closed cases (16 percent). TAS will continue to accept cases from taxpayers whose debts were assigned to a PCA as a matter of public policy.⁷⁹

TAS OPERATIONS ASSISTANCE REQUEST (OAR) TRENDS

To assist taxpayers more efficiently, the Commissioner of Internal Revenue delegated to the National Taxpayer Advocate certain tax administration authorities that do not conflict with or undermine TAS's unique statutory mission, but allow TAS to resolve routine problems.⁸⁰ When TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, it works with the responsible IRS Business Operating Division (BOD) or function to resolve the issue, a process necessary in 63 percent of TAS cases in FY 2018.⁸¹ After independently reviewing the facts and circumstances of a case and communicating with the taxpayer, TAS issues OARs to convey a recommendation or request that the IRS take action to resolve the issue, and provides documentation that supports it. The OAR also serves as an advocacy tool by:

- Giving the IRS a second chance to resolve the issue;

74 IRS, *Questions and Answers about Tax Year 2018 Reporting and Payments Arising under Section 965* (Dec. 12, 2018), <https://www.irs.gov/newsroom/questions-and-answers-about-tax-year-2018-reporting-and-payments-arising-under-section-965>.

75 IGM, TAS-13-1217-006, *Interim Guidance on Advocating for Taxpayers Whose Modules the IRS Assigned to a Private Collection Agency* (Dec. 27, 2017). For a detailed discussion of Private Debt Collection (PDC) issues, see Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive PCA Inventory Accumulates*, *supra*. See also National Taxpayer Advocate 2017 Annual Report to Congress 10-21 (Most Serious Problem: *Private Debt Collection: The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*); National Taxpayer Advocate FY 2019 Objectives Report to Congress 58-79. Nina E. Olson, *One Year Later, The IRS Has Not Adjusted Its Private Debt Collection Initiative To Minimize Harm To Vulnerable Taxpayers*, NTA BLOG, <https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-has-not-adjusted-its-private-debt-collection-initiative?category=Tax%20News> (June 6, 2018).

76 Data obtained from TAMIS (Oct. 1, 2018).

77 *Id.*

78 *Id.*

79 See TAS Case Receipt Criteria, *supra*.

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

81 TAS closed 133,844 cases with Operations Assistance Requests (OARs) in FY 2018. TAS can issue more than one OAR on a case. Data obtained from TAMIS (Oct. 2, 2018). If the IRS already has an open control on an account, TAS must use the OAR process and request that the IRS function take the requested actions.

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

All BODs agree to work TAS cases on a priority basis and expedite the process for taxpayers whose circumstances warrant immediate handling.⁸² Form 12412, *Operations Assistance Request*, includes an “expedite” box that TAS Case Advocates may check when the BOD needs to act immediately to relieve the taxpayer’s significant hardship. Figure 4.1.9 shows the number of “expedite” OARs TAS issued to each BOD in FY 2018.

FIGURE 4.1.9, Expedited and Non-Expedited OARs Issued by BOD, FY 2018⁸³

Business Operating Division	FY 2018 OARs Issued Requesting Expedite Action	FY 2018 OARs Issued without Expedite Request	FY 2018 Total OARs Issued
Appeals	278	475	753
Criminal Investigation	81	231	312
Large Business & International	275	761	1,036
Small Business/Self-Employed	14,661	19,008	33,669
Tax Exempt/Governmental Entities	242	245	487
Wage & Investment	104,435	81,074	185,509
Total	119,972	101,794	221,766

TAS USES TAXPAYER ASSISTANCE ORDERS TO ADVOCATE EFFECTIVELY

The TAO is a powerful statutory tool, delegated by the National Taxpayer Advocate to LTAs to resolve taxpayer cases.⁸⁴ LTAs issue TAOs to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions.⁸⁵ A TAO may also order the IRS to expedite consideration of a taxpayer’s case, reconsider its determination in a case, or review the case at a higher level.⁸⁶ If a taxpayer faces significant hardship and the facts and law support relief, an LTA may issue a TAO when the IRS refuses or otherwise fails to take the action TAS requested to resolve the case.⁸⁷ Once TAS issues a TAO, the BOD must comply with the request or appeal the issue for resolution at higher management levels.⁸⁸ Only the National Taxpayer Advocate, Commissioner of Internal Revenue, or Deputy Commissioner may rescind a TAO issued by the National Taxpayer Advocate, and unless and until that rescission occurs, the BOD must abide by the action(s) ordered in the TAO.⁸⁹

82 TAS has a Service Level Agreement (SLA) with each business operating division (BOD). Each SLA states the terms of engagement between TAS and the BODs, as agreed to by their respective executives, including timeframes and processes for communication in the OAR and TAO processes to assure that the IRS treats TAS cases with the agreed upon level of priority.

83 Data obtained from TAMIS (Oct. 1, 2018). As depicted in Figure 4.1.9, TAS issues OARs across all IRS BODs and Functions.

84 IRC § 7811(f) states that for purposes of this section, the term “National Taxpayer Advocate” includes any designee of the National Taxpayer Advocate. See IRM 1.2.50.2, *Delegation Order 13-1* (Rev. 1) (Mar. 17, 2009).

85 IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2), IRM 13.1.20.3, *Purpose of Taxpayer Assistance Orders* (Dec. 15, 2007).

86 Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, *Purpose of Taxpayer Assistance Orders* (Dec. 15, 2007).

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

88 IRM 13.1.20.5(2), *TAO Appeal Process* (Dec. 9, 2015).

89 IRC § 7811(c)(1) and Treas. Reg. § 301.7811-1(b).

In FY 2018, TAS issued 1,489 TAOs,⁹⁰ the most TAOs ever issued in a FY and more TAOs issued than in FYs 2013–2017⁹¹ combined. Of the 1,489 TAOs, 434 TAOs were issued in cases where the IRS failed to respond to an OAR, further delaying relief to taxpayers. Of these 434 TAOs, the IRS complied with 419 TAOs in an average of six days, meaning the IRS did not have a significant disagreement as to the resolution and the taxpayers could have had relief sooner if the IRS had been more responsive to TAS.⁹² TAS issued 814 TAOs for taxpayers with hardships related to passport issues⁹³ and 469 to advocate for taxpayers with RIO issues.⁹⁴ Figure 4.1.10a reflects the results of all TAOs. Figure 4.1.10b shows the TAOs issued by fiscal year.

FIGURE 4.1.10a, Actions Taken on FY 2018 TAOs Issued⁹⁵

Action	Total
IRS Complied with the TAO	1,357
IRS Complied after the TAO was modified	16
TAS Rescinded the TAO	43
TAS Pending (in Process)	73
Total	1,489

FIGURE 4.1.10b, TAOs Issued to the IRS, FY 2013–2018⁹⁶

Fiscal Year	TAOs Issued
2013	353
2014	362
2015	236
2016	144
2017	166
2018	1,489

The examples presented in this report illustrate issues raised in cases where TAS issued TAOs to obtain relief. In issuing TAOs, TAS protects taxpayers' rights *to pay no more than the correct amount of tax, to quality service, to finality, and to a fair and just tax system.*⁹⁷ To comply with IRC § 6103, which generally requires the IRS to keep taxpayers' returns and return information confidential, the details of the fact patterns have been modified or redacted. As noted in certain examples, however, TAS has obtained the written consent of the taxpayer to provide more detailed facts.

90 Data obtained from TAMIS (Oct. 1, 2018).

91 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018).

92 Data obtained from TAMIS (Oct. 1, 2018).

93 See Emerging Issues, *supra*.

94 See Pre-Refund Wage Verification Hold, *supra*.

95 Data obtained from TAMIS (Oct. 1, 2018).

96 Data obtained from TAMIS (Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018).

97 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

Taxpayer Assistance Orders to Examination Functions

In FY 2018, TAS issued 54 TAOs to examination units in Wage and Investment (W&I), SB/SE and Large Business and International (LB&I) BODs for issues including the EITC, audit reconsiderations, actions to complete open audits of original returns, penalty abatements, and appeal rights.⁹⁸ The IRS complied with 40 TAOs within an average of 13 days (a median of seven days).⁹⁹ In one example, a taxpayer was facing eviction while the IRS held the refund to audit the dependents, filing status, and EITC claimed on the taxpayer's tax return. Prior to requesting TAS assistance, the taxpayer submitted documentation to Exam but experienced continuous delays. TAS secured supporting documentation from the taxpayer to verify dependents, filing status, and EITC eligibility, and submitted it with an OAR to Exam. When Exam did not reply to the OAR timely, TAS issued a TAO directing Exam to review the additional documentation. Exam complied with the TAO, accepted the documentation, issued the refund, and closed the case.

Taxpayer Assistance Orders on Collection Issues

TAS provided relief in more than 73 percent of collection cases in FY 2018, compared to approximately 79 percent on all issues.¹⁰⁰ In FY 2018, TAS issued 52 TAOs in collection cases where the IRS did not initially agree with TAS's recommendations.¹⁰¹ Of these 52 TAOs, the IRS complied with 26 in an average of 21 days (a median of nine days), meaning the IRS's negative responses to TAS's requests unnecessarily delayed resolution, further harming the taxpayers, when there was no material disagreement on the resolution.¹⁰²

TAS issued 11 TAOs involving levy cases in FY 2018.¹⁰³ The IRS complied with five of the 11 TAOs within an average of 29 days (a median of 19 days) for levies in FY 2018, with TAS subsequently rescinding three TAOs.¹⁰⁴ For several weeks, TAS advocated on behalf of a taxpayer for Automated Collection System (ACS) to return Federal Payment Levy Program (FPLP)¹⁰⁵ payments taken from the taxpayer's social security income over several months.¹⁰⁶ The LTA issued a TAO ordering a review of the adverse determination that ACS made on the OAR to return the FPLP payments. The ACS manager responded: "it isn't in the best interest of the government to return levied funds to this taxpayer." The manager's position is directly opposite of the guidance in IRM 5.11.2.4.1(4)¹⁰⁷ and in the note in IRM 5.11.7.2.7(3), where the guidance specifically says it *is* generally in the best interest of the

98 Data obtained from TAMIS (Oct. 1, 2018).

99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 See IRC § 6331(h), which allows the IRS to collect a taxpayer's overdue taxes through a continuous levy on certain federal payments disbursed by the Bureau of Fiscal Service.

106 In this instance, the taxpayer has provided written consent under IRC § 6103(c) for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer on Aug. 15, 2018, and on file with TAS.

107 IRM 5.11.2.4.1(4), *Current Authority for Returning Levied Property to the Taxpayer* (Oct. 26, 2017). Additionally, although not considered erroneous, proceeds from levies issued in the last nine months can be returned to the taxpayer at the discretion of the Service if: With the consent of the taxpayer or the National Taxpayer Advocate (NTA), returning the levy proceeds is in the best interests of the taxpayer (as determined by the NTA) and the government. IRS makes a determination that return of property is in the best interest of the United States and the NTA also determines that return of the property is in the best interest of the taxpayer.

government to return the FPLP payments in this situation.¹⁰⁸ After being advised of this IRM language, ACS complied with the TAO and agreed to issue a manual refund of the FPLP levy payments.

TAS continued to advocate in cases where the taxpayer or Power of Attorney (POA) correctly questioned the validity of a collection statute expiration date (CSED) calculation.¹⁰⁹ In general, the IRS has ten years from the date of assessment of tax to collect; however, this period may be tolled by certain actions.¹¹⁰ In one case, a taxpayer came to TAS disputing the CSED on a tax liability for a tax period ending over 20 years previously. TAS computed the CSED and determined the CSED had expired. This case involved IA, OIC, and bankruptcy: three issues that added complexity to the computation of the CSED. TAS issued a TAO to zero-out the liability¹¹¹ and to write-off the remaining balance due.¹¹² The function agreed with TAS's CSED calculation and complied with the TAO but encountered numerous challenges and additional delays in getting the IRS database to accept the transactions needed to bring the balance due period to zero.

TAS also continued to use the TAO to advocate for taxpayers requesting a lien withdrawal. For example, a taxpayer who qualified for withdrawal of a notice of federal tax lien (NFTL) under the IRM¹¹³ came to TAS after making a payment under a Direct Debit Installment Agreement (DDIA) which reduced the balance due to under \$25,000.¹¹⁴ The taxpayer requested lien withdrawal. The lien withdrawal request was denied, because the IRS asserted the account would not be full paid within the 60-month time frame.¹¹⁵ In addition to finding the taxpayer qualified for withdrawal under the DDIA provisions (TAS disagreed with the IRS determination that the DDIA would not full pay in 60 months), TAS found that the taxpayer qualified for abatement of penalties under first-time abatement.¹¹⁶ Further, TAS determined that the withdrawal was in the best interest of the taxpayer and the government as it would allow the taxpayer to obtain better employment. Despite these facts, along with numerous email and telephone conversations, IRS refused to withdraw the lien. The LTA issued a TAO to further

108 IRM 5.11.7.2.7(3), *Returning FPLP Levy Proceeds* (Sept. 23, 2016). Note: In situations where the levy was released due to a finding of economic hardship or because the taxpayer entered into an installment agreement, the levied payment may be returned to the taxpayer subject to the nine-month look-back period stated in (2); generally, it is in the Government's best interest to do so. See IRM 5.11.2.4.1(4). However, if the taxpayer requests that the IRS keep the funds, the IRS should follow the taxpayer's instructions.

109 Nina E. Olson, *As a Result of TAS Advocacy, the IRS is Working to Address a Computer Glitch That Allowed Collection Activity on Accounts with Expired Collection Statute Expiration Dates but Many Issues Remain Unresolved*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/NTA-blog-IRS-Working-to-Address-Collection-Activity-on-Accounts-with-expired-CSED> (Sept. 7, 2018).

110 The IRS generally has ten years to collect a tax debt once it is assessed, which is referred to as the collection statute expiration date (CSED). IRC § 6502. Some events may extend or suspend the CSED. For example, the CSED is suspended during the period an offer in compromise (OIC) is pending, for 30 days immediately following the rejection of the OIC, and for any period when a timely filed appeal from the rejection is being considered by Appeals. Treas. Reg. § 301.7122-1(i). Treasury Regulation § 301.6159-1(g) suspends the CSED while an installment agreement (IA) is pending, or 30 days after an IA is terminated or rejected, and during any appeal of that decision. The CSED is suspended in bankruptcy, and for six months thereafter. IRC § 6503(h)(2). Even if the suspension of the CSED under IRC § 6503(h) no longer applies, the CSED still may be suspended when substantially all the debtor's assets remain in the custody or control of the bankruptcy court. IRC § 6503(b).

111 IRM 5.19.10.4.5.1, *Correcting an Existing CSED No TC 550 on Account* (Feb. 1, 2014).

112 IRM 5.19.10.4.7, *Writing Off Expired Balances with TC 534* (Feb. 1, 2014).

113 IRM 5.17.2.8.7.2, *Withdrawal of Notice of Federal Tax Lien When Direct Debit Installment Agreement (DDIA) is in Effect* (Dec. 12, 2014).

114 *Id.*

115 IRM 5.12.9.3.2.1(5), *Special Provisions for Direct Debit Installment Agreements* (Oct. 14, 2013). TAS computed the IA will full pay in 53 months, and that the IA will full pay within the CSED which should have allowed for the lien to be released.

116 Reasonable cause is generally available with respect to penalties for failing to file returns or pay or deposit taxes. IRC §§ 6651(a) and 6656(a). Nevertheless, this abatement is available only if taxpayers exercised ordinary business care and not willful neglect. Treas. Reg. §§ 301.6651-1(c), 301.6656-1.

advocate that the taxpayer was entitled to relief under IRC § 6323(j)(1)(B) allowing withdrawal of an NFTL in certain circumstances.¹¹⁷ After further discussion with the LTA, the IRS complied with the TAO and agreed to withdraw the NFTL.

Taxpayer Assistance Orders to Appeals

Sometimes Appeals employees have questioned TAS's authority to issue a TAO to Appeals, however, Treas. Reg. § 301.7811-1(d) makes clear that TAS can issue a TAO to the Office of Appeals, an independent organization within the IRS, as it provides that "a TAO may be issued to any office, operating division or function of the IRS."

Further support for the conclusion that TAS can issue a TAO to Appeals can be found in Treasury Reg. § 301.7811-1 (c)(4), Example 3, which states:

L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include the NTA's analysis of and recommendation for resolving the case.¹¹⁸

¹¹⁷ IRC § 6323(j)(1)(B), in general the Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that (B) the taxpayer has entered into an agreement under IRC § 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise.

¹¹⁸ Treas. Reg. § 301.7811-1(c)(4).

During FY 2018, TAS issued nine TAOs to Appeals. One Appeals complied with, one was rescinded, four are pending, and three were appealed.¹¹⁹ TAS continues to issue TAOs requesting face-to-face hearings.¹²⁰ For example, a POA contacted the National Taxpayer Advocate requesting that TAS advocate for a face-to-face Collection Due Process hearing. The Deputy Chief of Appeals indicated to the National Taxpayer Advocate that Appeals would grant face-to-face conferences, but that only applied to field Appeals cases, and this case was a campus Appeals case.¹²¹ The Settlement Officer denied the requests for a face-to-face hearing without providing a specific reason. Despite TAS's advocacy, Appeals still refused to allow a face-to-face hearing, so TAS issued a TAO ordering that the taxpayer be afforded a face-to-face meeting. After elevated discussions within Appeals and TAS, the LTA secured an agreement to allow a collection alternative, which negated the need to have a face-to-face hearing. While TAS rescinded the TAO, using the TAO process allowed TAS to obtain relief for the taxpayer. On November 30, 2018, in response to the National Taxpayer Advocate's and Low Income Taxpayer Clinic's (LITCs) advocacy, Appeals reversed its position with respect to availability of face-to-face conferences in campus appeals cases.¹²²

In another case, a POA requested TAS assistance after he was told by Appeals that the IRS erroneously assessed willful Foreign Bank and Financial Account Report (FBAR) penalties in excess of \$100,000 and the Appeals office treated the case as a post-assessment appeal.¹²³ Accordingly, any settlement would require approval from the Department of Justice (DOJ).¹²⁴ TAS held a conference with the IRS where the IRS acknowledged the assessment was erroneous. The correct processing of the case would have been to send it to Appeals *pre-assessment*. The Revenue Agent Group Manager confirmed that he did not intend to assess the FBAR penalties and was aware the taxpayer requested a pre-assessment hearing at the time of the assessments. The LTA issued a TAO to Appeals ordering Appeals to consult with the IRS Office of Chief Counsel and reconsider whether the IRS may abate the FBAR penalty erroneously assessed against the taxpayer and refrain from holding a hearing on the taxpayer's FBAR penalty until ten business days after a decision was rendered on the reconsideration (in consultation with Chief Counsel) as to whether the IRS may abate the erroneously assessed FBAR penalty. Appeals contacted the Office of Chief Counsel for an opinion on the authority to reverse the FBAR assessment and delayed the initial Appeals conference date with the taxpayer. Post-assessment FBAR cases in excess of \$100,000 cannot be compromised without the approval of the DOJ because the assessed penalty becomes a claim of the U.S. Government.¹²⁵ Working with the Office of Chief Counsel, the DOJ authorized the abatement. Chief Counsel worked with Exam and Appeals to abate the assessments. The penalties were abated in full.

119 Data obtained from TAMIS (Oct. 1, 2018).

120 National Taxpayer Advocate 2017 Annual Report to Congress 195-202; National Taxpayer Advocate 2016 Annual Report to Congress 206-210; National Taxpayer Advocate 2014 Annual Report to Congress 46-54; National Taxpayer Advocate 2014 Annual Report to Congress 311-314.

121 Prior to 2016, taxpayers could request to transfer cases out of the campus and to facilitate an in-person conference. That right was eliminated in 2016 and has not been restored. IRM 8.6.1.4.1, *Conference Practice* (Oct. 1, 2016). Compare IRM 8.6.1.2.2, *Transfers for the Convenience of Taxpayers* (June 25, 2015). See also IGM, Control No. AP-08-1017-0017 (Oct. 13, 2017).

122 IGM AP-08-1118-0013, *Appeals Conference Procedures* (Nov. 30, 2018). See also Most Serious Problem: *Appeals: Appeals Has Taken Important Steps Toward Increasing Campus Taxpayers' Access to In-Person, Quality Appeals, But Additional Progress is Required*, *supra*.

123 In this instance, the taxpayer has provided written consent under IRC § 6103(c) for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer on Aug. 14, 2018 and on file with TAS.

124 See 31 USC § 3711(a)(2); 31 CFR §§ 902.1(a)(b). See also IRM 8.11.6.1(6), *FBAR Overview* (Feb. 2, 2015).

125 31 USC § 3711(a)(2); 31 C.F.R. §§ 902.1(a), (b).

CONGRESSIONAL CASE TRENDS

Taxpayers often turn to their Congressional representatives when faced with IRS issues. The Congressional representatives refer these taxpayers to TAS, which is responsible for responding to tax account inquiries sent to the IRS by Members of Congress. Figure 4.1.11 reflects Congressional case receipts and TAS receipts from other contacts.

FIGURE 4.1.11¹²⁶

TAS Congressional Receipts, FYs 2012-2018

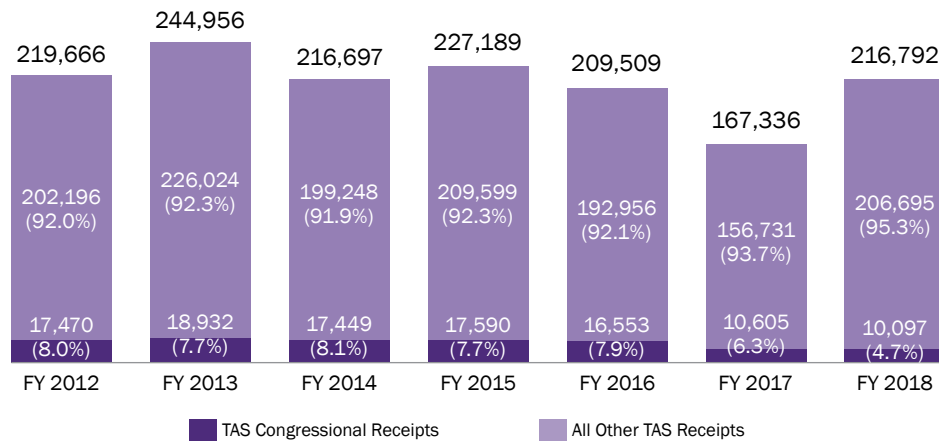


Figure 4.1.12 shows the top ten PCICs causing taxpayers to seek the assistance of their Congressional representatives. ID Theft receipts decreased by nearly 57 percent between FY 2017 and FY 2018 while PRWVHs increased by more than 152 percent.¹²⁷ Issues associated with the processing of amended returns decreased by more than four percent. These trends followed the overall TAS increase and decrease in receipts for these issues.¹²⁸

126 Data obtained from TAMIS (Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016; Oct. 1, 2017, Oct. 1, 2018).

127 Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).

128 PCIC 460 Application for Exempt Status cases from all sources, including Congressional referrals, were 407 cases in FY 2017 and 485 cases in FY 2018, an increase of 19.2 percent.

FIGURE 4.1.12, TAS Top Ten Congressional Receipts by Primary Core Issue Code, FYs 2017–2018¹²⁹

Rank	Issue Description	FY 2017	FY 2018	Percent Change
1	Pre-Refund Wage Verification Hold	368	929	152.4%
2	Transcript Request	480	546	13.8%
3	Other Refund Inquiry/Issue	431	509	18.1%
4	Processing Original Return	543	440	-19.0%
5	Processing Amended Return	418	399	-4.5%
6	Identity Theft	911	394	-56.8%
7	Application for Exempt Status	288	353	22.6%
8	Open Automated Underreporter	323	328	1.5%
9	Installment Agreements	399	321	-19.5%
10	Unpostables and Rejects	206	319	54.9%
Other Issues		6,238	5,559	-10.9%
Total Congressional Receipts		10,605	10,097	-4.8%

¹²⁹ Data obtained from TAMIS (Oct. 1, 2017; Oct. 1, 2018).