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Department of the Treasury
Internal Revenue Service

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EFFECTIVE DATE

(05-10-2012)

PURPOSE

- (1) This transmits revised **IRM 13.1.10, Taxpayer Advocate Case Procedures, Special Processes.**

MATERIAL CHANGES

- (1) 13.1.10.3.1(3) – Updated Area and Local Disclosure Office Contacts Link.

EFFECT ON OTHER DOCUMENTS

This revision supersedes IRM 13.1.10, dated February 14, 2012.

AUDIENCE

Taxpayer Advocate Service employees

Signed by Nina E. Olson
National Taxpayer Advocate.

13.1.10
Special Processes

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(04-09-2012)
Overview of TAS Special Processes
- (1) This section describes special processes necessary to work specific issues. All employees of the Taxpayer Advocate Service (TAS) must be aware of these special processes.
- 13.1.10.2
(04-09-2012)
Obtaining Legal Advice From Chief Counsel
- (1) When working cases, Case Advocates (CAs) may come upon issues that are beyond the scope of their expertise. Options include discussing the case with the CA's Manager, consulting a Technical Advisor (Campus Technical Advisor, Revenue Officer Technical Advisor, or Revenue Agent Technical Advisor), consulting with the Operating Division or Functional Unit, or contacting the Office of Chief Counsel for a legal opinion. The Technical Advisors are the primary source for interpreting internal policies and procedures, while Chief Counsel provides legal advice on the correct interpretation of the Internal Revenue Code, see IRC § 7803(b)(2),) including the rights and responsibilities of taxpayers and the Internal Revenue Service (IRS).
- (2) The field offices of the Division Counsel (Small Business/Self Employed) will provide legal support or advice, whether oral or written, to TAS. In every Counsel SB/SE post of duty there is a manager or senior attorney designated as the point of contact (SB/SE contact) for TAS issues. A list of SB/SE contacts can be found on the Special Counsel to the National Taxpayer Advocate website which can be reached from the TAS website located at <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/CNTA/Pages/default.aspx>. <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/CNTA/Pages/default.aspx>.
- a. The local SB/SE office will be responsible for providing advice for all legal issues that relate either to SB/SE or Wage & Investment, formulating and referring matters for coordination with the National Office, and coordinating legal services with other SB/SE offices.
- b. When Case Advocates raise Large Business & International (LB&I) or Tax Exempt and Government Entities (TEGE) issues, the local SB/SE office must coordinate its response with the respective Area Counsel for LB&I or TEGE or refer the case for assignment through the Area Counsel for LB&I or TEGE.
- (3) Advice on issues involving personnel, labor, and procurement should be requested from counsel in the local General Legal Services (GLS) office. Similarly, advice on criminal tax matters should be requested from counsel in the local Criminal Tax (CT) Counsel office. A list of GLS and CT contacts can be found on the Special Counsel to the National Taxpayer Advocate website which can be reached from the TAS website.
- (4) The Office of the Special Counsel to the National Taxpayer Advocate (CNTA) also provides legal advice to TAS. The following issues are under the jurisdiction of the CNTA:
- Internal Revenue Code (IRC) § 7803(c), including the Local Taxpayer Advocate's (LTA) discretion not to disclose information to the IRS under IRC § 7803(c)(4)(A)(iv);
 - IRC § 7811;
 - Taxpayer Advocate Directives; and
 - The scope of TAS's statutory authority or delegated authority to the extent not previously addressed in written legal advice.

- (5) Counsel's procedures for providing legal advice to TAS are included in IRM 33.1.2.4 , *Advice to Taxpayer Advocate Service*.

13.1.10.2.1
(04-09-2012)

Who Initiates Contact

- (1) If the CA believes that legal advice may be needed, the CA should first request assistance from the Internal Technical Advisor Program (ITAP). ITAP will either answer the question or recommend a request for legal advice from the SB/SE, GLS or CT contact. All requests for Counsel advice should be routed through the Manager and when appropriate, through the Executive Director Systemic Advocacy (EDSA) or the Executive Director Case Advocacy (EDCA). The Manager will determine who will request advice from the appropriate SB/SE, GLS, or CT contact.
- (2) If a case has been elevated to an Area Director (AD) who determines that legal advice is warranted, and the LTA office did not request advice initially, the LTA should request advice on behalf of the AD from the SB/SE, GLS or CT contact.

13.1.10.2.2
(04-09-2012)

Advice Requests

- (1) When the situation does not allow time for processing a written request or when the question is simple enough to warrant an oral response, call the designated SB/SE, GLS or CT contact after discussing with the Technical Advisor or the Manager. Have available a summary of the relevant facts and questions. The SB/SE, GLS or CT contact will either answer the question or refer it to the appropriate attorney. Counsel's policy is to acknowledge requests for oral advice within 24 hours.
- (2) At the request of Counsel or whenever legal assistance requires the review or analysis of a complicated set of facts, prepare a written request (signed by the AD, LTA or Taxpayer Advocate Group Manager (TAGM)) clearly stating:
- The legal issue for which advice is being sought;
 - A summary of the relevant facts and case history;
 - An analysis (if any) of the appropriate statute or other law;
 - A description of any prior contacts on the case with other IRS employees or Chief Counsel attorneys;
 - A proposed response date; and
 - The CA's name and telephone number.

13.1.10.2.3
(04-09-2012)

Timeframes for Advice by Counsel

- (1) The assigned Counsel attorney should contact the CA to confirm receipt of a written request, determine when a response is needed, and discuss the specific date by which Counsel will provide a response. In discussing the response date, consider the need to avoid unnecessary hardship for the taxpayer and the need for Counsel to work with other offices in the IRS. Counsel should provide a written notification (either by fax, E-mail, or memorandum) of the name and telephone number of the attorney assigned to answer the request and the anticipated completion date.
- (2) Keep both the taxpayer and the assigned attorney informed about any significant developments in the case while Counsel is preparing legal advice.
- (3) If Counsel does not provide legal advice by the agreed upon date, contact the assigned attorney to determine the reason for the delay. If the taxpayer will not experience additional hardship, consider an adjusted response date. If the taxpayer will experience additional hardship and the attorney anticipates a continued delay, advise the attorney of the need and reasons for the expedited

consideration. If the attorney is unable to provide a response within a time frame that is workable, contact the TAS Manager and have them contact the attorney's manager to discuss options. Advise the Manager of the situation for further guidance and assistance, including the need to contact the CNTA for assistance.

13.1.10.2.4
(04-09-2012)
**Additional Review by
Counsel**

- (1) When Counsel provides legal advice in response to the CA's request and the CA believes that the advice should be reviewed at a higher level in Counsel, contact the TAS Manager. The TAS Manager will determine whether such review is warranted. If so, the TAS Manager should forward the request to the CNTA. When appropriate, the TAS Manager should route the request for CNTA review through the EDSA or the EDCA.
- (2) The CNTA will ensure the matter is appropriately reviewed, and will coordinate with SBSE, GLS, or CT as necessary.

13.1.10.2.5
(04-09-2012)
**Significance of Counsel
Advice**

- (1) The position of the IRS is established in published guidance (e.g., Treasury regulations, revenue rulings, revenue procedures). Although written legal advice including E-mails, may be made available for public inspection, the advice does not set precedent regardless of the Counsel function (e.g., SB/SE, GLS, or the CNTA) that issues the advice.
- (2) Case specific advice does not set precedent, but TAS employees or other IRS personnel may rely upon the advice when resolving the case in which the advice was issued. Because the advice is case specific and does not set precedent, TAS employees and other IRS personnel should not rely on the advice when resolving any case other than the case in which the advice was issued, although it may be helpful to the CA in thinking through the issues in a case, including identifying the differences between the case in which the advice was issued and the earlier case. .
- (3) Counsel's written advice may be shared with other TAS employees or Operation Division employees who have a "need to know" because the employee is working with the same taxpayer on the same issue, although with respect to a different year, or because the other TAS employee has systemic advocacy responsibilities that may require the employee to have knowledge of all advice regarding a particular topic. Similarly, an Operating Division employee has a "need to know" when you want to share the advice with the Operating Division to get the appropriate relief for the taxpayer's case you are working.
- (4) Whenever possible, incorporate the Counsel advice into a TAS document (like a letter to the taxpayer.) If you think it is important to share Counsel's written advice in order to convey with clarity, the conclusions reached, please consult with your manager and the Counsel attorney who provided the advice.

13.1.10.2.6
(04-09-2012)
**Requests for TAS
Employees to Testify or
Produce IRS Records or
Information**

- (1) Occasionally, TAS employees may receive a request for testimony or production of IRS records or information in ongoing litigation. Such requests may come directly from the Department of Justice or the United States Attorney's Office. Frequently these requests are forwarded through SB/SE Counsel or the Criminal Investigation Division. These requests are not subject to the confidentiality provision in IRC § 7803(c)(4)(A)(iv). Do not use the CA, and the LTA Questionnaires. See IRM 13.1.5.5, *Discretion Not to Disclose*. See IRC § 7803(c)(4)(A)(iv).

- (2) TAS employees must obtain prior approval before they produce IRS records or information or testify in judicial or administrative proceedings in response to such a request. The request may be in the form of a subpoena, notice of deposition, or court order.
- (3) When a CA receives such a request, the CA should raise this through the management chain to the Area Director who will contact the CNTA for advice. The CA must also immediately contact his or her local SB/SE Counsel contact for assistance with the testimony authorization and related issues.
- (4) In addition to working with Counsel, the affected TAS employee will work with the local disclosure officer.
- (5) The procedure above apply regardless of whether the IRS is a party to the litigation which generates the request for testimony or production of records.
- (6) For more details regarding the procedures to follow upon receipt of a demand for testimony or production of IRS records or information in judicial or administrative proceedings, see IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*.

13.1.10.3
(04-09-2012)

Disclosure Issues and Taxpayer Authentication

- (1) As an IRS employee, the CA is responsible for protecting tax returns and tax return information and Privacy Act records. See IRC §6103 which contains provisions for protecting and disclosing confidential returns or return information. The Privacy Act (5 USC 552a(c)) protects the confidentiality of records retrieved by an identifier for an individual. See IRM 11.3, *Disclosure of Official Information*, concerning disclosure situations.
- (2) The CA is responsible for verifying that they are speaking to the correct taxpayer/representative.
 - Follow the guidance in IRM 21.1.3.2.3, *Required Taxpayer Authorization*, and
 - IRM 21.1.3.2.4, *Additional Taxpayer Authentication*.
 - For information on POAs or representatives, follow IRM 21.1.3.3, *Third Party (POA/TIA/F706) Authentication*.

Caution: Authentications must be made with any person(s) not previously authenticated. For example, if the CA contacts the other spouse on a married-filing-jointly (MFJ) return, the identity of that person must also be authenticated.

- (3) Prior to providing authorized tax return information to the individual, ask the taxpayer for identifying information and conduct IDRS research to validate the taxpayer's responses (*e.g.*, name and TIN). For a list of the research command codes, refer to IRM 21.1.3.2.3(10), *Required Taxpayer Authentication*.
- (4) Case Advocates may use the TAMIS Radio Button checkbox "Made Positive Identification of TP" which is located on the "Initial Action Screen" when:
 - the contact is an initial contact;
 - the contact is conducted verbally; and
 - the case involves one individual.

- (5) If more than one TAS employee makes contact with the taxpayer on the same case, then the subsequent employee must also authenticate the taxpayer identification before disclosing any information.
- (6) If the TAS case involves more than one taxpayer, the CA must document the authentication of each taxpayer (e.g., the wife or the husband) in the TAMIS history.
- (7) Document actions regarding the authentication of the taxpayer and any verification of third party authorizations on TAMIS.

Note: If documenting in the TAMIS history, consider using the acronym, "DV".

- (8) If a subsequent contact is made with a taxpayer or representative previously authenticated, and the CA recognizes the voice, additional taxpayer authentication is not necessary.

13.1.10.3.1
(05-10-2012)

**Power of Attorney, Other
Representatives and
Third Party (Check Box)
Designations**

- (1) There are times when taxpayers may ask accountants, attorneys, enrolled agents or students of a Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) to assist with tax problems or to represent them before the IRS. To be properly authorized as a power of attorney (POA), the representative must submit a Form 2848, Power of Attorney and Declaration of Representative. See IRM 21.1.3.3, *Third Party (POA /TIA / F706 Authentication)*; IRM 21.3.7, *Processing Third Party Authorizations onto the Centralized Authorization File (CAF)*.

Note: Students working in a LITC or STCP may represent taxpayers under a special order by the Director, Office of Professional Responsibility (OPR). The instructions to Form 2848, *Power of Attorney and Declaration of Representative*, require that such students attach a copy of the letter from the OPR authorizing practice before the Internal Revenue Service (IRS). Students who have been authorized to practice by special order may, subject to any limitations set forth in the letter from the OPR, represent taxpayers before any IRS office and should be viewed the same as any other taxpayer's representative for which a Form 2848 has been submitted.

- (2) Taxpayers can appoint someone to receive their tax account information by signing Form 8821, Tax Information Authorization (TIA). This allows the authorized party to receive tax account information, but does not allow the authorized party to advocate for the taxpayer or represent the taxpayer for examination or collection issues. Unenrolled return preparers have limited power and are only allowed to represent tax-related issues before the Examination function if the issues relate to a return that he or she prepared; unenrolled return preparers may not represent the taxpayer before other IRS functions, including Collection and **TAS**. See IRM 21.3.7.5, *Form 2848, Power of Attorney and Form 8821, Tax Information Authorization*.

Note: An unenrolled return preparer can provide information to TAS on the taxpayer's behalf and can accompany the taxpayer to a meeting with TAS, but the unenrolled return preparer is not viewed as the taxpayer's representative (unless the issue in TAS involves the Examination function with respect to a return the unenrolled return preparer prepared.)

- (3) Treas. Reg. 301.6103(c)-1(c)(2) authorizes the IRS to accept oral requests or consents (Oral Disclosure Consents) authorizing the disclosure of return information to third parties to assist taxpayers in resolving their federal tax matters.

Only the taxpayer or an authorized representative, who has previously been given the authority by a written POA to appoint other designees, can provide an Oral Disclosure Consent. Oral Disclosure Consents may be taken from taxpayers, or an authorized representative, who have open account issues or to whom some type of notice has been issued from the IRS. The disclosure of return information must be limited to the information covered in the oral consent and disclosure can only be made to third parties helping taxpayers resolve a Federal tax matter. The Oral Disclosure Consent expires when the account issue is closed. For additional information contact the Disclosure Officer. Information on who to contact can be found at: <http://discl.web.irs.gov/contact.asp>.

- (4) To record an Oral Disclosure Consent for a taxpayer inquiry where no TAS case is generated, TAS employees will follow the IRM 21 procedures. Refer to IRM 21.1.3.3.2, *Oral Disclosure Consent/Oral TIA (Paperless F8821)* for requirements and history item format using CC ACTON.
- (5) To record an Oral Disclosure Consent for TAS cases, TAS employees will record authorizations on TAMIS instead of IDRS.
- (6) Taxpayers can designate a third party contact by checking the box on their tax return. This designee is known as the Third Party Designee. The Third Party Designee is authorized to receive tax information relating to return processing issues (*i.e.*, notices), refunds or payments, respond to missing information on the return, and discuss math errors. Refer to IRM 21.1.3.3.1, *Third Party Designee Authentication*, for information on authorization and disclosure.
- (7) Refer to either Pub 4019 , Third Party Authorization, Levels of Authority, or to IRM 21.3.10.2.5, *References for Various Authorizations*, for references concerning different types of authorization.
- (8) Send original, photocopied, or faxed copies of Forms 2848 or Form 8821 to the CAF unit to be processed. If a POA/TIA is received that is not attached to any return or document, route it to the appropriate centralized CAF unit, see IRM 21.3.7, *Processing Third Party Authorizations* onto the Centralized Authorization File (CAF). Document the date the Form 2848 or 8821 was sent to the CAF unit in the "Date Form 2848/8821 sent to CAF" field in the TAMIS POA Screen. If the authorization is attached to correspondence, review the correspondence to determine if other requests are involved. If other requests are involved:
 - Fax a copy of the authorization (Form 2848 or Form 8821) to the CAF function for processing; and
 - Send a copy of the correspondence and authorization to the appropriate office(s) to complete the request(s).
- (9) Do not detach POAs/TIAs filed for specific issues from the related document or send them to the CAF function, unless the document includes authorization for release of return information in addition to the specific issue. In this case, a copy of the POA/TIA should be sent to the appropriate centralized CAF unit to input the return portion on the CAF system.
- (10) Examples of specific issues where the CA would detach the POA/TIA from the related document include, but are not limited to, the following:
 - Form 843, *Claim for Refund and Request for Abatement*;
 - Form 966, *Corporate Dissolution or Liquidation* (Form 964 is obsolete);

- Form W-4, *Employee's Withholding Allowance Certificate*;
 - Form 4361, *Application for Exemption from Self-Employment Tax for use by Ministers, Members of Religious Orders, and Christian Science Practitioners*;
 - Form 1128, *Application to Adopt, Change, or Retain a Tax Year*; or
 - Form SS-4, *Application for Employer Identification Number*.
- (11) If a "General Power of Attorney" or "Durable Power of Attorney" which does not contain sufficient authorization to process on the CAF is received, retain it in the case file or keep it attached to the related return and request that the taxpayer submit a Form 2848. If it is attached to a completed Form 2848, both forms should be sent to the CAF unit for processing.
- (12) If the forms were not sent to the CAF unit for processing, document the reasons for not sending the forms in the TAMIS history.
- (13) Congressional offices provide their own authorization forms completed by their constituents and will forward the authorization forms to TAS or the IRS. The IRS accepts these forms as tax information authorizations. The IRS also accepts correspondence addressed to Congressional offices as authorization for releasing tax information if the correspondence contains **ALL** of the following information:
- The correspondence is addressed to the Senator or Representative requesting the information; and
 - The person whose tax information is requested has sent AND signed the letter; and
 - The correspondence contains the taxpayer's name and Taxpayer Identifying Number; and
 - Help in the tax matter is specifically requested.
- Note:** It is important to remember TAS cannot honor a third party request for assistance from a Congressional office without a waiver signed by the taxpayer.
- Example:** A brother without a POA cannot obtain assistance from the IRS on his sister's behalf regarding a tax matter by writing to his Congressman. If this type of correspondence is received, call the Congressional office and ask that the taxpayer, in this case the sister, complete an authorization form.
- (14) TAS employees should ensure that any valid power of attorney or written authorization on file that provides for sending correspondence or copies of correspondence to the representative is honored.

13.1.10.3.2
(04-09-2012)

Misuse of IRC § 6103(f)

- (1) The Restructuring and Reform Act of 1998 (RRA 98), § 1203(b)(7), deals with the willful misuse of provisions of IRC 6103(f) of the Internal Revenue Code of 1986 for the purpose of concealing information from a Congressional inquiry. Such misuse of IRC 6103(f), would subject the employee to disciplinary action under the provisions of RRA 98, IRC §1203. The Director, Legislative Affairs, should be informed immediately of any request for tax information from a Congressional committee.
- (2) IRC 6103(f)(1) and IRC 6103(f)(2) provide for the disclosure of tax information upon receipt of a written request from the Chairman of the Committee on Ways and Means of the House of Representatives, the Chairman of the Committee on Finance of the Senate, or the Chairman of the Joint Committee on Taxation.

If any return or return information can be associated with or otherwise identify, directly or indirectly, a particular taxpayer, the IRS will furnish the return or return information to the committee only when the committee is sitting in closed executive session unless the taxpayer otherwise consents in writing to the disclosure.

- (3) Only officials with authority under Delegation Order 11-2 (IRM 1.2.49.3, *Delegation of Authorities for Communications, Liaison and Disclosure Activities*) or its successor may approve disclosure to Congressional committees under IRC § 6103(f). The National Taxpayer Advocate has been delegated the authority to disclose returns and return information to Congressional committees. IRC § 6103(p)(3) provides that an accounting of such disclosures be made.
- (4) IRM 11.3.4, *Congressional Inquiries* covers disclosure guidelines for Congressional committees, such as grand jury and informant information, and sets out record keeping requirements when making disclosures to Congressional committees.

13.1.10.3.3
(04-09-2012)
**Notice of Third Party
Contacts**

- (1) Form 911 has a paragraph which provides the taxpayer authorization for making third party contacts and, if signed, waives the notice requirements of IRC 7602(c)

Example: When the CA must contact a bank or landlord to verify the facts of the taxpayer's circumstances in order to expedite a release of levy or to expedite a refund, prior notice of third party contact must be provided unless a signed authorization for third party contact is received, e.g., signed Form 911 is received.

- (2) IRC § 7602(c) requires that, subject to certain exceptions, IRS employees may not contact any person other than the taxpayer without providing reasonable notice to the taxpayer that third party contacts may be made. Under this section the CA must provide taxpayers with prior notification that third parties may be contacted during the determination or collection of that specific taxpayer's federal tax liability. Upon request, the IRS will provide the taxpayer with a list of third parties that have been contacted.
- (3) In instances where no Form 911 is received or signed, follow the guidance in sub section (6) below.
- (4) If the taxpayer gives Oral Authorization, IRS employees are not required to complete a Form 12180 in all cases. See IRM 13.1.16.4.2, *Oral Authorization for IRC § 7602(c) Third Party Contact*, for more information on this topic.
- (5) Document the case file with the date the taxpayer provided the authorization. The requirements of this law can also be met by utilizing 3-way calling with the taxpayer on the line.
- (6) If the taxpayer does not authorize contact, ensure the taxpayer receives a reasonable notice via *Letter 3164-J*, (Taxpayer Advocate) Notification of Potential Third Party Contact Letter, stating that third parties may be contacted and record contacts made to third parties. Allow 10 days after mailing Letter 3164-J before contacting any third party, and then file Form 12175, *Third Party Contact Report* with the third party contact coordinator.

13.1.10.4
(04-09-2012)
**Handling Suicide
Threats**

- (1) TAS may receive a case where either the front line employee has already had the first conversation with the taxpayer or the suicidal intention is stated or hinted at in correspondence. In these situations, notify the Manager of the suicide threat and prepare what is going to be said before contacting the taxpayer.
- (2) The CA may experience instances when talking to taxpayers either in person or on the telephone when they indicate suicidal intentions, either directly or indirectly. These communications are not only sensitive, but may be uncomfortable as well.

13.1.10.4.1
(04-09-2012)
**What to Do When the
Taxpayer Threatens
Suicide**

- (1) When the taxpayer threatens suicide:
 - **Stay calm and remain on the phone with the taxpayer;**
 - Listen to the taxpayer;
 - Ask concerned questions;
 - Respond effectively; and.
 - Determine the information needed to notify the authorities who can help the taxpayer.

Note: CAs are not expected or encouraged to “counsel” or provide therapy to any taxpayer.

- (2) Alert a manager, or his/her designee to the suicide threat situation immediately (e.g., write a note and hand it to a co-worker, wave for assistance, etc.) so that they are aware of the situation and may take over the call. **Do not transfer the call or place the taxpayer on hold.**
- (3) If the inquiry is a live telephone call, ask the taxpayer for his or her location (including phone number) from which he or she is calling. Document the caller’s address and location.
- (4) Ask another employee to immediately contact the local law enforcement or government suicide prevention authority. Report the threat and the caller’s location to the local authorities. When a phone number or the caller’s location is obtained from the caller, the IRS can relay this information to local authorities. This is not a disclosure of return/account information. See IRM 13.1.10.4.3, *Discussion of Disclosure Issues*, for situations when the taxpayer’s location is not obtained from the taxpayer.
- (5) While reporting a suicide threat to local law enforcement authorities, state only that the threat was made during a contact involving “official business.” Be careful not to mention the underlying reason for the taxpayer’s call.
- (6) Contact the local Disclosure Officer as soon as possible and inform him or her of the threat and what information was disclosed to State or Federal law enforcement. Contact should be made if a threat is received either orally or from correspondence.
- (7) Refer to IRM 21.1.3.12 ***Suicide Threats***, for additional information on handling suicide threats.

13.1.10.4.2
(04-09-2012)
**Crisis Center Directory
and Other Contact
Points**

- (1) Each Local Taxpayer Advocate should maintain listings of phone numbers for State and Federal police and local Suicide prevention organizations.

13.1.10.4.3
(04-09-2012)
**Discussion of
Disclosure Issues**

- (1) One of the major considerations in helping a potentially suicidal taxpayer is determining what information can be provided to an outside party, such as the police department or suicide intervention service, and still meet the legal obligation to protect the confidentiality of tax information.

13.1.10.4.3.1
(04-09-2012)
**Disclosure in
Emergency Situations
Pursuant to IRC §
6103(i)(3)(B)**

- (1) Disclosure provisions of the IRC limit the release of confidential taxpayer information to others. In situations where there is an immediate danger of death or physical injury to any individual, IRC 6103(i)(3)(B)(i) allows disclosure of tax return information to a Federal or State law enforcement agency.
- (2) By itself, a suicide threat to a TAS employee is not considered tax information and therefore is not covered by the rules limiting tax disclosures. If TAS can get the address or current location directly from the taxpayer or from a public source (*e.g.*, telephone book, internet or other public source), then IRC 6103 rules do not apply to that location information and that information can be provided to Federal, State, or local law enforcement agencies.
- (3) If the taxpayer's location must be obtained by accessing the tax information (*e.g.*, through IDRS), IRS employees must follow the procedures related to disclosures under IRC 6103(i)(3)(B)(i).
- (4) If the taxpayer will not provide his or her location, an authorized IRS employee delegated the authority to disclose return information (which would include a taxpayer's address) to Federal or State law enforcement agencies in emergency can use IRS systems (*e.g.*, IDRS), in order to give the information to Federal or State law enforcement agencies. See IRM 11.3.28.9, *Disclosure in Emergency Situations Pursuant to IRC 6103(i)(3)(B)*, for suicide threat disclosure guidelines.

Note: This form of disclosure can be made only to the appropriate State or Federal authorities and **NOT** local police.

- (5) In all instances, only disclose information relevant to the threat. **Tax-related information cannot be disclosed.**
- (6) Contact the local Disclosure Officer as soon as possible and inform the officer of the threat and of any information that was disclosed to Federal or State law enforcement.

13.1.10.4.4
(04-09-2012)
Incident Report

- (1) As soon as possible after the event, prepare an incident report and forward to the Area Director. The report should include the following information:
 - Employee/manager information-names, locations, phone numbers;
 - Taxpayer name, EIN(s), address, phone number;
 - Date and time of incident;
 - Description of incident;
 - Action(s) taken; and
 - Current status

13.1.10.5
(04-09-2012)
**Disaster-Related Case
Processing**

- (1) General procedures for handling disaster-related issues can be found in IRM 25.16, *Disaster Assistance and Emergency Relief*.
- (2) Taxpayers who are victims of a disaster and make their initial contact for assistance to TAS should receive expedited handling in accordance with Disaster Relief procedures. TAS employees should be aware of the disaster procedures. Taxpayers should be directed to the function that has been assigned to assist with the issue involved. A local Disaster Coordinator is generally designated and may be contacted for the proper referral point.
- (3) In directing the taxpayer to the proper contact point, TAS employees should make a "live" transfer of the call, or offer to have the appropriate person make a return call, whenever possible.
- (4) Disaster-related cases qualifying for TAS handling should be controlled on TAMIS and assigned the appropriate case criteria codes.
- (5) New and open TAS cases impacted by a disaster will be treated with the utmost sensitivity. TAS employees will advise their manager of any such case. Timeframes for contacting the taxpayer, setting deadlines, and allowing extra time for response before closure, etc., should be extended based on the disaster circumstance and on reasonable judgement. Under no circumstances should a case be closed where the taxpayer has requested additional time to respond, until it has been discussed with the Manager. Note the disaster-related reason for any such extension in TAMIS.
- (6) Ensure that necessary stays on Collections actions are requested or input on TAS cases affected by disasters. See IRM 25.16.1.11.1, *Operating Procedures* for more information.
- (7) LTAs will participate on the team convened by the Field Assistance Area Director to determine the assistance and resources to be devoted to disaster recovery situations, whether Presidentially declared or not. The LTA will consult the AD and the National Taxpayer Advocate before committing TAS resources to a disaster recovery endeavor.

13.1.10.6
(04-09-2012)
**Media Involvement-
Related Issues**

- (1) The TAS Communications & Liaison office should always be notified of any media contacts. While the Case Advocate will be responsible for resolving the taxpayer's issue, the manager will determine who will contact the taxpayer or media. Refer to IRM 13.6, *TAS Communications*.
- (2) Managers should coordinate with the TAS Communications & Liaison office and the Office of Disclosure on the content of the responses.

13.1.10.7
(04-09-2012)
**Combat Zone and Killed
in Action-Related Issues**

- (1) Procedures on handling combat zone issues can be found in IRM 5.19.10.6, *Combat Zone Accounts*, and on *SERP*.
- (2) Procedures on handling KITA, KIA, and Astronauts Killed in the Line of Duty can be found in IRM 5.19.1.4.11, *Killed in Terrorist Action (KITA)*, *Killed in Action (KIA)*, and *Astronauts Killed in the Line of Duty*, and on *SERP*.

13.1.10.8
(04-09-2012)

**Small Business
Regulatory Enforcement
Fairness Act (SBREFA)
Cases**

- (1) The Small Business Administration's (SBA) Office of the National Ombudsman (ONO) was created by Congress in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The ONO works with federal offices to assist small businesses with unfair and excessive federal regulatory enforcement, such as repetitive audits or investigations, excessive fines, penalties, retaliation or other unfair regulatory enforcement action by a federal agency. The ONO receives complaints and comments from small businesses and forwards that information to the appropriate federal agency for a high level review. Each year the SBA Ombudsman submits a Report to Congress rating the responsiveness of each federal agency.
- (2) The ONO may receive three types of comments or complaints regarding the IRS:
 - **Case Specific Comments** indicate that IRS has taken some action that the taxpayer (the small business) disagrees with. They include complaints about collection actions, account problems, audits, misapplied payments, unpaid accounts, penalties, and tax assessments. These comments are assigned to a Case Advocate as a TAS SBREFA case.
 - **Systemic Comments** identify systemic problems that happen on a regular basis. The TAS Office of Systemic Advocacy responds to these comments.
 - **General Comments** involve questions about tax law, regulations, compliance initiatives, complaints about IRS employee misconduct, letters identifying tax fraud, questions about the burden certain laws or procedures have on taxpayers and information requests. HQ Stakeholder Liaison responds to these comments.

13.1.10.8.1
(04-09-2012)
**SBREFA Case
Assignment**

- (1) When the SBA Ombudsman receives a case specific complaint against the IRS, the SBA Ombudsman will forward the complaint, by fax or by e-mail, to the District of Columbia Local Taxpayer Advocate (D.C. LTA). The package from the SBA Ombudsman will include a letter from the SBA Ombudsman, the SBA's Federal Agency Appraisal Form, any correspondence provided by the small business owner, and a Form 8821, *Tax Information Authorization*. The original documents are later mailed to the D.C. LTA.
- (2) The SBREFA Analyst in the D.C. office (D.C. Analyst) reviews the incoming documents to determine if a referral to an LTA is appropriate.
- (3) If a referral to an LTA is appropriate, the D.C. Analyst will create a case on TAMIS using special case code "60."
- (4) Within 5 work days of receipt by the D.C. LTA's office, the D.C. Analyst will transfer the case on TAMIS, and forward the SBA Ombudsman package to the LTA where the small business owner resides. The D.C. Analyst will notify the LTA and the appropriate Area SBREFA Analyst that a new SBREFA case has been transferred to the local office.
- (5) Upon receipt, the LTA will assign the case to a Case Advocate.
- (6) Original SBA correspondence will remain in the D.C. LTA office. The D.C. Analyst will research IDRS, prior TAS cases, ALS, ICS, etc., for the D.C. LTA case file.

13.1.10.8.2
(04-09-2012)

**SBREFA Case
Processing Procedures**

- (1) The taxpayer must complete a Form 8821 to allow TAS to disclose tax-related information to SBA. The Case Advocate should review the Form 8821 to ensure that all tax years and tax returns are included for disclosure to the SBA Ombudsman. The small business owner must identify the SBA Ombudsman as the "Appointee" on line (2), and check the box on line (4), of Form 8821. The Form 8821 is not forwarded to an IRS CAF unit.
- (2) In general, a SBREFA case will be worked as a Criteria 7 TAS case, following procedures in IRM 13.1.18, *Processing TAS Cases*. The only modifications to those procedures are as follows:
 - a. Within 5 workdays of receipt, the LTA will prepare a letter to the SBA Ombudsman to acknowledge receipt of the SBA correspondence and provide the assigned Case Advocate's contact information.
 - b. Within 5 work days of assignment, the Case Advocate will make initial contact with the taxpayer. The initial contact, whether by telephone or in writing, will include a statement that the taxpayer's complaint filed with SBA has been referred to TAS for resolution.
 - c. The initial contact will include a request for a properly completed Form 8821, *Tax Information Authorization* if necessary.
 - d. The Case Advocate will prepare an interim response letter to the SBA Ombudsman every **30** days from the date of the acknowledgement letter, to update the SBA Ombudsman on the progress of the case.
 - e. The closing contact with the taxpayer will include a statement that a separate closing letter to the SBA Ombudsman will be signed by the National Taxpayer Advocate.
 - f. A draft closing letter to the SBA Ombudsman, as described in the following section, will be forwarded to the D.C. Analyst.
 - g. The National Taxpayer Advocate will edit, if necessary, and sign the closing letter to the SBA Ombudsman.

13.1.10.8.3
(04-09-2012)

**Closing Letter to the
SBA Ombudsman**

- (1) When all casework is complete, a draft closing letter will be forwarded through secure e-mail to the D.C. Analyst.
- (2) The draft closing letter to the SBA Ombudsman may be prepared by the Case Advocate, a Technical Advisor, or an analyst, for the National Taxpayer Advocate's review and signature. The letter is prepared from an advocate's perspective in a plain, straightforward manner. The draft closing letter must:
 - contain clear language, not IRS jargon, technical language on IRS procedures, or a complex explanation of technical tax law
 - provide a summary of the small business owner's complaint. If the complaint filed with SBA is vague, the Case Advocate should clarify the exact issue, such as lien release, IA, penalty abatement, *etc.*, during the initial contact with the taxpayer.
 - provide a comprehensive, but concise, chronological summary of relevant facts. A good summary will provide exact dates of significant actions, and the correct number and title of IRS Forms, Letters, and Notices.
 - answer each specific question in the SBA Ombudsman's letter. The Ombudsman interacts with more than 35 federal regulatory agencies, and the SBA Ombudsman's letter to TAS is not tailored to the individual business owner, the business owner's complaint, or to the IRS. The answers to these questions will be relevant and brief.

- (3) The draft closing letter may be reviewed by a Technical Advisor, the Taxpayer Advocate Group Manager, or the LTA. The draft may be reviewed by an Area program analyst, if required by the Area Director. The draft needs to be reviewed for accuracy in the presentation of IRS processes and procedures, clarity of content, and issues related to the National Taxpayer Advocate's Annual Report to Congress.
- (4) After review, as described in (3) above, the draft closing letter is forwarded to the D.C. Analyst by secure e-mail.
- (5) The case may be closed after the draft closing letter is forwarded to the D.C. Analyst. However, it is recommended that the case remain open until the closing letter is reviewed by the D.C. LTA and the Attorney Advisors.
- (6) If the case is closed before the closing letter to the SBA Ombudsman is signed by the National Taxpayer Advocate, a final interim response letter to the SBA Ombudsman will state the date that the closing letter was forwarded to the National Taxpayer Advocate.

13.1.10.8.4
(04-09-2012)

Action by D.C. SBREFA Analyst

- (1) The D.C. SBREFA Analyst will review the draft and consult with the Case Advocate or Technical Advisor, as appropriate, to resolve any questions and request copies of additional documentation secured while working the case. The D.C. Analyst should request only critical documents, and should not request items such as an entire exam or TFRP file. The D.C. Analyst will update the case history on TAMIS with appropriate comments as the case is forwarded and reviewed by the D.C. LTA, the National Taxpayer Advocate staff, and the National Taxpayer Advocate.
- (2) The D.C. Analyst will address any issues and approve the draft closing letter. All pertinent documents will be placed in the case file. The draft closing letter will be saved on a computer disk and forwarded, with the case file, to the D.C. LTA.
- (3) After review by the D.C. LTA, the draft closing letter is forwarded to the National Taxpayer Advocate's Attorney Advisors for review. The Attorney Advisors may address questions or comments to the D.C. Analyst, the Case Advocate, or Technical Advisor. Upon approval from the Attorney Advisors, the draft closing letter and case file are forwarded to the National Taxpayer Advocate for review and signature.
- (4) When the closing letter is signed by the National Taxpayer Advocate, the D.C. Analyst dates and faxes the letter to the SBA Ombudsman. The original will be mailed. A copy of the signed and dated closing letter will be sent to the Case Advocate for the file. The Area analyst and the LTA are advised by e-mail that the letter is signed.

13.1.10.8.5
(04-09-2012)

SBREFA Closing, Withdrawal, and Reopening Actions

- (1) A SBREFA case will be closed in the same manner as a TAS Criteria 7 case, as provided in IRM 13.1.21, *TAS Case Closing and Reopen Case Procedures*, subject to the additional items identified earlier. It is recommended that the case remain open until the closing letter to the SBA Ombudsman is reviewed by the Attorney Advisors.
- (2) A SBREFA case may be closed as a withdrawal, as provided in IRM 13.1.21. The withdrawal will be addressed in the draft closing letter to SBA.

- (3) If the taxpayer withdraws the complaint filed with the SBA Ombudsman, the D.C. Analyst will coordinate with SBA to determine if a closing letter is necessary.
- (4) A SBREFA case may be reopened, as provided in IRM 13.1.21, either through correspondence from SBA or direct contact from the taxpayer.

13.1.10.8.6
(04-09-2012)
**Other SBREFA
Information**

- (1) Further guidance on working a SBREFA case can be obtained from the SBREFA Analyst in the D.C. LTA's office.
- (2) Additional information on the SBA ONO can be found on the SBA website at, <http://www.sba.gov/ombudsman/>.
- (3) Other SBREFA information is on the IRS Intranet on the SB/SE website under "CLD, Stakeholder Liaison, BSA/Special Programs, SBREFA."

13.1.10.9
(04-09-2012)
Reserved

- (1)

13.1.10.10
(04-09-2012)
**Cases Processed Under
the Jurisdiction of Chief
Counsel and TE/GE**

- (1) There are times when taxpayers want to request written guidance on issues under the jurisdiction of the Chief Counsel or the Commissioner (Tax Exempt and Government Entities). One of the most requested forms of written guidance is the letter ruling. Letter rulings are issued to taxpayers on prospective transactions and certain completed transactions. The procedures for requesting letter rulings from Associate Offices of Chief Counsel are contained in the first revenue procedure published each year (*e.g.*, Rev. Proc. 2007-1). Similarly, the Office of the Division Commissioner (Tax Exempt and Government Entities) issues letter rulings to taxpayers.
- (2) The procedures for requesting letter rulings on issues under the jurisdiction of the Office of the Division Commissioner (Tax Exempt and Government Entities) are contained in the fourth revenue procedure published each year (*e.g.*, Rev. Proc. 2007-4). Taxpayers must generally pay a fee (known as a "user fee") when requesting a letter ruling. The user fees for requesting letter rulings are set forth in the first revenue procedure published each year, except for the user fees associated with letter rulings that involve Tax Exempt and Government Entities which are published in the eighth revenue procedure published each year (*e.g.*, Rev. Proc. 2007-8).
- (3) If contacted by a taxpayer concerning letter rulings, advise the taxpayer the appropriate user fee must accompany the request for letter rulings.

Reminder: There are procedures for requesting reduced fees or a waiver of fees addressed in the eighth revenue procedure published each year (*e.g.*, Rev. Proc. 2007-8).

- (4) Advise taxpayers that the time needed to process a ruling request is affected by many variable factors, including present inventory of cases, complexity of the issue, whether there is legal precedent for the requested ruling and whether the request was properly submitted in accordance with the applicable revenue procedure.
- (5) Generally, taxpayers who have not received responses within the indicated timeframes may write or call the contact person on the acknowledgment letter.

13.1.10.10.1
(04-09-2012)

**Request for Assistance
in Which Counsel or the
Department of Justice
has Jurisdiction**

- (1) When a taxpayer requests assistance from TAS in a case in which jurisdiction rests with the Office of Chief Counsel, the TAS employee should advise the proper SB/SE, CT or GLS Counsel contact that a request for assistance has been made.
- (2) The types of cases in which the Office of Chief Counsel has jurisdiction include cases that are in the Tax Court and cases involving requests for a letter ruling.
- (3) When it is unclear whether a case is within the jurisdiction of Chief Counsel, an inquiry should be directed to the Division Counsel SB/SE contact. See IRM 13.1.10.2, *Obtaining Legal Advice From Chief Counsel* for more information on this topic.
- (4) When a taxpayer is involved in tax litigation with the Government (whether in the Tax Court, the U.S. Court of Federal Claims, a U.S. Court of Appeals, a U.S. district court, the U.S. Supreme Court, or a federal bankruptcy court), the Government's jurisdiction over the case rests with either the Office of Chief Counsel or the Department of Justice. Once a taxpayer becomes involved in litigation with the Government, TAS employees have no jurisdiction over the issue(s) involved in the litigation.
 - a. If a taxpayer's legal counsel (or other authorized representative), contacts a TAS employee for assistance after litigation has commenced, that employee shall refer the taxpayer's counsel (or other authorized representative) to the Government attorney assigned to the case. If the employee does not know which Government attorney is assigned to the case the employee should contact the CNTA for assistance. A taxpayer's legal counsel should recognize that he or she is obligated to follow Rule 4.2 (Communication with Person Represented by Counsel) of the American Bar Association Model Rules of Professional Responsibility. Under this rule, it would be unethical for the taxpayer's legal counsel to communicate with a TAS employee when the taxpayer's legal counsel knows the Government is represented by either the Office of Chief Counsel or the Department of Justice.
 - b. If a taxpayer, represented or not, contacts a TAS employee for assistance after litigation has commenced, that employee shall refer the taxpayer to the Government attorney assigned to the case. If the employee does not know which Government attorney is assigned to the case, the employee should contact the CNTA for assistance.
 - c. If the taxpayer is not represented, keep in mind that the taxpayer may be eligible for representation from a Low Income Taxpayer Clinic. TAS employees can refer taxpayers to Pub 4134, Low Income Tax Clinic List.
 - d. TAS employees shall not provide any information or guidance to the taxpayer or the taxpayer's counsel (or other authorized representative) concerning the pending litigation. In addition, TAS employees shall not attempt to obtain information about the litigation on behalf of a taxpayer or a taxpayer's counsel (or other authorized representative). TAS employees shall direct all inquiries about the litigation to the appropriate Government attorney and only provide enough information to a taxpayer or a taxpayer's counsel (or other authorized representative) in order for that person to establish contact with the Government attorney.
 - e. Once a TAS employee has referred the taxpayer or taxpayer's counsel (or other authorized representative) to the proper Government attorney, the TAS employee should close any open TAS cases pertaining to the tax year(s) in litigation. See IRM 13.1.21.1.1, *Closing a TAS Case*.

- (5) Infrequently, there may be an instance where TAS may play an advocacy role even though the case is in litigation. If a TAS employee believes that TAS assistance is warranted, the TAS employee should discuss with his or her LTA. If the LTA believes that TAS should be involved despite the pending litigation, the LTA will contact the CNTA. The CNTA, after consultation with the National Taxpayer Advocate, will decide whether to pursue the matter with the Office of Chief Counsel or the Department of Justice, as appropriate.

Note: If an attorney has not been assigned to a bankruptcy case, and an action is required to resolve an account-related issue, refer to the SB/SE Service Level Agreement Addendum for Examination, Collection, and Specialty Programs to identify the correct location to direct an OAR.

13.1.10.10.2
(04-09-2012)
**Processing Times for
Letter Rulings**

- (1) The Associate Chief Counsels of the various Counsel functions are responsible for issuing the following letter rulings:
- Form 1128 — *Application to Adopt, Change or Retain a Tax Year* - Cases are generally completed in 60 to 90 days.
 - Form 3115 — *Application for Change in Accounting Method* - There are a large volume of these requests and processing time varies based on receipts, staffing, and case complexity. The average processing time for a case with little complexity is 9 to 12 months.
 - The office receiving either request above should contact the taxpayer within **21** days. A taxpayer inquiring about the status of the request may call or write to the contact person shown on the acknowledgment letter.
- (2) All Other Letter Ruling Requests
- **Twenty-one day cases** — Most letter ruling requests require the Chief Counsel branch receiving the request to contact the taxpayer within 21 days of receipt in the branch. If the ruling request is one requiring a call within 21 days and no call or other contact has been received, the taxpayer may call or write to the contact person listed on the acknowledgment letter.

13.1.10.10.3
(04-09-2012)
**Tax Exempt and
Government Entities
Division (TE/GE) Ruling
Requests**

- (1) The Commissioner, Tax Exempt and Government Entities Division, is responsible for the processing of the following forms:
- **Form 5308 — Ruling Request for Change in Plan/Trust Year;**
 - **Form 1128 — Application to Adopt, Change or Retain a Tax Year;**
 - **Form 3115 — Application for Change in Accounting Method; and**
 - **Form 1023 or Form 1024 — Application for Recognition of Exemption** —These forms are sent directly to the Cincinnati Office by the organization. Allow 120 calendar days for subsequent contact (not necessarily completion). Taxpayers can call 1-877-829-5500 to check on the status of the determination to be an exempt organization.
- (2) **Opinion and Advisory Letter Requests** — Employee Plans is responsible for issuing opinion and advisory letters to sponsors of Master and Prototype (M&P) Plans and practitioners for Volume Submitter plans. Generally, opinion letters are issued within two years. However, case processing may take longer following the passage of major pension legislation.

- (3) **All Other Exempt Organizations or Employee Plans Ruling Requests** - All other ruling Requests are generally completed in six to twelve months. Ruling requests are assigned to technical personnel within a short time after receipt in the appropriate office.

Note: A taxpayer who has a compelling need to have a request processed ahead of the regular order may request expedited handling. See IRC §9303(3) or Rev. Proc. 2008-4 (or its annual update) for information on how to expedite a request.

- (4) **General Information Cases** — Requests for general information about employee plans or exempt organizations generally are answered within 60 days from the date of receipt in TE/GE.

13.1.10.11
(04-09-2012)
**U.S. Possession(s)
including Requests for
Certificate of Filing**

- (1) Cases involving a certification of filing, U.S. possession or territory issue is a direct transfer to the International TAS office (DO66).
- (2) In general, TAS's authorities parallel those of accounts management employees. Account management employees (and therefore TAS employees) can take certain actions on international cases (*e.g.*, address changes) as those actions are governed by IRM 21.1 thru 21.7. The authority to adjust international issues, however, is governed by IRM 21.8, *International*, which is not within TAS's authority. See IRM 13.1.4.2.3.22 for a list of international issues where an OAR is necessary.

13.1.10.12
(04-09-2012)
**Automated Levy
Program Procedures on
Taxpayer Advocate
Cases**

- (1) IRC § 6331(h) authorizes the IRS to issue systemic continuous levies against certain federal payments. These cases require special processing. This section provides information on the Automated Levy Program (ALP). Automated levies are divided into three categories:
- a. Federal Payment Levy Program (FPLP);
 - b. State Income Tax Levy Program (SITLP); and
 - c. Other ALPs - such as Alaska Permanent Fund Dividend Levy Program (AKPFD), lottery payments, and vendor payments.
- (2) Correspondence and notices for these programs contain ACS telephone numbers. Refer to IRM 5.19.9.1, Automated Levy Program Overview, for more information

13.1.10.12.1
(04-09-2012)
**Federal Payment Levy
Program (FPLP)**

- (1) IRC § 6331(h) authorizes the IRS to issue continuous levies against certain federal payments. The law allows up to 15% of specified federal payments to be levied. If, however, the federal payment is due to a vendor of goods or services sold or leased to the Federal Government, the law allows up to 100% of the federal payment to be levied.
- (2) The Department of the Treasury, Financial Management Service (FMS) is the disbursing agent for many of the federal payments that can be levied.
- (3) FPLP is a paperless, automated levy program the IRS has implemented with FMS that will levy 15% or 100% of certain federal payments made by FMS. Refer to IRM 5.19.9.3.1, What is FPLP?

13.1.10.12.1.1
(04-09-2012)

**Federal Payments
Subject to Levy**

- (1) An interagency agreement between the IRS and FMS includes 15% Federal Payment Levy issuance on the following:
 - a. Federal retirement income disbursed for the Office of Personnel Management;
 - b. Federal (nonmilitary) contractor/vendor payments;
 - c. Miscellaneous vendor payments (Federal program-related expenditures). Examples of miscellaneous payments can be found in IRM 5.19.9.3.1 (7)(i), *What Is FPLP?*;
 - d. Federal employee travel voucher advances and reimbursements;
 - e. Federal employee salaries disbursed through the U.S. Department of Agriculture National Finance Center, the U.S. Department of Interior National Business Center, U.S. Postal Service, General Services Administration (GSA), and Defense Finance and Accounting Service (DFAS); and
 - f. Social Security Administration (SSA) benefits under Title II (Federal Old Age, Survivors and Disability Insurance (OASDI) benefits.

Note: Need-based Supplemental Security Incomes (SSI) payments and payments with partial withholding to repay a debt owed to SSA are NOT subject to the FPLP.

- (2) An interagency agreement effective April 15, 2005, between the IRS and FMS includes 100% Federal Payment Levy issuance on vendor payments for goods and services for Department of Defense (DOD) Contractors paid through the Defense Finance and Accounting Service (DFAS).
- (3) For jointly filed returns, the levy attaches to the Federal payments identified for both spouses.
- (4) If a taxpayer is receiving two or more types of federal payments that are available for levy through the FPLP, then each payment may be levied for the same percentage in accordance with the type of payment.

Example: A taxpayer is receiving both Social Security benefits and a federal retirement benefit. The FPLP may levy up to 15 % of each payment.

13.1.10.12.1.2
(04-09-2012)

Identifying FPLP Cases

- (1) All modules must be researched to determine if the levy was issued through the FPLP process or through standard paper levy procedures. Refer to IRM 5.19.9.3.5.1, *FPLP Levy vs Paper Levy*. If the levy was issued through standard (non-FPLP) levy procedures, an OAR to the appropriate Operating Division to release the levy is required. Refer to IRM 13.1.19, *Taxpayer Advocate Case Processing*, *TAS Operations Assistance Request (OAR) Process*.
- (2) Modules subject to levy are identified by Transaction Code (TC) 971 Action Codes (AC) 060, 062, 069, and other FPLP indicators.
- (3) Status codes 22, 23, 24, 26 and 53 with closing codes 03, 06, 09, 10, 12, 13 and 39 are subject to levy. Refer to IRM 5.19.9.3.2, *FPLP Selection Criteria*.
- (4) Modules will remain in their original Master File status codes if they are selected for the FPLP. Master File (I/BMFOL) entity will display the indicator FMS LEVY>1 or FMS-CD>1, if at least one module has been selected in the FPLP. Refer to IRM 5.19.9.3.3, *FPLP Systemic Processes and Indicators*, for additional information.

13.1.10.12.1.3
(04-09-2012)
**Notice of Levy and
Appeal involving FPLP**

- (1) Prior to issuance of a levy, the FPLP issues a final notice, *Notice of Intent to Levy* and *Notice of Your Right to a Hearing* (CP 90 for IMF accounts and CP 297 for BMF accounts), if it was not previously issued. This notice provides taxpayers with the opportunity to request a Collection Due Process (CDP) hearing before an independent appeals officer and raise collection alternatives in another BOD/function. Refer to *IRM 5.19.9.3.4, FPLP Generated Notice and Appeal Rights*. A CP 90 or CP 297 will not be issued if any CDP notice (e.g., LT11, Letter 1058C, CP 92, CP 77) was previously issued for this tax period with respect to this type of tax. A TC 971 AC 069 identifies the issuance of a CDP notice.
- (2) If Social Security benefits are identified, a Final Notice Before Levy on Social Security Benefits (CP 91 for IMF or CP 298 for BMF) will also be issued prior to the levy, but after the issuance of any CDP notice.
- (3) These notices will have the ACS contact phone numbers for taxpayers to call to resolve their balance or exercise their appeal rights. Taxpayers may exercise their appeal rights through:
 - Collection Appeals Program (CAP);
 - Collection Due Process Hearing; or
 - Equivalent Hearing (Hearing request made after the 30 day time period for requesting a CDP hearing expired).
- (4) If a taxpayer requests appeal of the levy, explain to the taxpayer the collection appeal rights. Refer to *IRM 5.19.8, Collection Appeal Rights*. Other than cases in assigned collection status or with an open control base, input a TC 971 AC 061 to block the module from being selected for FPLP. Document the reason for the block and input a History on CC ENMOD. Refer to the information below for unblocking modules.
- (5) If the case is in Status 26, contact the assigned Revenue Officer to advise him/her of the CAP and of TAS involvement. If the case is in STATUS 22, contact ACS and advise of taxpayer's CAP request and TAS involvement.

Note: IMPORTANT: New programming requirements changed the way the FPLP block TC 971 AC 061 functions on modules. New Recovery, Expiration, Manual/Systemic Criteria were implemented. Refer to *IRM 5.19.9.3.2.3, Modules Systemically Blocked from FPLP*.

- (6) Try to resolve the tax module through alternative collection means (e.g., installment agreement (full pay or partial pay), currently not collectible, offer-in-compromise).

13.1.10.12.1.4
(04-09-2012)
**IRC § 6343 Economic
Hardship Cases - FPLP
Issue**

- (1) Taxpayers who are suffering an economic hardship as the result of the Federal Payment Levy Program (FPLP) require immediate release of the levy and action to block future levies from occurring.
- (2) *IRM 5.19.9.3.7, FPLP Levy Release: General Information*, provides that if a FPLP is creating an economic hardship (within the meaning of IRC § 6343(a)(1)(D)) (Form 911 or hardship CNC) the FPLP levy is released. Refer to *IRM 13.1.10.12.1.5, Releasing Federal Payment Levies*, for procedures on immediate release of a levy.

- a. After conducting FPLP research and prior to any release, TAS should validate the economic hardship including analyzing the taxpayer's ability to pay to determine if the levy should be released. Refer to IRM 5.19.9.3, *Federal Payment Levy Program*.

13.1.10.12.1.5
(04-09-2012)
**Releasing Federal
Payment Levies**

- (1) Pursuant to Delegation Order 13-2 (Rev,1) (Formerly Delegation Order 267), TAS employees are authorized to release levies in systemically generated cases in certain circumstances under provisions described in IRM 5.11.7.2.6, *Blocking or Releasing FPLP Levy*. Refer to IRM 13.1.4, *TAS Authorities*.

Note: TAS has the authority to release the levy, except if the case is open in another IRS function. If the tax module is assigned in Status 26 or 22, an OAR to the Operating Division is necessary, as the case is considered open in another IRS function.

Note: TAS's authorities are routine and nonsubstantive and do not permit TAS employees to overrule substantive determinations made by the IRS. In the context of the FPLP, no IRS employee has reviewed the taxpayer's specific facts and circumstances prior to issuing the levy. Thus, when TAS employees release an FPLP levy, TAS employees are not overruling a substantive determination made by the IRS.

Note: Effective October 1, 2007, accounts in status 23, 24 or 53 are no longer considered as open in another IRS function.

- (2) The following are circumstances when a FPLP can be released:

- a. The FPLP is creating an economic hardship within the meaning of IRC § 6343(a)(1)(D) and Treas. Reg. 301.6343-1(6)(4).
- b. The CP 90/297 (or equivalent) was sent, but not to the taxpayer's last known address that was available to us when we requested the letter.
- c. The release facilitates the collection of the liability. The IRS, not the taxpayer, makes the determination that a release facilitates collection.
- d. The taxpayer has entered into an installment agreement.
- e. The taxpayer makes an Offer in Compromise.
- f. The taxpayer indicates that bankruptcy has been filed.
- g. Wrongful levy or erroneous levy conditions apply.
- h. The statutory collection period expired.
- i. A levy was issued prior to the expiration of the taxpayer's 30 day notice period in a non-jeopardy situation.
- j. The liability no longer owed (or a pending adjustment will fully satisfy the liability).
- k. The entity is a limited liability company (LLC) that has one owner and is a disregarded entity (*i.e.*, it is not taxed as a corporation). Verify how the entity is being treated for tax purposes.

- (3) The FPLP must be released electronically. It is the Case Advocate's responsibility to input and monitor the TC 971 AC 061 block/release or any other necessary FPLP exclusion as discussed in IRM 5.19.9.3, *Federal Payment Levy Program*.

Exception: If the case is in Status 22 or 26 it is considered open in another function and the action to input the TC 971 061 codes must be done by the OD/Function via an OAR.

Reminder: FMS has different cut-off dates and depending on the type of federal payments, the TC must be posted in accordance with FMS processing cut-off dates, as referenced in IRM 5.19.9.3.7, *FPLP Levy Release: General*.

Caution: Although the block normally remains on the account for 52 cycles (weeks), certain conditions may expedite release of the FPLP block.

- (4) FPLP levies are released by posting a transaction code (TC) that would exclude the taxpayer from the FPLP. See IRM 5.19.9.3.2.2, *FPLP Exclusion Criteria*. Posting a FPLP exclusion will generate a TC 972 AC 060, releasing the levy.
- (5) If the taxpayer states the levy is not appropriate and the exclusion is not yet warranted (the CA may need more time to determine if the taxpayer qualifies under the exclusion criteria), block the module by inputting an automated levy block. Input a TC 971 AC 061, on each appropriate module. Posting the TC 971 AC 061 will generate a TC 972 AC 060 reversing the existing TC 971 AC 060. This will systematically block the balance due module from going into the FPLP. Refer to IRM 5.19.9.3.7, *FPLP Levy Release: General* for when to block and release a levy and necessary TC input timeframes.

Caution: Although the block normally remains on the account for 52 cycles (weeks), certain conditions may expedite release of the FPLP block

Exception: If the case is in Status 22 or 26 it is considered open in another function and the action to input the blocking or releasing codes (TC 971/972 AC 60/61) must be done by the OD/Function via an OAR.

- (6) In addition to inputting the appropriate TC to release the levy, a FPLP Coordinator assigned in each SB/SE Compliance Area office can input an immediate release directly with FMS, if an immediate release of levy is necessary and the TC will not be posted in time to stop the levy.

Caution: An immediate release is not necessary if the transaction code is posted prior to the "cut-off date," as referenced in the table listed in IRM 5.19.9.3.2.3, *Modules Systemically Blocked from FPLP* or IRM 5.19.9.3.7, *FPLP Levy Release*.

- (7) Prepare Form 668-D, *Release of Levy*, in accordance with IRM 5.19.9.3.7.1, *Immediate Release Through the FPLP Liaison*, and send it to the FPLP Coordinator. **DO NOT MAIL THE FORM 668-D TO FMS OR THE FEDERAL AGENCY.** Only if requested, mail the taxpayer a letter explaining that the levy has been released. Document the reason for the release and input History on CC ENMOD.

Note: It may take two weeks for a FPLP to be stopped. This means a levied payment may still be en route to the IRS even though the FPLP was released.

Note: Taxpayers subject to a FPLP on their Social Security benefits may incur economic hardship as a result of the FPLP. See IRM 13.1.10.12.4, for information about the return of levied property.

13.1.10.12.2
(04-09-2012)
**State Income Tax Levy
Program (SITLP)**

- (1) The State Income Tax Levy Program (SITLP) is an automated levy program among the IRS and participating States with income tax requirements. This agreement permits state income tax refunds to be applied to federal tax liabilities. The federal tax debt is matched against state income tax refunds and is sent to the IRS to satisfy the debt. Procedures for the SITLP program are found in IRM 5.19.9.2, *State Income Tax Levy (SITLP) General*.
 - a. Each module included in the SITLP will have a TC 971 AC 600.
 - b. Payments received as a result of the SITLP are posted with a TC 670 designated payment code (DPC) of 20 (systemically applied) or 21 (manually applied) to the earliest module. If the amount overpays the earliest module, it will systemically offset (TC 826/706) to the next SITLP module(s) whose balance was included in the levy or to other balance due tax periods as appropriate.
 - c. SITLP notices are “post levy” notices. A post levy notice, CP 92, *Notice of Levy on Your State Tax Refund Notice of Your Right to a Hearing*, will be issued to the taxpayer when the combination of a TC 971 AC 600 and a TC 670 DPC 20, TC 670 DPC 21 or TC 706 posts to a tax module. This combination will systemically generate the CP 92 Notice. A TC 971 AC 069 will systemically post on each module when a CP 92 is generated.
 - d. The taxpayer will receive a letter from the state advising of the levy and how to contact the IRS.
- (2) Taxpayers may contact Compliance Services Collection Operations (CSCO), Accounts Management (AM), a Taxpayer Assistance Center (TAC), or TAS. If the taxpayer contacts TAS, explain that the state income tax refund was levied to satisfy a federal debt. Explain the assessment, discuss the payment of any remaining balance, and collection options, as appropriate. Refer to IRM 5.19.9.2.6, *Taxpayer Contacts on SITLP Notices*.
- (3) If the taxpayer wants to appeal the levy action, see IRM 5.19.8, *Collection Appeal Rights*, and explain to the taxpayer his or her appeal rights including a Request for a Collection Due Process (CDP) Hearing and Collection Appeal Rights.
- (4) If the account can be resolved prior to the CDP or Equivalent Hearing Request, input a TC 971 AC 061 which will stop future levy action, pending the outcome of the appeal. After the appeal is resolved or there is a withdrawal, a TC 972 AC 061 will be input. Refer to IRM 5.19.8, *Collection Appeal Rights*.
- (5) If the taxpayer claims a wrongful levy, such as when only one taxpayer is liable for the tax delinquency, refer to IRM 5.19.9.2.7.1, *SITLP Wrongful Levies*, and refer to IRM 5.19.9.2.7.2, *SITLP Wrongful Levy Documentation*.

Caution: Do Not confuse “wrongful levy” with “erroneous levy” (See IRM 3.17.79.3, *Processing Requests for Refund*).
- (6) If the taxpayer claims the amount should not have been levied, refer to IRM 5.19.9.2.1, *SITLP Selection Criteria*, to determine if the income should be excluded from the levy. If it is determined the income should have been excluded, TAS employees should forward an Operations Assistance Request (OAR), and include Form 5792, Request for IDRS Generated Refund, SITLP correspondence, and proper documentation to the appropriate ACS Support Liaison to resolve these claims.

Note: DO NOT contact SITLP Coordinators to resolve SITLP Wrongful Levy Claims. For SITLP Coordinator duties and responsibilities, refer to IRM 5.19.9.2.3, *SITLP Coordinator*.

13.1.10.12.3
(04-09-2012)

Alaska Permanent Fund Dividend Levy Program (AKPFD)

- (1) The Permanent Fund Dividend (PFD) is an annual dividend (payment) received by eligible Alaskan residents. The AKPFD is an automated levy program between the IRS and the State of Alaska. The IRS database of delinquent taxpayers is matched with the State of Alaska's database of PFD applicants. For BMF accounts, only sole-proprietorships and partnerships are included in AKPFD. The return address for BMF notices is for ACS Support in Cincinnati.
- (2) A TC 971 AC 601 is input on each tax period subject to the AKPFD levy. Two types of notices are issued to taxpayers; a CP 77 Collection Due Process notice, and a CP 78 Reminder Notice. After issuance of these notices, taxpayers generally have 45 days or more to resolve the tax account, prior to the IRS initiating levy action. Both the CP 77 and CP 78 provide an ACS toll-free telephone number for taxpayers to contact for assistance.
- (3) If a taxpayer wants to appeal the levy action, see IRM 5.19.8, *Collection Appeal Rights*.
- (4) If the taxpayer is interested in working out arrangements to resolve the account and a decision is reached to remove the tax account from levy action, follow procedures in IRM 5.19.9.4.6, *AKPFD Inquiries*.
- (5) If it is determined the payment should be excluded from levy action, refer to IRM 5.19.9.4.3.1, *AKPFD Exclusion Criteria*. If the levy is erroneous/wrongful or should be released due to economic hardship take the following actions:
 - a. Complete Form 13641, Permanent Fund Dividend No Levy/Levy Release Form. Refer to IRM 5.19.9.4.6.1, *No Levy/Levy Release Procedures*, and *AKPFD Cutoff Dates* link on SERP; and
 - b. Fax or E-mail Form 13641 with an OAR directly to the W&I Compliance AKPFD Analyst. The SERP link mentioned above contains the AKPFD Analyst information and the current year timeframes/deadlines related to AKPFD.
- (6) Contact with the Operating Division is necessary to ensure any necessary collection suspension actions are taken and to inform Compliance of TAS actions.

13.1.10.12.4
(04-09-2012)

Return of Levied Property

- (1) TAS does not have the authority to independently make the decision to return levied property.
- (2) Certain situations may warrant return of levied property to taxpayers. Refer to IRC § 6343(b) and (d), IRM 5.19.4.4.10, *Levy Release: General Information*, IRM 5.19.4.4.11, *Levy Release: Returning Levied Property* and IRM 5.19.4.4.12, *Wrongful Levies*. Property may be returned if the:
 - a. Levy was premature;
 - b. Administrative procedures were not followed;
 - c. Taxpayer has entered into an installment agreement for the liability included in the levy;
 - d. Returning of the property facilitates the collection of the liability; or

- e. Return of the property would be in the best interest of the taxpayer (as determined by the National Taxpayer Advocate) and the United States Government.

Note: Return of levied property may be appropriate where the taxpayer has foregone basic or necessary living expenses, such as medicine, or will not be able to pay future basic or necessary living expenses, as a result of the levy. TAS employees may encounter these situations frequently in the FPL context.

Note: If the release of the levy relieved an economic hardship, it is not appropriate to return the property that was levied prior to the hardship determination.

- (3) An OAR to the appropriate Operating Division Liaison is necessary to request the return of any levied property. Refer to IRM 13.1.19, *Taxpayer Advocate Case Processing, TAS Operations Assistance Request (OAR) Process* and to IRM 13.1.4, *TAS Authorities*.

- (4) A return of levied property is not considered a manual refund. TAS does not have the authority to return levied property.

Note: IRC § 6343(d) provides the National Taxpayer Advocate only with the authority to determine that it is in the taxpayer's best interest that the levied property be returned. TAS must still request that the Operating Division return levied property and may have to advocate that it is also in the IRS's best interest to return the property.

13.1.10.12.5
(04-09-2012)
Resolving Levy Cases

- (1) Follow the guidelines in IRM 5.19, *Liability Collection*, in determining how to assist the taxpayers in resolving their outstanding liabilities.
- (2) After addressing the cause of the levy, the taxpayer's balance due, and any other underlying or related issues, follow closing procedures in IRM 13.1.21, *Taxpayer Advocate Case Procedures, TAS Case Closing and Reopen Case Procedures*, for all additional actions necessary prior to closing.

13.1.10.13
(04-09-2012)
Relief for an Inadvertent Termination of an S-Corporation or Relief for a Late S-Corporation Application

- (1) IRC Sections IRC 1362(a) and IRC 1362(b) provide that a small business corporation may elect to be an S-Corporation by timely filing an election. IRC § 1362(b)(5) allows the Secretary to treat a late S-Corporation election or no S-Corporation election as timely filed if the taxpayer shows reasonable cause for the failure to timely make such election.
- (2) IRC 1362(f) provides the circumstances under which the Secretary will treat an S-Corporation election as still valid even when the taxpayer makes an inadvertent invalid election or terminates the election.
- (3) For procedures regarding an inadvertent termination of an S Corporation or relief for a late S Corporation application refer to IRM 3.13.2.22.15, *Inadvertent Terminations, Late and Invalid Elections*.

13.1.10.14
(04-09-2012)
Innocent Spouse Inquiries/Relief from Joint and Several Liability

- (1) **TAS does not have the authority to determine if relief should be granted on innocent spouse claims.** Therefore, TAS's role is to help facilitate the process for the taxpayers, not to circumvent established and required procedures. This includes encouraging taxpayers to avail themselves of all opportunities to resolve the issue (*i.e.*, contacting the group manager or requesting an Appeals conference).

- Case Advocates (CAs) should use and update TAMIS to track any contacts with innocent spouse claimants who have open TAS cases. Complete histories can provide background information that could aid the examiner in making decisions, especially in those claims that are filed through TAS.
 - CAs can facilitate matters by explaining the process to taxpayers and by providing guidance to them as they gather information needed for the examiner to make a determination.
- (2) See IRM 25.15.11, *Taxpayer Advocate Service Contacts and Processing of Innocent Spouse Cases* for additional procedures and information regarding TAS Innocent Spouse cases.
 - (3) Innocent Spouse (IS) inquiries may originate as either:
 - a. An original *Form 8857, Request for Innocent Spouse Relief*, or a similar statement containing the same information signed under penalties of perjury; or
 - b. Correspondence or a phone call requesting the status of an IS claim already in process. See IRM 25.15.1.6, *Request for Innocent Spouse Relief, Form 8857*.
 - (4) Inquiries meeting TAS criteria are transferred to the local TAS office in the location where the electing spouse (claimant) lives, regardless of any open controls (e.g., ACS, CSC, etc.).
 - (5) Before suggesting that the taxpayer submit a Form 8857, CAs need to elicit enough information from the taxpayer to ensure that filing for innocent spouse is the appropriate avenue of relief to pursue. Depending on the facts and circumstances of the individual taxpayer, there may be other more appropriate options for resolving the case which include payment in full, installment agreements (full pay or partial pay), Offer in Compromise, filing a claim for refund, audit reconsideration, Appeals conference, or filing of a suit or petition in court.
 - (6) CAs should ensure the taxpayer meets the minimum basic requirements for filing an innocent spouse claim. Minimum basic requirements include:
 - A valid joint return was filed for the year relief is requested;

Note: This requirement does not apply to IRC 66(c) cases. See IRM 25.15.5, *Relief from Community Property Law/Community Property States* for additional information.

- The Collection Statute Expiration Date (CSED) has not expired. (A claimant should be informed of the implications of filing a claim if the CSED is imminent, e.g., that the claim could extend an uncollectible CSED unnecessarily).
- The claim is for innocent spouse relief and not injured spouse relief;

Note: If the claim filed is alleging a forged signature, this is not innocent spouse criteria. Refer to IRM 21.6.1.4.7, *Claims of Joint to Single or Head of Household Where Joint Election is Invalid*.

- The taxpayer does not have a Closing Agreement (with certain exceptions for TEFRA) or an accepted Offer in Compromise for the same year(s);
- The United States Tax Court or other Court has not issued a final decision regarding the year requested after July 22, 1998; and

- Generally, only one determination will be made for each year. See IRM 25.15.1.4, *RAA98* for the exceptions.

- (7) CAs should inform taxpayers of the legal requirement for IRS to notify and offer an opportunity for participation to the non-requesting spouse (NRS). CAs should also inform taxpayers of procedures for claimants who are concerned about potential abuse or physical retaliation by the NRS.

Note: If the taxpayer is a victim of domestic violence or if the taxpayer fears any domestic violence in retaliation for filing a claim, be sure the taxpayer checks the box in Part III, line 10 of the Form 8857. Case Advocates (CAs) should be sensitive in dealing with taxpayers in these situations. For additional information refer to IRM 25.15, *Relief from Joint and Several Liability*, and IRM 25.15.3.3.1, *Notification to NRS in Cases of Alleged Abuse*.

- (8) CAs should inform taxpayers to file Form 8857, *Request for Innocent Spouse Relief*, directly with the Cincinnati Centralized Innocent Spouse Operations Unit, at the address on the Form 8857. If a Form 8857 is submitted directly to or secured by TAS, the CA will:
- a. Ensure the claim is processable;
 - b. Use the Operations Assistance Request (OAR) process to forward the claim with all necessary documentation and administrative file(s); and
 - c. Fax the OAR with the pertinent information or scan the information into an e-mail, and then send the original documents via overnight mail for expeditious treatment, if the taxpayer is suffering or about to suffer an economic burden.
- (9) If the IS claim is already in process, the CA will:
- a. Research TC 971 codes. The codes will assist in determining the claim status and location.
 - b. Research the Innocent Spouse Tracking System (ISTS) to determine the location of the open IS case. An ISTS reference guide is available at http://win.web.irs.gov/innocentspouse/isdocs/ISTS_REFERENCE_GUIDE.doc.
 - c. Monitor the case and provide status updates to the taxpayer until closing, when the Innocent Spouse case is being worked timely in accordance with the ISTS stages; or.

Note: Timely is based on processing timeframes for each stage. Refer to the ISTS Processing timeframes for Innocent Spouse Claims Exhibit 13.1.10-1, *ISTS Processing Timeframes for Innocent Spouse Claims*.

- d. Use OAR procedures to forward the case to the OD/Function Liaison, if the case is **not** being worked timely in accordance with the ISTS stages. Request expedite processing when the taxpayer is suffering or about to suffer economic harm.

Note: See the W&I SLA and IRM 13.1.19, *TAS OAR Process*, for other circumstances that might warrant expedite processing.

- (10) The CA will keep the case open and monitor it until the determination is made and all adjustments have posted to the account(s). See closing actions for Innocent Spouse cases in IRM 13.1.21.1.3.14, *Innocent Spouse Cases*.

13.1.10.15
(04-09-2012)

**Suspending Collection
Action**

- (1) While there is no legal requirement that the IRS suspend collection activity while a TAS case is open, it is the IRS's policy to suspend certain collection actions (e.g., lien filings, levies, and seizures) while the TAS case is open. Once a case is closed, it may be necessary to remove the suspension on collection.
- (2) Input Command Code (CC) STAUP on IDRS to suspend all relevant balance due modules. Periodic updates may be needed to extend the CC STAUP period.
- (3) It may be necessary to suspend a lien filing or levy action by using CC's REQ77/FRM77 to input a Transaction Code (TC) 470 with closing code (cc) 90.
- (4) Generally, an OAR is not required to Operations to request suspension of lien filing or levy action on TAS cases outside of TAS authority, *i.e.*, cases with an open IRS control base. These cases need to be closely monitored and collection holds requested from the Operating Division/Function controlling the case. The holds may be extended if necessary. The TAMIS Case Action Screen can be used to set follow-up dates as reminders to request extensions of collection holds.
- (5) Contact with Automated Collection System (ACS) is required to request suspension of collection action on ACS (Status 22) cases. Requests to ACS can be made via fax, or secure messaging, and should include the request to note TAS involvement and actions on ACS history. Clearly document the TAMIS history that the request was made, the method of the request (phone, fax or secure messaging) and the number of days of the hold.

Note: It is important to create an audit trail of actions taken on an account when TAMIS doesn't automatically generate one. This is accomplished by clearly documenting TAMIS when an ACS hold is requested.

Note: Release any suspensions, if appropriate, as part of the closing actions. Contact the assigned Compliance employee after the actions are completed and prior to closing the case.

- (6) Some Revenue Officers (ROs) may only come into an IRS office once a week to update their ICS laptop PCs. Because of this, direct telephone or E-mail contact to the RO or the RO's group manager should be made to request suspension of lien filing or levy action and to notify the RO about the TAS case. Enter the name and phone number of the RO the case is assigned to in the Initial Action Screens 1 of TAMIS. Request a copy of the ICS history, if a copy of the Revenue Officer case actions is needed for the file. .

Reminder: This is another situation when it is important to create an audit trail of actions taken on an account because TAMIS doesn't automatically generate one when contact with an RO is made.

- (7) The RO, the RO's group manager, or the Operating Division may inform the CA that lien filing or levy action is required on an open TAS case to protect the government's interest. The Operating Division must consult with TAS before taking such action. If it will take more than 3 workdays to suspend lien filing or levy action, the Operating Division will be asked to contact TAS so agreement can be reached on a final target date.

- (8) If the RO, Operating Division or Functional Unit refuses to suspend lien filing or levy action, discuss with the Manager whether the issuance of a TAO is appropriate. Refer to IRM 13.1.20, *Taxpayer Assistance Order (TAO) Process*.

13.1.10.16
(04-09-2012)
**Suspension of the
Statutes of Limitations
under IRC § 7811(d)**

- (1) Although IRC § 7811(d) requires the suspension of the applicable statutes of limitations on Application for Taxpayer Assistance Orders signed by the taxpayer or his or her duly authorized representative when the request for relief involves an action described in IRC § 7811(b), the suspension is not being consistently and correctly applied due to existing deficiencies in the computer databases that support the actions which must be taken. The November 10, 2003 Commissioner's Memorandum, Taxpayer Advocate Service Statute Suspension Provisions under IRC § 7811(d), makes clear that until these computer deficiencies are corrected, Case Advocates will not take action to suspend the statute of limitations.

13.1.10.17
(04-09-2012)
**Ex Parte
Communications
Between Appeals and
TAS**

- (1) Rev. Proc. 2000-43, 2000-2 C.B. 404, Citation provides guidance concerning prohibited ex parte communications.
- (2) Ex parte communications are communications between Appeals and another IRS function without the participation or consent of the taxpayer or the taxpayer's representative. Ex parte communications between any Appeals employee and employees of other IRS offices are prohibited to the extent that such communications appear to compromise the independence of Appeals. Ex Parte communication is permissible only when the communication involves procedural, administrative or ministerial matters. Examples of these types of discussions include:
- Questions about whether certain information was requested or received;
 - Questions about whether a document referred to in the work papers that the Appeals Officer cannot locate in the file is available;
 - Questions to clarify the content of illegible documents or writings;
 - Questions about case controls on the IRS's management information systems; and
 - Questions relating to tax calculations that are solely mathematical in nature.
- (3) Rev. Proc. 2000-43, Q&A - 18 addresses communications between Appeals employees and TAS. It states that communications initiated by TAS are not subject to the prohibition because the Appeals Officer may assume TAS is acting at the request of and with the consent of the taxpayer. This guidance applies in situations where TAS is acting on behalf of a taxpayer to help move a case to or through Appeals.

Example: A taxpayer requests assistance from TAS due to delays in processing his request to appeal a proposed collection action. Because communications between TAS and Appeals are conducted on behalf of the taxpayer and at the taxpayer's request, these communications are permissible.

- (4) TAS cannot engage in ex parte communications with Appeals when TAS has made a determination that is or may become the subject of an appeal.

Example: The taxpayer requested a streamlined installment agreement. The TAS employee reviews the request and determines the taxpayer is not eligible for an installment agreement because the taxpayer did not file income tax return for two of the last three years. The TAS employee sends TAS Letter 2272 to the taxpayer to notify the taxpayer of the

denial and provide the taxpayer with appeal rights. Because the TAS employee determined that the taxpayer is not eligible for an installment agreement, any ex parte discussion between Appeals and that TAS employee related to the taxpayer's request for an installment agreement would be prohibited under the ex parte communication rules.

13.1.10.18
(04-09-2012)

**Private Debt Collection
(PDC) Case Procedures**

- (1) In March of 2009, the PDC program was discontinued by the IRS. All accounts assigned to the Private Collection Agencies (PCAs) were recalled and re-assigned to internal collection functions. The dedicated mailbox used in the PDC program was taken offline effective August 31, 2009.
- (2) In the event TAS receives a case previously assigned to the PDC, and the CA needs additional information, see the PDC website at: http://tasnew.web.irs.gov/Files/Communications/SpecialProjects/TAS_PDC_contactaid.pdf.

13.1.10.19
(04-09-2012)

**USDA Black Farmers
Settlement Claim
(Pigford) Case
Procedures**

- (1) These cases arose as a result of a nationwide class action suit in which the plaintiffs, many of whom were African-American farmers, alleged race-based discrimination on the part of the United States Department of Agriculture (USDA). The plaintiffs prevailed, and many were awarded \$50,000. The USDA also made a \$12,500 tax payment on behalf of each plaintiff, which was sent directly to the IRS. The tax problems of these claimants are rooted in the tax consequences of the \$50,000 cash award and the \$12,500 estimated tax payment made on their behalf, and how these items were reported to the IRS.

13.1.10.19.1
(04-09-2012)

**Potential Tax Issues of
Pigford Claimants**

- (1) Pigford taxpayers face a variety of tax issues. Below is a list of some of the issues that may be arise in a Pigford case:
 - Tax consequences of the \$50,000 case payment;
 - A \$12,500 estimated tax payment directly deposited into the taxpayer's IRS account is noted on IDRS;
 - In some cases payment of the \$50,000 award and the \$12,500 estimated tax payment occurred in different years;
 - Debt forgiveness and statutory exclusions for cancellation of debt income;
 - Penalties for late payments;
 - Estate tax issues;
 - The farming status of the taxpayer in the year of receipt of the cash award;
 - Self-employment tax;
 - Delayed receipt of Form 1099-MISC and potentially incorrect tax years reported on the Forms 1099-MISC for tax payments;
 - Misunderstanding of the tax consequences of the \$50,000 cash award and failure to report various award items, such as debt forgiveness, in income by the taxpayer;
 - Tax payments incorrectly reported as withholding;
 - Misapplication of tax payments by the IRS to taxpayers' accounts;
 - Expired Refund Statute Expiration Date (RSED); or
 - Substantive tax law issues specific to farmers such as income averaging, exceptions to the discharge of indebtedness rules, special net operating loss (NOL) periods, etc.

13.1.10.19.2
(04-09-2012)
**Working the Pigford
Case**

- (1) The Case Advocate must input the code “DA” in the Special Case Code (SCC) field of TAMIS Screen 5 for tracking purposes, in order to identify the case as a USDA Farmer Settlement claim.
- (2) The Case Advocate should secure supporting documentation from the taxpayer to verify the taxpayer’s claim. Examples of such documents are:
 - The letter from USDA;
 - A Form 1099-MISC; and
 - Copies of filed tax returns.
- (3) If the taxpayer does not have any documentation, the Case Advocate can still obtain the documentation by other means. The USDA TAS Liaison may be able to provide assistance. Also, if the tax payment has been received by the IRS, the Case Advocate can locate the payment and the USDA claim number by using Command Code IRPTR (Information Returns Master File Transcript Request).
- (4) For more specific guidelines on working these cases, follow the procedures outlined in IRM 21.6.4.4.9.3 , *USDA Discrimination Settlement Payments*.
- (5) OARs on these cases should be sent to W&I Accounts Management at the Kansas City Campus (KCSC). Send the OARs with pertinent taxpayer information, including all returns to the W&I TAS Liaison at KCSC.
- (6) Send a closing letter to the taxpayer upon verifying that all transactions on the taxpayer’s account are completed and that the taxpayer received the refund check, if applicable. The closing letter should detail the adjustments made to the account.

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Exhibit 13.1.10-1 (04-09-2012)**ISTS Processing Timeframes for Innocent Spouse Claims**

| Stage(s) | Explanation | Time (days) in Stage(s) |
|-------------|---|-------------------------|
| Stages 1-10 | Receipt to Notification - From receipt until RS notified of decision. Time includes screening, ordering admin file, notification to NRS, making decision and issuing letter | 210 |
| Stage 11 | Preliminary letter mailed to RS and NRS offering appeal and awaiting response. Stage will show decision | 70 |
| Stage 12 | Final letter mailed to RS and awaiting decision to petition Tax Court. Stage will show decision | 135 |
| Stage 17 | Stage will show adjustment amount | 0 |
| Stage 18 | Account adjustment and initiation of MFT 31 processing (if claim allowed) | 45 |
| Stage 19 | MFT 31 account processing | 60 |
| Stage 30 | All processing complete and case closed | 0 |

If the case has been in the any of the above stages for more than 30 days from the time indicated, the TAS inquiry would meet Criteria 5 (TP has experienced a delay of more than 30 calendar days to resolve a tax related problem).

Note: If a claim is fully denied, it will not go through stage 19.

