

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

September 9, 2020

Reference Number: 2020-10-069

[TIGTACommunications@tigta.treas.gov](mailto:TIGTACommunications@tigta.treas.gov) | [www.treasury.gov/tigta](http://www.treasury.gov/tigta) | 202-622-6500

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

### Redaction Legend:

1 = Tax Return/Return Information

To report fraud, waste, or abuse, please call us at 1-800-366-4484

# **HIGHLIGHTS: Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**



**Final Audit Report issued on September 9, 2020**  
**Reference Number 2020-10-069**

## **Why TIGTA Did This Audit**

In order to help alleviate economic hardships experienced by taxpayers, the Taxpayer Advocate Service (TAS) has the authority to generate manual tax refunds, known as Offset Bypass Refunds (OBR), even when a taxpayer owes back taxes (as long as no other Federal debts are owed). This audit was initiated because of concerns raised by IRS employees who indicated the OBR process might be subject to abuse. The objective of the audit was to determine whether TAS appropriately responded to taxpayers with unpaid tax liabilities who requested refunds.

## **Impact on Taxpayers**

During Calendar Years 2017 and 2018, TIGTA estimates that TAS processed more than 750 refund checks to taxpayers who owed back taxes. These refunds are meant to help alleviate economic hardships experienced by taxpayers. Without adequate controls over the OBR process, TAS may inconsistently approve or deny refund requests, resulting in additional taxpayer burden. This could also result in lost revenue to the Federal Government because, in many situations, refund offsets may be the only recourse the IRS has to collect delinquent taxes.

## **What TIGTA Found**

Based on TIGTA's review of a statistical sample of TAS-initiated OBRs, TAS case advocates took actions to help prevent or alleviate taxpayer-reported hardships. However, TIGTA also reviewed a judgmental sample of OBRs that were denied and observed inconsistencies in how TAS case advocates handled OBR cases. Most OBR cases did not include an analysis of the taxpayer's income and expenses before an OBR was issued, and OBRs were provided to taxpayers based on supporting documentation that was not current or reasonable. However, in other cases, TAS case advocates required a full review of the taxpayer's income and expenses, and applied stricter supporting documentation criteria, before determining whether the taxpayer should be issued an OBR.

TIGTA also determined that one TAS location developed a form that was used to determine a taxpayer's payment history, collectability of back taxes, and prior OBRs before processing OBRs for issuance. However, cases from other locations often did not include any analysis of these factors. These inconsistencies occurred because TAS does not have detailed guidance for determining whether an OBR should be issued to a taxpayer. This can lead to case advocates approving a request for an OBR that would not be approved by another case advocate or vice versa.

In addition, TAS did not always document why it did not honor electronic refund requests. In these instances, although taxpayers indicated they were experiencing financial hardships, their refunds were not issued in the most expeditious means possible. Lastly, TIGTA identified instances in which TAS case advocates took actions on OBRs that exceeded their authority. For example, case advocates issued refunds in three cases without first obtaining approval from the IRS function that was assigned to the taxpayers' accounts.

## **What TIGTA Recommended**

TIGTA made eight recommendations, including that the National Taxpayer Advocate update guidance, establish processes, conduct training, and reinforce existing requirements to provide for more consistent treatment of taxpayers requesting OBRs. In their response, TAS management agreed with three recommendations. TAS management disagreed with recommendations to consider assigning OBRs to specialized teams or individuals, establish a process to require review and consideration of various factors before approving OBRs, update the Internal Revenue Manual to include TAS-specific OBR guidance and direct deposit documentation, and supplement TAS manual refund training to include direct deposit information.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

September 9, 2020

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers (Audit # 201910003)

This report presents the results of our review of whether the Taxpayer Advocate Service appropriately responded to taxpayers with unpaid tax liabilities who requested refunds. This review is part of our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of *Achieving Operational Efficiencies*.

Management's complete response to the draft report is included as Appendix III.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



# Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

---

## Table of Contents

<b><u>Background</u></b> .....	Page 1
<b><u>Results of Review</u></b> .....	Page 4
<u>Lack of Detailed Guidance Has Resulted in Inconsistent     Treatment of Taxpayers Seeking Offset Bypass Refunds</u> .....	Page 4
<u>Recommendations 1 and 2:</u> .....	Page 6
<u>Recommendation 3:</u> .....	Page 9
<u>Recommendation 4:</u> .....	Page 10
<u>Electronic Refund Requests Were Not Always Honored</u> .....	Page 10
<u>Recommendation 5:</u> .....	Page 11
<u>Recommendation 6:</u> .....	Page 12
<u>Some Case Actions Violated Taxpayer Advocate Service     Authority</u> .....	Page 12
<u>Recommendation 7:</u> .....	Page 14
<u>The Taxpayer Advocate Service Does Not Accurately     Capture the Number of Offset Bypass Refunds Processed</u> .....	Page 14
<u>Recommendation 8:</u> .....	Page 14
<b><u>Appendices</u></b> .....	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u> .....	Page 15
<u>Appendix II – Outcome Measures</u> .....	Page 17
<u>Appendix III – Management’s Response to the Draft Report</u> .....	Page 19
<u>Appendix IV – Glossary of Terms</u> .....	Page 24
<u>Appendix V – Abbreviations</u> .....	Page.26



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

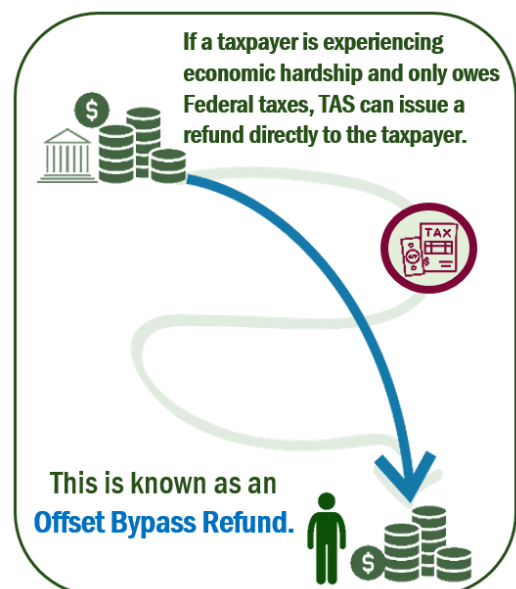
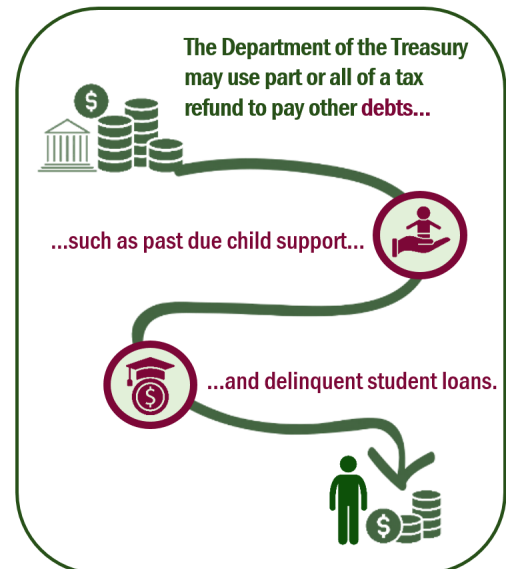
### Background

The Taxpayer Advocate Service (TAS) is an independent organization within the Internal Revenue Service (IRS) whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

TAS's Case Advocacy Program assists taxpayers experiencing economic hardships in receiving expedited refunds. Some of these cases involve taxpayers who owe past due taxes or other Federal debts. According to the Internal Revenue Code (I.R.C.),<sup>1</sup> the IRS must allow tax overpayments to be offset to nontax obligations if the taxpayer has no Federal tax obligations. For example, the Department of the Treasury's Bureau of the Fiscal Service may use part or all of a tax refund to pay certain other debts such as past due child support and delinquent student loans.

However, in order to help alleviate economic hardships experienced by taxpayers, TAS case advocates have the delegated authority to generate manual tax refunds, known as Offset Bypass Refunds (OBR), when a taxpayer has outstanding tax liabilities (herein referred to as back taxes), as long as no other Federal debts are owed. For the purposes of an OBR, the Code of Federal Regulations defines an economic hardship as the financial condition of an individual taxpayer who is unable to pay his or her reasonable basic living expenses. This includes a reasonable amount for food, clothing, housing, medical expenses, transportation, current tax payments, alimony, child support or other court-ordered payments, and expenses necessary to the taxpayer's production of income.<sup>2</sup>

TAS uses the Taxpayer Advocate Management Information System (TAMIS) to control and track cases, including manual refund cases. However, we could not rely on the TAMIS to determine the total number of OBRs processed because we found case advocates do not always properly record information in the system.<sup>3</sup> Instead, we partially reconstructed the number of OBRs processed by TAS using other IRS systems. As shown in Figure 1, we estimate that during Calendar Years



<sup>1</sup> I.R.C. § 6402. See Appendix IV for a glossary of terms used in this report.

<sup>2</sup> 26 C.F.R. 301.6343-1(b)(4)(ii).

<sup>3</sup> See the section of this report entitled *The Taxpayer Advocate Service Does Not Accurately Capture the Number of Offset Bypass Refunds Processed* for further details.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

(CY) 2017 and 2018, TAS issued more than 750 refund checks totaling approximately \$2 million to taxpayers who owed back taxes. These estimates are based on OBRs that were issued in conjunction with the submission of Form 5792, *Request for IDRS Generated Refund (IGR)*.<sup>4</sup> TAS also has the authority to issue OBRs electronically via Form 3753, *Manual Refund Posting Voucher*. However, data for these refunds were not included in our population and were not considered as part of our review.<sup>5</sup>

**Figure 1: Estimate of OBRs Processed by TAS Using Form 5792 (CYs 2017 and 2018)**

CY	Number of OBRs Processed by TAS	Dollar Amount of OBRs Processed by TAS
2017	369	\$947,000
2018	392	\$1,054,000
Total	761	\$2,001,000

Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of the Individual Master File and the manual refund file to estimate the total number of OBRs processed by TAS.<sup>6</sup> Dollar amounts are rounded to the nearest thousand.

Because IRS systems are set up to automatically use tax overpayments to pay back taxes, exception processing is required to process and issue an OBR. As shown in Figure 2, TAS case advocates work with taxpayers to gather information for review by the Local Taxpayer Advocate (LTA). If the LTA agrees that an OBR should be issued, the OBR will be entered into the Integrated Data Retrieval System (IDRS), and supporting paperwork will be sent to the IRS's Accounting function for review and approval to issue an OBR.

<sup>4</sup> The IDRS is the abbreviation for Integrated Data Retrieval System.

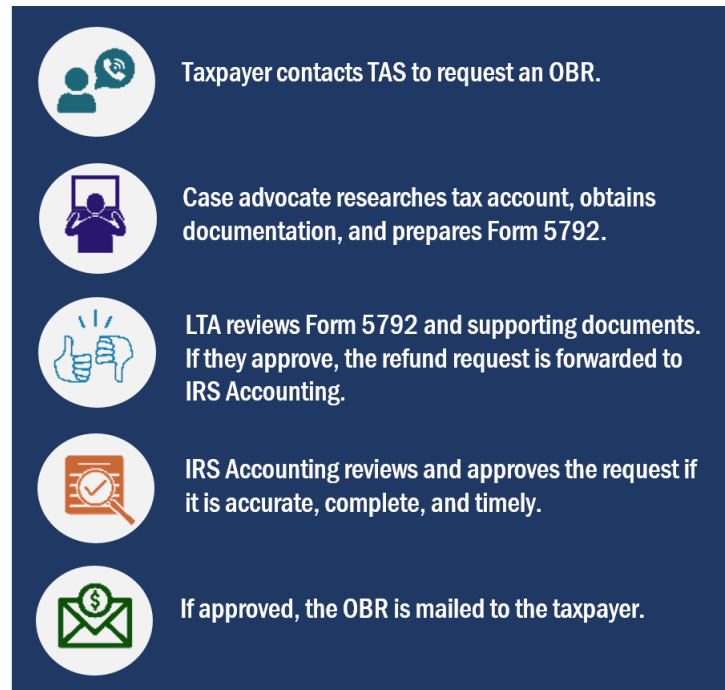
<sup>5</sup> Form 3753 manual refunds present a higher risk for disbursement losses (also known as erroneous refunds) and are used less frequently than Form 5792.

<sup>6</sup> As part of our review of a random sample of 111 of the 761 OBRs, we identified a small number of refunds (four) that were erroneously identified as OBRs. Therefore, we believe the total estimated number of OBRs processed by TAS during CYs 2017 and 2018 using Form 5792 will be less than 761. The four non-OBRs were replaced with four OBRs to maintain our sample size of 111 OBRs.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

**Figure 2: Process for Reviewing and Approving OBRs Initiated by TAS Using Form 5792**



*Source: TIGTA graphical depiction of the OBR process based on various Internal Revenue Manual (IRM) sections.*

Although an OBR can prevent or alleviate an imminent hardship, it is not always advantageous to taxpayers and may result in increased costs and lost revenue to the Federal Government. When a taxpayer is issued an OBR, the outstanding IRS debt continues to accrue additional interest and penalties, potentially subjecting the taxpayer to enforcement actions such as the filing of a Notice of Federal Tax Lien. Additionally, it may be in the taxpayer's best interest to negotiate payment arrangements with other creditors who do not charge significant penalties, interest, or user fees as part of a payment agreement.

OBRs may reduce the IRS's ability to collect delinquent taxes and require additional resources to process. In some cases, tax refund offsets may be the only recourse the IRS has to collect delinquent tax debts before the collection statute of limitations expires. Further, given that the IRS computer system is programmed to automatically offset taxpayer refunds to their balance due account(s), certain actions have to be performed manually to generate OBRs. These manual refunds are administered outside of normal IRS processing, making them more labor intensive because they require multiple levels of review and approval in addition to daily monitoring.<sup>7</sup>

<sup>7</sup> All manual refund transactions are subject to review and approval by the IRS Accounting function to ensure that the refund request is signed by an authorized official and the supporting forms are completed correctly and timely submitted with the required documentation. It is generally not within the purview of the Accounting function to question the validity of the hardship documents or the necessity of the OBR. Monitoring is required for all manual refunds to ensure that they are posted correctly to the Master File and to prevent the issuance of a computer-generated (erroneous) refund.





## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

### Results of Review

#### Lack of Detailed Guidance Has Resulted in Inconsistent Treatment of Taxpayers Seeking Offset Bypass Refunds

Based on our review of a statistical<sup>8</sup> sample of TAS-initiated OBRs, we determined that TAS case advocates took actions intended to help prevent or alleviate taxpayer-reported hardships. However, we also reviewed a judgmental sample<sup>9</sup> of OBRs that were denied and observed inconsistencies in how TAS case advocates handled OBR cases. We determined that most OBR cases did not include an analysis of the taxpayer's income and expenses before an OBR was issued. In addition, we identified cases in which OBRs were provided to taxpayers based on supporting documentation that was not current or reasonable. However, in other cases, TAS case advocates required a full review of the taxpayer's income and expenses, as well as applied stricter supporting documentation criteria, before determining whether the taxpayer should be issued an OBR.

**If case advocates do not consistently ensure that sufficient information is obtained to support OBRs, the risk of abuse by individuals seeking to avoid payment of their outstanding tax liabilities increases.**

We also determined that one TAS location developed a form that can be used to prompt a review of the taxpayer's payment history, collectability of back taxes, and prior OBRs before processing OBRs for issuance, while cases from other locations often did not include any analysis of these factors. In addition, we determined that TAS case advocates did not always verify supporting documentation obtained from taxpayers or consistently follow timeliness standards.

These inconsistencies occurred because TAS does not have detailed guidance for determining whether an OBR should be issued to a taxpayer. A TAS management official indicated that TAS does not provide specific guidance so that its employees can use judgment when considering the specific aspects of individual cases. However, the lack of detailed guidance results in inconsistent treatment of taxpayers. For example, we observed cases in which similar supporting documentation was accepted by one case advocate but rejected by another. This can lead to case advocates approving a request for an OBR that would not be approved by another case advocate or vice versa. In addition, if case advocates do not consistently ensure that sufficient information is obtained to support OBRs, the risk of abuse by individuals seeking to avoid payment of their outstanding tax liabilities increases.

#### **Hardship criteria and documentation requirements are not applied consistently**

"Hardship" is defined under the I.R.C. as the inability to meet necessary living expenses. While not required in the TAS IRM, one method the IRS uses to determine a taxpayer's financial condition is through obtaining a Form 433, *Collection Information Statement*. While this could assist TAS in determining the taxpayer's monthly income and expenses as part of a hardship

<sup>8</sup> See Appendix I for details on our sampling methodology.

<sup>9</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.





## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

determination, TAS only obtained a Form 433 for seven of the 111 OBRs we reviewed.<sup>10</sup> For the remaining 103 cases (93 percent) in our sample that did not include an analysis of the taxpayer's income and expenses, case advocates typically relied on other documentation to support the taxpayer's hardship, *e.g.*, past-due utility bills or other statements identifying obligations in arrears (such as rent or car payments). This type of documentation was used as the basis for OBRs without consideration of the taxpayer's household income and other expenses, despite the availability of IRS online tools to obtain and compile financial information.

In many instances, taxpayers provided multiple types of documents showing various accounts with outstanding balances. However, some documents provided were not current, did not support the hardship identified, or did not establish why the debt should take precedence over the IRS debt. For example, \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

Further, we observed instances in which the expenses claimed were not reasonable. For example, \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*<sup>11</sup> We observed other instances in which TAS issued OBRs to cover expenses that were not in arrears or could be paid in installments, *e.g.*, vehicle insurance and medical/dental bills.

Alternatively, we observed instances in which case advocates subjected taxpayers to stricter supporting documentation criteria. As part of our review of a judgmental sample of cases for which TAS did not provide the taxpayer with an OBR, \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

The inconsistent treatment afforded to the taxpayers in these examples is attributable to a lack of TAS detailed guidance. Although the TAS IRM indicates that supporting documentation should be obtained from the taxpayer, it does not specify the type of documentation that would generally be considered acceptable to support the OBR request. This lack of clarity resulted in the inconsistent treatment of similarly situated taxpayers. Further, the TAS IRM does not provide specific guidelines as to what constitutes a hardship, other than the inability to pay "basic living expenses."<sup>12</sup> Because the OBR process is not centralized, cases are worked by case advocates across the country who may receive OBR requests on an infrequent basis. Without

<sup>10</sup> Additionally, TAS did not always consider all of the financial information provided before processing an OBR for issuance. \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*

<sup>11</sup> \*\*\*\*\*1\*\*\*\*\*

<sup>12</sup> More detailed guidance is provided in other sections of the IRM. For example, IRM 5 (Collection) provides more detailed information on factors to consider when determining the taxpayer's financial status. However, this IRM is not referenced in the TAS IRM section pertaining to OBRs. As such, it is difficult to tell whether TAS management wishes for its employees to follow these guidelines. In addition, case advocates have access to informal guidance on their SharePoint site. However, this guidance has not been formally reviewed or published as official guidance in the IRM.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

detailed guidance, case advocates may find it difficult to provide consistent treatment to taxpayers.<sup>13</sup>

Based on an early version of this report, TAS management advised that the IRM instructs employees to handle each OBR on a case-by-case basis and stated that there is no exclusive list of expenses which would qualify a taxpayer for an OBR. Also, TAS management believes that specific IRM guidance will lead to employees failing to think critically, which ultimately could harm taxpayers and result in taxpayers' inability to receive an OBR. We believe that providing employees with broad parameters of factors to consider will not affect their ability to think critically and will help ensure more consistent treatment of taxpayers.

The National Taxpayer Advocate should:

**Recommendation 1:** Consider assigning OBRs to specialized teams or individuals in an effort to ensure more consistent treatment of taxpayers.

**Management's Response:** TAS management disagreed with this recommendation and expressed concerns that taxpayers would not be able to meet face-to-face with the advocate handling their problem and would have to send documents to a centralized location to resolve issues. Further, TAS management noted that OBRs can be time sensitive and asserted that centralizing the OBR process would impose additional burdens on taxpayers and impede timely case assistance and resolution.

**Office of Audit Comment:** Our recommendation is to consider assigning OBRs to specialized teams or individuals, not specific locations. The 761 OBRs identified in the report were issued by 333 employees, most of whom (68 percent) requested just one or two OBRs in our two-year scope period. We agree that OBRs can be time sensitive, and we maintain that limiting their assignment to specific teams or individuals, when feasible, could lead to more timely and consistent treatment of taxpayers.

**Recommendation 2:** Update the IRM to a) require case advocates to include details in the TAMIS history on how the OBR amount was computed, b) provide general guidelines and factors to consider when assessing if the taxpayer's circumstances warrant an OBR, c) provide general parameters as to what types of expenses should generally be allowed and not allowed, and d) establish criteria for when additional validation of taxpayer-provided documentation is needed, as well as procedures for validating supporting documentation.

**Management's Response:** TAS management disagreed with this recommendation and with the characterization of some of the examples used in the report. In addition, TAS management stated that the specific examples TIGTA references involve just a few cases. Further, TAS management stated that revisions to the TAS IRM are unnecessary and that more specific IRM guidance will lead to employees failing to think critically.

**Office of Audit Comment:** While we agree that OBR requests should be handled on a case-by-case basis, providing broad parameters and general

<sup>13</sup> In response to a Government Accountability Office finding concerning manual refund processing at campuses, the IRS centralized the input and monitoring of manual refunds to limit the process to fewer employees who, with daily exposure, gain more experience and a deeper understanding of the process. Government Accountability Office, GAO-16-457R, *Management Report: Improvements Are Needed to Enhance the Internal Revenue Service's Internal Control over Financial Reporting* (May 18, 2016).



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

guidelines should not impair an employee's critical thinking. In addition, the examples provided in the report were not meant to represent all cases in which we had concerns. Furthermore, this audit was initiated because of concerns raised by IRS employees who indicated that the OBR process might be subject to abuse. For these reasons, we continue to believe that IRM guidance should be updated to provide broad parameters and general guidelines to consider prior to approving OBRs.

### Collection factors are not consistently considered

TAS case advocates are not required to consider factors that other creditors would likely take into consideration before lending money, *e.g.*, the taxpayer's payment history or the collection potential of the account. As a result, while one office took some factors into account, TAS often processed OBRs without considering whether collection statutes are about to expire, whether the taxpayer had made any payments against their past due tax debt, and the source of the tax debt being bypassed. For example:

- \*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*
- \*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*

In these examples, case documentation did not show that TAS considered these collection factors before processing the OBRs. While some LTAs require additional research and support for OBRs they authorize, TAS guidance does not require case advocates to consider the taxpayer's prior history as part of the OBR determination. With the exception of the Fresno TAS office,<sup>14</sup> the taxpayer's compliance history generally does not appear to be taken into consideration.

In addition, TAS case advocates are not required to consider the reason a taxpayer owes back taxes, *e.g.*, examination assessments or fraud penalties, and whether a taxpayer has previously been issued an OBR. For most of the cases we reviewed, the balance due on the bypassed account was attributable to an IRS compliance action, *e.g.*, an examination assessment. As noted previously, \*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*  
\*\*\*\*\*1 \*\*\*\*\*.

Further, several of the taxpayers in our sample received OBRs for multiple tax periods. While the Fresno LTA has created a form that can be used to identify whether OBRs were issued to taxpayers in prior years, this is not required by TAS and does not appear to be generally considered. Thirty-six OBRs in our sample were issued to 34 taxpayers who previously or

<sup>14</sup> The Fresno LTA has developed a form that can be used prior to approval of an OBR. The form requires, among other things, a list of the outstanding liabilities, reasons for the balance due, and whether the taxpayer is attempting to pay outstanding balances.



While the number of prior OBRs issued may be a meaningful factor to consider, research may be difficult due to the lack of adequate detail in the TAMIS history about the taxpayer's hardship or the supporting documentation received. The TAS IRM states that documentation received should be notated in the TAMIS; however, we found that case histories often lacked specific details on what was received. Although all taxpayer correspondence must remain in the paper case file when the TAS case is closed, TAS management and other case advocates may not have access to the paper case file and can review case actions only by accessing the TAMIS history online.

[illegible]

Although TAS case advocates have no way to ensure that OBRs are used for the debt or expense identified by the taxpayer, reasonable efforts could be made to verify supporting documentation provided by taxpayers, especially when multiple years of OBRs have been issued. For example, \*\*\*\*\*1\*\*\*\*\*

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.

Based on an early version of this report, TAS management stated that their sole determination when considering an OBR is whether the taxpayer is suffering a hardship, and basing its decision on other factors would be inappropriate. TAS management also noted that, per the TAS IRM, just because a taxpayer has requested an OBR in one or more prior years is not, in and of itself, a reason to deny an OBR request in a current year. However, the LTAs are required to verify that proper research was conducted and that the circumstances of the case warrant an OBR. This includes consideration of the collection statute expiration date and ensuring that the actions taken are within their authority.<sup>15</sup> In addition, without consideration of the source of balances due and prior OBRs, the risk of abuse by taxpayers increases. Providing additional information could be beneficial to the LTA in making the determination whether to approve an OBR, as they would have a more complete picture of the taxpayer's needs and ability to comply with his or her tax obligations. A process similar to that used by the Fresno LTA could help ensure that all the pertinent data are collected before making a decision on whether to issue an OBR and the amount and type of the OBR to be issued. Because OBRs can be time sensitive, it is important that the LTAs have all of the requisite information so that they can make sound decisions as soon as practicable.

**Recommendation 3:** The National Taxpayer Advocate should establish a process, similar to the one employed by the Fresno LTA, enabling the review and consideration of various factors before approving OBRs. This could include, but not be limited to, a review of the IDRS to determine the cause and amount of the balance due, whether collection statutes are imminent, the existence of nontax debts, the number of prior OBR requests, and the current collection status.

**Management's Response:** TAS management disagreed with this recommendation and stated that the process would require unnecessary analysis, leading to delays in providing relief to taxpayers. Their sole determination when considering an OBR is whether the taxpayer is suffering a hardship.

**Office of Audit Comment:** While TAS management asserts that the sole determination when considering an OBR is whether the taxpayer is suffering a hardship, TAS's guidance requires advocates to consider the statute of limitations, the existence of third-party refund agreements, the existence of nontax debts, and whether the account is assigned to another IRS function before issuing an OBR. Therefore, we continue to believe the recommended process would help ensure that all pertinent information is obtained and should facilitate decisionmaking.

<sup>15</sup> IRM 1.4.13, *Resource Guide for Managers – TAS Guide for Managers* (Sept. 17, 2019).



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

### Timeliness standards are not consistently applied

OBR requests can be very time sensitive, as the IRS has established time frame parameters under which OBRs can be issued. In general, the OBR must be issued before the date the IRS system automatically applies tax overpayments to past due tax debts. However, in limited instances, TAS is authorized to issue OBRs after the applicable time frames if a clerical error prevented the timely issuance of the OBR.

IRS Accounting function personnel (who approve all manual refunds) stated that clerical errors are common for TAS and are caused by employees who submit OBR documents that are incomplete, are missing required supporting documents, do not have an authorized signature, *etc.* Additionally, they advised us of instances in which the clerical error exception was inappropriately cited or not adequately documented.

Fifteen of the 111 OBRs in our statistical sample were issued outside of established time frames, and clerical errors were identified as the cause for nine of the late OBRs. However, for the remaining six OBRs, there was not enough information in the case files to establish if a clerical error prevented the timely issuance of the OBR.

**Recommendation 4:** The National Taxpayer Advocate should require case advocates to document case histories to describe the circumstances that prevented the timely issuance of the OBR when it is issued outside of established time frames.

**Management's Response:** TAS management agreed with this recommendation and will provide training to reinforce the requirement for TAS employees to describe the circumstances that prevented the timely issuance of an OBR when it is issued outside of established time frames.

### Electronic Refund Requests Were Not Always Honored

Although taxpayers indicate when they file a tax return how they wish to receive their refunds (paper check, direct deposit to the taxpayer's account, or direct deposit to a third-party financial institution),<sup>16</sup> TAS often does not honor the taxpayer's request. Case advocates have the option to issue OBRs by paper check or direct deposit. In general, direct deposits enable taxpayers to receive their refunds quicker and more safely than paper checks. This is especially important for taxpayers who have been, or are in the process of being, evicted from their homes or are homeless. Further, they are a less expensive option for the Government. TAS is the only IRS function that has the authority to issue hardship manual refunds via direct deposit.

#### Direct deposit requests were not honored

Although the taxpayers for 42 of the OBRs in our sample requested direct deposits on their tax returns, these taxpayers were issued OBRs via paper check. Direct deposit reduces the potential that a refund could be lost, stolen, or returned to the IRS as undeliverable. Additionally, direct deposit refunds are issued quicker and at a lower cost than paper checks. As such, although

<sup>16</sup> Taxpayers frequently enter into agreements with their return preparer to have their refund direct deposited to a third-party account as part of a process to obtain a refund anticipation check (RAC) or loan (RAL). Taxpayers enter into these types of agreements so that their refunds can be received quickly and they can have the preparer fees deducted from the refund rather than having to pay fees upfront.





## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

these taxpayers indicated they were experiencing financial hardships, their refunds were not issued in the most expeditious means possible.

TAS management explained that the decision on how to issue the OBR is primarily left to the discretion of the case advocate, and TAS guidance does not specify when a direct deposit should be considered. Based on an early version of this report, TAS management stated that the decision on which option to use is not based on whether the taxpayer chose direct deposit on the tax return. Rather, the decision is based on how quickly the taxpayer needs the funds. However, based on our review, it was not always clear in TAMIS documentation whether TAS considered how quickly taxpayers needed funds when deciding to issue an OBR via paper check versus direct deposit. In addition, \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* As such, the reason for the method chosen to issue the OBR should be documented in the TAMIS case history.<sup>17</sup>

### Refunds were not issued per agreements with tax preparers

All 26 taxpayers in our sample who requested direct deposits to a third-party financial institution per agreements with their return preparer/software provider had a refund issued directly to them instead. In reviewing the case files, we identified 11 instances in which TAS obtained additional information supporting the issuance of a paper check or documented why a paper check was necessary.<sup>18</sup> It was not fully evident why the remaining 15 OBRs were issued directly to taxpayers, but it appears case advocates were not always aware of, or did not recognize a requirement to issue refunds to, the authorized third-party account.

While conducting the audit, TAS management stated that, per legal advice from IRS Office of Chief Counsel, it is within TAS's authority to bypass third-party accounts and issue refunds directly to taxpayers. However, TAS management also agreed that, in general, OBRs should be issued to the third-party account when possible and issued additional informal guidance to that effect on its SharePoint site. Based on this action, we are not making any additional recommendations regarding OBRs that were sent directly to a taxpayer instead of a third-party financial institution.

The National Taxpayer Advocate should:

**Recommendation 5:** Update the TAS IRM pertaining to OBR requests to address instances in which taxpayers requested direct deposits on their tax returns and require case advocates to document their decision as to the method chosen to issue the OBR.

**Management's Response:** TAS management disagreed with this recommendation. See response to Recommendation 6.

<sup>17</sup> We also noted that IRS personnel in the Accounting function (who approve all manual refunds) may require additional documentation to support the taxpayer's hardship and to verify the existence of the direct deposit account and that it belongs to the taxpayer requesting the OBR.

<sup>18</sup> In four of the 11 cases, taxpayers provided documentation, ostensibly from return preparers, giving their consent to have OBRs issued directly to the taxpayer. None of the four documents specifically indicated the agreements were cancelled or rejected by the financial institution. Further, the legitimacy of the documents is questionable due to poor grammar, misspelled words, *etc.*





## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

**Office of Audit Comment:** See the Office of Audit Comment for Recommendation 6.

**Recommendation 6:** Supplement the current manual refund training requirements with additional TAS-specific training that addresses factors to consider under TAS authority to issue direct deposit manual refunds for hardships. This should include whether the taxpayers requested a direct deposit on their tax return and requirements for documenting the decision for issuing an OBR via paper check or direct deposit.

**Management's Response:** TAS management disagreed with this recommendation, stating that a taxpayer's election to receive a refund by direct deposit on an original filed return does not mean the taxpayer should receive a direct deposit manual refund after TAS's intervention and decision to issue an OBR. Further, TAS management stated that the IRMs are already clear on this subject and quoted sections from the Customer Account Services and Submission Processing IRMs. The sections cited indicate that direct deposit refunds should only be issued when the taxpayer needs the refund in less than five days.

**Office of Audit Comment:** As noted in our report, direct deposit refunds are delivered more quickly and safely than paper checks, and we observed instances in which taxpayer circumstances seemed to warrant this option. For example, we identified taxpayers that did not have a permanent mailing address or were in the process of being evicted, yet we did not identify anything in the case files indicating that a direct deposit was considered. Although TAS indicated that direct deposit refunds should only be issued when the taxpayer needs the refund in less than five days, it was not always clear in TAMIS documentation whether TAS considered how quickly taxpayers needed funds when deciding to issue an OBR. Therefore, we continue to believe TAS management should update the IRM, document the decision as to the method chosen to issue the OBR, and provide training in order to provide consistent service to taxpayers.

### Some Case Actions Violated Taxpayer Advocate Service Authority

As part of our review of the 111 OBRs in our sample, we identified \*\*1\*\* instances in which TAS employees took actions outside of their delegated or statutory authority. Figure 3 shows the applicable law or authority for each of the breaches of TAS authority we identified.





## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

**Recommendation 7:** The National Taxpayer Advocate should reinforce the requirement for TAS employees to obtain approval for OBRs from the IRS function controlling the account.

**Management's Response:** TAS management agreed with this recommendation and will provide training to reinforce the requirement for TAS employees to obtain approval for OBRs from the IRS function controlling the account.

### The Taxpayer Advocate Service Does Not Accurately Capture the Number of Offset Bypass Refunds Processed

When a TAS case results in the issuance of a manual refund, it should be documented on the TAMIS closing screen according to the TAS IRM.<sup>19</sup> During our review, we observed that 19 (17 percent) of the 111 OBRs in our sample did not contain the required refund information in the TAMIS.<sup>20</sup> According to the *Standards for Internal Control in the Federal Government*,<sup>21</sup> management should design internal controls so that all transactions are recorded completely and accurately. This allows transactions to maintain their relevance and value to management in controlling operations and making decisions. Without accurate information, TAS management cannot reliably use the TAMIS for decisionmaking and planning purposes related to OBRs. Based on our discussions with TAS management, management and case advocates may be unaware of the requirement or may be confused on where in the TAMIS this should be entered.

**Recommendation 8:** The National Taxpayer Advocate should reinforce the requirement for all TAS employees to document the issuance of manual refunds on the TAMIS closing screen.

**Management's Response:** TAS management agreed with this recommendation and will provide training to reinforce the requirement for TAS employees to document the issuance of manual refunds on the TAMIS closing screen.

<sup>19</sup> IRM 13.1.21.1.3.18(3), *Manual Refunds* (Feb. 03, 2011).

<sup>20</sup> See Appendix II.

<sup>21</sup> Government Accountability Office, GAO-14-704G (Sept. 10, 2014).



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

### **Appendix I**

#### **Detailed Objective, Scope, and Methodology**

Our overall objective was to determine whether TAS appropriately responded to taxpayers with unpaid tax liabilities who requested refunds. To accomplish our objective, we:

- Determined if IRS management provided adequate guidance to TAS employees regarding the OBR process by reviewing IRS guidance for procedures pertaining to the OBR process and interviewing TAS management.
- Determined if TAS personnel processed OBRs according to procedures.
  - Using Individual Master File, Manual Refund, Standard Employee Identifier/Social Security Number, and Treasury Integrated Management Information System files from our Data Center Warehouse, identified all IDRS-initiated manual refunds processed by TAS personnel with an OBR indicator (Transaction 971 Action Code 036) in CYs 2017 and 2018.
  - Selected a statistically valid stratified sample of 111 OBRs from a population of 761 IDRS-initiated OBRs processed by TAS in CYs 2017 and 2018. Our sample strata was based on the dollar amount of the OBR provided to the taxpayer. We selected the following:
    - 70 of the 504 OBRs that were less than \$2,900. The total dollar amount associated with these OBRs was approximately \$89,000. The taxpayers associated with these OBRs owed a combined balance of approximately \$790,000 to the IRS as of December 31, 2019.
    - 34 of the 250 OBRs that were \$2,900 to \$9,999. The total dollar amount associated with these OBRs was approximately \$167,000. The taxpayers associated with these OBRs owed a combined balance of approximately \$479,000 to the IRS as of December 31, 2019.
    - All seven of the OBRs that were \$10,000 or more. The total dollar amount associated with these OBRs was approximately \$93,000. The taxpayers associated with these OBRs owed a combined balance of approximately \$365,000 to the IRS as of December 31, 2019.

The first two tiers of the sample were selected randomly using a confidence level of 90 percent, a precision rate of  $\pm 6$  percent, and an expected error rate of 27 percent. Our sampling methodology was developed with assistance from our contracted statistician.

- Reviewed TAMIS history, TAS case file, and the IDRS to determine the amount and source of the taxpayer's balance due, the reason(s) identified for needing an OBR, whether the taxpayer received an OBR in a prior or subsequent year, and the amount of tax debt that expired due to statute after the issuance of an OBR.
  - Determined whether a) TAS's actions were appropriate based on TAS procedures, b) TAS obtained documentation supporting the need for an OBR, and c) IDRS and TAMIS entries were correct.



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

Selected a judgmental sample<sup>1</sup> of 25 cases from a population of 2,076 cases closed by TAS in CYs 2017 and 2018 for which (per TAMIS) an OBR was not issued and reviewed the TAMIS case history online. A judgmental sample was selected to compare TAS actions on cases in which an OBR was not provided to a taxpayer to cases in which an OBR was provided to a taxpayer. We did not project the results of the sample across the population.

### **Performance of This Review**

This review was performed at TAS and Wage and Investment Division Submission Processing offices in Kansas City, Missouri, and Austin, Texas, as well as the TAS Case Advocacy office in Albuquerque, New Mexico, during the period November 2018 through November 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. As part of our audit, we reviewed a statistical sample of OBRs processed by TAS. As noted previously, our scope was limited to reviewing OBRs processed by TAS using Form 5792.

Major contributors to the report were Heather Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Troy Paterson, Director; Mindy Dowdy, Audit Manager; Mary Herberger, Lead Auditor; and Tom Polsfoot, Senior Auditor.

### **Validity and Reliability of Data From Computer-Based Systems**

We performed tests to assess the reliability of data from TIGTA's Data Center Warehouse in accordance with TIGTA Audit Manual Sections (300) 60.3.3 and (300)-90.12.7. We evaluated the data by 1) selecting a random sample of the data, 2) performing electronic testing of required data elements, and 3) matching the results from our sample to the IRS's IDRS. We determined that the data were sufficiently reliable for purposes of this report.

### **Internal Controls Methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the IRS's policies, procedures, and practices for processing OBR requests. We evaluated these controls by interviewing IRS management and employees, reviewing a random stratified sample of 111 OBRs issued by TAS in CYs 2017 and 2018, and reviewing a judgmental sample of TAS cases closed in CYs 2017 and 2018 for which TAS denied the taxpayer's request for an OBR.

---

<sup>1</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

## Appendix II

### Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

#### Type and Value of Outcome Measure:

- Revenue Protection – Potential; 22 OBRs from CYs 2017 and 2018 totaling \$115,556 that should not have been issued without approval from the IRS function assigned to the account or \$288,890 for 55 OBRs forecast over five years (see Recommendation 7).

#### Methodology Used to Measure the Reported Benefit:

In three of the 111 sampled OBRs issued in CYs 2017 and 2018, TAS did not seek approval from the controlling function before issuing the OBRs totaling \$15,750. The controlling function may or may not have approved the OBR if given the opportunity. Based on the results of our statistically valid sample, we estimate that 22 OBRs totaling \$115,556<sup>1</sup> were issued without approval from the controlling IRS function (55 OBRs totaling \$288,890<sup>2</sup> when projected over five years).

**Management's Response:** TAS management disagreed that TIGTA's recommendation will provide potential revenue protection benefits of \$290,000 over five years because obtaining permission from an IRS function with an open control is a routine part of issuing an OBR. They stated that in the sample of 111 approved OBRs, and in the judgmental sample of 25 cases in which an OBR was not issued, TIGTA identified no cases in which an IRS function with an open control prevented TAS from issuing an OBR. Therefore, they believe the projected revenue protection benefit from correcting the three identified errors is \$0.

**Office of Audit Comment:** We believe that the methodology used to quantify the outcome was appropriate and provided a reasonable estimate of potential revenue protection. Regardless of whether obtaining OBR approval is a routine action, it was not performed in the instances we identified, and whether the controlling function prevented TAS from issuing an OBR is not relevant as it was not within TAS's authority to issue the OBRs we identified.

<sup>1</sup> The point estimate projection was developed using the empirical likelihood method and is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between three and 41 OBRs totaling between \$34,211 and \$274,772.

<sup>2</sup> The five-year forecast for potential revenue protection is based on multiplying the estimate for the two-year period by 2.5 and assumes, among other considerations, that economic conditions and tax laws do not change.



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

### **Type and Value of Outcome Measure:**

- Reliability of Information – Potential; 138 OBRs not captured as required on the TAMIS (see Recommendation 8).

### **Methodology Used to Measure the Reported Benefit:**

Nineteen of the 111 sampled OBRs were not identified as manual refunds on the TAMIS case closing screen as required. Based on the results of our statistically valid sample, we estimate that 138 OBRs<sup>3</sup> were not accurately coded as a manual refund on the TAMIS during CYs 2017 and 2018.

---

<sup>3</sup> The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 94 and 182.





**Controls Over Offset Bypass Refunds Processed by the  
Taxpayer Advocate Service Should Be Improved to Reduce the  
Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

## Appendix III

### Management's Response to the Draft Report



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS  
OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

August 17, 2020

MEMORANDUM FOR MICHAEL E. MCKENNEY  
Deputy Inspector General for Audit

FROM: Erin M. Collins   
National Taxpayer Advocate

SUBJECT: Management Response to Draft Audit Report – Controls Over Offset  
Bypass Refunds Processed by the Taxpayer Advocate Service Should  
Be Improved to Reduce the Risk of Abuse and Allow for More  
Consistent Treatment of Taxpayers (Audit # 201910003)

The Taxpayer Advocate Service has reviewed the Treasury Inspector General for Tax Administration (TIGTA) draft audit report 201910003, *Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers*, issued July 17, 2020. In this management response, we state whether we agree with each of the eight recommendations TIGTA included in the draft report and identify corrective actions we plan to take.

In addition, Deputy Inspector General McKenney's memo to the National Taxpayer Advocate specifically asks for TAS's concurrence that TIGTA's recommendations will provide the following measurable benefits on tax administration: (1) potential revenue protection benefits of \$290,000 over five years and (2) potential improved reliability of 138 records in the Taxpayer Advocate Management Information System (TAMIS). We concur with the latter (improved accuracy of TAMIS records), but not with the former (potential revenue protection benefits).

As detailed in Appendix II, TIGTA found three cases in its sample of 111 where TAS worked to issue an offset bypass refund (OBR) with an open control in another IRS function. TIGTA extrapolated the three errors from its sample to the total population of TAS OBRs to arrive at the estimate of \$290,000 in savings over five years. However, obtaining permission from an IRS function with an open control is a routine part of issuing an OBR. In the sample of 111 approved OBRs, and in its judgmental sample of 25 cases where an OBR was not issued, TIGTA identified no cases where an IRS function with an open control prevented TAS from issuing an OBR. Therefore, we believe the projected revenue protection benefit from correcting the three identified errors is \$0.

We acknowledge that improvements can be made in documenting OBRs in our case management system. However, we believe TIGTA has fundamentally misunderstood key aspects of OBRs and TAS operations. For the reasons explained below, we disagree with the majority of TIGTA's recommendations.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

### **Recommendation 1: Consider assigning OBRs to specialized teams or individuals in an effort to ensure more consistent treatment of taxpayers.**

*TAS does not agree.* Centralizing OBR processing would not be consistent with Internal Revenue Code (IRC) § 7803(c)(2)(D)(i)(I), which requires a Local Taxpayer Advocate (LTA) in each state. We believe Congress created this provision to ensure TAS is integrated into the local environment, understands the context in which tax hardships and cases may arise, and is physically accessible to local taxpayers.

Taxpayers needing an OBR are already facing difficult times while trying to resolve a time-sensitive problem with the IRS. Centralizing this work would impose additional burdens on these taxpayers. Taxpayers would not have the option of meeting face-to-face with the IRS case advocate handling their problem. They would have to fax or mail hardship documents to a centralized location and resolve any questions or issues that come up with someone who may not be aware of their circumstances, which may be location-specific. OBR issues that arise in the context of an existing case would have to be transferred elsewhere, causing delays for taxpayers. We believe centralizing the OBR process would provide little benefit yet would impede timely case assistance and resolution, confuse taxpayers, and undermine TAS's statutory mission.

### **Recommendation 2: Update the IRM to a) require case advocates to include details in the TAMIS history on how the OBR amount was computed, b) provide general guidelines and factors to consider when assessing if the taxpayer's circumstances warrant an OBR, c) provide general parameters as to what types of expenses should generally be allowed and not allowed, and d) establish criteria for when additional validation of taxpayer-provided documentation is needed, as well as procedures for validating supporting documentation.**

*TAS does not agree.* TIGTA's draft report uses broad language about inconsistencies in TAS OBR casework and reliance on "unreasonable" hardship documents to justify this recommendation. The specific examples TIGTA references involve just a few cases, and TAS disputes many of TIGTA's case-related findings. The few remaining cases are a very small and unrepresentative percentage of the cases reviewed and are insufficient justification for TIGTA's recommendations.

\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

TIGTA's specific IRM recommendations are unnecessary and sometimes counterproductive. TAS's IRM already includes a requirement to document TAMIS and provides guidelines on when an OBR is warranted. See IRM 13.1.18.6, *Subsequent Actions and Case Resolution* (05/05/2016), and IRM 13.1.24.6.2, *Advocating For Taxpayers Seeking Offset Bypass Refunds* (05/11/2018). TIGTA's recommendation for procedures to validate hardship documentation is also unnecessary. TAS employees are not handwriting analysts or forensic documentation experts. TIGTA's report acknowledges TAS employees already make an effort to validate taxpayer hardship documents when they have questions or concerns.

TIGTA's recommendation to specify the types of hardship documents to be allowed would be counterproductive. IRM 21.4.6.5.11.1, *Offset Bypass Refund* (11/08/2017), says: "Handle each OBR on a case by-case basis. There is no exclusive list of expenses which would qualify a taxpayer for an OBR." Based on our experience in other areas, TAS believes that specific IRM guidance will lead to employees failing to think critically. TAS and IRS employees will only agree to hardships that are specifically mentioned or accept documents that are specifically listed, even if the guidance explicitly says a list is not meant to be all-inclusive. We believe this approach would harm taxpayers who are entitled to OBR relief but whose hardship does not fall within the parameters covered by the IRM.

**Recommendation 3: The National Taxpayer Advocate should establish a process, similar to the one employed by the Fresno LTA, enabling review and consideration of various factors before approving OBRs. This could include, but not be limited to, a review of the IDRS to determine the cause and amount of the balance due, whether collection statutes are imminent, the existence of non-tax debts, the number of prior OBR requests, and the current collection status.**

*TAS does not agree.* TAS disputes many of the facts underlying this recommendation. However, TAS's primary concern is that TIGTA has fundamentally misunderstood the statutory and policy reasons for OBRs. OBRs are time-sensitive operations, and any unnecessary analysis both delays relief for the taxpayer and risks the successful completion of the OBR. TAS's sole determination when considering an OBR is whether the taxpayer is suffering a hardship. Basing our decision on other factors, such as whether we approve of how the taxpayer accrued the debt or whether the taxpayers has previously received an OBR, would be inappropriate.

TIGTA suggests that TAS step into the shoes of a creditor to determine whether a taxpayer is worthy of an OBR to address their hardship. Nothing in IRC §§ 6402 or 6343, the legal bases for OBRs, would allow a worthiness determination as a precondition to receiving an OBR. A worthiness determination is not a precondition for relief in other IRS processes based on hardships, like the hardship release of a levy. Denying an OBR to an eligible taxpayer with a hardship would be inconsistent with the underlying statutory basis for OBRs, the IRS policy decision not to offset refunds to prior IRS debts for taxpayers with hardships, and TAS's statutory mission.





## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

**Recommendation 4: The National Taxpayer Advocate should require case advocates to document case histories to describe the circumstances that prevented the timely issuance of the OBR when it is issued outside of established time frames.**

*TAS agrees.* TAS agrees to take reasonable action to reinforce the requirement for TAS employees to appropriately document TAMIS when using the clerical error exception to timing requirements for OBRs.

Planned Corrective Action: TAS will provide training to reinforce the requirement for TAS employees to describe the circumstances that prevented the timely issuance of an OBR when it is issued outside of established timeframes.

Responsible Official: Bonnie Fuentes, EDCA-ITS

Implementation Date: March 31, 2021

Monitoring Plan: Will use JAMES to monitor and update the status of this PCA.

**Recommendation 5: Update the TAS IRM pertaining to OBR requests to address instances in which taxpayers requested direct deposits on their tax returns and require case advocates to document their decision as to the method chosen to issue the OBR.**

*TAS does not agree.* See response to Recommendation 6, below.

**Recommendation 6: Supplement the current manual refund training requirements with additional TAS-specific training that addresses factors to consider under TAS authority to issue direct deposit manual refunds for hardships. This should include whether the taxpayer requested a direct deposit on their tax return and requirements for documenting the decision for issuing an OBR via paper check or direct deposit.**

*TAS does not agree.* We believe TIGTA has fundamentally misunderstood this process. A taxpayer's election to receive a refund by direct deposit on an original filed return does not mean the taxpayer should receive a direct deposit manual refund after TAS's intervention and decision to issue an OBR. These are entirely different processes. Both types of manual refunds (direct deposit and paper) are extraordinary remedies for the taxpayer. As TIGTA notes in its footnote 5, the direct deposit manual refunds (using Form 3753) create a higher risk of an erroneous refund. The decision regarding which option to use isn't based on whether the taxpayer chose direct deposit on his or her return. Rather, the decision is based on how quickly the taxpayer needs the funds.

The IRMs on this process could not be clearer. IRM 21.4.6.5.11(1), *Hardship Manual Refunds* (05/07/2018), states, in relevant part: "Not every refund based on hardship qualifies as an emergency [direct deposit] refund. Emergency refunds are those based on hardship where the taxpayer needs the refund in less than 5 days." IRM 3.17.79.3.3, *Issuing Hardship Refunds* (12/03/2019), provides that direct deposit manual refunds are granted "under rare and unusual circumstances."



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

TAS does not agree with this recommendation because TIGTA has fundamentally misunderstood the rules for when a direct deposit manual refund is appropriate.

**Recommendation 7: The National Taxpayer Advocate should reinforce the requirement for TAS employees to obtain approval for OBRs from the IRS function controlling the account.**

*TAS agrees.* TAS continues to dispute that the audit identified any employee violation of IRC § 6402. TAS agrees to take reasonable corrective action to address the OBRs issued with an open control in another function.

Planned Corrective Action: TAS will provide training to reinforce the requirement for TAS employees to obtain approval for OBRs from the IRS function controlling the account.

Responsible Official: Bonnie Fuentes, EDCA-ITS

Implementation Date: March 31, 2021

Monitoring Plan: Will use JAMES to monitor and update the status of this PCA.

**Recommendation 8: The National Taxpayer Advocate should reinforce the requirement for all TAS employees to document the issuance of manual refunds on the TAMIS closing screen.**

*TAS agrees.* TAS agrees to take reasonable action to reinforce the requirement for TAS employees issuing manual refunds to document the issuance of manual refunds appropriately on the TAMIS case closing screen.

Planned Corrective Action: TAS will provide training to reinforce the requirement for TAS employees to document the issuance of manual refunds on the TAMIS closing screen.

Responsible Official: Bonnie Fuentes, EDCA-ITS

Implementation Date: March 31, 2021

Monitoring Plan: Will use JAMES to monitor and update the status of this PCA.



## Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers

### Appendix IV

#### Glossary of Terms

Term	Definition
Bureau of the Fiscal Service	Established on October 7, 2012, with the consolidation of two Department of the Treasury bureaus: the Bureau of the Public Debt and the Financial Management Service. The Bureau of the Fiscal Service collects revenue and delinquent debt and disburses funds to millions of Americans, ensuring their timely receipt of benefit payments.
Collection Information Statement	Form used by the IRS to determine a taxpayer's income and expenses to assist the IRS in making a collection determination on past due debt.
Collection Statute of Limitations	I.R.C. § 6502 provides that the length of the period for collection after assessment of a tax liability is 10 years. However, certain actions such as bankruptcy, litigation, and innocent spouse claims extend the collection period.
Data Center Warehouse	A secured centralized storage of IRS database files used to maintain critical historical data that have been extracted from operational data storage and transformed into formats accessible to TIGTA employees.
Individual Master File	The authoritative data source for individual tax account data. All other IRS information system applications that process Individual Master File data depend on output from this source. The Individual Master File is a critical component of the IRS's ability to process tax returns.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Code	The body of law that codifies all Federal tax laws, including income, estate, gift, excise, alcohol, tobacco, and employment taxes. These laws constitute Title 26 of the United States Code. The United States Code is a consolidation and codification by subject matter of the general and permanent laws of the United States.
Internal Revenue Manual	The primary, official source of IRS instructions to staff related to the organization, administration, and operation of the IRS.
Local Taxpayer Advocate	TAS official located in various cities in the United States providing management of TAS case processing within a geographic location.
Manual Refund	A refund that is not generated through normal computer processing.
Notice of Federal Tax Lien	A public notice document filed with the local recording office that identifies tax liabilities owed by the taxpayer. By filing, the IRS is putting other creditors on notice that the U.S. Government has a priority claim against all property and any rights to property of the taxpayer. Per 26 United States Code § 6323, the IRS Notice of Federal Tax Lien does not have validity or priority against certain other creditors.



## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

Offset Bypass Refund	Under certain limited circumstances in which hardship exists, the IRS may issue a manual refund of excess credits without first satisfying outstanding tax liabilities. These refunds are known as OBRs.
Refund Anticipation Check	A nonloan product used by many commercial tax preparers and their financial institution partners in which the financial institution opens a temporary bank account into which the IRS direct deposits the refund check. The financial institution, via the preparer, then issues the taxpayer a paper check.
Refund Anticipation Loan	Money borrowed by a taxpayer from a financial institution based on the taxpayer(s) anticipated income tax refund. The loan is made pursuant to a written agreement between the taxpayer and the financial institution.
Social Security Number	A nine-digit number issued to an individual by the Social Security Administration. The IRS uses this number to process tax documents and returns.
Standard Employee Identifier	A five-digit alpha/number that identifies an IRS employee.
Taxpayer Advocate Management Information System	A computerized inventory control and report system developed: 1) for the TAS case worker and 2) to produce inventory and other reports to support management.
Treasury Integrated Management Information System	An official automated personnel and payroll system for storing and tracking all employee personnel and payroll data. It is outsourced to the U.S. Department of Agriculture National Finance Center and managed by the Department of the Treasury.





## **Controls Over Offset Bypass Refunds Processed by the Taxpayer Advocate Service Should Be Improved to Reduce the Risk of Abuse and Allow for More Consistent Treatment of Taxpayers**

---

### **Appendix V**

#### **Abbreviations**

CY	Calendar Year
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LTA	Local Taxpayer Advocate
OBR	Offset Bypass Refund
RAC	Refund Anticipation Check
RAL	Refund Anticipation Loan
TAMIS	Taxpayer Advocate Management Information System
TAS	Taxpayer Advocate Service
TIGTA	Treasury Inspector General for Tax Administration