

Enlist an ally in TAS

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When the IRS's processes are not working as they should, the Taxpayer Advocate Service (TAS) may be able to help. Sec. 7811 authorizes TAS to issue a taxpayer assistance order if the taxpayer is suffering, or about to suffer, a significant hardship as a result of the way the internal revenue laws are being administered. For this purpose, a significant hardship includes (Sec. 7811(a)(2)):

- An immediate threat of adverse action;
- A delay of more than 30 days in resolving taxpayer account problems;
- The taxpayer's incurring significant costs (including fees for professional representation) if relief is not granted; and

- Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

Regs. Sec. 301.7811-1(a)(4)(ii) further explains that "significant hardship" means "a serious privation [is] caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS."

In addition to the economic-burden hardships listed in the statute, TAS has also formulated categories for relief when there is a systemic burden, when an action is in the best interest of the taxpayer, or when public policy supports relief. A systemic burden includes the IRS not timely responding within a promised time period to a taxpayer or resolving the taxpayer's issue because a system, process, or procedure has not operated as intended.

The "best interest of the taxpayer" can include considerations of equity or fairness, or when the IRS's approach impairs or will impair the taxpayer's rights. Those rights include the Taxpayer Bill of Rights, which the IRS adopted on the recommendation of former national taxpayer advocate Nina Olson and was subsequently codified at Sec. 7803(a)(3). It includes, among other rights, the right to be informed, the right to quality service, the right to challenge the IRS's positions and to be heard, and the right to a fair and just system.

While TAS can address many of these types of taxpayer problems, taxpayer representatives should first escalate the issue to the appropriate supervisory levels in the examinations or collection functions to try to resolve the case within the IRS. For example, if a collection case is being worked by a revenue officer (RO), first address the issue with the RO as well as the collection manager or territory manager. However, in many instances, the adverse action is not accompanied by a notice or the contact number for a specific representative with whom you can communicate, and TAS assistance may be appropriate immediately after the system does not work properly.

To apply for assistance, the taxpayer can either call a local office (see TAS's contact page at taxpayeradvocate.irs.gov (<https://taxpayeradvocate.irs.gov/contact-us>)) or submit an IRS Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*. Form 911 can either be mailed or faxed, and in 2020, TAS temporarily implemented email submissions with encrypted attachments.

Internal Revenue Manual (IRM) Section 13.1.7.2 sets forth TAS case criteria. These criteria expand upon the statutory definition of "significant hardship." An "immediate threat of adverse action" is defined to include IRS actions that create negative financial consequences or economic burdens for the taxpayer because of the nature of the taxpayer's situation. The IRM defines "significant costs" as "[s]ituations where the IRS is unable to immediately make adjustments, process returns, release a lien, etc.," and the taxpayer will incur significant costs or expenses, including professional fees (IRM §13.1.7.2.1(3)). Finally, there may be a significant hardship if "irreparable injury or long-term adverse impact [to a taxpayer will occur] if relief is not granted," which includes situations where a taxpayer "may lose assets, income, or potential income if relief is not provided" (IRM §13.1.7.2.1(4)).

Form 911 should set forth each criterion in Sec. 7811 that is met and explain specifically how the individual or business is being detrimentally impacted. For instance, if there is an immediate threat of adverse action under Sec. 7811(a)(2)(A) in the form of a levy before an appropriate notice is received, the Form 911 should set forth the specific right or notice requirement that was not met, as well as the specific immediate consequences. Explaining how the levy would render the taxpayer unable to make a rent payment and face eviction would help emphasize the urgency of the taxpayer's situation when an advocate is assigned to the case and could give the case appropriate priority. Local advocates often have a high case volume, particularly with many requests related to the relief measures included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136.

Additionally, set forth the specific relief or assistance requested in Form 911. For instance, requested relief may include:

- Assistance facilitating a prompt response to a request;
- Assistance understanding the rationale for the denial of a claim — for example, why an e-filing expulsion was issued or why a penalty abatement was denied;
- The release of an improper levy or the abatement of a penalty; or
- Other specific types of relief.

The TAS may find an alternate solution after interacting with the appropriate IRS function, but a list of possible relief actions may be helpful for an advocate to understand what types of relief can help the client before the advocate reaches out to the IRS.

Advocates often respond within a few days. In the initial call, the advocate will set up a time frame for investigating the case. Representatives should verify that the time frame is manageable, given the client's specific needs. Perhaps the taxpayer has a seasonal business and much of his or her annual income will be earned in the few months following the request for relief. The advocate needs this information to understand the immediate nature of the problem.

Additionally, note that TAS is limited in that it must work within and through the applicable IRS divisions to obtain relief for taxpayers. TAS cannot make the fix outright. For instance, in the levy example above, TAS would interact with personnel in the IRS Collection Division to understand the issue, communicate it to the appropriate personnel, and then facilitate a solution. This is why it is important in collection situations to escalate the issue first with the RO and supervisors.

During the COVID-19 pandemic, some advocates have worked remotely, since many IRS offices and service centers have been closed; other IRS personnel in the compliance divisions have had limited access to mail or been unable to work remotely. This has hampered TAS's ability to interact in a normal way to resolve certain issues. These issues are being remedied as various IRS functions resume. However, where relief is sought for a significant hardship involving a delay by the IRS of more than 30 days to resolve a taxpayer account problem (Sec. 7811(a)(2)(B)), anticipate that the "normal" or required response dates may have been revised as a result of COVID-19. Applications for client relief should clearly establish that the taxpayer is eligible for relief under both the 30-day and any revised timeline so that the initial call can focus on the harm the client suffered and the relief needed.

By properly applying for assistance from TAS for a taxpayer and making sure the assigned TAS representative has all the pertinent information for his or her investigation of the taxpayer's problem, taxpayer representatives demonstrate to clients their familiarity with IRS processes and how they can add value when the usual procedures are not working properly.

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