



**NYCLA's Non-Traditional Tax Advocacy**  
featuring  
**Nina E. Olson, the National Taxpayer Advocate**

<b>WHEN</b>	<b>WHERE</b>
<b>Tuesday, September 26, 2017</b> Registration & Sign-In @ 8:30AM Seminar 9:00 AM to 12:00 PM	<b>JONES DAY</b> 250 Vesey Street New York, NY 10281-1047

This seminar introduces the volunteers to nontraditional advocacy in tax controversy case, including

1. when & how to request assistance from the Taxpayer Advocate Service (TAS),
2. when & how to involve the Taxpayer Inspector General for Tax Administration (TIGTA),
3. when & how to involve the traditional media and/or social media in tax cases, and
4. when & how to involve elected officials (i.e., how and when constituent services offices can help).

**Other Panelists Include**

Frank Agostino, Esq., Agostino & Associates Rita Chan, Vice Media Minna R Elias, Esq., District Chief of Staff, Rep. Carolyn Maloney Kathryn Keneally, Esq., Jones Day Robert Franzke, Assistant Special Agent in Charge, TIGTA	Cindy Rogers, Esq., District Director, Congressman Tom Suozzi Darol Tucker, Brooklyn Taxpayer Advocate David Voreacos, Bloomberg Matthew Weir, Assistant Inspector General, TIGTA Kaja Whitehouse, New York Post
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## NYCLA'S NON-TRADITIONAL TAX ADVOCACY

featuring

**Nina E. Olson, the National Taxpayer Advocate**

Have a tax problem you haven't been able to resolve with the IRS? The **Taxpayer Advocate Service** will assist taxpayers in person at its upcoming

## Problem Solving Day



WHEN	WHERE
<p><b>Tuesday, September 26, 2017</b>            Registration &amp; Sign-In @ 8:30AM            Seminar 9:00 AM to 12:00 PM</p>	<p><b>JONES DAY</b>            250 Vesey Street            New York, NY 10281-1047</p>

The Taxpayer Advocate Service (TAS) will be available to assist practitioners in person with client tax problems they have not been able to resolve with the IRS. Our goal is to provide one to one guidance, direction on next steps, and case building ideas so you can help your clients. If your client's problem meets our criteria, we'll assign a Case Advocate to work with you to resolve your client's issue



**Allan R. Pearlman, Esq.**  
**Chair**  
**Taxation Committee**  
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Dear NYCLA Member and Tax Court Calendar Call Volunteer,

You already are taking the free tax-controversy-focused CLEs, like NYCLA's Non-Traditional Tax Advocacy featuring Nina E. Olson, the National Taxpayer Advocate.

You can extend your NYCLA tax practice experience to get even more out of it by joining and participating in NYCLA's Committee on Taxation. Where the Tax Court Pro Bono Program and related CLEs is focused on federal income tax issues, primarily for low income taxpayers, the committee can and does consider issues affecting all taxpayers, regardless of income level. For example,

- a program on representing clients in state and local criminal tax investigations, included a prosecutor from the Manhattan DA's office, Sheriff working for New York City's Department of Finance (NYC's tax department), and a private practitioner whose practice includes tax criminal defense.
- Sales tax in New York for businesses selling products or services online.
- An employment lawyer discussing tax implications of employment discrimination settlements and awards.
- A matrimonial lawyer discussing tax implications of divorce settlements and awards
- An insider view of how the IRS deals with unpaid tax collection matter from the IRS Director of Collection Policy
- Up close views of solving the problems that seem utterly intractable from
  - Nina Olsen, the National Taxpayer Advocate,
  - Jack Trachtenberg, first Taxpayer Rights Advocate for the State of New York, and
  - Diana Leyden, first Taxpayer Advocate for the City of New York

The committee's agenda is membership driven, and so is responsive to the issues which members are working on or about which they are curious. You just have to join and come to the next



Page 2

meeting (date TBA), ready to hear what other members are dealing with, and bring your own questions. For example, Is NYS's driver's license suspension program for taxpayers owing more than \$10,000 good policy or bad? What about the IRS's upcoming policy to revoke passports?

Membership in the committee provides an opportunity to meet and interact with other tax people, deal with issues that matter to you, and expand your resume. *Here's how to join:*

Joining online is easy. Simply go to NYCLA.org and click on the JOIN button at the top of the screen. If you're already a Member of NYCLA and would like to join our committee, go to NYCLA.org and login. Once you are logged in, choose the tab at the far right "STANDING COMMITTEES, SECTIONS & COMMUNITIES" In that pull down menu you'll see a choice for "JOIN A COMMITTEE." Simply select the committee you'd like to join and follow the prompt.

If you have forgotten your username and/or password, you can click the appropriate link at the login screen. For further assistance during business hours, feel free to contact membership at 212 267 6646 ext. 208.

*OR FILL THIS OUT:*

I would like to Join the Taxation Committee.

Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Are you currently a NYCLA Member?     YES     NO

Would you like to have someone contact you about joining NYCLA?  YES     NO

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# NYCLA'S NON-TRADITIONAL TAX ADVOCACY

THREE (3) FREE NY & NJ CLE, CPE, and EA CE CREDITS

WHERE: **Jones Day**  
250 Vesey Street  
New York, NY 10281-1047

WHEN: **September 26, 2017**  
9:00 AM to 12:00 PM

## PANELISTS:

Frank Agostino, Agostino & Associates  
Rita Chan, Vice Media  
Minna R. Elias, Esq. District Chief of Staff, Rep. Carolyn Maloney  
Kathryn Keneally, Esq., Jones Day  
Robert Franzke, Assistant Special Agent in Charge, TIGTA  
Cindy Rogers, Esq. District Director, Congressman Thomas Suozzi  
David Voreacos, Bloomberg  
Matthew Weir, Assistant Inspector General, TIGTA  
Kaja Whitehouse, New York Post

## TOPICS

The topics to be reviewed in Non-Traditional Tax Advocacy include:

1. When and how to request assistance from Taxpayer Advocate Service (TAS); and
2. When and how to involve the Treasury Inspector General for Tax Administration (TIGTA);
3. When and how to involve traditional media and/or social media in tax cases, and;
4. When and how to involve elected officials (i.e., how and when constituent services offices can help).



## TIMED AGENDA

Moderators - Frank Agostino and Kathryn Keneally

Topic	Suggested Reading  IRM	Panel Leaders	Min
Introduction of NYCLA		Keneally	9:00 - 9:10
Nina E. Olson, <u>National Taxpayer Advocate</u>	<u>IRM pt 13</u>	Olson	9:10 - 9:55
TIGTA	<u>I.R.C. § 7803</u>	Agostino Franzke Weir	9:55 - 10:25
BREAK			10:25 - 10:35
When and How to Involve the Media When to Use Social Media	<u>IRM pt 9.3.2</u>	Boreacos Chan Whitehouse	10:35 - 11:20
When and How to Involve Constituent Services	<u>Congressional Affairs Program</u>  <u>IRM pt 11.5.2</u>	Elias Rogers	11:20 - 11:50
<u>Questions</u>		<u>All</u>	11:50-12:00



## **Frank Agostino, Esq.**

*President*

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### **Profile**

Frank Agostino is the president of Agostino & Associates, P.C., a law firm in Hackensack, New Jersey specializing in civil and white collar criminal litigation, tax controversies and tax planning.

Prior to entering private practice, Mr. Agostino was an attorney with the Internal Revenue Service's District Counsel in Springfield, Illinois and Newark, New Jersey. He also served as a Special Assistant United States Attorney, where he prosecuted primarily criminal tax cases.

As an adjunct professor, Mr. Agostino taught tax controversy at Rutgers School of Law and served as the co-director of the Rutgers Federal Tax Law Clinic.

Mr. Agostino is a frequent speaker and author on tax controversy and litigation matters. He serves on the Advisory Board of the Journal of Tax Practice and Procedure. Mr. Agostino is actively involved with the American Bar Association and the New York County Lawyers' Association.

Mr. Agostino is also the President of the Taxpayers Assistance Corp., which provides tax and legal advice to low income taxpayers in the NY/NJ area.

### **Recent Publications**

- *Tax Practitioner's Guide to Identity Theft* (CCH Inc., 2017, ISBN 978-0-8080-4556-4)
- *Recent Developments in FATCA Compliance*, 93 TAXES 51 (July 2015)
- *A 21st-Century Approach to Litigating Valuation Issues*, 17 J. TAX PRAC. & PROC. 47 (Apr.-May 2015)
- *Reviving Disallowed Charitable Conservation Easement Deductions*, 146 TAX NOTES 449 (Apr. 27, 2015)

### **Practice Areas**

- Civil Tax
- Criminal Tax
- White Collar Defense

### **Education**

- LL.M., Taxation, New York University School of Law
- J.D., New York Law School
- B.A., City College of New York

### **Awards & Recognition**

- Recipient, ABA's 2012 Janet Spragens Pro Bono Award
- Recipient, NJ State Bar Association's 2015 Pro Bono Award

### **Admitted In**

- New York
- New Jersey
- Tax Court

- *Be Prepared: The IRS's Duty to Foster Voluntary Compliance Through Code Secs. 6014(a) and 6020(a)*, 17 J. TAX PRAC. & PROC. 5 (Feb.-Mar. 2014)

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**Minna Elias**  
New York Chief of Staff  
Congresswoman Carolyn Maloney's Office

Minna Elias has worked as the New York Chief of Staff in Congresswoman Carolyn Maloney's office for 20 years. Ms. Elias received here AB in Government from Harvard University and JD from Cornell Law School. Prior to working with Congresswoman Maloney, Ms. Elias worked at Weil Gotshal and Manges. She formerly co-chaired the New York County Lawyer's Association Women's Rights Committee, and is currently a board member of Hashomer Hatzair.

## **Robert Franzke**

Robert W. Franzke is the Assistant Special Agent-in-Charge (ASAC) within the Treasury Inspector General for Tax Administration (TIGTA), Office of Investigations, and is responsible for the Long Island, New York (NY) Field Office located in Brookhaven, NY. The primary role of TIGTA Investigations is to detect fraud, waste, and abuse within the IRS and provide investigative services that promote economy, efficiency, and integrity in the administration of Federal tax laws.

Robert began his career with the Federal government in June 1991 as an Internal Revenue Service (IRS) Revenue Officer (R/O). During his career with the IRS, Robert was employed in both a Territory (Area) Office and Service Center (Campus) environment, and held several positions, including but not limited to, Collection R/O, Offer in Compromise (OIC) Specialist, Technical R/O for the Brookhaven Campus Centralized OIC Operation, and Supervisory OIC Examiner. Robert joined TIGTA, Office of Investigations, as a Special Agent in March 2004, and was promoted to his current position as the ASAC in October 2012.

Robert holds a Bachelor's in Business Management degree from Long Island University, and is a native of Long Island, NY.



## **KATHY KENEALLY**

PARTNER

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Kathy Keneally, former Assistant Attorney General of the U.S. Department of Justice (DOJ) Tax Division, focuses her practice on tax litigation and government investigations. She has more than 30 years of experience representing large corporations, financial institutions, closely held businesses, and high net worth individuals in civil and criminal tax controversy matters and in non-tax criminal defense. She is an accomplished trial lawyer and has resolved matters with the IRS and other federal agencies without proceeding to litigation.

At DOJ, Kathy oversaw the work of more than 350 attorneys in civil, criminal, and appellate tax litigation nationwide. In cooperation with IRS leadership, she developed and implemented key tax enforcement initiatives. She worked closely with DOJ leadership, U.S. attorneys, and senior officials at federal and state regulatory agencies, including the Federal Reserve Board of Governors, New York Federal Reserve, Securities and Exchange Commission, and New York Department of Financial Services.

Kathy has given keynote and panel presentations before government agencies, professional organizations, bar associations, and law schools and has testified before Congressional committees. She served as a vice chair of the American Bar Association Section of Taxation and chaired the Committees on the Standards of Tax Practice and Civil and Criminal Tax Penalties. She was a member of the Practitioners' Advisory Committee to the U.S. Sentencing Commission. Kathy is a Regent of the American College of Tax Counsel, co-chair of the National Institutes on Tax Controversy and Criminal Tax Fraud, and a life member of the National Association of Criminal Defense Lawyers.

## **Cindy Rogers**

Cindy Rogers is currently serving as District Director Congressman Thomas Suozzi (NY03). Cindy has devoted her career to public service – she was the Congressman’s first Deputy Mayor when he was Mayor of Glen Cove, NY and was Deputy Commissioner for Planning when Tom Suozzi served as Nassau County Executive. Cindy also oversaw Family Services for the City of Glen Cove, New York.

From 1978 to 1991, Cindy served as a Legislative Aid, Legislative Assistant and staff attorney to US Senator J. Bennett Johnston of Louisiana. Her focus in the Senate was the Interior Appropriations Subcommittee, and the Senate Energy and Natural Resources, Finance, Environment and Public Works, Judiciary Committees.

Cindy has also served on the City of Glen Cove’s Planning Commission, Landmarks Commission and Board of Ethics. She currently serves as Chair of the Mayor’s Senior Citizen Advisory Council.

Cindy, a graduate of Georgetown University and the Columbus School of Law at Catholic University, lives in Glen Cove, New York.

Darol Tucker is the Local Taxpayer Advocate in Brooklyn, New York. He assumed this position with the Taxpayer Advocate Service (TAS) in February 2015. He previously served as a Supervisory Revenue Officer in Albany, NY from 2012 until the beginning of 2015.

He started his career with the IRS in October 2005, in Syracuse, NY as a Revenue Officer. From there, he served as a Recruiting Agent with the IRS Recruitment Office from November 2010 until August 2012, where he was responsible for all of the IRS recruiting efforts for both North and South Carolina.

Prior to joining the IRS, Darol served and retired from the US Army after 26 years of service from February 1978 to February 2004, where he served in various leadership positions.

Darol graduated from Columbia College (Missouri) where he majored in Business Administration.



# David Voreacos

David Voreacos is a legal reporter at Bloomberg News who covers offshore tax evasion, corporate frauds, pharmaceutical and medical device litigation, whistleblowers, money laundering, insider trading, New Jersey politics and assorted other topics. He grew up in Baltimore and graduated from Haverford College. He earned master's degrees at the University of Pennsylvania and Northwestern University. He worked as an intern at the Los Angeles Times and a reporter at the Bridgeport Post and Bergen Record before joining Bloomberg in 2000. He lives in Teaneck, NJ.

## **Kaja Whitehouse**

**Kaja Whitehouse** is an experienced communicator, writer and researcher with a strong track record of breaking news and writing compelling profiles and feature stories. She has experience with online publishing and video reporting and have made appearances on CNBC, CNN, Fox News Channel and the TODAY show. She has a strong background in business and legal news. She is the author of a how-to book on estate planning, and I speak Mandarin Chinese..

Ms. Whitehouse is currently a reporter at the New York Post covering high-profile trials and law enforcement investigations stemming from the Manhattan US Attorney's office and the NY FBI, including breaking news of Manhattan US Attorney Preet Bharara's planned visit with President Donald Trump in November, where Trump asked Bharara to stay on in his role before firing him a few months later.

## **Part 13. Taxpayer Advocate Service**

### **Chapter 1. Taxpayer Advocate Case Procedures**

#### **Section 8. Congressional Affairs Program**

##### **13.1.8 Congressional Affairs Program**

- 13.1.8.1 [Introduction to Congressional Affairs Program](#)
- 13.1.8.2 [Control Principles](#)
- 13.1.8.3 [Assignment and Routing](#)
- 13.1.8.4 [Case Processing](#)
- 13.1.8.5 [TAMIS](#)
- 13.1.8.6 [Congressional Letter Writing](#)
- 13.1.8.7 [Disclosure Issues](#)
- 13.1.8.8 [Closing Actions](#)
- 13.1.8.9 [Congressional Inquiries on Frivolous Filers](#)
- Exhibit 13.1.8-1 [Sample Congressional Letter - DC or Local Office](#)

##### **Manual Transmittal**

April 04, 2017

##### **Purpose**

(1) This transmits revised IRM 13.1.8, Taxpayer Advocate Case Procedures, Congressional Affairs Program.

##### **Material Changes**

(1) 13.1.8 - Updated all references to Governmental Liaison (GL) to IRS Congressional District Liaison (DL) in document.

(2) IRM 13.1.8.1(5) - Add paragraph addressing outreach responsibilities for Local Taxpayer Advocates.

(3) IRM 13.1.8.2 (1) – Clarify tax related inquiries rather than non-tax related and incorporated IGM TAS 13-1115-007 on case criteria.

(4) IRM 13.1.8.2 (2) – Clarify assignment of congressional inquiries.

- (5) IRM 13.1.8.2 (4) – Updated the IRM Reference to IRM 13.1.8.7, *Disclosure Issues*.
- (6) IRM 13.1.8.2 (5) – Remove the references to GL & LA cases. Update IRM reference to IRM 13.1.8.6, **Congressional Letter Writing**.
- (7) IRM 13.1.8.4 (1) – Update IRM reference to IRM 13.1.17.5.
- (8) IRM 13.1.8.4.1 (1) (d) – Clarify congressional case assignments.
- (9) IRM 13.1.8.4(1)(g) - Added information on completing duplicate case screens, incorporating IGM TAS 13-0316-001.
- (10) IRM 13.1.8.4.1(1) (h) – Update the IRM reference.
- (11) IRM 13.1.8.4.1 (2) – Added IRM 13.1.8.7 Reference
- (12) IRM 13.1.8.4.2 – Where appropriate changed references to the new office of Executive Secretariat Correspondence Office (ESCO) from Legislative Affairs.
- (13) IRM 13.1.8.4.2 (1) (l) – Change the examples to match the TAS Quality Review Attribute guidelines.
- (14) IRM 13.1.8.4.2 (1)(o) – Corrected the IRM reference for Exhibit IRM 13.1.8-1.
- (15) IRM 13.1.8.4.3 - Adding Subsection Addressing Congressional Inquiries Involving Litigation Issues - added IRM 13.1.8.4.3(1)
- (16) IRM 13.1.8.5(2) - Added power of attorney screen to be completed, if appropriate.
- (17) IRM 13.1.8.5 (6) – Removed the “Note.”
- (18) IRM 13.1.8.5(10) - Removing the requirement for separate TAMIS cases on duplicate congressional case with the same taxpayer, same issues, and same TAS employee working the case. This incorporates IGM TAS 13-0316-001.
- (19) IRM 13.1.8.5(11) - Revised paragraph addressing when a duplicate congressional case is appropriate and codes.
- (20) IRM 13.1.8.6 (1) – Revised to reflect reference to IRM 1.10.1.14 and IRM 1.10.1.15 for ESCO Controlled Correspondence.
- (21) IRM 13.1.8.6 (2) –Expanded the “Note” to cover “No Response” correspondence to congressional offices.
- (22) IRM 13.1.8.6(3) - Changing the title of Area Directors to Deputy Executive Director Case Advocacy (DEDCA).

(23) IRM 13.1.8.6 (5) - Added paragraph concerning email with congressional offices.

(24) IRM 13.1.8.7 (1) (c) – Change the IRM reference to IRM 1.10.1.13, *Disclosure Information* and add reference to IRM 11.3.4.2.1.

(25) IRM 13.1.8.7 (3) – Corrected the IRM reference to IRM 13.1.8.7 (1)(b). Added information on disclosures with congressional offices and early vacancy. Renumbering the rest of the IRM 13.1.8.7.

(26) IRM 13.1.8.7 (6) - Previously (5), clarified contact with power of attorney, authorized third party on congressional inquiries.

(27) IRM 13.1.8.7 (7) – References IRM 1.10.1.13 for disclosure information working with congressional offices.

(28) IRM 13.1.8.7 (8) - Added new paragraph, moved current (8) to (9).

(29) IRM 13.1.8.8 (1) – Changed IRM reference to IRM 13.1.21

(30) IRM 13.1.8.8.(2) – Changed the wording to reflect the TAS Quality Review Attributes.

(31) IRM 13.1.8.9 (1) – Changed IRM references to reflect the new IRM 1.10.1.14 and IRM 1.10.1.15 ESCO Controlled Correspondence.

(32) We made editorial changes throughout this IRM section.

### **Effect on Other Documents**

This IRM supersedes IRM 13.1.8 dated 02-27-2012.

### **Audience**

Taxpayer Advocate Service employees

### **Effective Date**

(04-04-2017)

Nina E. Olson  
National Taxpayer Advocate

### **13.1.8.1 (04-26-2011)**

### **Introduction to Congressional Affairs Program**

1. The Taxpayer Advocate Service (TAS) plays a key role in the Congressional Affairs Program (CAP). The Local Taxpayer Advocate (LTA) will coordinate the CAP along with the IRS Congressional District Liaison (DL) in each geographic area.
2. The LTA will have responsibility for all tax account related issues, primarily constituent casework and advocacy.
3. The DL will have responsibility for any non-tax account related inquiries and for communicating IRS policy and procedures. The DL will deliver IRS messages through outreach or liaison efforts.
4. The LTA and DL will coordinate congressional visits, outreach activities, and hosting congressional staff liaison meetings. Congressional visits may be separate, depending on the nature of the visit, but must be coordinated.
5. LTAs are responsible for building and maintaining professional relationships with local congressional offices through effective outreach. Congressional outreach requirements are covered in IRM 13.6.1.12.3, *Congressional Outreach*.

### **13.1.8.2 (04-04-2017)**

#### **Control Principles**

1. **All** tax account related congressional inquiries received by TAS will be controlled on the Taxpayer Advocate Management Information System (TAMIS). If an inquiry does not qualify under acceptance criteria 1-8, follow current interim guidance on accepting cases under TAS case criteria 9, **Public Policy**, which specifically includes congressional account inquiries. Interim guidance is published annually and can be found on the TAS Intranet.

#### **Exception:**

General telephone (or e-mail) inquiries from a congressional office that can be answered while on the line need not be controlled.

2. Assign Congressional inquiries that are not associated with an existing case with the same issue to the Local Taxpayer Advocate office that is aligned with the congressional district that initiated the inquiry. The LTA office/congressional district alignment includes both the local and campus offices. See the LTA office/congressional district alignment list on the **Congressional page** of the TAS intranet site.
3. Cases requiring normal campus assistance should be worked through the Operations Assistance Request (OAR) process. Functions should work all controls assigned to them by Legislative Affairs (LA) on e-trak.
4. Taxpayer correspondence noted as having a courtesy copy (cc) sent to a congressional office will not be treated as a congressional inquiry. See *IRM 13.1.8.7, Disclosure Issues*.
5. When responding to congressional offices in writing, do not delegate signature authority below the LTA on TAS cases. See *IRM 13.1.8.6, Congressional Letter Writing*.

- All congressional inquiries received by Business Units (BUs) in the National Office are forwarded to Legislative Affairs for review and control on e-trak.

**Exception:**

The National Taxpayer Advocate (NTA) will control and assign inquiries addressed to that office.

**13.1.8.3 (04-26-2011)  
Assignment and Routing**

- Tax account related inquiries will be assigned to TAS. These cases may require assistance and cooperation from BUs on complex issues, and will be worked via the OAR process. The DL or LA office will work non-tax related inquiries, depending on the issue involved.
- Establish only one control on TAMIS if a congressional inquiry addresses a tax account issue as well as a non-tax account issue. TAS will attempt to resolve the taxpayer account and coordinate resolution on the non-tax account issue.
- The following tables provide directions for assigning congressional inquiries, and consider the impact of §1203 of the IRS Restructuring and Reform Act of 1998 (RRA 98).

<b>TAX ACCOUNT RELATED</b>	<b>NON-TAX ACCOUNT RELATED</b>	<b>NATIONAL OFFICE NON-TAX ACCOUNT RELATED</b>
<b>Assign to Taxpayer Advocate (Controlled as Criteria Code 1-9)</b>	<b>Route to IRS Congressional District Liaison</b>	<b>Route to Legislative Affairs</b>
1. All tax account related congressional inquiries.	1. IRS employee complaints about routine personnel actions that have not yet gone through the system, or local issues that fall under local union agreement or MOU.	1. Personnel actions that have gone through the system but are still unresolved.
2. An inquiry from a taxpayer that contains <b>both</b> a tax account <b>and</b> a non-tax account issue will stay with TAS.	2. Complaint about an unidentified IRS employee that isn't an RRA 98 §1203 violation. If employee is identified or if the complaint is an RRA 98 §1203 violation, route to Legislative Affairs.	2. All IRS hardship transfer requests.
3. Tax law / Technical specific to an account issue or request for opinion or ruling.	3. Tax law / Technical questions and issues that don't involve a taxpayer's account.	3. IRS employee reporting or alleging impropriety, RRA 98 §1203 violation, ethical

<b>TAX ACCOUNT RELATED</b>	<b>NON-TAX ACCOUNT RELATED</b>	<b>NATIONAL OFFICE NON-TAX ACCOUNT RELATED</b>
<b>Assign to Taxpayer Advocate (Controlled as Criteria Code 1-9)</b>	<b>Route to IRS Congressional District Liaison</b>	<b>Route to Legislative Affairs</b>
		issues.
<b>TAS EXAMPLES</b>	<b>DL EXAMPLES</b>	<b>LA EXAMPLES</b>
IRS denied EITC	Who can claim EITC?	EITC is welfare
IRS employee has hardship and needs refund	IRS employee wants a parking space near office	IRS employee misuse of government time
Trouble understanding notice received	IRS employees are rude and misinformed	Employee who can be identified gave taxpayer's return information to neighbor
IRS levied prematurely	Where is my closest Collection office?	Constitutionality issues
Why was frivolous filer penalty assessed?	Frivolous filer penalty is unconstitutional	Frivolous filer penalty and constitutionality have previously been explained and taxpayer isn't satisfied
Where is my refund?	How long does it take to receive an e-filed refund?	IRS should provide e-file to everyone
IRS employee didn't receive refund	Employee concerned POD closing due to reorganization	Employee concerned about reorganization issues previously negotiated in local offices
Offset based on bad data, need help getting it back	What are the rules for injured spouse?	Offset law unfair

#### **13.1.8.4 (04-26-2011) Case Processing**

1. Process cases under general guidelines in IRM 13.1.18, *Processing TAS Cases*. However, see IRM 13.1.17.5, *Exceptions to TAS Case Transfers*, for information about transferring congressional cases.

#### **13.1.8.4.1 (04-04-2017) Congressional Office Inquiries Received By TAS**



1. Upon receipt of an inquiry from a congressional office:
  - A. Date stamp the request if written or faxed.
  - B. Research e-trak, TAMIS, or IDRS to identify the issues involved and the appropriate office to which to assign the inquiry.
  - C. Control the inquiry on TAMIS (see below for unique input items).
  - D. Work tax-related inquiries in the LTA office aligned with the congressional district that initiated the inquiry. The LTA office/congressional district alignment includes both local and campus offices. See the LTA office/congressional district alignment list on the ***Congressional page*** of the TAS intranet site. If, under unusual circumstances, a transfer is necessary, fax the documents to the assigned office or express-mail them if they require the taxpayer's original signature(s).
  - E. Forward non-tax related inquiries to the DL, who will decide whether to work the case or forward it to LA for assignment if it is national in scope. LA assigns these inquiries in e-trak to the appropriate BU to prepare a response. The BU works all cases assigned by LA. **Do not forward these cases back to TAS.**
  - F. Attempt to reach the congressional staff by telephone to acknowledge receipt of the inquiry. See IRM 13.1.18.3, *Initial Contact*. **Contact the congressional office for permission to respond to the taxpayer directly.**
  - G. Each congressional inquiry and subsequent inquiries will be controlled on TAMIS. If more than one congressional office contacts TAS to assist a taxpayer **with the same issue and the same TAS employee, in the same office will be working the case**, an additional case will not be created. Add an additional Congressional Record screen with the additional congressional office's information to the existing case. Refer to IRM 13.4.5.2.2.2, *Congressional Screen*.
  - H. Timely resolution and the best interest of the taxpayer should always be the deciding factors when determining the office responsible for any needed actions. Consistent information and correspondence must be given to the congressional office and the taxpayer. Refer to IRM 13.1.8.6, *Congressional Letter Writing*, for procedures for responding to congressional inquiries.
2. See IRM 13.1.8.7, *Disclosure Issues* addressing the requirements about the Congressional Authorization to receive information.

#### **13.1.8.4.2 (04-04-2017)**

### **Congressional Inquiries Received By Legislative Affairs and Routed to Local TAS Office**

1. Upon receipt of a congressional inquiry on e-trak from Legislative Affairs:
  - A. Control the case on TAMIS (if not already controlled on TAMIS).
  - B. Annotate the TAMIS case file number in the "Other ID NO:" section of the e-trak ticket. If a prior TAMIS/e-trak case exists, annotate this

information in the HISTORY/COMMENTS section of the e-trak control ticket. Include the TAMIS case file number, name and telephone number of the case advocate assigned to the case.

- C. The receiving office should immediately contact the congressional office to advise the staff of the assignment of the inquiry to the TAS office. Follow time frames established in IRM 13.1.18.3, *Initial Contact*. TAS needs to use the standard congressional letter template when responding to congressional offices.

**Note:**

When discussing cases with congressional staffers, case advocates are not required to give the independence statement if there is an established relationship between the advocate and staffer. The case advocate should notate the independence statement on the TAMIS history. This does not eliminate the requirement that the statement be included in all written congressional correspondence.

- D. If an e-trak congressional assignment from National Office is sent to your office in error, immediately (within one workday) transfer the case to the correct office with a detailed explanation of why the case should be transferred. Before transferring, be sure the time frame for congressional acknowledgment has not passed. If the time frame has passed or is about to pass, acknowledge the case and then transfer it to the correct office.
- E. Take appropriate actions and document e-trak and TAMIS. Extension requests must be input to e-trak and TAMIS with a detailed explanation of the reasons for an extension. *National Office approval is not required unless specifically requested by the controlling office.*
- F. **The Executive Secretariat Correspondence Office (ESCO) must review the written response to an e-trak controlled congressional case before it is issued.** E-mail the incoming letter and the draft response letter to ESCO at \*Executive Secretariat E-Review for review. Include the e-trak control number in e-mail.
- G. Make appropriate corrections to letter once it is returned by ESCO.
- H. Secure the appropriate signature and send the closing letter.
- I. Scan the final closing letter signed by the LTA into e-trak. Close the e-trak control and close the case on TAMIS. Update histories on both e-trak and TAMIS.
- J. Enter the date of the closing contact, either by correspondence or telephone, on the congressional screen of TAMIS. Refer to IRM 13.4.5.2.2.2, *Congressional Screen*.
- K. Written responses are not mandatory unless requested by the congressional office. Telephone closures are acceptable. Document on TAMIS and e-trak the details of the phone call that closed the case. Include the date of the call and the name of the person you spoke to in the congressional office.

- L. These cases are subject to the TAS quality review guidelines (*e.g.*, timeliness of contacts and actions, accuracy of actions, authorized disclosures and correct communication, etc.).
- M. In the closing paragraph, the NTA/LTA must include his/her contact telephone number.

**Example:**

A suggested closing paragraph is "I hope this information is helpful. If you have any questions please contact me at (XXX) XXX-XXXX."

- N. If the letter is to a taxpayer, RRA 98 requires you to include your identification number(s) or badge number in the letter. The case advocate employee number should be included if the case advocate is referenced as a contact person in the letter.
- O. Do **NOT** include hours of availability or operation in congressional responses. Do **NOT** use pattern letters. On all congressional correspondence, use the approved method for incorporating your local address within the letter. See *Exhibit 13.1.8-1*, Sample Congressional Letter, for an acceptable letter template.

**Note:**

If a congressional case (not on e-trak) already exists and you receive a non-congressional e-trak case from the same taxpayer, the e-trak case must remain open until the issue is resolved. If the cases are assigned to two different offices, the two case advocates must coordinate efforts.

**13.1.8.4.3 (04-04-2017)**

**Congressional Inquiries Involving Litigation Issues**

- 1. Inquiries received from congressional offices that involve issues under litigation, follow the guidance found in IRM 13.1.10, *Special Procedures*. If guidance is needed, the LTA should contact the Office of the Counsel to the National Taxpayer Advocate.

**13.1.8.5 (04-04-2017)**

**TAMIS**

- 1. All congressional inquiries controlled on TAMIS will be processed within one workday of receipt, except for:
  - A. Inquiries (other than written) that can be answered immediately during the call.
  - B. Courtesy copies (copies of letters addressed to someone other than the member of Congress with cc: member's name) of written responses to

congressional offices. These will not be treated as congressional inquiries unless actually referred by a congressional office.

- C. Non-case-related inquiries that will be worked by the DL or sent to LA for control and assignment on e-trak. The LA cases should not be controlled on TAMIS by the receiving office but instead faxed to the DL. If LA assigns the case to TAS as the BU, then follow procedures in *IRM 13.1.8.4.2, Congressional Inquiries Received by Legislative Affairs and Routed to Local TAS Office*.
2. When an inquiry is received from a congressional office, the Congressional Screen on TAMIS must be input as well as the Taxpayer Screen, including Power of Attorney information, if applicable. Refer to *IRM 13.4.5.2.2.2, Congressional Screen*, for TAMIS input requirements.
  3. Use the Taxpayer Screen to record the taxpayer data.
  4. If the case is controlled on e-trak, input the e-trak control number in the e-trak Control # field (Taxpayer Screen 5) of TAMIS.
  5. If the congressional inquiry was addressed to the BU and the BU referred the case, input "0" in the first Outreach field, and "00" in the second Outreach field to indicate the request did not come directly from the taxpayer. Input "20" in the second Outreach Field on Taxpayer Screen 1 to indicate the taxpayer's inquiry was received in TAS from a congressional office. If a congressional inquiry was addressed to TAS or there was a request for TAS assistance, input "1" or "2" in the first Outreach field and "20" in the second Outreach field.
  6. Use the appropriate criteria code when inputting the congressional inquiry on TAMIS. All TAS congressional inquiries should be coded 1 – 8, or if the NTA has identified the issue as a compelling public policy issue, as code 9.
  7. Use Taxpayer Screen 5 on TAMIS in the "How Received" field to indicate how the congressional inquiry was received into TAS.
    - A. Use an "X" to identify a congressional inquiry addressed or sent to operations/functions/units other than TAS.
    - B. Use a "Y" to identify a congressional inquiry addressed or sent directly to the NTA, Deputy Executive Director of Case Advocacy (DEDCA), or LTA.
  8. Use the congressional screen of TAMIS to input the congressional office contact information.
  9. Check the "Disclosure Release Received" box on the congressional screen if the congressional office has appropriate disclosure authorization.
  10. When there is an existing case (non-congressional) and a congressional inquiry is received concerning **the same taxpayer with the same issue and the same TAS employee is the same office will work the case**, an additional case will not be created. If more than one congressional office contacts TAS to assist a taxpayer **with the same issue and the same TAS employee in the same office will work the case**, do not create another case on TAMIS. In both instances, add a Congressional Record screen for each additional congressional office to the existing case.

**Note:**

Casework Procedures (for example: initial contact, next contact date, and follow up dates) still apply for each congressional office with the case. See IRM 13.1.18 *Case Procedures*.

**Caution:**

11. If any of the above requirements are not met: **same issue, same office, and same TAS employee assigned**, an additional case should be opened in TAMIS. Code the congressional inquiry with the appropriate criteria code (1-9). On the congressional TAMIS case, input **DUPTA** in the **N.O. Use** field on the TAMIS Taxpayer Screen 5. The congressional case will be worked in the LTA office of the member of Congress' home state. If the cases are assigned in two different offices, the two case advocates must coordinate efforts, but each office will be responsible for responding to its local congressional office staff.

**Note:**

TAMIS allows duplication of history to other cases. Refer to IRM 13.4 *TAS TAMIS Guide*, for information on how to automatically duplicate the TAMIS history from one case to another. Initial and closing actions, including follow-up dates and next contact dates, should be entered on each case.

**Caution:**

### **13.1.8.6 (04-04-2017) Congressional Letter Writing**

1. IRM 1.10.1.14, *Format for Responses to ESCO Controlled Correspondence*, and IRM 1.10.1.15, *Variable Elements for ESCO Controlled Correspondence*, provides instructions for preparing responses to congressional inquiries and should be used to supplement regular instructions for TAS case processing. Refer to *Exhibit 13.1.8-1*, Sample Congressional Letter, for an example of writing style, format, headers, and salutation to follow in written correspondence to congressional offices.
2. The LTA will review and sign **all** written correspondence, including interim correspondence, to congressional offices, and ensure adherence to quality attributes on tax account related congressional inquiries.

**Note:**

If you do not receive requested information from the taxpayer or congressional office, do not send a second request pattern letter (1671 Letter). Contact the office

again, re-request the information, and discuss as necessary to work and resolve the issue. If the taxpayer still fails to provide documentation and you close the case as **No Response**, send the congressional office a final communication to explain the circumstances, for example: **As we discussed on MM/DD/YYYY, TAS is unable to pursue further relief for your constituents because they haven't responded to our requests for supporting documentation we need to proceed with their case. If your constituents can provide this information later, we would be happy to reopen the case.**

3. Signature authority cannot be delegated below the NTA/DEDCA/LTA or the responsible official, unless the individual has been officially designated to act on their behalf. For example, when an LTA delegates a group manager to act as the LTA, that manager may sign the written response as the acting LTA.
4. Do **NOT** include hours of availability or operation in congressional responses. Do **NOT** use pattern letters. On all congressional correspondence, use the approved method for incorporating your local address within the letter.
5. Communication that involves a specific tax case, taxpayer, or is account related **cannot be sent to a congressional office by email**. This correspondence must be sent through the mail or by fax. TAS will follow existing guidance in IRM 11.3.1.14.2, *Electronic Mail and Secure Messaging*, which prohibits the use of email to communicate with taxpayers or their representative, including congressional offices, when the email contains Sensitive But Unclassified (SBU) information. See IRM 10.8.1.4.14.1 *Sensitive but Unclassified Information*, IRM 11.5.2, *Congressional Affairs Program* and IRM 11.5.2.7.6, *Email/Fax Inquiries*.

### **13.1.8.7 (04-04-2017)**

#### **Disclosure Issues**

1. IRC § 6103(c) permits disclosure of a taxpayer's return or return information to a third party designee. A taxpayer's letter to a member of Congress will authorize disclosure to the extent it is signed, dated, and indicates the following:
  - A. Taxpayer's identity: name, address, and identifying number (e.g., Social Security number/ individual taxpayer identification number/ employer identification number), or any combination thereof, which enables the IRS to clearly identify the taxpayer.
  - B. The identity of the person to whom disclosure is to be made. A letter addressed to "Dear Sir" that does not specifically refer to the member of Congress is not sufficient. However, the taxpayer's letter, forwarded with the envelope showing it was addressed to the member of Congress, is sufficient.
  - C. The letter must contain sufficient facts to enable the IRS to determine the nature and extent of the assistance requested and the returns or return information to be disclosed. See IRM 1.10.1.13, *Disclosure Information* and IRM 11.3.4.2.1, *Inquiry Accompanied by Taxpayer's Correspondence*.

- D. The congressional office may substantiate valid authorization by submitting Form 8821 (or a satisfactory facsimile) with all required information included and the taxpayer's signature and date.
2. An authorization to a member of Congress will be construed to include a member of the Congressperson's staff designated in the Congressperson's inquiry, identified in a general designation from the Congressperson, or known to be the Congressperson's staff person for dealing with constituents' tax inquiries. Likewise, an authorization to a staff member of the Congressperson in their capacity as staff member handling constituent inquiries includes the Congressperson as well. Should the Congressperson become incapacitated or die in office requiring a long-term actor or designee to be appointed to fill the term, authorizations can be construed to remain in effect for that Congressional office. If there is any doubt that the taxpayer would want continuing disclosures in these situations, contact the taxpayer to determine his or her wishes.
  3. Typically, TAS should not accept congressional cases subsequent to the congressional member vacating office until a new member is elected. However, if the Office of the Clerk for the United States House of Representatives or the Assistant Secretary of the Senate issues a letter stating the congressional office would continue assisting taxpayers, renames the office and officially names the Clerk or Assistant Secretary as the supervisor, TAS may continue to receive and work cases from that office. TAS must receive proper authorization from the taxpayers to disclose information to that office as outlined in IRM 13.1.8.7, *Disclosure Issues* and IRM 11.3.4.2.1, *Inquiry Accompanied by Taxpayer Correspondence*. If there is any doubt the taxpayer would want continuing disclosures in this situation, contact the taxpayer to determine their wishes.
  4. **Copies of letters addressed to someone other than the member of Congress ("cc" letters) do not authorize the IRS to disclose returns or return information to a member of Congress or staff.** An exception to this rule will be made when the taxpayer includes a signed addendum requesting the assistance of the member who forwarded the correspondence to the IRS, and the letter otherwise meets the above requirements for valid disclosure authorization. Also, as in *IRM 13.1.8.7 (1)(b)* above, a signed, dated "cc" letter, not a photocopied signature, forwarded with the envelope showing it was addressed to the member of Congress, is sufficient.
  5. Absent written authorization from the taxpayer, the member of Congress or his/her staff person may be provided general information and advised when IRS considers the matter resolved. However, no disclosures of the constituent's returns or tax account information may be made. In that case, resolve the problem by communicating directly with the taxpayer and advise the congressional office that this was done.
  6. Whether responding directly to the taxpayer at the request of a congressional office, or to the congressional office, check command code "CFINK" on IDRS for power of attorney or written authorization information. TAS is not required to work with the POA or authorized third party when responding to the congressional inquiry; as a courtesy, however, the Case Advocate may want to let

the POA or authorized third party know of the inquiry and copy them on any written response sent to the congressional office. .

7. If the congressional office has appropriate disclosure authorization, check the "Disclosure Release Received" box on the congressional TAMIS screen.
8. The effective period of authorization generally continues for the tax periods and issues covered by the original disclosure consent even after TAS closes the case and a subsequent inquiry requires TAS to reopen the case. The original consent is valid for the reopened case if it covers the same years and congressional office. A valid disclosure consent does not have an expiration date unless the taxpayer revokes it. Follow the procedures in IRM 13.1.21.3, *Reopening Cases*, to reopen the case.
9. See IRM 1.10.1.13, **Disclosure Information** for all disclosure considerations for working with congressional offices.

### **13.1.8.8 (04-04-2017)**

#### **Closing Actions**

1. Follow the guidelines in IRM 13.1.21 , *TAS Case Closing and Reopen Case Procedures*, to determine when to close the case. TAS will communicate with the congressional office throughout the process unless the office requests that TAS work with the taxpayer directly, or determines it no longer wishes to stay involved. The office staff will also determine if telephonic closure is acceptable.

#### **Note:**

Even though the congressional office is no longer involved in the case, the TAMIS coding should still reflect "Congressional" for tracking purposes.

2. All tax account related congressional inquiries are subject to the same attributes as any other TAS criteria case and may be selected for quality review.
3. An apology must be given on TAS criteria cases, including congressional inquiries that meet the criteria. The following IRM sections address apologies:
  - A. IRM 13.1.6.5, Apology - Just saying TAS is sorry for any inconvenience it has caused is not a sincere apology. State **why** we are apologizing.
  - B. IRM 13.1.18.3, Initial Contact - Advise the taxpayer of your name, job title, address, telephone number, office hours, and employee identification number. Apologize, if appropriate.
4. If an apology is clearly not appropriate, address the reasons in the TAMIS history.
5. Close the case on TAMIS by completing all case screens, including the closing action screen and the Congressional Screen.

#### **Reminder:**

Complete the Closed Date field on the Congressional Screen on TAMIS.



### 13.1.8.9 (04-04-2017)

#### Congressional Inquiries on Frivolous Filers

1. If you receive a congressional frivolous filer inquiry that has no tax account related issue, send the inquiry to the DL. For general information on responding to congressional inquiries, see IRM 1.10.1.14 , **Format for Responses to ESCO Controlled Correspondence**, and IRM 1.10.1.15 , **Variable Elements for ESCO Controlled Correspondence**.

#### Exhibit 13.1.8-1

#### Sample Congressional Letter - DC or Local Office

This sample shows the proper format for a congressional letter, as follows based on office location. It should be copied into the TAS LTA letterhead showing the current logo and other information.

Position	Example
House of Representatives Washington, DC Office	The Honorable (Full Name) U.S. House of Representatives Washington, DC 20515 Dear Representative (Last name):
House of Representatives Local Office	The Honorable (Full Name) Member, U.S. House of Representatives (Local office street address)(City) (State) (ZIP Code) Dear Representative (Last Name):  <b>Note:</b>  If the Member, U.S. House of Representatives is too long, carry over part of it to the next line and indent 2 spaces. This will give the inside address a more balanced appearance

Attention: Name of Staffer

Dear Representative XXX:

I am responding to your letter of (date) to Commissioner of Internal Revenue \_\_\_\_\_ on behalf of your constituent, Mr. John Smith of (constituent's city/town). Mr. Smith had expressed concern about (description of issue), and the Commissioner referred this issue to the Taxpayer Advocate Service for independent review.

We have (description of resolution / status of case). I apologize for the problem and for any inconvenience and delay it caused Mr. Smith.

I hope this information is helpful in responding to Mr. Smith. If you have any questions, please call me at XXX-XXX-XXXX, or Case Advocate John Doe of my staff at XXX-XXX-XXXX.

Sincerely,

(signature)

(name)

Local Taxpayer Advocate

# Taxpayer Advocate Service Assistance

## A. Background [I.R.C. § 7803(c)]

### I. Appointments, Reporting

- (1) The National Taxpayer Advocate is appointed by the Secretary of the Treasury.
- (2) The National Taxpayer Advocate reports directly to the Commissioner of Internal Revenue.

### II. Responsibilities

- (1) Assist taxpayers resolve problems with the IRS;
- (2) Identify areas in which taxpayers have problems dealing with the IRS;
- (3) Propose changes in administrative practices of the IRS that will mitigate those problems; and
- (4) Identify potential legislative changes that may mitigate those problems.

## B. Form 911

### I. What is it?

- (1) Request for Taxpayer Advocate Service Assistance and Application for Taxpayer Assistance Order

### II. When to use it?

- (1) A problem with the IRS is causing financial difficulties for a taxpayer, the taxpayer's family or business;
- (2) A taxpayer (or business) is facing an immediate threat of adverse action; or
- (3) A taxpayer has tried repeatedly to contact the IRS, but no one has responded, or the IRS has not responded by the date promised.

### III. Where to file it?

- (1) Fax to the local Taxpayer Advocate office
- (2) Mail to the local Taxpayer Advocate office
- (3) Call the National Taxpayer Advocate Intake Line
- (4) Contact Information:

National Taxpayer Advocate Intake Line 877-777-4778
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New Jersey 955 S. Springfield Ave., 3 <sup>rd</sup> Floor Springfield, NJ 07081 Phone: 973-921-4043 Fax: 973-921-4355
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New York: Manhattan 290 Broadway, 5 <sup>th</sup> Floor New York, NY 10007 Phone: 212-436-1011 Fax: 212-436-1900
New York: Brooklyn 2 Metro Tech Center, 100 Myrtle Ave., 7 <sup>th</sup> Floor Brooklyn, NY 11201 Phone: 718-834-2200 Fax: 718-834-6545
Overseas Taxpayer Advocate Service, IRS PO Box 193479 San Juan, Puerto Rico 00919-3479 Fax: 1-787-622-8933

IV. Notify the IRS Officer

- (1) Notify the IRS officer on the case by sending a copy of the completed signed form to the officer.

C. Case Criteria [IRM 13.1.7.2 (02-04-2015)]

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

- 2. **Economic Burden.** Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.
  - **Criteria 1:** The taxpayer is experiencing economic harm or is about to suffer economic harm.
  - **Criteria 2:** The taxpayer is facing an immediate threat of adverse action.
  - **Criteria 3:** The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
  - **Criteria 4:** The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

**3. Systemic Burden.** Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue.

- **Criteria 5:** The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- **Criteria 6:** The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
- **Criteria 7:** A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer’s problem or dispute within the IRS.

**4. Best Interest of the Taxpayer.** TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.

- **Criteria 8:** The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer’s rights.

**5. Public Policy.** Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.

- **Criteria 9.** The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

**6.**

**Reminder:**

Taxpayers do not need to document their hardship to be accepted into the TAS program. Case Advocates will need to document the hardship in the course of developing the case and determining what relief is appropriate.

**7. General Response Time Guidelines [IRM Exhibit 13.1.7-1]**

Issue	IRM Reference	Processing Time
Account Referral Form 4442 / e-4442	21.3.8.8.2	30 Days from Receipt
Adjustment / Math Error Notices	21.3.1.4	See Specific Math Error
Audit / Collection Adjustment Overpayment (CP210)	21.3.1.4.94	2 to 5 Weeks
Collection Adjustment Balance Due	21.3.1.4.95	2 to 5 Weeks

Issue	IRM Reference	Processing Time
(CP220)		
Copy of Audit Report	21.5.10.4.4	60 Days
Copy of CP 2000 / 2501 / 2893C	21.3.1.4.59	60 Days
Correspondence to the Accounts Management	21.3.3.3.4	30 Days
Credit Transfer Overpayment (CP62)	21.3.1.4.43	2 to 4 Weeks
DDIA Changes in CSCO	5.19.1.5.5.13.2	72 hours from Receipt (3 business days)
Form SS-4 Submitted by Mail	21.7.13.3.6.1	4 Weeks
Form SS-4 Submitted by Fax	21.7.13.3.7.2	4 Business Days
Form SS-4 Submitted by EIN Toll-Free Telephone Service	21.7.13.3.5.1	Immediately
Form SS-8	21.7.2.4.23	180 Days from Receipt
Form W-7 / W-7A	Instructions	6 Weeks (8 to 10 weeks during peak processing periods of January 15 through April 30)
Form 3911	Form	6 Weeks
Form 4506 - Copy of Return	Instructions	60 Days
Form 4506 - Copy of W-2	Instructions	60 Days
Form 8379 Attached to Original Return	Instructions	14 Weeks
Form 8857	Instructions	6 Months
-A Freeze (Amended Returns)	21.5.6.4.2	12 Weeks
-D Freeze	21.5.6.4.8	75 Days
E Freeze	21.5.6.4.9	6 Weeks from Control
S Freeze	21.4.3.4.3	4 to 6 Weeks
T Freeze	21.5.6.4.38	None Provided
INTST Payoffs by Phone	5.19.1.5.2	Add 10 Days to Date TP States Payment will be made
INTST Payoffs by Mail	5.19.1.5.2	Add 21 Days to Date TP States Payment will be made
Refund from Paper Return	21.4.1.3	6 to 8 Weeks
Refund from ELF Return	21.4.1.3	3 Weeks
Refund from Form 1040X	21.4.1.3	8 to 12 Weeks
Response from Taxpayer to Underreporter	4.19.2.2.1	30 Days
Unpostable is Open	21.5.5.3.3	6 to 8 Weeks
Unpostable is Closed	21.5.5.3.3	4 to 6 Weeks

8. Case Assignment, Closing, Re-Opening, and Transfers [IRM 13.3.1.1(7)-(8) (01-15-2005), IRM 13.1.16.12 (03-28-2017), 13.1.21.1.1 (02-01-2011), 13.1.21.1.2 (06-12-2012), 13.1.21.3.1 (02-01-2011), 13.1.17.5 (11-01-2011)]
  - a. Case Advocate Case Assignment
    - i. Upon acceptance into the program, cases are ready for assignment to Case Advocates.
    - ii. Cases are assigned within 2 workdays of the Taxpayer Advocate Received Date for Criteria 1-4 cases and 3 workdays of the Taxpayer Advocate Received Date for Criteria 5-9 cases.
    - iii. When a taxpayer, after being told that his case does not meet the criteria, persists on the phone, the representative is instructed to keep the appearance of a qualified case, but to note to the contrary in the electronic system.
    - iv. Cases involving litigation are generally not accepted.
    - v. Contacting the Taxpayer Advocate Service is not a substitute for contacting the IRS. Examples:
      1. Writing to Taxpayer Advocate does not serve as a substitute for writing to the proper IRS office to exhaust administrative remedies and request costs under I.R.C. § 7433. See Bowers v. United States, 498 Fed.Appx. 623 (7th Cir. 2012).
      2. Writing to Taxpayer Advocate does not put the IRS on notice of a refund claim. See Green v. United States, 428 Fed.Appx. 863, 868 (10th Cir. 2011).
  - b. Closing Cases
    - i. Generally, cases are open until completely resolved, including all related issues.
    - ii. When no relief is granted, a taxpayer can discuss the situation with a Local Taxpayer Advocate.
    - iii. A taxpayer unsatisfied with the outcome has the opportunity to speak to a manager.
    - iv. When appropriate, the representatives are instructed to apologize to the taxpayer.
    - v. A written response is mandated in hardship cases when the taxpayer does not get relief.
  - c. Quick Closure Cases
    - i. TAS considers the following two situations as meeting quick closure procedures:

1. Issues that are completely resolved by a TAS employee the same day.

**Example:**

On March 15, a taxpayer calls the local TAS office because he requested transcripts of his last three income tax returns two weeks ago, and he has not yet received them. He needs them to qualify for a mortgage, and the underwriter must have the transcripts before March 17, or his pre-qualifying letter will expire, and his closing date will be cancelled. He is not able to use the Online Transcript service because he is not living at the same address as his last filed return. The taxpayer does not want to update his address with the IRS until after he moves into the new home. After verifying the taxpayer's identity and conducting an in-depth interview, TAS retrieves and prints transcripts for the taxpayer, faxes them to the fax number he provides, and confirms receipt. After all applicable closing actions under IRM 13.1.21.1, *Closing Criteria*, are completed, load and close the case on TAMIS as a quick closure and include a copy of the transcript in the case file.

2. Issues that are resolved by a TAS employee the same day, but require IDRS transaction monitoring before TAS can close the case per IRM 13.1.21, *TAS Case Closing and Reopen Case Procedures*.

**Example:**

Taxpayer contacts TAS because he has not received his refund; it has been three months since he filed his return. TAS researches IDRS and determines there is an S- Freeze on the account indicating the taxpayer's refund was undeliverable. The taxpayer informs TAS that he changed addresses after filing his return. After verifying the taxpayer's identity and conducting an in-depth interview, TAS confirms the new address. The case is not open in another function. TAS inputs IDRS command code (CC) CHK64 to change the taxpayer's address and release the refund. TAS informs the taxpayer of the date the taxpayer should receive the refund and the refund amount. TAS inputs a TAMIS history to document the initiated release of the refund and conversation with the taxpayer. TAS monitors the account to verify the refund is timely released to the taxpayer and address change has posted. After TAS completes all applicable closing actions under IRM 13.1.21.1, *Closing Criteria*, TAS closes the case on TAMIS as a quick closure.

- ii. Generally, quick closure cases must follow and adhere to TAS case processing procedures, including taxpayer identification and authentication, in-depth taxpayer interview, case documentation, and closing procedures. See IRM 13.1.18, *Processing TAS Cases*, and IRM 13.1.21. However, to facilitate the closure of these cases, the following TAMIS input changes apply to quick closure cases:
  1. **TAMIS Taxpayer Screen 3.** TAS employees are required to make a determination of significant hardship on all



cases. Intake Advocates will not be required to enter an “Explanation” on Taxpayer Screen 3. Instead they will enter the literal **IA7811**. If the case is worked to completion by an Intake Advocate, this will alert TAS Quality Reviewers that the case was worked to completion by an intake advocate and an explanation is not required. For those cases that are worked by a TAS employee other than an Intake Advocate, the TAS employee will be required to enter the Explanation field as appropriate.

2. **TAMIS Taxpayer Screen 5.** TAS employees are not required to input data in the Local Use, Local Use 2, Sys Adv Use, and N.O. Use fields. For additional information see IRM 13.4.5.2.1.5, *Taxpayer Screen 5 of 5*.
3. **Taxpayer Screen 5, Special Case Code QC – Quick Closure.** TAS employees will select special case code QC for all TAS quick closure cases. Special Case Code QC will take precedence over all other Special Case Codes.
4. **Action Plan Screen.** TAS employees will enter the literal QC in the Action Field to indicate that this is a quick closure case. An action plan is not required for quick closure cases; however, TAS employees will continue to document the action taken on the case in the history. For additional information see IRM 13.4.5.3.3, *Action Plan Screen*.
5. **Case Actions Screen.** Generally, TAS employees are not required to complete the case actions screen for quick closure cases. However, TAMIS systemically generates an NCD for every new case, employees are still required to close out the date in order to close the TAMIS case. For additional information see IRM 13.4.5.3.5, *Case Actions Screen* and IRM 13.4.5.3.6, *History Screen*.
6. **Case Factors Screen.** The Case Factors Screen is a required screen on TAMIS. There are 26 case factor determinations on the case factors screen. Many of the case factors are systemically populated by TAMIS. TAS has analyzed the case factors and determined that the answer to a number of the case factors associated with quick closure cases should be “no.” TAS employees should use *Exhibit 13.1.16-1, Quick Closure Completion of the TAMIS Case Factor Screen*, to assist them with completion of the Case Factors Screen. For additional information see IRM 13.4.5.4, *Case Factors Screen*.

d. Closing Actions

- i. Before closing a case, review the action plan and TAMIS documentation to ensure all actions on the TAMIS Action Plan Screen have been completed and all related issues addressed.
- ii. Case Advocates are responsible for contacting the taxpayer or representative with a clear, complete, and correct explanation of what was done to resolve the problem. If the taxpayer or representative requests a written response, the Case Advocate must provide one. The closing contact **must** :
  1. When appropriate address all balance due situations. Include specific dollar amounts of taxes owed, adjustment(s), and/or penalty and interest accruals as of a specific date. See *IRM 13.1.21.1.3.6, Balance Due* for additional information.
  2. Advise of possible consequence of balance due situations and provide payment options including installment agreements (IA), partial payment installment agreements (PPIA), currently not collectible (CNC) and offer in compromise (OIC), as appropriate.
  3. When appropriate, provide or discuss avenues of appeal or examination reconsideration, ensuring taxpayers are aware of and understand how to exercise their right to appeal an IRS decision in an independent forum.
  4. Address all refund situations, including exact amount of refund, separate interest amount, exact date of refund depending on paper or direct deposit, and warn of possible offset if there is an offset indicator on IDRS. Advise the taxpayer interest is taxable in the year received.
  5. Include an explanation that would educate the taxpayer if it appears he or she does not understand what caused the problem.
  6. If appropriate, give an explanation of preventative actions.
  7. Give "recourse" to an unsatisfied taxpayer if he or she indicates that the resolution does not provide what he or she requested. "Recourse" includes such things as speaking to a manager.
  8. Give an apology specific to the taxpayer's concern. See *IRM 13.1.6, Casework Communication* for additional information.
  9. Document closing actions/contact in TAMIS per *IRM 13.1.21.1.2 (4), Closing Actions*.

- a. Closing actions are distinct from closing contacts. The closing contact must be completed before closing the case on TAMIS.
- iii. The following actions must be completed before closing the case:
  1. Ensure adjustments are posted (not pending) — Check CC IMFOL/BMFOL;
  2. Release notice or enforcement holds as appropriate;
  3. Contact Compliance, if applicable, including assigned Compliance employees on actions taken and case resolution;
  4. Retain a copy of applicable returns in the file, but remove any original returns and send them to be refiled. (TC 290 for .00 for a refiled DLN does not have to post before closing). If the returns are voluminous, only copy the pertinent sections that are needed to support any decisions made;
  5. Delete case related e-mails from Outlook after printing copies for case file, if appropriate;
  6. Remove any unnecessary paperwork (duplicate transcripts and E-mails) from the case file;
  7. Close all IDRS control bases; and
  8. Include a copy of the final IDRS print in the case file as well as any other pertinent IDRS information.

**Note:**

To meet the requirement for including final IDRS prints in case files, TAS employees can now copy and paste IDRS screen shots into TAMIS as a substitute for including hard-copy IDRS prints. TAMIS will systemically establish a History Date Stamp to reflect the date the TAS employee pasted the IDRS screen into a TAMIS History screen.

- iv. TAMIS must be documented with all actions taken and the case file must include copies of all closing correspondence. If a closing telephone contact was made, document a summary including a clear, concise and correct explanation of how the problem was resolved on the TAMIS History screen. Utilize the Closing Action Screen 1 to indicate the closing contact date and the resolution of the case in the Relief Resolution field. All taxpayer correspondence must remain in the case file.
- v. Take the following closing actions on TAMIS (See **IRM 13.4.5.5, *Closing Actions*** directly after the case is resolved:

1. Check the accuracy of the Taxpayer Issue Code (TIC), Primary Core Issue Code (PCIC), and Secondary Core Issue Code (SCIC), and update TAMIS if necessary;
  2. Complete appropriate fields on the Case Factors Screen and update TAMIS, if necessary;
  3. Update the TAO/Relief Code and Assistance Code;
  4. Input any other applicable special codes;
  5. Verify that the TP Entity/POA/Congressional entity is correct;
  6. Verify that the Outreach indicator is correct; and
  7. Verify that any other special codes are correct.
- vi. It is only appropriate to use the **No Customer Survey Contact Box** in the following limited situations:
1. When the taxpayer/representative requests he not be included in the survey;
  2. When the taxpayer/representative has made threats (verbal, physical, stalking); (see **IRM 25.4.1, *Potentially Dangerous Taxpayer***); and
  3. When the National Taxpayer Advocate has determined a specific case, or group of cases, should be excluded from survey contact due to extended delays (for example, cases involving Return Preparer Misconduct where IRS delays in developing procedures to provide relief in response to appealed TAOs resulted in excessive delays to taxpayers.)

**Note:**

Check this box to indicate that this taxpayer (or representative) should not be contacted for the customer satisfaction survey conducted by a contractor on TAS's behalf. Only permission level 4 or 5 users can check this box.

- vii. An **IRC § 7811** Significant Hardship Determination must be made prior to closing the case. If no **IRC § 7811** Significant Hardship Determination has been made, make an **IRC § 7811** Significant Hardship Determination before closing the case. **Refer to IRM 13.1.18.7 , Making an IRC § 7811 Significant Hardship Determination**
1. If an economic burden case (TAS Criteria 1-4) is determined to meet **IRC §7811**, and the Case Advocate decides that the relief requested by the taxpayer is not warranted, the Case Advocate must provide a written response. For economic hardship cases where the 7811

determination is Yes and no relief is due to: law prevents, hardship not substantiated, no internal revenue law issue, or Other, the letter will be signed by the LTA. The letter will explain why relief is not being granted.

**Note:**

The LTA is required to sign the No Relief Letter only in situations where the case Advocate has determined that relief is **not** warranted.

2. Give the taxpayer an opportunity to speak to the LTA when the relief is not being granted.

**Caution:**

If some relief has been provided, it is not necessary for the LTA to sign the letter.

**Caution:**

If some relief has been provided, it is not necessary for the LTA to sign the letter.

e. Re-opening Cases

- i. Closed cases may be re-opened for the following reasons:
  1. Additional information provided by the taxpayer
  2. IRS error
  3. Response from the taxpayer on a case closed due to no response
  4. The taxpayer is dissatisfied with the outcome, and corrective action can be taken
  5. The internal review shows the case was resolved incompletely or incorrectly.
- ii. The decision whether to reopen must be made within one workday for category 1-4 cases and three workdays for category 5-9 cases.

f. Case transfers

- i. The Service has many general rules for transferring cases between different offices.
- ii. Sensitive Issue Cases, including those involving suicidal communications (either orally or in writing), potential media contact cases, or those involving politicians, celebrities, and

employees, etc., must be brought to manager's attention before transfer.

- iii. Congressional Cases are transferred to the local office in the Congressperson's home state.

**9. Delegated authorities [IRM 13.1.4.2.2; 13.1.4.2.2.1 through 13.1.4.2.2.6]**

a. Background

- i. Authorities, both administrative and procedural, are granted to the National Taxpayer Advocate by the Commissioner and re-delegated to employees and management.
- ii. Allows Taxpayer Advocate to resolve routine cases in the same manner as other functions within the IRS exercising the same authority.

b. Some delegated authorities include:

- i. Making credits or refunds within the applicable period of limitations, including manual refunds in certain circumstances
- ii. Abating interest on erroneous refunds under IRC §6404(e)(2)
- iii. Issuing, modifying or rescinding Taxpayer Assistance Orders for cases under TAS jurisdiction
- iv. Approving replacement checks for lost or stolen refunds without a credit balance on an account where hardship or unreasonable delay exists
- v. Substantiating credits to taxpayer accounts where a taxpayer furnishes proof of payment but the Service cannot locate the payment within a reasonable period of time
- vi. Abating for reasonable cause Form W-4 civil penalties assessed per IRC §6682
- vii. Abating for reasonable cause all automatically assessed penalties
- viii. Mandating administrative or procedural changes to improve the operation of a functional process or to grant relief to taxpayers
- ix. Reporting delinquent accounts currently not collectible, releasing liens in cases not currently open in another IRS function if the account is full paid, releasing levies in systemically generated cases, making trust fund recovery penalty adjustments

**10. Taxpayer Assistance Orders [I.R.C. § 7811, Treas. Reg. § 301.7811-1]**

- a. Orders that may be issued by the Taxpayer Advocate.
- b. May be appropriate if the taxpayer suffers or is about to suffer from hardship.
- c. Hardship can be one of the following:

- i. An immediate threat of adverse action;
      - ii. A delay of more than 30 days in resolving taxpayer account problems;
      - iii. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
      - iv. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.
    - d. Relief can include one of the following:
      - i. Release a levy
      - ii. Cease action an action related to the following:
        - 1. Collection
        - 2. Bankruptcy/receiverships
        - 3. Discovery of liability and enforcement of title
      - iii. Any other I.R.C. provision described in the order.
    - e. Issuance of the Orders is discretionary.
- 11. Statute of limitations suspended [IRM 13.1.14.2 (10-31-2004), IRM 13.1.14.2 (10-31-2004)]**
- a. Types of qualifying cases
    - i. Criteria 1 through 7 (see above)
  - b. Information required for suspension
    - i. Taxpayer name, identification number, and current mailing address,
    - ii. Kind of tax (individual, corporate, etc.) and tax period(s) involved,
    - iii. Description of Internal Revenue Service (IRS) action or proposed action causing or about to cause a significant hardship,
    - iv. IRS office and personnel involved, if known,
    - v. Description of the specific hardship,
    - vi. Kind of relief requested, and
    - vii. Signature(s) of the taxpayer(s) or duly authorized representative.
  - c. Duration of suspension is until:
    - i. The date the Application of Assistance Order (Form 911) is denied;
    - ii. The date an agreement is reached with the involved function as to what should be done with the Operations Assistance Request (OAR);

- iii. The date the Taxpayer Assistance Order (Form 9102) is issued; or
- iv. The date the review is completed by the parties capable of modifying or rescinding the Form 9102.

**12. Immediate Intervention [IRM 13.2.1.4.2.1 (07-16-2009)]**

- a. What it is?
  - i. An operational issue, identified internally or externally, which causes immediate, significant harm to multiple taxpayers;
  - ii. Demands an urgent response;
  - iii. Cannot be resolved soon enough through the normal corrective process;
  - iv. Clear sources, highly visible and sensitive locally, area wide or nationally.
- b. Timing
  - i. Resolution must be identified within 3-5 calendar days of the actual start date.
- c. Examples
  - i. Mailing of erroneous information to hundreds of thousands of taxpayers, possibly resulting in penalties for late or incomplete filing of returns
  - ii. A campus sending incomplete instructions to more than 3,000 practitioners and creating a potential financial hardship for a large group of taxpayers if the incorrect guidance is followed.
- d. How it works?
  - i. May result in:
    - 1. An Advocacy Proposal
    - 2. A Taxpayer Advocate Directive
    - 3. An IRM Procedural Update (IPU)
    - 4. Another type of procedural change.



**13. Congressional Affairs Program [IRM 13.1.8.3 (04-26-2011)]**

<b>TAX ACCOUNT RELATED</b>	<b>NON-TAX ACCOUNT RELATED</b>	<b>NATIONAL OFFICE NON-TAX ACCOUNT RELATED</b>
<b>Assign to Taxpayer Advocate (Controlled as Criteria Code 1-9)</b>	<b>Assign to Governmental Liaison (Control as Criteria Code 0)</b>	<b>Fax to Legislative Affairs</b>
1. All tax account related congressional inquiries.	1. IRS employee complaints about routine personnel actions that have not yet gone through the system, or local issues that fall under local union agreement or MOU.	1. Personnel actions that have gone through the system but are still unresolved (Control as Criteria Code 0).
2. An inquiry from a taxpayer that contains <b>both</b> a tax account <b>and</b> a non-tax account issue will stay with TAS.	2. Complaint about an unidentified IRS employee that is not an RRA 98 §1203 violation. If employee is identified or if the complaint is an RRA 98 §1203 violation, fax to Legislative Affairs.	2. All IRS hardship transfer requests.
3. Tax law / Technical specific to an account issue or request for opinion or ruling.	3. Tax law / Technical questions and issues that do not involve a taxpayer's account.	3. IRS employee reporting or alleging impropriety, RRA 98 §1203 violation, ethical issues.
	4. Reorganizations for locations of offices.	4. Agency practices, procedures, and policies.

**I. Examples:**

<b>TAS EXAMPLES</b>	<b>DL EXAMPLES</b>	<b>LA EXAMPLES</b>
IRS denied EITC	Who can claim EITC?	EITC is welfare
IRS employee has hardship and needs refund	IRS employee wants a parking space near office	IRS employee misuse of government time
Trouble understanding notice received	IRS employees are rude and misinformed	Employee who can be identified gave taxpayer's return information to neighbor
IRS levied prematurely	Where is my closest Collection office?	Constitutionality issues
Why was frivolous filer penalty assessed?	Frivolous filer penalty is unconstitutional	Frivolous filer penalty and constitutionality have previously been explained and taxpayer is not satisfied
Where is my refund?	How long does it take to receive an e-filed refund?	IRS should provide e-file to everyone
IRS employee didn't receive refund	Employee concerned POD closing due to reorganization	Employee concerned about reorganization issues previously negotiated in local offices
Offset based on bad data, need help getting it back	What are the rules for injured spouse?	Offset law unfair ( <i>sic</i> )

**a. Introduction to the Congressional Affairs Program**

- i. The Taxpayer Advocate Service (TAS) plays a key role in the Congressional Affairs Program (CAP). The Local Taxpayer Advocate (LTA) will coordinate the CAP along with the IRS Congressional District Liaison (DL) in each geographic area.
- ii. The LTA will have responsibility for all tax account related issues, primarily constituent casework and advocacy.
- iii. The DL will have responsibility for any non-tax account related inquiries and for communicating IRS policy and procedures. The DL will deliver IRS messages through outreach or liaison efforts.

- iv. The LTA and DL will coordinate congressional visits, outreach activities, and hosting congressional staff liaison meetings. Congressional visits may be separate, depending on the nature of the visit, but must be coordinated.
- v. LTAs are responsible for building and maintaining professional relationships with local congressional offices through effective outreach. Congressional outreach requirements are covered in IRM 13.6.1.12.3, *Congressional Outreach*.

**14. Congressional Office Inquiries Received by TAS [IRM 13.1.8.4.1 (04-04-2017)]**

- a. Upon receipt of an inquiry from a congressional office:
  - i. Date stamp the request if written or faxed.
  - ii. Research e-trak, TAMIS, or IDRS to identify the issues involved and the appropriate office to which to assign the inquiry.
  - iii. Control the inquiry on TAMIS (see below for unique input items).
  - iv. Work tax-related inquiries in the LTA office aligned with the congressional district that initiated the inquiry. The LTA office/congressional district alignment includes both local and campus offices. See the LTA office/congressional district alignment list on the *Congressional page* of the TAS intranet site. If, under unusual circumstances, a transfer is necessary, fax the documents to the assigned office or express-mail them if they require the taxpayer's original signature(s).
  - v. Forward non-tax related inquiries to the DL, who will decide whether to work the case or forward it to LA for assignment if it is national in scope. LA assigns these inquiries in e-trak to the appropriate BU to prepare a response. The BU works all cases assigned by LA. **Do not forward these cases back to TAS.**
  - vi. Attempt to reach the congressional staff by telephone to acknowledge receipt of the inquiry. See IRM 13.1.18.3, *Initial Contact*. **Contact the congressional office for permission to respond to the taxpayer directly.**
  - vii. Each congressional inquiry and subsequent inquiries will be controlled on TAMIS. If more than one congressional office contacts TAS to assist a taxpayer **with the same issue and the same TAS employee, in the same office will be working the case**, an additional case will not be created. Add an additional Congressional Record screen with the additional congressional office's information to the existing case. Refer to IRM 13.4.5.2.2.2, *Congressional Screen*.
  - viii. Timely resolution and the best interest of the taxpayer should always be the deciding factors when determining the office responsible for any needed actions. Consistent information and

correspondence must be given to the congressional office and the taxpayer. Refer to *IRM 13.1.8.6, Congressional Letter Writing*, for procedures for responding to congressional inquiries.

- b. Congressional Inquiries Received by Legislative Affairs and Routed to Local TAS Office
  - i. Upon receipt of a congressional inquiry on e-trak from Legislative Affairs:
    - 1. Control the case on TAMIS (if not already controlled on TAMIS).
    - 2. Annotate the TAMIS case file number in the "Other ID NO:" section of the e-trak ticket. If a prior TAMIS/e-trak case exists, annotate this information in the HISTORY/COMMENTS section of the e-trak control ticket. Include the TAMIS case file number, name and telephone number of the case advocate assigned to the case.
    - 3. The receiving office should immediately contact the congressional office to advise the staff of the assignment of the inquiry to the TAS office. Follow time frames established in *IRM 13.1.18.3, Initial Contact*. TAS needs to use the standard congressional letter template when responding to congressional offices.

**Note:**

When discussing cases with congressional staffers, case advocates are not required to give the independence statement if there is an established relationship between the advocate and staffer. The case advocate should notate the independence statement on the TAMIS history. This does not eliminate the requirement that the statement be included in all written congressional correspondence.

- 4. If an e-trak congressional assignment from National Office is sent to your office in error, immediately (within one workday) transfer the case to the correct office with a detailed explanation of why the case should be transferred. Before transferring, be sure the time frame for congressional acknowledgment has not passed. If the time frame has passed or is about to pass, acknowledge the case and then transfer it to the correct office.
- 5. Take appropriate actions and document e-trak and TAMIS. Extension requests must be input to e-trak and TAMIS with a detailed explanation of the reasons for an extension. *National Office approval is not required unless specifically requested by the controlling office.*

6. **The Executive Secretariat Correspondence Office (ESCO) must review the written response to an e-trak controlled congressional case before it is issued.** E-mail the incoming letter and the draft response letter to ESCO at \*Executive Secretariat E-Review for review. Include the e-trak control number in e-mail.
7. Make appropriate corrections to letter once it is returned by ESCO.
8. Secure the appropriate signature and send the closing letter.
9. Scan the final closing letter signed by the LTA into e-trak. Close the e-trak control and close the case on TAMIS. Update histories on both e-trak and TAMIS.
10. Enter the date of the closing contact, either by correspondence or telephone, on the congressional screen of TAMIS. Refer to IRM 13.4.5.2.2.2, *Congressional Screen*.
11. Written responses are not mandatory unless requested by the congressional office. Telephone closures are acceptable. Document on TAMIS and e-trak the details of the phone call that closed the case. Include the date of the call and the name of the person you spoke to in the congressional office.
12. These cases are subject to the TAS quality review guidelines (*e.g.*, timeliness of contacts and actions, accuracy of actions, authorized disclosures and correct communication, etc.).
13. In the closing paragraph, the NTA/LTA must include his/her contact telephone number.

**Example:**

A suggested closing paragraph is "I hope this information is helpful. If you have any questions please contact me at (XXX) XXX-XXXX."

14. If the letter is to a taxpayer, RRA 98 requires you to include your identification number(s) or badge number in the letter. The case advocate employee number should be included if the case advocate is referenced as a contact person in the letter.
15. Do **NOT** include hours of availability or operation in congressional responses. Do **NOT** use pattern letters. On all congressional correspondence, use the approved method for incorporating your local address within the letter. See

*Exhibit 13.1.8-1, Sample Congressional Letter, for an acceptable letter template.*

**Note:**

If a congressional case (not on e-trak) already exists and you receive a non-congressional e-trak case from the same taxpayer, the e-trak case must remain open until the issue is resolved. If the cases are assigned to two different offices, the two case advocates must coordinate efforts.

- c. Congressional Inquiries Involving Litigation Issues [IRM 13.1.8.4.3 (04-04-2017)]
  - i. Inquiries received from congressional offices that involve issues under litigation, follow the guidance found in IRM 13.1.10, *Special Procedures*. If guidance is needed, the LTA should contact the Office of the Counsel to the National Taxpayer Advocate.

**15. Congressional Letter Writing [IRM 13.1.8.6 (04-04-2017)]**

- a. IRM 1.10.1.14, *Format for Responses to ESCO Controlled Correspondence*, and IRM 1.10.1.15, *Variable Elements for ESCO Controlled Correspondence*, provides instructions for preparing responses to congressional inquiries and should be used to supplement regular instructions for TAS case processing. Refer to ***Exhibit 13.1.8-1, Sample Congressional Letter***, for an example of writing style, format, headers, and salutation to follow in written correspondence to congressional offices.
- b. The LTA will review and sign **all** written correspondence, including interim correspondence, to congressional offices, and ensure adherence to quality attributes on tax account related congressional inquiries.

**Note:**

If you do not receive requested information from the taxpayer or congressional office, do not send a second request pattern letter (1671 Letter). Contact the office again, re-request the information, and discuss as necessary to work and resolve the issue. If the taxpayer still fails to provide documentation and you close the case as **No Response**, send the congressional office a final communication to explain the circumstances, for example: **As we discussed on MM/DD/YYYY, TAS is unable to pursue further relief for your constituents because they haven't responded to our requests for supporting documentation we need to proceed with their case. If your constituents can provide this information later, we would be happy to reopen the case.**

- c. Signature authority cannot be delegated below the NTA/DEDCA/LTA or the responsible official, unless the individual has been officially designated to act on their behalf. For example, when an LTA delegates a

group manager to act as the LTA, that manager may sign the written response as the acting LTA.

- d. Do **NOT** include hours of availability or operation in congressional responses. Do **NOT** use pattern letters. On all congressional correspondence, use the approved method for incorporating your local address within the letter.
- e. Communication that involves a specific tax case, taxpayer, or is account related **cannot be sent to a congressional office by email**. This correspondence must be sent through the mail or by fax. TAS will follow existing guidance in IRM 11.3.1.14.2, *Electronic Mail and Secure Messaging*, which prohibits the use of email to communicate with taxpayers or their representative, including congressional offices, when the email contains Sensitive But Unclassified (SBU) information. See IRM 10.8.1.4.14.1.1 *Sensitive but Unclassified Information*, IRM 11.5.2, *Congressional Affairs Program* and IRM 11.5.2.7.6, *Email/Fax Inquiries*.

**16. Disclosure Issues [IRM 13.1.8.7 (04-04-2017)]**

- a. IRC § 6103(c) permits disclosure of a taxpayer's return or return information to a third party designee. A taxpayer's letter to a member of Congress will authorize disclosure to the extent it is signed, dated, and indicates the following:
  - i. Taxpayer's identity: name, address, and identifying number (e.g., Social Security number/ individual taxpayer identification number/ employer identification number), or any combination thereof, which enables the IRS to clearly identify the taxpayer.
  - ii. The identity of the person to whom disclosure is to be made. A letter addressed to "Dear Sir" that does not specifically refer to the member of Congress is not sufficient. However, the taxpayer's letter, forwarded with the envelope showing it was addressed to the member of Congress, is sufficient.
  - iii. The letter must contain sufficient facts to enable the IRS to determine the nature and extent of the assistance requested and the returns or return information to be disclosed. See IRM 1.10.1.13 , *Disclosure Information* and IRM 11.3.4.2.1 , *Inquiry Accompanied by Taxpayer's Correspondence*.
  - iv. The congressional office may substantiate valid authorization by submitting Form 8821 (or a satisfactory facsimile) with all required information included and the taxpayer's signature and date.
- b. An authorization to a member of Congress will be construed to include a member of the Congressperson's staff designated in the Congressperson's inquiry, identified in a general designation from the Congressperson, or known to be the Congressperson's staff person for dealing with constituents' tax inquiries. Likewise, an authorization to a staff member of

the Congressperson in their capacity as staff member handling constituent inquiries includes the Congressperson as well. Should the Congressperson become incapacitated or die in office requiring a long-term actor or designee to be appointed to fill the term, authorizations can be construed to remain in effect for that Congressional office. If there is any doubt that the taxpayer would want continuing disclosures in these situations, contact the taxpayer to determine his or her wishes.

- c. Typically, TAS should not accept congressional cases subsequent to the congressional member vacating office until a new member is elected. However, if the Office of the Clerk for the United States House of Representatives or the Assistant Secretary of the Senate issues a letter stating the congressional office would continue assisting taxpayers, renames the office and officially names the Clerk or Assistant Secretary as the supervisor, TAS may continue to receive and work cases from that office. TAS must receive proper authorization from the taxpayers to disclose information to that office as outlined in IRM 13.1.8.7, *Disclosure Issues* and IRM 11.3.4.2.1, *Inquiry Accompanied by Taxpayer Correspondence*. If there is any doubt the taxpayer would want continuing disclosures in this situation, contact the taxpayer to determine their wishes.
- d. **Copies of letters addressed to someone other than the member of Congress ("cc" letters) do not authorize the IRS to disclose returns or return information to a member of Congress or staff.** An exception to this rule will be made when the taxpayer includes a signed addendum requesting the assistance of the member who forwarded the correspondence to the IRS, and the letter otherwise meets the above requirements for valid disclosure authorization. Also, as in *IRM 13.1.8.7 (1)(b)* above, a signed, dated "cc" letter, not a photocopied signature, forwarded with the envelope showing it was addressed to the member of Congress, is sufficient.
- e. Absent written authorization from the taxpayer, the member of Congress or his/her staff person may be provided general information and advised when IRS considers the matter resolved. However, no disclosures of the constituent's returns or tax account information may be made. In that case, resolve the problem by communicating directly with the taxpayer and advise the congressional office that this was done.
- f. Whether responding directly to the taxpayer at the request of a congressional office, or to the congressional office, check command code "CFINK" on IDRS for power of attorney or written authorization information. TAS is not required to work with the POA or authorized third party when responding to the congressional inquiry; as a courtesy, however, the Case Advocate may want to let the POA or authorized third party know of the inquiry and copy them on any written response sent to the congressional office.

- g. If the congressional office has appropriate disclosure authorization, check the "Disclosure Release Received" box on the congressional TAMIS screen.
- h. The effective period of authorization generally continues for the tax periods and issues covered by the original disclosure consent even after TAS closes the case and a subsequent inquiry requires TAS to reopen the case. The original consent is valid for the reopened case if it covers the same years and congressional office. A valid disclosure consent does not have an expiration date unless the taxpayer revokes it. Follow the procedures in IRM 13.1.21.3, *Reopening Cases*, to reopen the case.
- i. See IRM 1.10.1.13, **Disclosure Information** for all disclosure considerations for working with congressional offices.

**17. Closing Actions [IRM 13.1.8.8 (04-04-2017)]**

- a. Follow the guidelines in IRM 13.1.21, *TAS Case Closing and Reopen Case Procedures*, to determine when to close the case. TAS will communicate with the congressional office throughout the process unless the office requests that TAS work with the taxpayer directly, or determines it no longer wishes to stay involved. The office staff will also determine if telephonic closure is acceptable.

**Note:**

Even though the congressional office is no longer involved in the case, the TAMIS coding should still reflect "Congressional" for tracking purposes.

- b. All tax account related congressional inquiries are subject to the same attributes as any other TAS criteria case and may be selected for quality review.
- c. An apology must be given on TAS criteria cases, including congressional inquiries that meet the criteria. The following IRM sections address apologies:
  - i. IRM 13.1.6.5, Apology - Just saying TAS is sorry for any inconvenience it has caused is not a sincere apology. State **why** we are apologizing.
  - ii. IRM 13.1.18.3, Initial Contact - Advise the taxpayer of your name, job title, address, telephone number, office hours, and employee identification number. Apologize, if appropriate.
- d. If an apology is clearly not appropriate, address the reasons in the TAMIS history.
- e. Close the case on TAMIS by completing all case screens, including the closing action screen and the Congressional Screen.

**18. Congressional Inquiries on Frivolous Filers [IRM 13.1.8.9 (04-04-2017)]**



- a. If you receive a congressional frivolous filer inquiry that has no tax account related issue, send the inquiry to the DL. For general information on responding to congressional inquiries, see IRM 1.10.1.14 , **Format for Responses to ESCO Controlled Correspondence**, and IRM 1.10.1.15 , **Variable Elements for ESCO Controlled Correspondence**.

**19. Sample Congressional Letter – DC or Local Office [Exhibit 13.1.8-1]**

Position	Example
House of Representatives Washington, DC Office	The Honorable (Full Name) U.S. House of Representatives Washington, DC 20515 Dear Representative (Last name)
House of Representatives Local Office	The Honorable (Full Name) Member, U.S. House of Representatives (Local office street address)(City) (State) (ZIP Code) Dear Representative (Last Name):  <b>Note:</b>  If the Member, U.S. House of Representatives is too long, carry over part of it to the next line and indent 2 spaces. This will give the inside address a more balanced appearance

Attention: Name of Staffer

Dear Representative XXX:

I am responding to your letter of (date) to Commissioner of Internal Revenue \_\_\_\_\_ on behalf of your constituent, Mr. John Smith of (constituent’s city/town). Mr. Smith had expressed concern about (description of issue), and the Commissioner referred this issue to the Taxpayer Advocate Service for independent review.

We have (description of resolution / status of case). I apologize for the problem and for any inconvenience and delay it caused Mr. Smith.

I hope this information is helpful in responding to Mr. Smith. If you have any questions, please call me at XXX-XXX-XXXX, or Case Advocate John Doe of my staff at XXX-XXX-XXXX.

Sincerely,

(signature)

(name)

Local Taxpayer Advocate

**20. Senate Finance Committee [IRM 13.1.9.2.1 (10-31-2004)]**

a. How Cases are Received

- i. A taxpayer writes to the Senate Finance Committee regarding a tax matter or the behavior of an IRS employee.
- ii. After making a determination, the Committee office informs the taxpayer by letter that the correspondence will be forwarded to the Taxpayer Advocate Service within 14 days unless the taxpayer objects.
- iii. If the taxpayer does not object, the correspondence is forwarded to the National Taxpayer Advocate for review. Otherwise, the case is worked by an area office or local office.

b. Independent Review Process Cases

- i. The Independent Review Team (IRT) will review SFC cases and their corresponding draft closing letters within 7 calendar days of receipt.
- ii. Technical Advisor teams in each area will conduct the independent review process using developed guidelines.

1. SFC Independent Review Team Criteria:

- a. An independent review from the perspective of an advocate.
- b. The letter states that an independent review was conducted.
- c. A technically and procedurally correct conclusion.
- d. All issues addressed.
- e. All IRS errors acknowledged.

- f. Where appropriate, alternative solutions considered and explained.
- g. Employee complaints addressed.
- h. Appropriate tone used in response.
- i. Sufficient documentation.
- j. Documentation supports the conclusion/resolution reached.
- k. Documentation shows corrective actions completed.
- l. SAA or Technical Advisor's name, title, address, employee ID number, phone number, fax number and tour of duty in the letter.
- m. An appropriate apology is provided.
- n. Taxpayer contact was made by telephone if telephone number was available. (In cases where telephone contact was not made, the reasons why telephone contact was not possible are fully documented).
- o. The case file contains documentation (IDRS printouts, etc.) that all promised actions were taken.

# State Taxpayer Advocates

## A. New York

### I. Contact Information:

**New York State**  
**Department of Taxation and Finance**  
Office of the Taxpayer Rights Advocate  
W.A. Harriman Campus, Building 9  
Albany, NY 12227  
Phone: 518-530-4357  
Fax: 518-435-8532

(Informational video: [http://www.youtube.com/watch?v=\\_nGQPDc44Rk](http://www.youtube.com/watch?v=_nGQPDc44Rk))

### II. What does it do?

- (1) Assists taxpayers who were unable to resolve protracted tax problems through regular channels or whose tax problems are causing undue economic harm.
- (2) Identifies systemic problems, including those that compromise taxpayer rights or unduly burden taxpayers, and recommends administrative and legislative reforms.

### III. Criteria for acceptance:

- (1) A reasonable attempt has been made to resolve the problem through the Department's established methods.
- (2) Tax laws, regulations or policies are being administered unfairly or incorrectly, or have impaired (or will impair) taxpayer rights.
- (3) The taxpayer faces a threat of immediate adverse action (e.g., seizure of an asset) for a debt you that is not owed or where the action is unwarranted, unfair, or illegal.
- (4) Irreparable injury or long-term adverse impact is expected if relief is not granted; or the taxpayer experiences or is about to experience undue economic harm.
- (5) There has been an undue delay by the tax department in providing a response to a taxpayer's inquiry or resolution of a taxpayer's problem or inquiry.
- (6) The taxpayer's unique facts and circumstances warrant assistance; or public policy reasons compel assistance.

### IV. Criteria for systemic issues:

- (1) A systemic flaw that may adversely impact other taxpayers.
- (2) Impact segments of the taxpayer population.
- (3) Relate to Department systems, policies, and procedures.

- (4) Require study, analysis, administrative changes or legislative remedies.
- (5) Involve protecting taxpayer rights, reducing or preventing taxpayer burden, ensuring equitable treatment of taxpayers or providing essential services to taxpayers.

V. How to ask for help

- (1) Complete Form DTF-911 and mail or fax to Office of the Taxpayer Rights Advocate. (available at:  
[http://www.tax.ny.gov/pdf/current\\_forms/misc/df911.pdf](http://www.tax.ny.gov/pdf/current_forms/misc/df911.pdf))

VI. Related: New York Taxpayers' Bill of Rights

- (1) Available at:  
[http://www.tax.ny.gov/pdf/memos/multitax/m93\\_2c\\_2i\\_2m\\_2r\\_2s.pdf](http://www.tax.ny.gov/pdf/memos/multitax/m93_2c_2i_2m_2r_2s.pdf)

**B. New Jersey**

I. Contact Information:

**State of New Jersey**  
**Division of Taxation**  
Office of the Taxpayer Advocate (OTA)  
P.O. Box 240  
Trenton, NJ 08695-0240  
Fax: 609-984-5491  
Email: nj.taxpayeradvocate@treas.state.nj.us

II. What it does and does not do:

- (1) Assists taxpayers who were unable to resolve their issues through normal channels or who experience hardship.
  - a. Criteria for hardship:
    - (i) A threat of immediate adverse action, or
    - (ii) Undue economic harm (present or about to happen) resulting from the way in which the tax laws, regulations or policies are being administered by the Division of Taxation.
    - (iii) Note that mere inconvenience is not hardship.
  - b. Criteria for other cases:
    - (i) A threat of immediate adverse action for a disputed liability, or
    - (ii) Lack of adequate notice or unwarranted, unfair, or illegal actions by the Division, or
    - (iii) A delay of more than 75 days to resolve a tax account problem or in receiving a response to an inquiry to the Division.
    - (iv) A taxpayer believes the Division's procedures failed to resolve his or her problem as intended.

- (2) Identifies systemic issues and recommends administrative and legislative reforms.
- (3) Can assist with tax problems related to the New Jersey Department of Treasury, but not tax problems related to other state departments.
- (4) Cannot reverse technical or legal determinations.
- (5) Does not presently assist with Earned Income Tax Credit issues.

### III. How to ask for help

- (1) Fill out Form NJ-OTA-911 and mail or fax to Office of the Taxpayer Advocate. (available at:  
<http://www.state.nj.us/treasury/taxation/pdf/ota/ota-911.pdf>)

### IV. Related: New Jersey Taxpayers' Bill of Rights

- (1) Publication ANJ-1:  
<http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj1.pdf>

# Treasury Inspector General for Tax Administration

## A. Overview

### I. Ways to submit complaint about fraud, waste, or abuse:

(1) Online form at [http://www.treasury.gov/tigta/contact\\_report.shtml#theform](http://www.treasury.gov/tigta/contact_report.shtml#theform)

(2) By phone: (800)-366-4484

(3) By fax: (202) 927-7018

(4) By mail:

Treasury Inspector General for Tax Administration Hotline  
P.O. Box 589  
Ben Franklin Station  
Washington, DC 20044-0589

### II. Local Offices

#### **New York Field Division**

William A. Kalb  
Special Agent in Charge  
201 Varick St., Room 1050  
New York, NY 10014  
Tel: 917-408-5640  
Fax: 917-408-5690

#### **Washington, D.C. Field Division**

Rodney Davis  
Special Agent in Charge  
600 Arch Street, Room 4218  
Philadelphia, PA 19104  
Tel: 215-861-1003  
Fax: 215-861-1024

## B. TIGTA § 1203(b) violations

### I. Penalties for violations (violating employees)

(1) Termination from work

### II. General considerations

(1) For § 1203(b) to be implicated in a case involving a violation against a taxpayer, the IRS employee has to be involved in the taxpayer's case or, at least, the taxpayer has to be aware that the employee works for the IRS.

### III. Types of violations

(1) Willful failure to obtain required signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets

a. IRM Exhibit 5.10.2-1

Asset Type	Approval Authority JA- Judicial AD-Area Director TM-Territory Mgr.		
	JA	AD	TM
<b>REAL PROPERTY:</b>			
Principal Residence – Primary dwelling of the taxpayer, the taxpayer’s spouse, former spouse and/or the taxpayer’s minor children. IRM 5.10.2.18 & IRC 6334(e)(1)	X	X	
Personal Residence – A principal residence of someone other than the taxpayer, the taxpayer’s spouse, former spouse and/or minor children. IRM 5.10.2.1(4) & IRM 5.17.3.4.5(3)		X	
Real property used in the trade or business of an individual taxpayer. IRM 5.10.2.1(4) & IRC 6334(e)(2)		X	
Historic Real Properties – Area counsel must be consulted prior to seizure. IRM 5.10.2.5(1)			X
Real Property belonging to a religious organization. If the property is being used as a residence, use the appropriate guidance listed above. Area counsel approval must be obtained before seeking other appropriate approvals when seizing property belonging to a religious organization. IRM 5.10.2.6(2)			X
<b>PERSONAL PROPERTY:</b>			
Tangible personal property used in the trade of business of an individual taxpayer. IRM 5.10.2.1(4) & IRC 6334(e)(2)		X	
Perishable goods – Seizure and expedited sale of property under IRC 6336. IRM 5.10.2.16		X	
Historic personal property – Area counsel must be consulted prior to seizure. IRM 5.10.2.5			X
Personal Property belonging to a religious organization. Area counsel approval must be obtained before seeking other appropriate approvals when seizing property belonging to a religious organization. IRM 5.10.2.6(2)			X
Firearms of substantial value may be seized if they are included as a business asset (sports equipment outlet, hardware store, gun shop, etc). Prior to the seizure the revenue officer must contact PALS who will contact area counsel and ATF. IRM 5.10.2.7		X	
Controlled substances or drug paraphernalia. IRM 5.10.2.8		X	
Material considered obscene or pornographic – Area counsel must be contacted before such material is seized. IRM 5.10.2.9		X	
High Level Drug Dealers (assets of narcotics related taxpayers in connection with jeopardy/termination assessments). IRM 5.10.2.10		X	
Property with environmental considerations. IRM 5.10.2.11			X
Cleared Contractor Facility. IRM 5.10.2.12			

(2) False statement under oath

- a. 28 U.S.C. § 1746 sworn declaration, verification, certificate, statement, oath, or affidavit

(3) Constitutional and civil rights

a. Constitutional Rights

- (i) First Amendment [IRM 11.3.17.1(1)-(5) (09-12-2013), 9.4.6.4(1) (09-05-2008), IRM Exhibit 4.76.7-3

- i. Text: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”



- ii. A taxpayer who files a non-fraudulent complaint against a trespassing agent may be protected under the grievance clause.
  - iii. Subpoenas may be overly broad.
  - iv. IRS limits its agents with respect to collecting information at peaceful demonstrations.
- (ii) Fourth Amendment [IRM 34.5.2.4.2.5 (08-11-2004), 5.10.2.14(2) (04-11-2013), 5.10.2.14(5) (04-11-2013), 5.17.4.13(2) (08-01-2010), IRM Exhibit 5.10.2-1, 5.10.2-2; G.M. Leasing Corp. v. United States, 429 U.S. 338, United States v. Payner, 447 U.S. 727, 735 (1980), Donaldson v. United States, 400 U.S. 517 (1971).]
- i. Text: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
  - ii. Probable cause requirement or ‘regulatory inspection’
  - iii. No right to challenge documents obtained when third party rights are violated, instead of the taxpayer’s. Same when a summons is issued to a third party, such as accountants.
  - iv. The IRS agreed it should not seek emails from internet providers without a warrant
- (iii) Fifth Amendment [IRM 1.2.13.1.5 (12-23-1960)]
- i. Text: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”
  - ii. The duty of the IRS is to determine the correct amount of tax, not more or less, and to do so in an impartial and non-discriminatory manner.
  - iii. An exaction by the United States Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. Accordingly, a Service representative in his/her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his/her duty to determine the correct amount of the tax, with

strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(iv) Sixth Amendment

- i. Text: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”
- ii. Where an IRS agent, in a criminal trial, intimidated a taxpayer’s accountant, threatening the accountant would be prosecuted if he didn’t testify against the taxpayer (the agent also admitted he intended to intimidate the accountant), the taxpayer was unconstitutionally deprived of an important defense witness. See United States v. Heller, 830 F.2d 150 (11th Cir. 1987).
- iii. The search of a taxpayer’s attorney’s office may violate the taxpayer’s Sixth Amendment right to effective representation. See United States v. Miller, 660 F.2d 563, 565 n.5 (5th Cir. 1981), vacated, 660 F.2d 563 (5th Cir. 1982).
- iv. Where the government did not inform a taxpayer of his indictment, did nothing on the case other than enter it in a database, and decided to prosecute after ten years, the right to a speedy trial was violated. See United States v. Mendoza, 530 F.3d 758 (9th Cir. 2008).

b. Civil Rights

- (i) Title VI or VII of the Civil Rights Act of 1964
- (ii) Title IX of the Education Amendments of 1972
- (iii) The Age Discrimination in Employment Act of 1967
- (iv) The Age Discrimination Act of 1975
- (v) Section 501 or 504 of the Rehabilitation Act of 1973
- (vi) Title I of the Americans with Disabilities Act of 1990

(4) Falsifying or destroying documents to conceal mistakes

(5) Assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service

- a. Requires a criminal conviction, or a final judgment by a court in a civil case

- b. Does not apply when the IRS employee has no involvement with the other person in an official capacity and the other person is unaware that the employee works for the IRS.
  - (6) Violating the Code, regulations or policies for retaliating against or harassing a taxpayer, representative, or other employee
    - a. Harassment is the use of words, gestures, or actions that tend to alarm, disturb, or abuse another person. [IRM 10.5.7.2.4 (11-19-2010)]
    - b. Retaliating may involve auditing a taxpayer for complaining against an IRS employee.
  - (7) Willful misuse of I.R.C. § 6103 to conceal information from a Congressional inquiry
    - a. The IRS employees have mentioned taxpayer confidentiality in recent Congressional hearings as a reason why they are complying slowly with the subpoenas.
  - (8) Willful failure to file by an employee
    - a. I.R.C. §§ 6651, 6652, 7201, 7203
    - b. Unless due to reasonable cause and not to willful neglect
  - (9) Willful understatement of tax liability by an employee
    - a. I.R.C. §§ 6663, 7201, 7203
    - b. Unless due to reasonable cause and not to willful neglect
  - (10) Threatening to audit for personal gain or benefit
    - a. Threat as perceived by a reasonable person. For example, an IRS agent's threat to report her ex-husband to the IRS after he refused to give up his right to claim their child as a dependant was a violation. Personal gain (exemption) and perceived threat (he knew she was an IRS agent) were both present. See James v. Tablerion, 51 Fed. Appx. 856 (Fed. Cir. 2002).
- C. Allegations of Misconduct [IRM 13.1.15.3 (01-06-2009), 13.1.15.4 (07-31-2010)]
- I. Allegations of I.R.C. § 1203 violations
- (1) Taxpayer Advocate employees must have a basic understanding of I.R.C. § 1203.
  - (2) Taxpayer Advocate employees must report I.R.C. § 1203 violations to managers who forward it to:
    - a. TIGTA (most cases)
    - b. Other managers
      - (i) EEO and tax related issues
      - (ii) Allegations relating to all Executives
      - (iii) Senior Managers and Criminal Investigation Employees.

II. Allegations Not Involving I.R.C. § 1203

- (1) Should be raised with the violating IRS employee’s manager.
- (2) Can be raised Taxpayers, internal sources, taxpayers or third parties can raise these allegations with the IRS employee's manager.

a. IRM 5.1.3.2.3 (11-06-2014)

**SAFETY Do’s and Don’ts for IRS Employees**

Do	Do Not
Research the case prior to contact.	Keep calling the taxpayer for additional information.
Prepare interview questions in advance.	Lose focus.
Rehearse how you would react to a situation and have a backup plan.	Personalize collection efforts.
Bring another RO to accompany you, if necessary.	Threaten or patronize the taxpayer.
Arrange for an armed escort, if necessary.	Be overzealous or try any heroics.
Secure maps of assigned area.	Try to be funny or witty.
Dress appropriately for the environment.	Use a threatening tone of voice or body language.
Store valuables in the trunk of your car.	Mislead the taxpayer.
Observe your surroundings.	Be afraid to seek assistance.
Observe no trespassing or warning signs.	Lose composure.
Park your vehicle so you can leave quickly.	Look like a victim.
Maintain at least an arm’s length distance from the taxpayer.	Turn your back on the taxpayer.
Stay alert.	Enter areas with unleashed animals.
Act professionally.	Try to prevent rescue of seized property.
Stay in control of the interview.	

III. Information required:

- (1) Taxpayer's name, address, and telephone
- (2) The IRS employee’s name, ID, function, and location.
- (3) Specifics of the alleged inappropriate behavior and or complaint.

IV. Issues or concerns involving IRS policy, procedure, or practice may be referred to the Human Capital Office, Employee Conduct and Compliance Office (ECCO).

D. Frivolous Arguments [IRM 13.1.16.9 (03-28-2017)]

I. What are they?

- (1) Arguments that have no basis in law

II. Process

- (1) Any entirely frivolous correspondence is forwarded to the Ogden Compliance Center, where it is processed.

- (2) A letter is sent to the taxpayer, stating that his or her inquiry does not meet TAS criteria and that it was forwarded to the Examination Division of the Ogden Campus.

### III. Consequences

- (1) Raising frivolous arguments on Form 911 on in a TIGTA complaint may result in a penalty of \$5,000 under IRC § 6702(b).
- (2) Tax professionals may be fined, censured, disbarred, or suspended under Circular 230.

## Tax advocacy outside the box—Complaining to the Media

### Social Media's Increasing Role

- As of August 2011, the Pew Internet and American Life Project report showed 65% of American adults use at least one social networking site (Facebook, Twitter, LinkedIn), up from 5% in 2005 and 29% in 2008. Helen W. Gunnarson. “Friending Your Enemies, Tweeting Your Trials: Using Social Media Ethically,” Illinois Bar Journal, Oct. 2011, *available at* <http://www.isba.org/ibj/2011/10/friendingyourenemiestweetingyourtri>
- Among attorneys, a 2012 survey of ABA members (12,500 questionnaires were sent out, with 823 responses) found that 22% of attorneys answered that their law firm had a blog (compared with 15% in 2011). <http://www.lawsitesblog.com/2012/08/aba-survey-shows-growth-in-lawyers-social-media-use.html>
- In the same survey, 13% of attorneys said that their firms had a Twitter presence (up from 7% in 2011). Additionally, 11% of attorneys said they used Twitter for professional purposes (6% in 2011). *Id.*
- Additionally, 88% of lawyers said their firms maintained a presence on LinkedIn, and 55% said their firms were on Facebook in 2012. 95% of attorneys said they individually used LinkedIn, and 38% said they used Facebook for professional purposes. *Id.*
- The most common reasons lawyers used social media were for career development and networking (72%); case investigation (44%); client development (42%); and education and current awareness (15%), according to the 2012 survey. *Id.*
- In 2012, the ABA modified its Model Rules of Professional Conduct and corresponding comments to account for electronic and social media. *See* [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/2012\\_hod\\_annual\\_meeting\\_105a\\_filed\\_may\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/2012_hod_annual_meeting_105a_filed_may_2012.authcheckdam.pdf)

### How the IRS and the U.S. Government Use the Media

- “One of the most effective methods to encourage compliance is through publicity” of the activities that CI undertakes to enforce the laws within CI's jurisdiction.” IRM 9.3.2.2 (07-02-2004)
- The IRS issues regular press releases on significant cases, changes in laws or regulations, and general tax advice *available at* <http://www.irs.gov/uac/Latest-News>
- For criminal matters, the local Criminal Investigation (CI) Public Information Officer (PIO) works with the local U.S. Attorney for publicity on local cases. For cases of national scope, or for national media, National Media Relations will coordinate publicity efforts with CI Communication and Education Headquarters

- IRM 11.1.2.1(1) (08-22-2008). See also IRM 9.3.2 (02-16-2012) (Criminal Investigation-Disclosure and Publicity-Publicity and Internal Communications)
- The PIO develops local strategy with the Communication Liaison Media Relations Specialist. *See* IRM 9.3.2.4.3 (07-02-2004).
  - 28 C.F.R. § 50.2 outlines the release of information by the Department of Justice in both civil and criminal proceedings. The IRS, in general, follows the Department of Justice guidelines.
    - “The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.” § 50.2(a)(2)
    - For criminal actions: “At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant’s trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.” § 50.2(b)(2).
    - For civil actions: “Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to (1) Evidence regarding the occurrence or transaction involved. (2) The character, credibility, or criminal records of a party, witness, or prospective witness. (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such. (4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule. (5) Any other matter reasonably likely to interfere with a fair trial of the action.” § 50.2(c).
    - Information that may be released (IRM 9.3.2.6(2) (06-05-2006)):
      - “general information concerning CI and the type of work done by the organization”
      - “information that is a matter of public record (such as pleadings filed with the U.S. Tax Court, a sworn affidavit or an indictment, which has been made public) may be supplied upon request”
  - Publicity of civil cases generally falls to the Department of Justice and/or the local U.S. Attorney. However, in some cases, the IRS may decide to proactively publicize civil cases or issues. This will be determined on a case-by-case basis, and should be coordinated through National Media Relations for matters with

- national scope or for national media, or through the Field Media Relations Specialist for geographically-based (local) matters with local media. IRM 11.1.2.1(2) (10-10-2014).
- For publicity of tax fraud issues or tax schemes that are not case related, a Field Media Relations Specialist will work with the local CI PIO to develop local strategies, and the National Media Relations Branch will work with NHQ CI Communication and Education Headquarters to develop national strategies. IRM 11.1.2.1(3) (10-10-2014).
  - Field service offices will service inquiries from the local media, as well as inquiries from national media on matters under their jurisdiction, though they will contact CI Communications and Education before taking any action on national requests. The IRS Communications & Liaison will service all other national media inquiries. IRM 9.3.2.5 (02-16-2012)
    - Media inquiries must be coordinated through the PIO. 9.3.2.10(1) (07-02-2004)
    - Inquiries should be handled “promptly and in a spirit of genuine helpfulness,” so that the media may correctly disseminate “the requirements of tax law compliance and the policies and programs of the IRS.” 9.3.2.10(2) (07-02-2004)
    - Timeliness is also “essential ... If it is appropriate to comment, the IRS’s side of the story should be made available as quickly as possible, preferably in time for the edition in which the first reporting of the story appears.” 9.3.2.10(3) (07-02-2004)
    - Extreme care should be used in responding to inquiries of a general nature when it can reasonably be deduced that the answers are going to be applied to a specific situation. 9.3.2.10(4) (07-02-2004)
    - “A statement of ‘no comment’ should be avoided. If the media inquiry is made at a stage in the investigation when little or no public information is available, the PIO should explain the law that prohibits IRS from either confirming or denying the existence of an investigation.” 9.3.2.10(5) (07-02-2004)
  - The IRS and the Department of Justice will often publish more articles and press releases outing tax cheats in the months leading up to April 15, as a deterrent against tax evasion. <http://ifawebnews.com/2011/03/04/tax-season-is-publicity-season-for-irs%E2%80%99-cases-against-cheats/>
  - State tax departments have similar ways of reaching out to the media. The New Jersey Division of Taxation, for instance, publishes a list of the “Top Debtors” in state tax liability. See <http://www.state.nj.us/treasury/taxation/jdgdisc1.shtml>
  - Press release guidelines. According to a memorandum within the United States Attorneys Manual, Title 1, Organization and Functions Manual, the government should “exercise caution when preparing tax press releases. Future press releases cannot be written with information from IRS or the prosecutor's files, but must be



based on, and contain only, *public record information*. Thus, a press release announcing an indictment should contain only information set forth in the publicly-filed indictment and indicate that the source of the information is the indictment. Similarly, a press release discussing a conviction should be based solely on information made public at the trial or in pleadings publicly filed in the case, and should indicate that the source of the information is the public court record.” (emphasis added) *See*

[http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title1/doj00028.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title1/doj00028.htm)

- The manual also states that Section 6103 “bars the public disclosure of information taken directly from IRS files, or returns and return information that have been accumulated in Department files as part of an investigation or prosecution. It does not, however, ban the disclosure of information that is taken from the public court record.”
- Additionally, “a press release should contain only information the *immediate source* of which is the public record of the judicial proceeding, and the press release should attribute the information to the public court record.” (emphasis in original)
- “Care should be taken to avoid statements that are ambiguous as to source. Statements that could be based on information in IRS or Department files should not be made unless the information in the statements are obtained from and attributed to specific public sources.”
- Trials are a public form; thus, anything introduced at trial (with the exceptions below) is considered public information. But the information must be released without “editorial comments” (including those made by a judge). IRM 9.3.2.8.2 (06-05-2006).
- *Johnson v. Sawyer*, 120 F.3d 1307 (5th Cir. 1997) – Prohibitions against disclosure of return information—including taxpayer’s middle initial, home address, and occupation—in an IRS press release about criminal conviction considered wrongful disclosure of information in violation of 26 U.S.C. § 6103 [see below], even if such information was included in the court record, if the immediate source of such information was the taxpayer’s return. *See also Mallas v. United States*, 993 F.2d 1111 (4th Cir. 1993), stating a similar principle.
- *Cf. Rice v. United States*, 166 F.3d 1088 (10th Cir. 1999) (“whether information about a taxpayer may be classified as ‘return information’ invoking application of § 6103 turns on the *immediate source* of the information”) (emphasis in original); *Thomas v. United States*, 890 F.2d 18 (7th Cir. 1989) (“[T]he definition of return information comes into play only when the immediate source of the information is a return, or some internal document based on a return ... and not when the immediate source is a public document lawfully prepared by an agency that is separate from the Internal Revenue Service and has lawful access to tax returns.”); *Lampert v. United States*, 854 F.2d 335 (9th Cir. 1988) (nondisclosure

restrictions no longer apply to return information made public in a judicial proceeding).

- “All news releases concerning criminal actions will be submitted to the appropriate attorney for the government for approval before distribution to the news media. News releases may be attributable to either the attorney for the government, or to both the IRS and the attorney for the government. Jointly attributable news releases may be issued on approved IRS letterhead after clearance through the Disclosure Officer and the attorney for the government, and may be distributed by IRS officials. News releases, which are attributable only to the attorney for the government, may be distributed by IRS officials.” IRM 9.3.2.6(3) (06-05-2006)
- “Because of the statutory prohibition on the disclosure of tax returns and return information, it is imperative that material contained in news releases be limited to information that is taken directly from the public record. Media requests for information that go beyond public record information, or general IRS program issues, will be referred to the attorney for the government.” IRM 9.3.2.6(5) (06-05-2006)
- Just because an item may be released via 28 U.S.C. § 50.2 does not mean that it is not subject to § 6103 restrictions. I.R.M. 9.3.2.6(7) (06-05-2006).
- IRS personnel are *not* allowed to release the following information during a criminal investigation if it is not in the public record (IRM 9.3.2.7(2) (07-02-2004):
  - “observations about a defendant's character
  - “information concerning a defendant's prior criminal record
  - “statements, admissions, confessions, or alibis attributable to the defendant or the refusal or failure of the accused to make a statement
  - “references to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations
  - “statements concerning the identity, credibility, or testimony of prospective witnesses
  - “statements concerning the evidence or argument developed during the course of an investigation, whether or not it is anticipated that such evidence or argument will be used at trial
  - “any opinion as to the accused’s guilt or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense
  - “any statement or information expected to influence the outcome of a pending or future trial

- “any information that would be highly prejudicial and where release would serve no law enforcement function.”
  - The IRS also may not provide photographs of a criminal defendant held in federal custody to the news media, nor may it assist the news media in photographing or televising the defendant. IRM 9.3.2.7(3) (07-02-2004)
  - The Department of Justice is responsible for publicizing criminal tax investigations, but the IRS may assist with preparing and distributing news releases for the government attorney. Media representatives are not allowed accompany CI personnel “carrying out an investigative, enforcement, or similar assignment.” IRM 9.3.2.8 (06-05-2006)
  - Press releases about pretrial actions—indictments and informations; execution of search, seizure, and arrest warrants; pretrial motions, hearings, and injunctions; pleas and arraignments—must be approved by the government attorney. The IRS will refer media requests about a pretrial action that go “beyond the contents of a release” will also to the government attorney. IRM 9.3.2.8.1 (07-02-2004).
  - For search, seizure, and arrest warrants, news releases should include “only incontrovertible factual matters,” and not “subjective observations.” IRM 9.3.2.8.1.1 (06-05-2006)
- The IRS has also registered various social media accounts, including Facebook, Twitter, and Tumblr, promoting them as a way to “Connect with the IRS”—i.e., “Share the latest information on tax changes, initiatives, products and services.” See <http://www.irs.gov/uac/IRS-New-Media-1> and <http://www.irs.gov/uac/Newsroom/Tax-Information-Available-Through-IRS-Social-Media-Tools>

### How Attorneys Use the Media (Mainstream and Social)

- To raise awareness of a particular issue or case
- To garner sympathy for a client or a cause, or bolster a client’s reputation
- To force a settlement between parties
  - “Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client's reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1043 (1991).
  - “A lawyer should represent a client zealously within the bounds of the law.” Model Code of Professional Responsibility, Canon 7. “Zealous” representation could include going to the news media.

- Many defendants in tax cases—particularly in higher profile cases such as those involving public figures, corporations, or political or charitable organizations—will hire public relations strategists.
  - Poorer taxpayers will use the media *offensively*, to craft an image of David vs. Goliath, i.e., expose the IRS for abusing the powerless, and to show the disproportionate effect the IRS has in attempting to collect from those who already have little to begin with.
  - Richer taxpayer will use the media for publicity—for instance, to appear more sympathetic before a potential jury is chosen, or to show why they are entitled to their day in court.
  - Note: Be careful of what is divulged to a public relations strategist. It may inadvertently waive attorney-client privilege or confidentiality. (See below.)
  
- Attorneys often issue press releases through their law firm website or through different media outlets. Attorneys or firms also use tax law blogs as both an informative and advocative platform.
  - Law firms are also hiring social media directors, or working with public relations firms representatives specifically trained in social media for optimal use of the platforms.
  - Some debate that social media may be replacing the traditional press release, though Kevin O’Keefe of LexBlog, Inc. argues, among other things, that press releases are still more professional than social media blasts, and that law firms are slower to accept the changes that have seemingly revolutionized the press overnight. Additionally, law blogs can serve as an effective interactive tool between attorneys, the media, and others. <http://kevin.lexblog.com/2013/09/24/are-press-releases-in-the-legal-industry-dead/>
  
- Beware of gag orders. If the IRS feels that an attorney is raising too much awareness about a particular matter to be litigated that it is in danger of influencing or prejudicing the outcome of litigation, the IRS may petition the court to issue a “gag order.” Such an order prohibits “the attorneys and the parties to a pending lawsuit or criminal prosecution from talking to the media or the public about the case. The supposed intent is to prevent prejudice due to pre-trial publicity which would influence potential jurors. A gag order has the secondary purpose of preventing the lawyers from trying the case in the press and on television, and thus creating a public mood (which could get ugly) in favor of one party or the other.” “The People’s Law Dictionary,” *available at* <http://dictionary.law.com/default.aspx?selected=802>
  - Courts have not definitively ruled on the constitutionality of gag orders on attorneys, though an attorney may be sanctioned for speech that creates a “substantial likelihood of material prejudice.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) (see discussion on “Trial Publicity” below).

- However, even if the court orders parties not to comment on a case, First Amendment freedoms often allow the media to continue to report on a case. (Thus arises the peculiar situation of the media being able to divulge negative information about either side in a case that has been “gag ordered,” on which the party being reported on cannot comment.)
- Gag orders on the press are presumptively unconstitutional, *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976), but if narrowly tailored, they have been upheld on rare occasions. See *United States v. Noriega*, 917 F.2d 1543 (11th Cir. 1990), cert. denied 498 U.S. 976 (1990) (upholding an order blocking CNN from broadcasting tapes of private conversations between defendant and his attorney).
- No court has ruled whether and when gag orders can be placed on parties who are not attorneys, such as witnesses or police officers.
- If a defendant chooses not to use the media, the circumstances under which a court can order a “closure of judicial proceedings” are unclear. Compare *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979) (“the Sixth Amendment confers the right to a public trial only upon a defendant and only in a criminal case,” and not members of the press) with *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) (distinguishing *Gannett* as holding for pretrial motions only, but that the First Amendment allows the press access to trials “absent an overriding interest”) and *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) (denial of the press access to trial “is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest”).
  - Court has authority to limit presence of the press, or their conduct in the courtroom (e.g., no cameras) when “it is apparent that the accused might otherwise be prejudiced or disadvantaged,” and it may limit “number of reporters in the courtroom ... at the first sign that their presence will disrupt the trial.” *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966).
  - All states have rules allowing cameras in the courtroom, though their level of access varies widely. Federal trial courts typically do not allow them; however, fourteen jurisdictions—notably the Northern District of Illinois, the Northern District of California, the District of Massachusetts, and the Southern District of Florida—are participating in a pilot program, which began in June 2011, to evaluate the effect of cameras in the district courts.
  - Some courts are experimenting with social media. Although U.S. District court generally prohibits cell phones and electronic devices, some judges have allowed credentialed journalists to live blog or tweet high-profile cases, such as the Boston Marathon bombing hearings or mobster Whitey Bulger in the District of Massachusetts.  
<http://kevin.lexblog.com/2013/12/22/courtroom-coverage-by-social-media-a-welcome-development/>

## WHEN (Not) to Complain/Best Practices in Using the Media

- Client Confidentiality. “A lawyer shall not reveal information relating to the representation of the client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted” in specific situations such as to prevent reasonably certain death or substantial bodily harm, prevent the client from committing a crime, or to comply with a court order. “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” *See* ABA Model Rules of Professional Conduct (“MRPC”) Rule 1.6.
  - “The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” *Id.*, Comment 3.
  - State laws also provide for client confidentiality rights. New York, for instance, affords clients “the right to privacy in your communications with your lawyer and to have your confidential information preserved by your lawyer to the extent required by law.” *See* Statement of Client’s Rights, Joint Order of the Appellate Division of the Supreme Court, at 8, *available at* <http://courts.state.ny.us/litigants/clientsrights.shtml>
  - Attorneys also risk inadvertent waiver of the attorney-client privilege (verbal communications) or work product privilege (information contained in documents prepared in anticipation of litigation or trial, *see* Fed. R. Civ. P. Rule 26(b)(3)) by disclosing any client communications to a third party—a journalist, or through a social media account.
  - “People have a tendency to tweet real time,” said DLA Piper attorney Erin E. Wright, particularly because social media encourages the sharing of information—and one’s presence on social media is dependent on posting or tweeting frequently, in detail. Gunnarson, “Friending Your Enemies,” *supra*.
  - A public defender in Winnebago County, Illinois was suspended from practice for posting personal information about clients on her blog, including confidential case information. She also made derogatory remarks about judges. *In the Matter of Peshek*, Ill. Atty. Reg. and Disc. Comm, 09 CH 89 (Aug. 25, 2009), Ill S. Cut MR 23794 (May 18, 2010).
  - Best practices: get client consent before divulging anything to the media, particularly a clear understanding of the boundaries of what may be said.
  - Public relations strategists. Law is unclear whether seeking advice from PR people is considered privileged information, or whether documents arising therefrom are work product. No publicist-client privilege exists,

and no bright-line rule exists to determine whether or not such information is privileged.

- Courts will often consider if the exchange took place for the purposes of obtaining legal advice, as opposed to public relations advice. *See, e.g., Burton v. R.J. Reynolds Tobacco Co.*, 200 F.R.D. 661 (D. Kan. 2001) (some documents not covered by privilege because they were related to “public relations and public image issues” and “make no reference to legal issues or the rendering of legal advice.”)
- Another question is whether the advice were necessary for the attorney to manage the conduct of the litigation itself, as opposed to allowing the PR consultant to manage the effects of the litigation.
- Courts have applied the doctrine in *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961) that the attorney-client privilege may encompass third parties if the communication with the publicist “be made in confidence for the purpose of obtaining legal advice.” *See, e.g., In re Grand Jury Subpoenas Dated March 24, 2003*, 265 F. Supp. 2d 321 (S.D.N.Y. 2003) (“[T]he ability of lawyers to perform some of their most fundamental client functions—such as (a) advising the client of the legal risks of speaking publicly and of the likely legal impact of possible alternative expressions, (b) seeking to avoid narrow charges brought against the client, and (c) zealously seeking acquittal or vindication—would be undermined seriously if lawyers were not able to engage in frank discussions of facts and strategies with the lawyers’ public relations consultants.”).
- Courts have also treated publicists as an employee of the litigating party, performing a role or a job that is beyond any of the party’s specialized skills. *See, e.g., In re Copper Market Antitrust Litigation*, 200 F.R.D. 213 (S.D.N.Y. 2001) (PR firm “incorporated into” Japanese company’s staff to “perform a corporate function that was necessary in the context of the government investigation, actual and anticipated private litigation, and heavy press scrutiny obtaining at the time,” providing English-language skills and experience with the U.S. media that the company could not do itself; communications therefore privileged.)
- Keep in mind that party claiming privilege bears the burden.
- Best practices: attorney should act as gatekeeper over information shared with publicist; structure the communications so that they clearly relate to litigation issues; direct the PR representative to open a separate file for litigation issues. Often helpful if the attorney, not the client, retains the publicist, and that the attorney

not use the client's recently hired publicist for his own consulting work. If case involves international litigation, be aware of parameters of privilege in other countries.

- Protect your clients from self-incrimination. Because social media encourages interaction, a client could easily incriminate him or herself by inadvertently posting information on a social media site that may be harmful. Advise your client not to post anything pertaining to the particular legal matter for which you have been retained as representation on any social media site.
  - Furthermore, according to attorney Michael Downey of Hinshaw & Culbertson LLP, "The Web's informality makes it very easy to say something inappropriate about the lawyer or client on the other side of a matter. Aggressive or nasty comments made in an unguarded moment or in the heat of a contentious litigation matter could result in a defamation claim. The circumstances in which the comments were made can determine whether there is coverage under your malpractice policy. Making a nasty comment on a blog in the course of providing professional services to the client isn't worth it." Downey, "12 Tips for Reducing Online Dangers and Liabilities," *Law Practice*, July/August 2010, available at [http://www.americanbar.org/publications/law\\_practice\\_home/law\\_practice\\_archive/lpm\\_magazine\\_articles\\_v36\\_is4\\_pg26.html](http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v36_is4_pg26.html)
- Trial Publicity and Prejudice. "A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." MRPC Rule 3.6.
  - Additionally, an attorney may not "engage in conduct that is prejudicial to the administration of justice." MRPC Rule 8.4(d). This would seem to be a catchall accounting for anything other than an "adjudicative proceeding," such as, potentially, settlement negotiations. It has also been applied to attorneys who make disparaging remarks about judges or attempt to manipulate the court system.
    - *Mississippi Bar v. Lumumba*, 912 So.2d 871 (Miss. 2005) – A lawyer who made negative remarks to a newspaper about a judge's judicial temperament post-trial was sanctioned under Rule 8.4(d) because the court found his conduct inappropriate for a member of the Bar. He was also sanctioned under MRPC Rule 8.2 (see below), making "a statement ... with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge."
  - Making a statement to the media could inadvertently impact the outcome of a trial.



- *Sheppard v. Maxwell*, 384 U.S. 333 (1966) – Defendant’s guilty second-degree murder verdict overturned because massive, widespread publicity of the case unfairly prejudiced the trial. Recognizes a “duty” of trial courts to “protect [the defendant] from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom.”
- *Cf. Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) – Attorney of suspect indicted for theft made public statements incriminating the investigating police officers. Although suspect was acquitted, attorney’s comments were found not substantially likely to materially prejudice the trial outcome, because much of the information was already published in some form by the time the trial took place.
- As result of *Gentile*, Rule 3.6 was amended to include specific information a lawyer may disclose publicly, such as “a warning of danger concerning the behavior of a person involved when there is reason to believe” so; “a request for assistance in obtaining evidence and information necessary thereto”; or, in a criminal case, information to apprehend a person accused of a crime. For the entire list, see MRPC Rule 3.6(b).
- Also as a result of *Gentile*, Rule 3.6 was amended to include a provision allowing an attorney to “make a statements that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client,” but the statement “shall be limited to such information as is necessary to mitigate recent adverse activity.” MRPC Rule 3.6(c).
- However, many states that have adopted the MRPC, such as Florida, have not adopted Rule 3.6(c). *See* Rules Regulating the Florida Bar Rule 4-3.6.
- At the other end of the spectrum, the New York Rules of Professional Conduct (NYRPC) includes a provision explicitly defining a statement “ordinarily” likely to “prejudice materially an adjudicative proceeding.” *See* NYRPC Rule 3.6(b). *See also* Illinois Rules of Professional Conduct Rule 3.6(b) (“certain subjects which would pose a serious and imminent threat to the fairness of a proceeding”); MRPC Rule 3.6, Comment 5 (examples of statements that would prejudice a criminal trial).
- *State of Delaware v. Grossberg*, 705 A.2d 608 (Del. Sup. Ct. 1997) – Gag order in place limiting pretrial publicity that violated Rule 3.6; defense had expressly represented it did “not intend to go on any television shows” or give any interviews. Criminal defense attorney then appeared with defendant on “20/20,” guiding her to answer questions generally dealing with the emotional impact the events surrounding the ongoing litigation had taken upon her. Defense attorney also claimed defendant was innocent. Court ruled that attorney had violated the gag order, that the statements of defendant—relevant to her state of mind—and that of the attorney could be prejudicial, thus in violation of Rule 3.6.

- A similar provision governing the Department of Justice in criminal trials is found in 28 C.F.R. § 50.2(b)(2) (see above).
  - As a general rule, however, pretrial publicity by itself does not automatically “render a trial constitutionally unfair.” *Dobbert v. Florida*, 432 U.S. 282 (1977); *cf. Irvin v. Dowd*, 366 U.S. 717 (1961) (extensive publicity of case contributed to overturning of verdict because of a “pattern of deep and bitter prejudice” in the community).
  - On the flip side, an attorney should perform a thorough voir dire—and demonstrate to the judge why additional peremptory challenges may be needed in a high-profile case—to rule out any media prejudice when selecting potential jurors for any case.
- **Misstatements of Fact.** “In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.”  
MRPC Rule 4.1
- In an impassioned tirade about a particular issue or case—either to a journalist or via social media—material facts often are exaggerated or omitted.
  - MRPC Rule 8.2(a) – “A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.”
    - *See Mississippi Bar v. Lumumba*, 912 So.2d 871 (Miss. 2005) (“Attorney’s statement to newspaper reporter, to effect that trial judge who had cited attorney for contempt in course of criminal proceedings ‘had the judicial temperament of a barbarian[,]’ was made with willful, reckless disregard as to its truth concerning judge’s qualifications and integrity, in violation of applicable attorney disciplinary rule.”)
- **Caution: Soapboxing.**
- Attorneys may comment on cases or issues which the attorney is not personally involved.
  - Although not a violation of Rule 1.6 (client confidentiality) or Rule 3.6 (trial publicity), attorneys should make sure the *firm* does not represent a client in that particular case or issue. *See generally*, MRPC Rule 1.7 (conflict of interest violations).
  - Often a problem in blogs or social media, where attorney’s public opinion can conflict with client representation or client expectations.
  - At the extreme, a court can file sanctions on an attorney under Fed. R. Civ. P. Rule 11 (filing a pleading for “any improper purpose, such as to harass” the opposition).

- *Whitehead v. Food Max of Mississippi, Inc.*, 332 F.3d 796 (5th Cir. 2003)(en banc) – Court imposed Rule 11 sanctions on an attorney who used the media and federal marshals to “embarrass Kmart and advance his personal position,” in order to collect on a judgment.
- **Choose your Social Media connections wisely.** Be careful about the connections of people you “friend,” the groups you join. Neither you, nor an agent should ever friend represented parties.
  - San Diego County Bar Association Opinion 2011-2: Friending a represented party violates California Rule of Professional Conduct 2-100 (analogous to MRPC Rule 4.2—“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter” without consent or legal authorization), because it is an indirect ex parte communication. Even if the communication is not directly “about the subject matter of the representation,” it could aid the other side in discovery (which may be made “regarding any matter ... relevant to the subject matter”), and it might give the attorney an unfair advantage in preparing for trial. Additionally, “the attorney’s duty not to deceive prohibits him from making a friend request even of unrepresented witnesses without disclosing the purpose of the request.”  
<https://www.sdcba.org/index.cfm?pg=LEC2011-2>
  - If parties are already friends *before* the matter in controversy, communication is permitted for matters outside the representation.
  - *Domville v. State*, 103 So.3d 184 (Fla. Dist. Ct. App. 2012) – Motion upheld to disqualify judge who was “friends” with a prosecutor through social media, because it created a well-founded fear of not receiving a fair and impartial trial. *But see Chace v. Loisel*, \_\_\_ So.3d \_\_\_, 2014 WL 258620 (Jan. 24, 2014) (suggesting that *Domville* might be too strict because a “friend” on Facebook could also mean an “acquaintance and, sometimes, virtual stranger”).
- **“Returns and return information shall be confidential.”** 26 U.S.C. § 6103. This applies to, among others, attorneys with access to a client’s tax returns, and to IRS agents with access to said returns.
  - An attorney should refrain from referring to specifics regarding a client’s tax liabilities in any discussion with the media.
  - Civil penalties for anyone who “knowingly, or by reason of negligence, inspects or discloses any return or return information” 26 U.S.C. § 7431
  - Criminal penalties for willful disclosure of return or return information 26 U.S.C. § 7213.
- **Government officials.** Civil penalties “if any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of

section 6103.” 26 U.S.C. § 7431. Criminal penalties for willful disclosure of return or return information. 26 U.S.C. § 7213(a).

- Preparers of returns. A preparer of tax returns who “knowingly or recklessly discloses any information furnished to him for, or in connection with, the preparation of any such return, or uses any such information for any purpose other than to prepare, or assist in preparing, any such return shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.” 26 U.S.C. § 7216.
  - CPAs or other accountants should be careful not to tweet or post on Facebook, etc, any information pertaining to a client’s tax returns.
  - Although this particular rule applies to federal tax returns, individual states generally have similar confidentiality statutes regarding state tax returns. *See, e.g.,* N.Y. Tax Law § 697(e).

### HOW to Complain to Mainstream Media

Pulitzer-winning journalist David Cay Johnston, who has written extensively about the IRS and tax law, says that he is particularly selective in fielding complaints from attorneys, taxpayers, or IRS or other government employees. The following are a few attributes that increase credibility, attract positive attention or encourage a journalist to follow up with a story:

- “You have to have relatively clean hands.” Taxpayers who alert the media of their tax problems often are not completely innocent, and blemishes on their record such as unfiled tax returns or ignored IRS notices can negate any sort of sympathy shown to them by the media or a reporter.
- Be able to support your complaint. Reporters seldom, if ever, take a source at its word and will seek other sources of verification. A taxpayer who laments that the IRS is “bullying” him, for instance, but cannot produce any documentation evidencing any wrongdoing—say, an angry letter, or IRS forms and receipts evidencing their compliance—will seem less credible.
- Take responsibility. “Many people who come to news organizations have another agenda,” says Johnston. For instance, “they don’t believe in government. They believe the federal government is a criminal organization. Many of these people I find are psychologically children; they don’t take responsibility for their own judgment.” Be forthright in you or your client’s matter—if you feel the IRS has wronged you or your client in spite of your or your client’s own mistakes, admit to the mistakes, rather than painting yourself or your client as being the innocent victim. According to Johnston, if the attorney just wants “leverage—when I smell that, I back off.”
- Remember your audience. IRS attorneys often become mired in jargon when they attempt to explain matters to a non-attorney. Very few journalists—even those that cover tax matters regularly—understand tax policy or basic government, particularly administrative law, at the same level as an attorney. And generally the

journalist is faced with the task of simplifying the story even further into a form the general public can understand. Keep your explanations succinct and in laymen's terms, to allow the journalist to report it accurately and without confusion.

- Use the media to raise awareness, not to fix problems. “News organizations are not the business of resolving your individual disputes,” Johnston said. “We have forms for solving individual disputes—those are the courts.”

## **THINKING OUTSIDE THE BOX IN TAX ADVOCACY**

### **1. Constituent Services & Congressional Inquiries**

- a. Congressional Inquiries on Behalf of Taxpayer Constituents (Overview):  
Members of Congress, in their individual capacity, are entitled to no greater access to tax returns or return information than any other person who inquires about the tax affairs of a third party. [IRM 11.3.4.2 (05-20-2005)].
- b. However, IRC § 6103(c) provides that Members of Congress can access tax information as a designee of a constituent taxpayer. [IRM 11.3.4.1.1 (05-17-2017)].
- c. As a § 6103(c) designee, a Senator or Congressperson may be able to assist with a whole host of IRS issues by submitting a Congressional Inquiry to the IRS on a constituent's behalf pursuant to the Service's Congressional Affairs Program. [IRM 11.5.2.1 (09-01-2014)].
- d. The Congressional Affairs Program was first implemented by the IRS in 1989.
  - 1) However, prior to 2001, District and Service Center Executives managed local Congressional relationships.
  - 2) Currently, Legislative Affairs manages the Congressional Affairs Program in coordination with Governmental Liaisons and Local Taxpayer Advocates in each state.
  - 3) Guide for Congressional Offices: [IRM 11.5.2.7.8 (09-01-2014)]
    - i. Publication 04323, An Overview of the Internal Revenue Service for Congressional Staff, replaced Publication 1273.

- ii. The publication is a tool that can be used by Governmental Liaisons and Local Taxpayer Advocates to acquaint congressional staffers with the IRS organizational structure and how to access IRS information and publications.
- e. The Congressional Affairs Program helps IRS develop and maintain positive working relationships with Members and their staffs by:
- 4) Maintaining relationships with local offices in every state;
  - 5) Organizing regular outreach and liaison efforts to deliver corporate information and messages; and
  - 6) Coordinating with Local Taxpayer Advocates on Congressional correspondence and other issues as needed.
- i. The majority of Congressional correspondence received by the IRS is controlled by the Taxpayer Advocate Service, Congressional Affairs Program. This includes Tax Account-related issues.
    - 1. The Taxpayer Advocate Service is headed by the National Taxpayer Advocate (NTA), who reports to the Commissioner. Each state and campus has at least one Local Taxpayer Advocate (LTA) who is independent of the local IRS office and reports directly to the NTA.
  - ii. The Taxpayer Advocate plays a key role in the Congressional Affairs Program by handling tax account-related issues. [IRM 11.5.2.3.5 (09-01-2014)].

1. The Taxpayer Advocate Service (TAS) is headed by the National Taxpayer Advocate (NTA), who reports to the Commissioner. Each state and campus has at least one Local Taxpayer Advocate (LTA) who is independent of the local IRS office and reports directly to the NTA. TAS plays a key role in the CAP by handling Congressional inquiries on tax account related issues.

f. Common Taxpayer Account-Related Congressional Inquiry Issues:

- 7) Expediting Refunds in Cases of Exigent Need;
- 8) 501(c) Tax-Exempt Status Issues;
- 9) Unfiled Tax Returns, Liens Levies and Wage Garnishment;
- 10) Resolving ID theft cases;
- 11) Problems with Tax Return Processing.

2. Contact Information (Where to Complain):

New York	
<b>Office of Senator Charles Schumer</b> 780 Third Ave, Suite 2301 New York, NY 10017 Tel: (212) 486-4430 Fax: (202) 228-2838	<b>Office of Senator Kirsten Gillibrand</b> 780 Third Avenue, Suite 2601 New York, New York 10017 Tel: (212) 688-6262 Fax: (866) 824-6340
<b>Office of Congresswoman Carolyn Maloney</b> [12 <sup>th</sup> District – NYC] Attn: IRS Caseworker [Tricia Shimamura] 1651 3rd Avenue, Suite 311 New York, NY 10128-3679 Tel: (212) 860-0606 Fax: (212) 860-0704	

New Jersey	
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<b>Office of Senator Robert Menendez</b> One Gateway Center, #1100 Newark, NJ 07102 Tel: (973) 645-3030 Fax: (973) 645-0502	<b>Office of Senator Cory Booker</b> One Gateway Center, 23rd Floor Newark, NJ 07102 Tel: (973) 639-8700 Fax: (973) 639-8723
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3. Congressional Inquiry Process (How to Complain):

a. The Authorization Letter: A Congressional Inquiry must be accompanied by the constituent's authorization. [IRM 11.3.4.2.1 (06-10-2008)].

i. Disclosure to Members of Congress [IRM 11.3.4.2 (05-20-2005)].

1. Members of Congress in their individual capacity are entitled to no greater access to returns or return information than any other person inquiring about the tax affairs of a third party.

2. Disclosure of returns and return information to a taxpayer's designee, including a member of Congress inquiring on behalf of a constituent, may be made only in accordance with IRC §6103(c).

3. Generally, IRC §6103 provides that returns and return information are protected from disclosure and can only be disclosed as authorized by the Internal Revenue Code (IRC). The IRC authorizes disclosures to third parties after a request or authorization under IRC §6103(c) is obtained from the taxpayer. Treasury Regulations in 26 CFR §301.6103(c)-1 allows the use of non-written consents, where the third party is assisting the taxpayer in resolving a Federal tax related matter. Functional procedures must be followed in honoring such

consents. (See IRM 11.3.3, *Disclosure to Designees and Practitioners*, for additional information on third party authorizations.)

- ii. The taxpayer's authorization may, but need not, take the form of a Power of Attorney (POA) signed by the taxpayer authorizing the Member to receive tax information on his or her behalf.
- iii. The taxpayer may also use a Form 8821, *Tax Information Authorization*.
- iv. Or a taxpayer may utilize a Congressional Authorization Form signed by the taxpayer authorizing the Member and his or her staff to obtain information to assist that taxpayer (provided by Congressional offices under the Privacy Act of 1974)
- v. Moreover, a taxpayer's letter is sufficient to authorize disclosure to the taxpayer's Member of Congress as the taxpayer's designee as long as the letter:
  1. Identifies the Taxpayer: Any combination of name, address or SSN/EIN information that allows the IRS to "clearly" identify the taxpayer is sufficient;
  2. Identifies Member of Congress Authorized to Receive Disclosures: A letter simply addressed "Dear Sir" or "Dear Madam," that does not specifically refer to the Member of Congress in the letter, does not alone suffice. However, taken together with the envelope from the constituent's letter

addressed to the Member of Congress, the two items would be sufficient.

- a. An authorization to a Member of Congress includes members of the Congressperson's staff that deal with constituent tax inquiries.

3. Identifies the Information to be Disclosed & Extent of

Disclosure: The IRS will limit its disclosure to returns or return information necessary to comply with the taxpayer's correspondence. However, a phrase such as "all years" or "all returns" is acceptable and makes all information available to the Member of Congress.

- b. If a Member of Congress submits an Inquiry but does not enclose a written authorization from the constituent, the IRS may only communicate general tax information to the taxpayer. [IRM.11.3.4.2.2 (05-20-2005)].
  - i. The Member will receive a communication explaining that, because of disclosure issues, the IRS is communicating directly with the taxpayer.
  - ii. The Member should also have the procedures for obtaining return and return information to him/her.
  - iii. The IRS may contact the taxpayer, inform him/her of the Congressional Inquiry, and obtain a written or non-written consent for disclosure to the Member. [IRM.11.3.4.2.2 (05-20-2005); 26 C.F.R. § 301.6103(c)-1].

- c. If the request to the Member is from a third party (an attorney or Certified Public Accountant), the IRS may provide information only if:
  - i. There is a POA from the taxpayer on file, and
  - ii. The request authorizes disclosure of tax information to the third party POA on the taxpayer's behalf.
- 4. When to Complain/What to Complain About:
  - a. Complain Early:
    - i. Every Congressional office that we spoke with said that taxpayers who contact them at the first indication of an issue have a much better chance of obtaining meaningful intervention by the Member and favorable resolution of the taxpayer's issues with the IRS.
      - 1. The constituent should contact the Member's office before there is a CDP proceeding, an Offer in Compromise in place, or a Tax Court/other court case, or an appeal in process.
      - 2. A constituent also should contact the office before the Taxpayer Advocate is involved. Once the Taxpayer Advocate is involved, the Congressional office can monitor and ensure responsiveness but will not attempt to influence the Taxpayer Advocate.
    - ii. Inquiries after there is Already a Court Case: [IRM 11.3.4.2.4 (05-20-2005)]

1. If a Member of Congress inquires about a constituent's pending court action that is not in the Tax Court, the inquiry is referred to IRS Chief Counsel.
2. If a Member of Congress inquires about a constituent's tax court case that is jointly under the jurisdiction of Commissioner and Chief Counsel, responses to the inquiry should be coordinated with Counsel.
3. If a Member of Congress inquires about a constituent's Tax Court case that is under the sole jurisdiction of Chief Counsel, the inquiry should be referred to Chief Counsel for reply.

b. Complain with Specificity:

- i. The Congressional inquiry must present sufficient facts regarding a specific tax matter so the IRS can comply with the request. [IRM 11.3.4.2.1(c) (06-10-2008)].

c. Most Common Issues:

i. **Problems with Tax Return Processing:**

1. A Congressional office will reach out to the Taxpayer Advocate and will even elevate the issue up to the Department of Treasury Congressional Liaison.
2. The Taxpayer Advocate Service may decide to take on a case they would have ordinarily passed on if it is referred by a Congressional office.

- a. See June 12, 2012 Taxpayer Advocate Press Release stating that the Taxpayer Advocate's office "can't possibly help all six million to 12 million taxpayers who may be having problems at any given time."
- b. In 2011, the Taxpayer Advocate identified four types of issues which the IRS seemed to eventually address (though slowly) on its own without Taxpayer Advocate intervention.
  - i. Those cases involve the processing of:
    - 1. original tax returns;
    - 2. amended returns;
    - 3. rejected and unpostable returns; and
    - 4. injured (but not innocent) spouse claims.
- c. The Taxpayer Advocate Service generally won't accept cases involving these pure processing issues (to focus on higher impact problems)
- d. However, an exception is that if the taxpayer is referred by a Congressional office, TAS will take the case.

ii. **501(c) Not-Profit Status:**

- 1. See Feb 6, 2014 Letter from Taxpayer Advocate Sharen K. Greene in response to "the tremendous backlogs" in making determinations regarding tax exempt status.

- a. The backlog was greater than 66,000 as of Nov. 12, 2013.
  - b. This was identified as one of the most serious problems facing the IRS in the National Taxpayer Advocate Nina E. Olson's 2013 Annual Report to Congress.
2. A Congressional office can assist constituent with their concerns in receiving approval, or reinstatement, of tax exempt status.
  - a. In general, the IRS processes applications in the order received. However, the IRS will work a case outside the regular order, if the organization can provide a compelling reason to process the request ahead of others.
  - b. A Congressional office can usually obtain a determination on status within 90-days in the following cases:
    - i. An organization is in imminent danger of losing a grant or financial support if the approval process is delayed;
    - ii. A newly created organization providing disaster relief to victims of emergencies;
    - iii. IRS errors have caused undue delays in issuing a determination letter.

3. The organization must have documentation of the compelling reason such as information showing a donor, who intends to contribute a significant portion of the organization's annual revenues, has declined to donate because the tax exempt status has been revoked.
  - a. For a pending grant, the following specific information will help support a request for expedited processing:
    - i. The name of the person or organization committed to giving the grant or asset;
    - ii. The amount of the grant or the value of the asset;
    - iii. The date the grant will be forfeited or permanently redirected to another organization;
    - iv. The impact on the organization's operations if it does not receive the grant/asset; and
    - v. The signature of a principal officer or authorized representative.
4. TAS can assist organizations in non-expedite situations, if the organization submitted the application prior to the date the IRS is currently assigning applications to examiners for review (August, 2013 as of 5/23/14).

iii. **Payment Schedules & Penalty Abatement (Liens, Levies, and Wage Garnishment):**



1. Before there is a CDP proceeding, an Offer in Compromise in place, a Tax Court action or an appeal in process, the Member's office will act as a liaison between the constituent and the local Taxpayer Advocate's Office.
  - a. Once there is a proceeding or OIC, things are in the IRS' hands and the Member's office can just monitor what is going on.

**iv. Resolving ID Theft Cases:**

1. The IRS has expanded its "Law Enforcement Assistance Pilot Program on Identity Theft Activity Involving the IRS" that was started in 2012.
  - a. Federal law imposes restrictions on sharing of taxpayer information, including information that can be shared with state and local law enforcement.
  - b. This program allows taxpayers the option to permit information to be shared with state and local law enforcement specifically to assist law enforcement officials with their efforts in pursuing identity theft perpetrators.
2. Communication with Member of Congress requesting the inquiry must be submitted with:
  - a. IRS Form 14039 – Identity Theft Affidavit, and
  - b. 2 Proofs of ID.

v. **Expediting Refunds in Cases of Exigent Need:**

1. Examples of exigent need include needing the funds for payment of medical expenses or a mortgage.

5. What Happens Next?:

a. Processing of a Congressional Inquiry:

- i. All Congressional inquiries received by TAS will be controlled on the Taxpayer Advocate Management Information System (“TAMIS”).  
[IRM 13.1.8.2.1 (04-04-2017)].

1. TAMIS records and tracks TAS activity and performance in carrying out its statutory role of assisting taxpayers experiencing problems and hardships with the IRS. TAMIS is a critical data source for the National Taxpayer Advocate’s Annual Report to Congress, for internal feedback reporting to the operating divisions and other functional areas and for proposing remedies to correct and cure inequitable tax legislation and internal IRS systemic processes that negatively impact the taxpaying public. [IRM 11.5.2.8 (09-01-2014)].

- ii. All Congressional Inquiries controlled on TAMIS will be processed within one workday of receipt, except:

1. Inquiries (other than written) that can be answered immediately during the call;
2. Courtesy copies (copies of letters addressed to someone other than the Member of Congress with cc: Member’s name) of

written responses to Congressional offices. These will not be treated as Congressional Inquiries unless actually referred by a Congressional office;

3. Non-case-related inquiries that will be worked by the Government Liaison or sent to Legislative Affairs for control and assignment [IRM 13.1.8.5 (04-04-2017)].

b. Correspondence and Resolution: [IRM 11.5.2.7.5 (09-01-2014)]

- i. Tax account related Congressional inquiries will be assigned to the Local Taxpayer Advocate Office (for example, an inquiry from a constituent where the IRS denied an Earned Income Tax Credit (EITC) claim).
- ii. Non-tax account related Congressional inquiries will be assigned to the Local Governmental Liaison (for example, an inquiry from a constituent wanting to know how to claim the EITC).
- iii. The following non-account related Congressional inquiries will be assigned to the National Headquarters Executive Secretariat Correspondence Office (ESCO). These cases are controlled through E-TRAK, a service-wide internal documents tracking system.
  1. Congressional correspondence addressed to the Commissioner or the National Director of Legislative Affairs.
  2. Complaints concerning IRS employees or from IRS employees. These issues will be assigned by ESCO to the Employee Conduct and Compliance Office (ECCO).

3. Technical or sensitive issues that would benefit from a formal, written response.
- iv. The Local Taxpayer Advocates and the Governmental Liaisons are responsible for the CAP in the field. Each party brings specific skills to the program. Both work together closely with a spirit of cooperation to serve the best interests of local Congressional offices and their constituents, as well as the best interest of the IRS. The Local Taxpayer Advocate: [IRM 11.5.2.6.5 (9-01-2004)].
1. Has primary responsibility for all tax account related issues.
  2. Develops advocacy issues and represents taxpayers.
  3. Coordinates with Governmental Liaisons on Congressional contacts and visits (see IRM 13.1.8, *Taxpayer Advocate Case Procedures, Congressional Affairs Program*).
  4. Conveys the messages contained in the National Taxpayer Advocate's Annual Report to Congress, which should not be misconstrued as influencing Members of Congress under IRS Rules of Conduct. IRC 7803(c)(2)(B)(ii) requires the Office of the Taxpayer Advocate to make legislative recommendations to resolve problems encountered by taxpayers.
- v. Timeframes for Congressional Correspondence received by Governmental Liaisons and controlled through TAMIS:
1. The response must be received in the Congressional office within 20 days of receipt.

2. If the letter cannot be sent within 20 days, an interim contact must be made with the Congressional office by telephone or letter.
- vi. Governmental Liaisons should document all written responses to Congressional Inquiries on the Congressional Affairs database.
1. Congressional Affairs Program Database [IRM 11.5.2.10 (09-01-2014)]
    - a. The CAP Contacts Database has been replaced by aFOIA GLDS. Governmental Liaisons should record Congressional contacts and times on GLDS. The GLDS system is maintained by PGLD Data Services. If questions specific to the use of GLDS for CAP arise, contact Legislative Affairs for instructions.
    - b. Local Taxpayer Advocates, although part of the Congressional Affairs Program, do not have access to the system.
      - i. TAMIS is used by the Taxpayer Advocate Service to record, control, and process Taxpayer Advocate Service taxpayer cases and GL non-tax account related cases.
    - c. The Congressional Affairs Program database allows Governmental Liaisons and Legislative Affairs staff to

share information about congressional inquiries and to track the numbers of contacts made.

- i. Visits to Capitol Hill and local congressional offices are also recorded on this database.

- d. The retention period for information from the database is 2 years, to coincide with each new Congress.

vii. Special Procedures for Frivolous Filers: [IRM 11.5.2.9.5 (09-01-2014)]

1. Congressional offices may forward constituent correspondence that contains frivolous statements or statements that challenge the constitutionality of the income tax.
  2. These types of correspondence do require a response from the Service.
  3. After reading the correspondence to ensure it does not contain a Freedom of Information Act request, it is not an account inquiry, or it is not related to an open case in a local office, the Governmental Liaison should prepare a reply.
    - a. To assist the Government Liaison in responding to these types of correspondence, issue letters can be found on the CAP website at <http://irweb.irs.gov/AboutIRS/bu/cl/la/lacap/default.asp>
- x.

b. If the issue letters do not fully address the frivolous or constitutional tax arguments, the Congressional correspondence can be forwarded to ESCO

6. Dos and Don'ts in Dealing with Congress [IRM 11.5.2.7.9 (09-01-2014)]

a. The following table provides guidance for interactions with Members of Congress and their staff.

<b>Do...</b>	<b>Don't...</b>
Have a positive attitude.	Be shy or apologetic.
Plan to explain and defend (if needed) your office's programs, products, and services, as well as any national concerns.	Think it is someone else's job.
Remember that you are providing quality customer service to an important external stakeholder.	Be afraid to tell them what your office appropriately can do for them and their constituents.
Remember that Legislative Affairs is a legitimate function of all federal agencies. The IRS Legislative Affairs Division has already provided Members of Congress and their staffs considerable information and material on the IRS and tax administration issues.	Feel that speaking with, writing to, or visiting Members and/or staffs is somehow inappropriate.  Be surprised if the Member/staff are familiar with certain IRS items; use that to lead into your message about your office.
Call on Legislative Affairs for general or specific advice on all matters relating to Congress (schedules, map, reference books, bill status, committee memberships, current events, etc.)	Hesitate to check (it could save some embarrassment).
Concentrate on providing education and information. Avoid lobbying or the appearance of lobbying (trying to influence the Member on a specific issue or bill).	Tell the Member or the staff your opinion on an issue or bill (you could be quoted).
Stick to educating Members and staff on your office's organization, programs, operations, products and services, and national programs of interest.	Talk about other agencies or issues.
Avoid discussions of specific tax or other legislation whenever possible. <ul style="list-style-type: none"> <li>• Advise that IRS, Treasury and OMB require prior clearance on any comments, which will be limited to administrative concerns in any event.</li> <li>• Suggest that the Member write directly to the Assistant Secretary on Tax Policy or to the Commissioner.</li> </ul>	Saying that a particular bill is good or bad, or that you favor or don't favor it.  Feel bad about referring such questions where they belong.
Avoid discussion of IRS budget/appropriations whenever possible. <ul style="list-style-type: none"> <li>• Stick to whatever resources you have in your office and how you are using them.</li> <li>• Suggest that any questions on overall IRS programs or budget be sent to the Commissioner.</li> </ul>	Say that you need more resources (everyone has that problem--even Members of Congress).  Feel bad about referring such questions where they belong.

Remember that anything discussed by the IRS in prepared testimony has been cleared by Treasury and OMB can be discussed with Members and staff.	Go beyond what is in the testimony.
Follow-up to ensure that you have addressed all their concerns.	Forget.
Keep Legislative Affairs advised of any significant items or developments you learn about.	Keep it to yourself.



## Congressional Affairs Program

### **11.5.2.1 (09-01-2014)**

#### **History of Congressional Affairs Program**

1. The Congressional Affairs Program (CAP) is an official IRS program, approved by the Executive Committee on December 1, 1988, and first implemented in early 1989.
2. Prior to 2001, District and Service Center executives managed local Congressional relationships.
3. Currently, Legislative Affairs manages CAP in coordination with Governmental Liaison (GL) and Taxpayer Advocate Service (TAS).

### **11.5.2.2 (09-01-2014)**

#### **Congressional Affairs Program Mission and Objectives**

1. The Congressional Affairs Program (CAP) supports the mission of the Office of Legislative Affairs, which is to:
  - A. Manage and enhance IRS relationships with Members of Congress and their staffs by timely sharing publicly available information,
  - B. Serve as the central coordinating point for the IRS to achieve its legislative objectives, and
  - C. Assist in ensuring continued Congressional support for the IRS.
2. The CAP supports this mission by managing relationships with all local Congressional offices, addressing their inquiries, delivering clear and consistent corporate messages, and organizing regular outreach.
3. The objective of the CAP is to help the IRS maintain positive relationships with Congressional delegations. This entails:
  - A. Establishing relationships with Congressional offices at the local level, and
  - B. Providing a primary point of local contact between the IRS and local Congressional offices.

### **11.5.2.3 (09-01-2014)**

#### **Organizational Structure**

1. Implementation of the CAP in the field relies on coordinated effort between Legislative Affairs, Governmental Liaison, and the Taxpayer Advocate Service. The operating divisions support CAP by providing program information and technical expertise.

### **11.5.2.3.1 (09-01-2014)**

#### **Legislative Affairs**

1. At National Headquarters (NHQ), the National Director for Legislative Affairs is the principal advisor to the Chief, Communications and Liaison, the Commissioner, the Deputy Commissioners, and the top executives of the IRS on all legislative and Congressional matters related to tax administration.
2. For the CAP, Legislative Affairs provides:
  - Coordination, oversight, and guidance.
  - Support with research on tax, policy, legislative and budgetary issues.
  - Analysis and reporting on issues raised by Congressional offices.

#### **11.5.2.3.2 (09-01-2014)**

##### **National Headquarters Governmental Liaison**

1. The Office of Governmental Liaison (GL) is a unit of Privacy, Government Liaison and Disclosure (PGLD). The Chief, Office of Government Liaison, works in coordination with Legislative Affairs to manage the CAP.
2. NHQ GL receives strategic direction from Legislative Affairs in delivering the CAP.
3. NHQ GL provides administrative support for the CAP.

#### **11.5.2.3.3 (09-01-2014)**

##### **Governmental Liaison Area Manager**

1. Area Managers report to the Chief, Office of Governmental Liaison, at NHQ. Area Managers have responsibility for the day-to-day oversight and management of field Governmental Liaisons.

#### **11.5.2.3.4 (09-01-2014)**

##### **Governmental Liaisons**

1. Governmental Liaisons are located throughout the country and serve as the Legislative Affairs field presence. They are the primary relationship managers for local Congressional offices. The Governmental Liaisons manage contacts with local Congressional staffs on non-account-related issues. Government Liaisons work closely with Local Taxpayer Advocates in the field to ensure Congressional messages are clear, consistent, and timely.

#### **11.5.2.3.5 (09-01-2014)**

##### **Taxpayer Advocate Service**

1. The Taxpayer Advocate Service (TAS) is headed by the National Taxpayer Advocate (NTA), who reports to the Commissioner. Each state and campus has at least one Local Taxpayer Advocate (LTA) who is independent of the local IRS office and reports directly to the NTA. TAS plays a key role in the CAP by handling Congressional inquiries on tax account related issues.

#### **11.5.2.4 (09-01-2014)**

### **Congressional Affairs Program and Governmental Liaison Strategic Plans**

1. Overall guidance and strategies for CAP activities can be found in the Communications & Liaison Division Strategy and Program Plan.
2. The PGLD Program Letter is an annual plan that establishes the areas of emphasis for the Governmental Liaison programs for the fiscal year. Included in the program letter is specific guidance for the successful implementation of the CAP within the Office of Governmental Liaison.
3. The PGLD Program Letter is provided to Governmental Liaisons through their Area Managers.

#### **11.5.2.5 (09-01-2014)**

### **Legal and Policy Considerations**

1. Congress, the Office of Management and Budget (OMB), the Treasury Department, and the IRS have all placed restrictions on the various aspects of the substance, extent, and the manner of IRS communications with Congress. Governmental Liaisons must be mindful of these restrictions during their interactions with Members of Congress and their staffs. Questions about specific situations should be referred by memo to the National Director of Legislative Affairs via the Government Liaison Area Manager.
  - A. Congress has prohibited any lobbying by the executive branch of government using appropriated funds. Lobbying has been defined as trying in any way to influence a Member of Congress to vote a certain way on a certain bill. The Comptroller General (GAO) has ruled that this also applies to grassroots efforts by agencies to have other groups lobby Congress. (18 U.S.C. § 1913)
  - B. OMB rules require that all official agency comments on pending legislation be cleared through them. CAP coordinators in the field cannot provide legislative proposals or comments on pending legislation to a Member of Congress or a staffer without first clearing it with the Legislative Affairs Division at Headquarters. (OMB Circular A-19 and Treasury Directive 28-02)
  - C. Any discussions concerning the IRS budget must be handled very carefully. While CAP coordinators are generally allowed to discuss the use of existing resources locally, it is best to avoid discussions of the overall IRS budget and its policy/program implications. (OMB Circular A-11)
  - D. Comments on legislation may only be made with the approval of the Commissioner or designee, and must be limited to the administrative aspects of the legislation. For example, a Government Liaison, with prior approval, could discuss how a proposed bill might affect taxpayers and/or the IRS administratively. (IRS Policy Statement 11-87 (formerly P-1-24). See IRM 1.2.19.1

- E. Legislative reports, records, and studies made by the IRS are, in most cases, pre-decisional documents, which may be protected from Freedom of Information Act (FOIA) requests. Such documents may not be disclosed to the public unless the disclosure is made by, or authorized by, the Office of the Treasury Secretary or the IRS Commissioner. (IRS Policy Statement 11-88 (formerly P-1-25). IRM 1.2.19.1.)
- F. When authorized by the Office of the Secretary or the Commissioner, the IRS can furnish technical and drafting assistance with tax legislation to Congressional committees, their staffs, the legislative counsels in the House and Senate, and other government agencies. In certain circumstances, and when authorized by the Commissioner, the IRS can furnish assistance on proposed legislation affecting the IRS or tax administration to individual Members of Congress and individuals outside the Treasury Department. (IRS Policy Statement 11-89 (formerly P-1-26). See IRM 1.2.19.1.)
- G. Employees may not use government time, money, or property to influence Members of Congress to favor or oppose legislation. (IRS Rules of Conduct 217.3)

#### **11.5.2.6 (09-01-2014)**

### **Congressional Affairs Program Roles and Responsibilities**

1.

#### **11.5.2.6.1 (09-01-2014)**

### **Legislative Affairs**

- 1. The Legislative Affairs Division's role is to:
  - A. Establish the strategies and direction of the CAP:
    - As part of the Filing Season Readiness Committee, identify filing season messages and share with Governmental Liaisons/Local Taxpayer Advocates.
    - Establish a work group that includes Taxpayer Advocate Service, the Office of Governmental Liaison, Government Liaison Area Managers, and field Governmental Liaisons on an ad hoc basis to address cross-functional aspects of the CAP.
    - Coordinate actions and resources with the Office of Governmental Liaison to maximize efficiency and reduce redundancy.
    - Provide trend analysis on issues raised by Governmental Liaisons.
  - B. Share corporate messages with Governmental Liaisons:
    - Coordinate with operating/functional divisions to identify key messages for CAP activity.
    - Meet regularly with operating/functional division contacts to identify key corporate messages and ensure consistency of messages.

- Communicate updates on Congressional hearings, legislative issues or other information valuable to Governmental Liaisons.
- C. Identify issues and trends by providing alerts and updates, talking points, guidance, and letter templates.
- D. Provide support to Governmental Liaisons:
- Provide relevant information on issues/hot topics that will assist the Governmental Liaisons in their local interactions.
  - Maintain the Legislative Affairs web site as a viable source for timely information sharing.
  - Issue a periodic newsletter for Governmental Liaisons to distribute to Congressional offices.
  - Provide legislative updates.
  - Provide timely and updated outreach materials.

#### **11.5.2.6.2 (09-01-2014)**

##### **National Headquarters Governmental Liaison**

1. The Office of Governmental Liaison is responsible for assisting the Legislative Affairs Division with the CAP by supporting its goals. The Office of Governmental Liaison's role is to:
  - A. Coordinate Governmental Liaison communications and messages with similar CAP efforts.
  - B. Identify and coordinate resources in support of the CAP.
  - C. Assist in ongoing training and education for Governmental Liaisons.
  - D. Coordinate with Legislative Affairs on training and other conferences.

#### **11.5.2.6.3 (09-01-2014)**

##### **Governmental Liaison Area Manager**

1. The Governmental Liaison Area Manager's role is to:
  - A. Provide leadership, direction and coordination for area CAP activity by:
    - Ensuring all correspondence is handled in a timely and professional manner.
    - Ensuring Governmental Liaisons are maintaining appropriate level of visitations and routine communication with Congressional offices.
    - Sharing information within and between areas on trends and issues identified by Governmental Liaisons.
    - Elevating best effective strategies developed by Governmental Liaisons and sharing them for replication.
    - Assisting the Governmental Liaisons in resolving sensitive/high profile issues related to Congressional visits, correspondence, and contacts.
  - B. Provide guidance on time reporting and workload balances by:

- Ensuring Governmental Liaisons are correctly using the automated Freedom of Information Act – Governmental Liaison and Data Services (aFOIA GLDS) system.
  - Balancing workload demands and providing additional resources/support to Governmental Liaisons as necessary to deliver CAP objectives.
- C. Coordinate operating/functional division field executive activity by:
- Ensuring field executive counterparts are apprised of significant CAP events.
  - Providing field executive counterparts with information on key issues of interest to the operating/functional divisions raised by Congressional delegations.
  - Obtaining feedback from field executive counterparts on CAP issues, quality of the program and interest level.
- D. Ensure that significant CAP events, sensitive issues, etc. have been discussed with Legislative Affairs.
- E. Provide support for ongoing and new CAP projects by:
- Leveraging resources to properly balance workload among Governmental Liaisons within the area to ensure overall quality of the program.
  - Coordinating with other areas as appropriate.

#### **11.5.2.6.4 (09-01-2014)**

#### **Governmental Liaisons**

1. Governmental Liaisons represent the agency and maintain ongoing relationships with all local Congressional offices. Government Liaisons and Local Taxpayer Advocates should work closely on Congressional correspondence, issues, visits, and liaison meetings, as they are co-coordinators in these program areas.
  - A. In their role as the primary field point of contact on corporate messages between the IRS and Congressional staff, the Governmental Liaisons should:
    - Contact each local Congressional office monthly, at a minimum.
    - Disseminate key agency information using the communication vehicle identified/preferred by the local Congressional staff.
    - Ensure critical, time-sensitive information is shared with Congressional offices.
    - Visit local Congressional offices.
    - Schedule or respond to requests for meetings.
    - Support Congressional requests for assistance (i.e., disaster outreach, town hall meetings, etc.) using the appropriate operating/functional divisions resources.
  - B. Establish and manage relationships between the IRS and Congress at the field level by:
    - Pro-actively developing and enhancing relationships with their local staffs and with Members of Congress.

- Educating themselves about their Members of Congress. Web sites, newspapers, and other resources are useful for developing a file containing information relevant to each of their Members. Examples of such items include committee assignments, Congressional demographics, and major IRS issues or legislation of interest to Members.
- C. The Governmental Liaisons coordinate all operating/functional division interactions with local Congressional offices by:
- Marketing the concept of a single point of contact for non-account-related issues.
  - Coordinating with the operating/functional divisions to communicate and market their initiatives and key messages.
  - Sharing items of interest with appropriate local operating/functional division management.
  - Assisting the operating/functional divisions in addressing systemic issues/concerns, identifying areas where sensitivity exists, and facilitating enhanced working relationships between the operating/functional divisions and Governmental Liaisons.
- D. Governmental Liaisons are responsible for educating local Congressional offices on key corporate messages and programs. This can be done by planning and hosting periodic Congressional staff liaison meetings which will also provide a coordinated forum for the operating/functional divisions to interact with the local Congressional staffs.
- E. Ensure consistency of IRS messages to local Congressional offices. Helpful tools include the IRS web site and IRS news releases.
- F. Generate understanding and support for IRS programs by communicating issues of interest to local Congressional offices. Localize key messages as appropriate.
- G. A critical Governmental Liaison responsibility is to respond to Congressional inquiries (non-tax account related). This is accomplished by:
- Timely managing correspondence inventory.
  - Coordinating Congressional inquiries with the Local Taxpayer Advocate.
  - Utilizing standard IRS correspondence bullets available via SERP, forms, publications, media releases, and CAP issue letters.
  - Using the aFOIA GLDS system to report inquiries.
  - Establishing key points of contact in the operating/functional divisions for technical assistance.
- H. Legislative Affairs should be informed of local issues that may have nationwide impact. This can be accomplished by immediately elevating hot or sensitive issues to Legislative Affairs and the operating/functional division via the Area Manager.

#### **11.5.2.6.4.1 (09-01-2014)**

#### **Governmental Liaison Subject Matter Expert Program**

1. The Subject Matter Expert Program (SME) is designed to provide technical expertise on GLD programs through peer-to-peer assistance on an as-needed basis.

#### **11.5.2.6.5 (09-01-2014)**

##### **Local Taxpayer Advocates**

1. The Local Taxpayer Advocates and the Governmental Liaisons are responsible for the CAP in the field. Each party brings specific skills to the program. Both work together closely with a spirit of cooperation to serve the best interests of local Congressional offices and their constituents, as well as the best interest of the IRS. The Local Taxpayer Advocate:
  - A. Has primary responsibility for all tax account related issues.
  - B. Develops advocacy issues and represents taxpayers.
  - C. Coordinates with Governmental Liaisons on Congressional contacts and visits (see IRM 13.1.8, *Taxpayer Advocate Case Procedures, Congressional Affairs Program*).
  - D. Conveys the messages contained in the National Taxpayer Advocate's Annual Report to Congress, which should not be misconstrued as influencing Members of Congress under IRS Rules of Conduct. IRC 7803(c)(2)(B)(ii) requires the Office of the Taxpayer Advocate to make legislative recommendations to resolve problems encountered by taxpayers.

#### **11.5.2.7 (09-01-2014)**

##### **Interaction with Local Congressional Offices**

- 1.

#### **11.5.2.7.1 (09-01-2014)**

##### **Legislative Affairs Communiques**

1. Communiques are issued periodically by Legislative Affairs to all Governmental Liaisons on pertinent IRS issues.
2. These communiques are classified as "Information Only" or "Action Required" and include:
  - A. An issue summary that contains:
    - Details about the issue.
    - The message to be communicated to the Congressional Offices.
    - The message to be communicated to the states, if appropriate.
    - Recommended Governmental Liaison actions.
  - B. Attachments may include a news release, fact sheet or other guidance for issuance to state agencies and/or Congressional offices.
3. Communiques are delivered via aFOIA GLDS and/or email. Communiques issued prior to aFOIA GLDS can be found on the IRS intranet under Legislative Affairs, Congressional Affairs Program, CAP Message Catalog, at



[https://organization.ds.irsnet.gov/sites/cl/la/coca/SitePages/FindingGuide\\_CAPcommunity.aspx](https://organization.ds.irsnet.gov/sites/cl/la/coca/SitePages/FindingGuide_CAPcommunity.aspx) .

#### **11.5.2.7.2 (09-01-2014)**

##### **Congressional Newsletter**

1. The IRS *Congressional Update Newsletter* is published monthly as a joint Governmental Liaison/Legislative Affairs effort.
2. A team comprised of Governmental Liaisons and a Taxpayer Advocate Service designee meets via conference calls throughout the year to discuss articles and deadlines for each edition.
3. Each team member is responsible for soliciting articles from an operating/functional division(s) at the national level. The operating/functional division contacts are responsible for providing articles in final, approved format for publication.
4. After formatting and team review, the *Congressional Update* is sent to Legislative Affairs for final approval.
5. The newsletter is issued via electronic format by Legislative Affairs to all Governmental Liaisons, Governmental Liaison Area Managers, NHQ Governmental Liaison staff, Legislative Affairs, and the Taxpayer Advocate Service.
6. Governmental Liaisons may distribute the newsletter to all Congressional offices for their state(s), including the Washington, D.C. Congressional offices, via the office's preferred method of delivery (e-mail, fax or hard copy). Governmental Liaisons should document all distributions of the *Congressional Update* on aFOIA GLDS.

#### **11.5.2.7.3 (09-01-2014)**

##### **Congressional Office Visits**

1. It is important that the Governmental Liaison and Local Taxpayer Advocate coordinate regular local Congressional visits. The purposes of these visits are to:
  - A. Develop and maintain relationships and reinforce communications channels.
  - B. Discuss corporate messages and topics of mutual interest.
2. **Planning the Visits**
  - A. The Governmental Liaison and Local Taxpayer Advocate should identify trends and subjects for discussion. Review recent Congressional correspondence from Members to identify issues so the Governmental Liaison and Local Taxpayer Advocate can be prepared for possible discussion.
  - B. Check with the operating/functional divisions to identify current national and local issues or items of interest. Working with Stakeholder Relationship Management Local Councils is one way to identify operating/functional divisions issues (i.e., small business workshops,

changes in procedures, Taxpayer Assistance Center hours and services, VITA, etc.).

- C. Develop a specific agenda and/or outline, tailored to individual offices or Members, if necessary.
- D. Prepare handouts and/or information packets (i.e., press releases, VITA site listings, contact numbers for constituents, small business or tax product CD-ROMs, announcements of special IRS events, etc.).

**3. Scheduling Visits**

- A. Make phone calls to schedule the visits at least one month in advance.
- B. Suggest a date and time for the visit and ask for an appointment. Typically, 30-60 minutes should be sufficient. Also discuss a tentative agenda and ask if there are any concerns that they would like addressed. Be flexible with scheduling visits because the chosen dates and times may not work for the Congressional staffer.
- C. To confirm the appointment, send each staffer an e-mail or letter with date, time and topics.

**4. Conducting Visits**

- A. The Governmental Liaison and Local Taxpayer Advocate should conduct joint visits to provide a comprehensive view of the CAP. If not visiting jointly with the Local Taxpayer Advocate, the Government Liaison should provide updated TAS contact information.
- B. Provide information and handouts and solicit feedback on IRS service and messages.

**5. Evaluating the Visits**

- A. Take appropriate and immediate action on any Congressional suggestions, requests or comments, and follow-up with the Congressional office as necessary. This may require a follow up discussion with the operating/functional divisions and/or Legislative Affairs.
- B. Governmental Liaisons should document all visits with each office on a FOIA GLDS

6. The following table summarizes the action items necessary for Governmental Liaisons to conduct Congressional office visits.

<b>ACTION</b>	<b>RESULT</b>
Meet with Local Taxpayer Advocate.	Identifies preliminary agenda items and date for visit.
Contact the Congressional staffer.	Collaborates on date and time of visit and solicit agenda items.
Check with Operating/Functional Divisions.	Identifies current issues or items of interest.
Develop outline of what you want to accomplish.	Focuses on key messages.
Prepare handouts and/or information packet.	Gives staff valuable information and allows Governmental Liaison to focus messages.
Sort aFOIA GLDS entries by Member's	Identifies trends & subjects to

ACTION	RESULT
name.	discuss.
Identify key IRS Committee Members.	Identifies Members who have interests related to IRS issues and helps to further develop strategic relationships.
Visit local offices with Local Taxpayer Advocate, if possible. If not, discuss pending visits with Local Taxpayer Advocate before scheduled dates.	Provides staffers with a full view of CAP. If not visiting with Local Taxpayer Advocate, be sure to provide updated TAS contact information.
Provide staffer with current products such as fact sheets, CD-ROMs, office hours, key contact sheets.	Adds value to your visit by providing important local information.

#### 11.5.2.7.4 (09-01-2014)

### Congressional Liaison Meetings

1. The Governmental Liaison/Local Taxpayer Advocate should arrange agency meetings with the local Congressional staff. These more formal interactions are an excellent opportunity for the IRS to present its strategic objectives and goals. Consideration should be made to include operating/functional divisions, Counsel, Appeals and other internal/external stakeholders.
2. **Planning the Meeting**
  - A. The Governmental Liaison/Local Taxpayer Advocate should conduct liaison meetings for their delegation at regular intervals (recommended at least once every two years).
  - B. Tailor the meetings to meet the needs of the delegation. For example: if there is high Congressional staff turnover, a basic overview of the Governmental Liaison/Local Taxpayer Advocate's responsibilities and an overview of IRS organization and programs may be appropriate. Other meetings may focus on selected topics of local operations.
  - C. Survey the local Congressional delegation(s) and staffs on issues/programs they would like to have discussed.
  - D. Working with your local Stakeholder Relationship Management Local Council is one way to identify and include specific operating/functional division issues (i.e., IRS procedures, key messages, national initiatives, etc.).
  - E. Inform and/or invite the local Field Media Relations Specialist and local Disclosure Officer, as appropriate.
  - F. Develop an agenda based on national and local issues, and Congressional feedback.
    - A. Keep the agenda varied in terms of the topics covered (i.e., general procedures v. technical issues, enforcement v. service), the length of individual sessions, techniques used, and the style of presenters.

- B. Include time for a question-and-answer session after each presentation or at the end of the meeting.
  - C. If there are employees in the local office(s) who deal with the Congressional staff frequently, include them in the meeting. For example, include time for Local Taxpayer Advocate caseworkers to meet the Congressional staffers face-to-face.
  - G. Assemble appropriate handouts for participants.
- 3. Scheduling the Meeting**
- A. Try to schedule the meeting with the local staffs when their Members are not in their Congressional district. At the same time, consider seasonal considerations such as summer vacations, winter weather, etc.
  - B. Although a full day may be the best (i.e., 9:00 to 3:00), the length of the meeting depends on the topics covered and the preferences of the Congressional participants.
  - C. Ensure that necessary audio-visual equipment, name tags, pens, paper, etc. are available.
  - D. Hold the meeting in space that is convenient and appropriate. Since many local Congressional offices have limited travel funds, select a location that is close and convenient for them.
  - E. Disclosure and privacy considerations make tours of IRS offices difficult. For additional information, see the February 2014 memo from the National Director of Legislative Affairs, [https://organization.ds.irsnet.gov/sites/cl/la/coca/Congressional\\_Affairs\\_Program/CAP\\_Reference\\_Materials/MemoVisitationToIRSfacilitiesByMembersOfCongress.pdf](https://organization.ds.irsnet.gov/sites/cl/la/coca/Congressional_Affairs_Program/CAP_Reference_Materials/MemoVisitationToIRSfacilitiesByMembersOfCongress.pdf).
  - F. Consider how to best address refreshments and lunch arrangements, as appropriate.
  - G. Invite each Congressional office in writing. Follow-up as necessary to get RSVP. Include the agenda, directions/map and parking information with the letter. Make sure to advise the attendees what ID is needed and what the sign-in/escort policy is.
- 4. Conducting the Meeting**
- A. On the day of the meeting, provide signs/directions in the building to help staffers get to the right location.
  - B. Distribute the agenda and keep the meeting on schedule. Introduce speakers for each presentation.
  - C. Provide the pre-assembled handouts to the staffers. Mail or deliver the handouts to any staffer who was unable to attend the meeting.
  - D. Allow time for staffers to ask questions or raise issues. Ensure that a private area is available for staffers who have case-related issues or questions they wish to discuss with the Local Taxpayer Advocate.
- 5. Evaluating the Meeting**
- A. Survey the participants (informally or formally) for their views and suggestions for future meetings.
  - B. Take appropriate and immediate action on any Congressional suggestions, requests, or comments and follow-up with the Congressional office, as

necessary. This may require discussion with operating/functional divisions and/or Legislative Affairs.

- C. Governmental Liaisons should document the meeting and any feedback on aFOIA GLDS

#### **11.5.2.7.5 (09-01-2014)**

#### **Correspondence**

1. Congressional correspondence will be assigned and worked on depending on the following criteria:
  - A. Tax account related Congressional inquiries will be assigned to the Local Taxpayer Advocate Office (for example, an inquiry from a constituent where the IRS denied an Earned Income Tax Credit (EITC) claim).
  - B. Non-tax account related Congressional inquiries will be assigned to the Local Governmental Liaison (for example, an inquiry from a constituent wanting to know how to claim the EITC).
  - C. The following non-account related Congressional inquiries will be assigned to the National Headquarters Executive Secretariat Correspondence Office (ESCO). These cases are controlled through E-TRAK, a service-wide internal documents tracking system.
    - A. Congressional correspondence addressed to the Commissioner or the National Director of Legislative Affairs.
    - B. Complaints concerning IRS employees or from IRS employees. These issues will be assigned by ESCO to the Employee Conduct and Compliance Office (ECCO).
    - C. Technical or sensitive issues that would benefit from a formal, written response.
  - D. Refer to IRM 13.1.8.3(1), *Taxpayer Advocate Service, Assignment*, for more information.
2. Upon receipt by the Local Taxpayer Advocate, Congressional inquiries will be controlled on the Taxpayer Advocate Management Information System (TAMIS). (Exception: General phone or e-mail inquiries received from a Congressional office which can be answered while on the line or immediately on e-mail do not have to be controlled).
3. Timeframes for Congressional correspondence received by Governmental Liaisons are as follows:
  - A. The response must be received in the Congressional office within 20 days of receipt.
  - B. If the letter cannot be sent within 20 days, an interim contact must be made with the Congressional office by telephone or letter.
4. Governmental Liaisons will follow the guidelines established by ESCO in IRM 1.10.1 for Congressional correspondence and related disclosure issues. See also IRM 11.3.4, *Disclosure of Official Information - Congressional Inquiries*.
5. For all other routine correspondence, Governmental Liaisons will follow the guidelines established in the *Internal Revenue Service Correspondence Manual* IRS Document 11426.

6. Any Congressional correspondence received that could have nationwide implications should be brought to the attention of Legislative Affairs.
7. Governmental Liaisons should document all written responses to Congressional inquiries on aFOIA GLDS.
8. **Issue Letters**
  - A. Governmental Liaisons should refer to the catalog of issue letters when responding to non-tax account related Congressional inquiries. These sample letters can be found on the Legislative Affairs web site at <http://irweb.irs.gov/AboutIRS/bu/cl/la/lacap/default.aspx> .
  - B. Issue letters address subjects that generate continuing interest from Members of Congress. These letters cover topics such as the complexity of tax forms, competitive sourcing, frivolous tax arguments, IRS structure, outsourcing return preparation, tax preparation software, referrals to Treasury, and others as they are developed and approved.
  - C. Use these sample letters as guides to preparing correspondence. Pay attention to the date the issue letter was created. If it is old, verify the technical advice before using the information.
  - D. Governmental Liaisons should document all responses using issue letters on aFOIA GLDS
9. **Executive Control Management System**
  - A. E-TRAK is used by the Executive Secretariat to control incoming correspondence. It includes inquiries that address non-tax related, broad policy, and procedures that are assigned to ESCO.
  - B. Timeframes for Congressional correspondence assigned by ESCO are as follows:
    - A. A response to Congressional correspondence must reach ESCO for review within 15 days of receipt and control into E-TRAK.
    - B. If the letter cannot be ready for review within 15 days, an interim contact must be made with the Congressional office by telephone or letter.
    - C. The response must be received by the Congressional office within 20 days of its assignment.
  - C. Governmental Liaisons should document all responses to E-TRAK inquiries on aFOIA GLDS.

#### **11.5.2.7.6 (09-01-2014)**

##### **E-Mail/Fax Inquiries**

1. Many Congressional offices prefer to receive information via e-mail or by fax. Examples of items that could be sent in this manner include attachments to the *Congressional Communiques*, the *Congressional Update Newsletter*, and responses to technical inquiries.
2. Correspondence that involves a specific tax case, taxpayer, or is account related CANNOT BE SENT TO A CONGRESSIONAL OFFICE VIA E-MAIL . This correspondence must be sent through the mail or by fax. This includes any responses to technical inquiries that may contain taxpayer information.

3. Governmental Liaisons should document all e-mail and fax communications on aFOIA GLDS.

#### 11.5.2.7.7 (09-01-2014)

##### Conference Calls

1. Conference calls may be a useful and efficient method of communicating IRS messages to Congressional offices.
2. They can be used in lieu of face-to-face meetings as a money-saving measure for both the IRS and the Congressional offices.
3. They are also useful for answering questions from Congressional offices regarding general IRS programs, conveying filing season messages, etc.
4. All participants should be informed that no specific taxpayer, account or case can be discussed on a conference call. If a Congressional representative or staffer wants to discuss a specific situation, the Governmental Liaison will arrange this at another time with that Congressional staffer.
5. Governmental Liaisons should document all conference calls on aFOIA GLDS.

#### 11.5.2.7.8 (09-01-2014)

##### Guide for Congressional Offices

1. IRS Publication 4323, *An Overview of the Internal Revenue Service for Congressional Staff*. This publication is a tool that can be used by Governmental Liaisons and Local Taxpayer Advocates to acquaint Congressional staffers with the IRS organizational structure and how to access IRS information and publications. .

#### 11.5.2.7.9 (09-01-2014)

##### Dos and Don'ts in Dealing with Congress

1. The following table provides guidance for interactions with Members of Congress and their staff.

Do...	Don't...
Have a positive attitude.	Be shy or apologetic.
Plan to explain and defend (if needed) your office's programs, products, and services, as well as any national concerns.	Think it is someone else's job.
Remember that you are providing quality customer service to an important external stakeholder.	Be afraid to tell them what your office appropriately can do for them and their constituents.
Remember that Legislative Affairs is a legitimate function of all federal agencies. The IRS Legislative Affairs Division has already provided Members of	Feel that speaking with, writing to, or visiting Members and/or staffs is

<b>Do...</b>	<b>Don't...</b>
Congress and their staffs considerable information and material on the IRS and tax administration issues.	somehow inappropriate.  Be surprised if the Member/staff are familiar with certain IRS items; use that to lead into your message about your office.
Call on Legislative Affairs for general or specific advice on all matters relating to Congress (schedules, map, reference books, bill status, committee memberships, current events, etc.)	Hesitate to check (it could save some embarrassment).
Concentrate on providing education and information. Avoid lobbying or the appearance of lobbying (trying to influence the Member on a specific issue or bill).	Tell the Member or the staff your opinion on an issue or bill (you could be quoted).
Stick to educating Members and staff on your office's organization, programs, operations, products and services, and national programs of interest.	Talk about other agencies or issues.
<p>Avoid discussions of specific tax or other legislation whenever possible.</p> <ul style="list-style-type: none"> <li>• Advise that IRS, Treasury and OMB require prior clearance on any comments, which will be limited to administrative concerns in any event.</li> <li>• Suggest that the Member write directly to the Assistant Secretary on Tax Policy or to the Commissioner.</li> </ul>	<p>Saying that a particular bill is good or bad, or that you favor or don't favor it.</p> <p>Feel bad about referring such questions where they belong.</p>
<p>Avoid discussion of IRS budget/appropriations whenever possible.</p> <ul style="list-style-type: none"> <li>• Stick to whatever resources you have in your office and how you are using them.</li> <li>• Suggest that any questions on overall IRS programs or budget be sent to the Commissioner.</li> </ul>	<p>Say that you need more resources (everyone has that problem--even Members of Congress).</p> <p>Feel bad about referring such questions where they belong.</p>
Remember that anything discussed by the IRS in prepared testimony has been cleared by Treasury and OMB can be discussed with Members and staff.	Go beyond what is in the testimony.
Follow-up to ensure that you have addressed all their concerns.	Forget.



Do...	Don't...
Keep Legislative Affairs advised of any significant items or developments you learn about.	Keep it to yourself.

### **11.5.2.8 (09-01-2014)**

#### **Coordination with Taxpayer Advocate Service**

1. The Local Taxpayer Advocate and the Governmental Liaison are co-coordinators of the local CAP. The Local Taxpayer Advocate is responsible for all tax account related issues, primarily constituent casework and advocacy. The Governmental Liaison has responsibility for communicating IRS policy and procedures. The Governmental Liaison also responds to any non tax-account related inquiries.
2. Both the Governmental Liaison and the Local Taxpayer Advocate will coordinate Congressional visits and outreach activities, and will host Congressional staff liaison meetings. Congressional visits may be made separately depending on the nature of the visit, but should be jointly coordinated.
3. TAMIS is used by the TAS to record, control, and process TAS taxpayer cases. It is also used to capture and analyze core tax issues, laws, policies and internal IRS functional processes that are the sources of significant taxpayer hardship and other critical problems.
  - A. All Congressional inquiries that are worked by TAS should be controlled on TAMIS through the Local Taxpayer Advocate's Office.
  - B. TAMIS records and tracks TAS activity and performance in carrying out its statutory role of assisting taxpayers experiencing problems and hardships with the IRS. TAMIS is a critical data source for the National Taxpayer Advocate's Annual Report to Congress, for internal feedback reporting to the operating divisions and other functional areas and for proposing remedies to correct and cure inequitable tax legislation and internal IRS systemic processes that negatively impact the taxpaying public.
  - C. For more information on TAMIS as it relates to the CAP, refer to IRM 13.1.8, *Taxpayer Advocate Service*.

### **11.5.2.9 (09-01-2014)**

#### **Coordination with Other Operating Divisions/Functions**

1. Governmental Liaisons are the single point of contact with the Congressional staffs for the local operating divisions/functions (ODs/FDs), except on account-related issues. The most effective way to achieve a successful level of support for the CAP is for the Governmental Liaisons to establish linkages with the ODs/FDs.
2. Government Liaisons will coordinate with ODs/FDs to communicate and market their local initiatives with local Congressional offices (i.e. Tax Tour, VITA, etc.). Coordination is enhanced through timely and continuous contact with OD/FD representatives.
3. It is critical that Governmental Liaisons develop and maintain good relationships with all operating divisions, Counsel, Appeals, and the Local Taxpayer Advocate.

Often, local expertise within these business segments will provide the answers for timely and accurate responses to Congressional inquiries. It may be useful to provide Document 12188, *Office of Governmental Liaison*, to the OD/FDs as a way to introduce the local Government Liaison and provide a description of Government Liaison roles and responsibilities.

4. Governmental Liaisons should share any items of interest with local OD/FDs. Doing so will assist OD/FDs in identifying and addressing sensitive issues and concerns, and will also enhance working relationships between OD/FDs and Governmental Liaisons.
5. Government Liaisons should implement the following actions relating to the OD/FDs:

<b>Action</b>	<b>Result</b>
Market the CAP to ODs/FDs with emphasis on single point of contact with Congressional offices.	Establishes expertise and knowledge of Governmental Liaison within ODs/FDs.
Identify local subject matter experts from within the Operating and Functional Divisions.	Establishes assistance in issue development and Congressional correspondence responses.
Provide feedback on regular basis to Operating and Functional Divisions on Congressional visits or contacts.	Enhances relationships with ODs/FDs by providing timely information on issues related to their functions. Adds value to ODs/FDs and promotes the single point of contact by sharing information

#### **11.5.2.9.1 (09-01-2014)**

#### **Stakeholder Relationship Management Local Council (SRMLC)**

1. The SRMLC focuses on operational issues and ensures that key IRS messages, quality products and events are consistently conveyed to a cross-functional/multi-state external stakeholder audience, including the Congressional delegation.
2. The SRLMC was established to create a forum for local representatives from designated operating divisions, the Local Taxpayer Advocate, Counsel, Appeals, and the Governmental Liaison to discuss current goals and objectives.
3. The SRMLC can also be used to respond to issues that require a multi-functional approach. Examples are: disaster assistance, compliance initiatives, EITC outreach, and filing season readiness.
4. Inviting staff to SRMLC meetings is one way to enhance outreach to the state's Congressional delegation. This would be especially useful if the SRMLC has endorsed a coordinated initiative to address a local issue where, for example, a task group will travel to local communities. Inviting the staff member(s) whose district(s) will be affected by the coordinated initiative could be the best way to inform the staff member(s) of the purpose and objective of the initiative. The

Congressional staffer might, in turn, help publicize or support the IRS initiative through their Congressional newsletter or web site.

#### **11.5.2.9.2 (09-01-2014)**

##### **Operating Division/Functional Local Expertise**

1. (1) Frequently, Congressional issues can be resolved with nominal assistance from local OD/FD staff. Government Liaisons are encouraged to rely on their local OD/FD contacts in cases where:
  - Local expertise will result in a faster resolution.
  - A formal, written reply, signed by an executive, is neither expected nor warranted.
  - Information necessary for the resolution is publicly available; the Government Liaison just needs help finding it.
2. The Government Liaison will be responsible for conveying any response derived from local OD/FD staff. Local OD/FD staff should not be asked to respond directly to a Congressional office.
3. If the local OD/FD staff believes a referral to NHQ or E-TRAK is necessary, they should consult with the Government Liaison before taking any further action.

#### **11.5.2.9.3 (09-01-2014)**

##### **IRS Crisis and Disaster Response**

1. Certain situations require Governmental Liaisons to inform local Congressional offices of an IRS response to a crisis or disaster. Governmental Liaisons must work closely with operating and functional divisions to convey important messages through the Crisis Communication Plan and the Disaster Assistance and Relief Program.
  - A. Crisis Communication Plan
    - A. The Crisis Communication Plan is administered by the Communication & Liaison Division (C&L). Its purpose is to establish a coordinated process for communicating IRS efforts to address a specific crisis.
    - B. The plan requires the Governmental Liaison to communicate the IRS message to the local Congressional delegation through prepared communications from C&L Field Media Relations Specialists.
    - C. Because timing is critical, information will generally be distributed to appropriate Congressional offices via phone, fax, or e-mail.
    - D. Governmental Liaisons should become familiar with the Crisis Communication Plan to understand their role in achieving Service objectives. Contact the designated Field Media Relations Specialist for additional advice and assistance.
  - B. Disaster Assistance and Relief Program
    - A. This strategic plan for responding to local or regional disasters is administered by SB/SE. There are a wide range of relief options

for use in responding to disasters and terrorist or military attacks. The severity of the disaster and proximity of tax deadlines are the primary factors in determining the level of relief that will be provided.

- B. When disasters occur, it is essential for the IRS to provide timely, accurate information to Congress on the steps being taken to assist victims with their tax affairs.
- C. Contacts with Congressional offices on Capitol Hill will typically be handled by National Headquarters Legislative Affairs, while contacts with local Congressional offices will typically be handled by Governmental Liaisons.
- D. Specific steps to be taken by Governmental Liaisons to carry out their responsibilities under the plan can be found in IRM 25.16.1.12, *Special Topics, Disaster Assistance and Emergency Relief, Communications and Liaison*. It is recommended that the Government Liaison become familiar with the Disaster Assistance and Relief Programs and the state coordinators.

#### **11.5.2.9.4 (09-01-2014)**

##### **Office Closures**

1. The strategic decision by the Service to close, relocate, or change hours of operation of a local IRS office must be shared as soon as possible with the appropriate Congressional delegation. The purpose of this action is to fully inform the delegation of the decision as well as to advise them of where and how citizens of the impacted community can find assistance. This often is a very sensitive issue and will likely result in Congressional interest. Because office closures, relocations, or changes in hours may attract Congressional attention, the Government Liaison must inform the Legislative Affairs office as well.

#### **11.5.2.9.5 (09-01-2014)**

##### **Frivolous Filers**

1. Congressional offices may forward constituent correspondence that contains frivolous statements or statements that challenge the constitutionality of the income tax. These types of correspondence do require a response from the Service. After reading the correspondence to ensure it does not contain a Freedom of Information Act request, it is not an account inquiry, or it is not related to an open case in a local office, the Government Liaison should prepare a reply.
2. To assist the Government Liaison in responding to these types of correspondence, issue letters can be found on the CAP website at <http://irweb.irs.gov/AboutIRS/bu/cl/la/lacap/default.aspx>.
3. If the issue letters do not fully address the frivolous or constitutional tax arguments, the Congressional correspondence can be forwarded to ESCO.

#### **11.5.2.10 (09-01-2014)**

### **Congressional Affairs Program Contact Database**

1. The CAP Contacts Database has been replaced by aFOIA GLDS. Governmental Liaisons should record Congressional contacts and times on GLDS. The GLDS system is maintained by PGLD Data Services. If questions specific to the use of GLDS for CAP arise, contact Legislative Affairs for instructions.

#### **11.5.2.11 (09-01-2014)**

### **Coordination with Other External Stakeholders**

- 1.

#### **11.5.2.11.1 (09-01-2014)**

### **State Legislative Bodies**

1. Interactions with state officials on issues involving technical or legislative assistance should be limited. Governmental Liaisons should do no more than facilitate contact with the appropriate IRS office to comment on the proposed legislation.
2. Involvement should be limited to legislation that affects the IRS or federal tax administration.
3. Requests for assistance should be cleared through:
  - A. Area Manager,
  - B. Appropriate operating division,
  - C. Legislative Affairs and
  - D. Headquarters Governmental Liaison.
4. Employees appearing on behalf of the IRS before a state legislative body must obtain authorization from the Associate Director, Office of Governmental Liaison. For more information on testimony authorization, refer to IRM 11.3.35, Requests and Demands or Testimony and Production of Documents.

#### **11.5.2.11.2 (09-01-2014)**

### **State and Federal Agencies**

1. Governmental Liaisons may encounter situations where coordination with state and other federal agencies can enhance their interactions with Congressional offices. For instance, when planning liaison meetings with the local Congressional staff, consideration should be given to inviting state tax officials and other federal agencies such as the Social Security Administration, the Small Business Administration, or any other federal agency of interest to the Congressional office.
2. Congressional offices may contact Governmental Liaisons regarding constituent inquiries that involve other federal, state, or local agencies. Governmental Liaisons are encouraged to provide linkages to better assist the Congressional

offices. For example, a staff member may contact a Governmental Liaison on an issue that is subsequently determined to be better resolved by the state tax authority. The Governmental Liaison could use their state contacts to provide assistance.

### **11.5.2.11.3 (09-01-2014)**

#### **Federal Executive Boards/Associations**

1. Other Governmental Liaisons contacts are useful in providing assistance to Congressional offices. For example: coordinating a Congressional expo sponsored by the Federal Executive Boards (FEB) on emergency preparedness.

# Communications & Liaison At-a-Glance

## **Mission:**

Supports the IRS mission and business objectives using strategic relationship management, communication tools and processes, resolution of issues of mutual concern, and information sharing.

## **Strategic Priorities:**

Enable IRS business objectives by supporting the operating and functional divisions' major strategies and operational priorities.

1. Ensure that communications with customers, Congress and stakeholders are consistent and coordinated IRS-wide and integrate stakeholder relationship management in the day-to-day operations of the agency.
2. Ensure a quality work environment that is operationally efficient and effective, including an emphasis on automating business processes.
3. Ensure the appropriate collection, use and protection of information to accomplish IRS business objectives.

**Headquarters:** Washington, DC

## **Management Team:**

Chief, Communications & Liaison — Terry Lemons

Director, Office of Communications — Michelle Eldridge

Director, Office of Legislative Affairs — Leonard Oursler

Director, Office of National Public Liaison — Melvin Hardy

## **Stakeholders:**

Communications & Liaison stakeholders include IRS employees, IRS operating, functional and support divisions, national media, the National Treasury Employees Union, the Office of Management and Budget, the Treasury Department, the American public, business groups, Congress, Federal agencies, foreign governments, IRS advisory committees, the Information Reporting Policy Council, the IRS Oversight Board, the General Accounting Office, public interest groups, tax practitioner groups, associations, and the Treasury Inspector General for Tax Administration.

## **Overview and Services of the C&L Offices:**

The Communications and Liaison Division (C&L) enables the IRS to achieve its strategic business objectives by integrating communications, partnering activities and information sharing with key internal and external stakeholders and is a key strategic tool for the Commissioner and for IRS Operating Divisions. C&L helps achieve the IRS strategic goals by:

- Linking the IRS to the American taxpayer through critical constituencies: the Congress, national and local media, tax professionals' organizations, and official oversight and advisory panels.
- Identifying ongoing and emerging issues from key stakeholders, and ensuring their timely resolution.
- Advising the Commissioner on the effective presentation of policy positions and issue responses.
- Promoting public awareness of major IRS initiatives.
- Coordinating high-priority communications to employees, working with professional staff in all IRS divisions.

### **Communications**

The Office of Communications is the focal point for planning, coordinating, and producing Servicewide communications. It provides a wide range of expertise, products, and services to help achieve business outcomes through communications within and outside the agency. The office works with national and local media to enhance the public's understanding of the IRS and its mission, programs and policies; manages national media campaigns to help the IRS meet its goals and business objectives; manages voicemail and Intranet channels for communicating with all IRS employees; and produces interactive video teletraining and operates a satellite television network that reaches 135 IRS offices nationwide.

### **Legislative Affairs**

The Office of Legislative Affairs manages and enhances IRS relationships with members of Congress and their staffs by timely sharing publicly available information, serving as the central coordinating point for the IRS to achieve its legislative objectives, and assisting in securing Congressional support for the IRS. It prepares and coordinates legislative proposals that further the IRS Strategic Plan's objectives to improve service and compliance. These proposals are separate from those provided directly to the Congress by the Taxpayer Advocate.

Legislative Affairs also provides a national level of coordination, oversight and guidance for the [Congressional Affairs Program](#), which helps manage relationships with congressional offices.

### **National Public Liaison**

The Office of National Public Liaison manages relationships with national stakeholder organizations, business and professional associations, the Internal Revenue Service Advisory Council (IRSAC), the Information Reporting Program Advisory Committee (IRPAC) and federal agencies with an interest in tax administration, IRS activities and programs. The Office also manages the Nationwide Tax Forum program, with an annual attendance of more than 18,000 tax practitioners.



When Should a Taxpayer Request a Congressional Inquiry?

What documents and/or other information will your office request from the taxpayer or the tax professional?

How does your office address your constituent's  
problem?

Letter/Telephone Call

When, if ever, do you reach out to"

TAS

or a

IRS Funded Low Income Tax Clinic?

What do you expect from the IRS and how quickly do you expect a response?

What procedure, if any, do you have for following up and closing the constituent's case?

# Can you share some examples of Taxpayer Issues Resolved via Congressional Inquiry

Expediting refunds in cases of exigent need

IRS delays causing hardship, including tax return processing problems

Payment schedules and penalty abatement (liens, levies, and wage garnishment) &

identity theft cases,

# **Guide to the IRS for Congressional Staff**

<https://play.google.com/books/reader?id=6HfuBaxnCnkC&printsec=frontcover&output=reader&hl=en&pg=GBS.PP1>



IRS Resource Guide – Links to IRS.gov  
Common Issues  
(Rev. 9/7/ 2017)



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YOUR VOICE AT THE IRS



# Carolyn B. Maloney

U.S. CONGRESSMAN

THOMAS SUOZZI  
Representing New York's 14th District



Moderators

## Frank Agostino

- Frank Agostino is the president of Agostino & Associates, P.C., where he concentrates his practice in civil and criminal tax matters before the IRS and state tax authorities.
- He regularly represents businesses and individuals on a wide range of tax and valuation matters before the United States Supreme Court, the United States Courts of Appeals, the United States Tax Court, the United States District Courts, and the United States Court of Federal Claims.
- Prior to entering private practice, Mr. Agostino was an attorney with the IRS District Counsel Offices in Springfield, Illinois and Newark, New Jersey, as well as a Special Assistant United State Attorney concentrating in criminal tax prosecution.
- He is a frequent author and lecturer on tax controversy and litigation matters, the recipient of the ABA's 2012 Janet Spragens Pro Bono Award, and the recipient of the 2015 Pro Bono Award from the NJSBA.



## Kathy Keneally

- Kathy Keneally, former Assistant Attorney General of the U.S. Department of Justice (DOJ) Tax Division, focuses her practice on tax litigation and government investigations. She has more than 30 years of experience representing large corporations, financial institutions, closely held businesses, and high net worth individuals in civil and criminal tax controversy matters and in non-tax criminal defense. She is an accomplished trial lawyer and has resolved matters with the IRS and other federal agencies without proceeding to litigation.
- At DOJ, Kathy oversaw the work of more than 350 attorneys in civil, criminal, and appellate tax litigation nationwide. In cooperation with IRS leadership, she developed and implemented key tax enforcement initiatives. She worked closely with DOJ leadership, U.S. attorneys, and senior officials at federal and state regulatory agencies, including the Federal Reserve Board of Governors, New York Federal Reserve, Securities and Exchange Commission, and New York Department of Financial Services.



# When and how to request assistance from Taxpayer Advocate Service (TAS)

Nina E. Olsen



YOUR VOICE AT THE IRS

3rd  
International Conference on **TAXPAYER RIGHTS**  
Amsterdam, Netherlands • May 3-4, 2018

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**Robert Franzke, Assistant Special Agent in Charge**

**&**

**Matthew Weir, Assistant Inspector General**



**When and how to involve the  
Treasury Inspector General for  
Tax Administration (TIGTA)**



Break

When and how to involve  
traditional media and/or social  
media in tax cases

Rita Chan

David Voreacos

Kaja Whitehouse

## Rita Chan

- VICE News Tonight
  - Brooklyn, New York
  - Writing and Editing
- **Current**
  - VICE News,
  - VICE News Tonight
- **Previous**
  - [Fox News](#),
  - [Al Jazeera America](#),
  - CBS News
- **Education**
  - [University of California, Davis](#)



## David Voreacos

- David Voreacos is a legal reporter at Bloomberg News who covers offshore tax evasion, corporate frauds, pharmaceutical and medical device litigation, whistleblowers, money laundering, insider trading, New Jersey politics and assorted other topics. He grew up in Baltimore and graduated from Haverford College. He earned master's degrees at the University of Pennsylvania and Northwestern University. He worked as an intern at the Los Angeles Times and a reporter at the Bridgeport Post and Bergen Record before joining Bloomberg in 2000.

**Bloomberg**



## Kaja Whitehouse

- Cover the high-profile trials and law enforcement investigations stemming from the Manhattan US Attorney's office and the NY FBI, including breaking news of Manhattan US Attorney Preet Bharara's planned visit with President Donald Trump in November, where Trump asked Bharara to stay on in his role before firing him a few months later <http://nyp.st/2gkXrIJ>.



What makes a **tax story** interesting to the media?

When & how should a tax professional looking for media attention for a client's case approach a reporter?

How can a taxpayer make his or her case interesting to the media?

What documents or materials should a taxpayer or tax professional prepare to get your attention?

What diligence, if any, do you do with the information provided to you by a taxpayer or tax professional?

How does a tax professional establish a relationship with the press?

**Responding to IRS and the  
Department of Justice Issue  
Press Releases and Press  
Conferences.**

What advice do you have for  
taxpayers and professionals  
responding to government  
attempts for media attention?

**Responding to IRS and the  
Department of Justice Issue  
Press Releases and Press  
Conferences**

When, if ever, should the defense  
team issue a press release?

**Responding to IRS and the  
Department of Justice Issue  
Press Releases and Press  
Conferences.**

When, if ever, should a taxpayer  
have a media professional on his  
or her defense team?

**Whistle blowers and  
Confidential Informants**

When should a whistle blower  
Approach the Media?

## **Whistle blowers and Confidential Informants**

Can you keep the identity of a  
whistle blower anonymous?

## **Whistle blowers and Confidential Informants**

What does a source need to do  
to keep his identity secret?

Questions?

When and how to involve elected  
officials (i.e., how and when  
constituent services offices can  
help)

Minna Elias, Esq.  
Cindy Rogers, Esq.  
Darol Tucker

## Minna R. Elias, Esq.

- New York Chief of Staff - Congresswoman Carolyn Maloney's Office
- Ms. Elias has worked as the New York Chief of Staff in Congresswoman Carolyn Maloney's office for over 20 years. She received her AB in Government from Harvard University and JD from Cornell Law School. Prior to working with Congresswoman Maloney, Ms. Elias worked at Weil Gotshal and Manges. She formerly co-chaired the New York County Lawyer's Association Women's Rights Committee.

**Carolyn B. Maloney**

## Cindy Rogers, Esq.

- Cindy Rogers – District Director for Congressman Thomas Suozzi.
- Ms. Rogers, also an attorney, served as Mayor Suozzi's first Deputy Mayor of Glen Cove. She has over 13 years of experience on Capitol Hill, most notably, as a Legislative Assistant and Staff Attorney for Senator J. Bennet Johnston.
- Recently, she served as the Family Services Coordinator for the City of Glen Cove's Youth Bureau.

U.S. CONGRESS  
THOMAS SUOZZI  
Representing New York's 11th District





## Darol Tucker, LTA Brooklyn, NY

- Darol Tucker is the Local Taxpayer Advocate in Brooklyn, New York. He assumed this position with the Taxpayer Advocate Service (TAS) in February 2015. He previously served as a Supervisory Revenue Officer in Albany, NY from 2012 until the beginning of 2015.



Thank You!

## **UNITED STATES TAX COURT CALENDAR CALLS:**

**All Calendar Calls are Held at:**

Jacob K. Javits Federal Building  
26 Federal Plaza  
Rooms 206, 208  
New York, NY 10278

- October 23, 2017
  - November 13, 2017
  - November 27, 2017
  - December 4, 2017
- Contact Jeffrey Dirmann, Esq. at (201) 488-5400, Ext 119 or [jdirmann@agostinolaw.com](mailto:jdirmann@agostinolaw.com) to volunteer.