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From: [REDACTED]
Sent: Tuesday, August 01, 2017 9:22:45 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: FW: Counsel Opinion

forwarded me your email and asked me to respond to you. Since I don't know anything more about the case than what you have written below, it might be easier to discuss this. However, based on IRM 13.1.20.2(5), TAS generally has conversations with the IRS office before issuing a TAO. It sounds like you have done that, but I wasn't sure how long it's been or whether you and [REDACTED] had a settled response date. If not, I'd try to reach out to her again and explain that if you don't hear from her by a certain date, then you will issue a TAO. Alternatively, before issuing a TAO, you could issue an OAR asking her to review the refund request.

Otherwise, if you want to issue a TAO, I don't see any legal prohibition to ordering Appeals to expedite review of the refund claim. Counsel's opinion questions the merits of the refund claim, but nonetheless, agrees that Appeals must consider it. Based on Counsel's advice below, treas. Reg. Section 301-7811-1(c), and IRM 13.1.20.3.1(2), it appears that you have the law supporting you. If you decide to issue a TAO, you cannot order Appeals to grant the refund claim (a substantive determination), but you could order Appeals to expedite their review of the refund claim. Although you cannot order Appeals to grant the refund claim, in your TAO you should advocate for the taxpayer and explain why the refund claim should be granted based on the law and facts of the case. In particular, you should focus on the issues Counsel raised with respect to the merits of the claim.

If you'd like to discuss, please let me know. We should probably wait, though, until returns, unless this needs immediate attention.

Best Regards,