

**MSP
#13****COLLECTION STATUTE EXPIRATION DATES: The IRS Lacks a Plan to Resolve Taxpayer Accounts with Extensions Exceeding its Current Policy Limits****RESPONSIBLE OFFICIALS**

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DEFINITION OF PROBLEM

As of December 31, 2013, 2,371 taxpayers remain subject to IRS collection action because of waivers of the applicable statutory period for collection, which violate the IRS policy limit of five years.¹ Before 2000, IRS collection personnel solicited waivers to extend the collection period when it did not appear the taxpayer could pay the tax owed prior to the collection statute expiration date (CSED).² Congress limited this practice as part of the IRS Restructuring and Reform Act of 1998 (RRA 98), which generally ended CSED waivers, other than for extensions entered in connection with installment agreements (IAs).³ In response to Taxpayer Advocate Directive (TAD) 2010-3, the IRS Small Business/Self-Employed Division (SB/SE) and TAS formed a workgroup to investigate and resolve CSED extensions that exceeded five years.⁴

The IRS has placed almost 82 percent (1,939) of these accounts in currently not collectible (CNC) status or in the collection queue, and has no plan to collect these amounts.⁵ A TAS analysis of these accounts reveals that 309 of these taxpayers are deceased.⁶ Further, more than half of the taxpayers subject to these CSED extensions owe more than \$50,000, of which almost 76 percent is attributable to accrued penalties and interest.⁷

1 IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS transaction code (TC) 550, definer code (DC) 0 and 1 for Individual Master File (IMF) accounts for tax periods ended on or before December 31, 1998 (April 20, 2013).

2 National Taxpayer Advocate 2006 Annual Report to Congress 428.

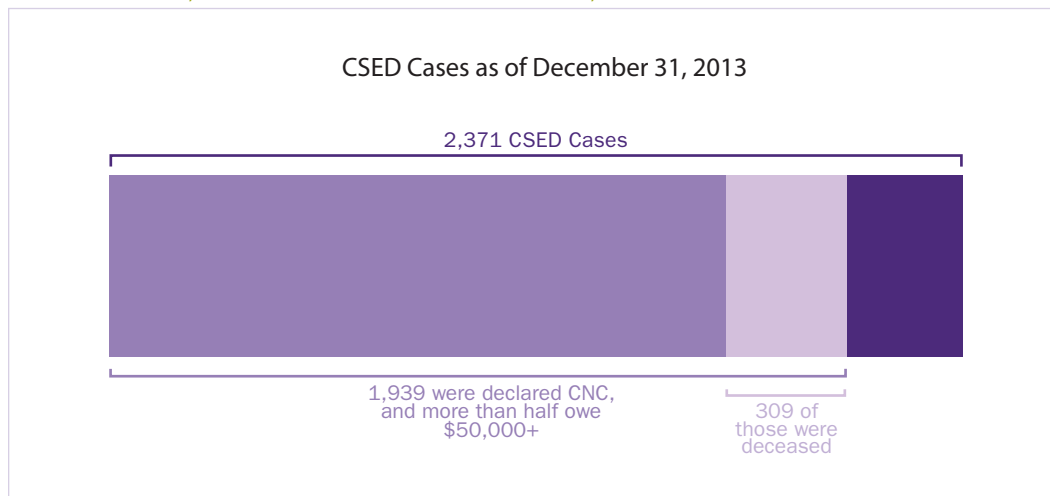
3 Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3461, 112 Stat. 685, 764 (1998). The legislation also provided for collection statute extensions in connection with the release of levies after the collection statute expiration date (CSED) expired. However, the IRS has not implemented this provision.

4 Taxpayer Advocate Directive (TAD) 2010-3 and responses to the TAD, *available at*: <http://www.irs.gov/Advocate/Taxpayer-Advocate-Directives-and-Related-Documents>.

5 IRS CDW, analysis of IDRS TC 550, DC 0 and 1, TC 470, and Status Code 24 (Queue) for Individual Master File (IMF) (April 20, 2013). The IRS deems accounts currently not collectible (CNC) or places them in the collection queue where it does not have the resources to collect or identifies a noncollectible account. See, e.g., Internal Revenue Manual (IRM) 5.11.1.2.2.2(7)(d) (Feb. 3, 2012), IRM 5.19.5.5.8(3) (Sept. 21, 2011), and IRM 5.16.1.1 (May 22, 2012).

6 IRS CDW, analysis of IDRS TC 550, DC 0 and 1, TC 470 for Individual Master File (IMF) (Apr. 20, 2013).

7 IRS CDW, analysis of IDRS TC 550, DC 0 and 1, Tax Module Balances (TMOBAL) by Taxpayer Identification Number (TIN) for the IMF (Apr. 20, 2013).

FIGURE 1.13.1, CSED Cases as of December 31, 2013⁸

The majority of these lengthy CSED cases burden taxpayers, who do not appear able to pay or resolve their debts through collection alternatives. Legal and administrative impediments have unnecessarily complicated the resolution of these accounts. In all but one Annual Report to Congress since 2009, the National Taxpayer Advocate identified accounts with lengthy CSEDs as a most serious problem or provided a status update about the problem. The National Taxpayer Advocate's chief concern is the IRS's failure to cancel these unreasonable CSED extensions that do not comply with current policies. The IRS has already spent over four years trying to fix this problem, and no resolution is in sight. The IRS's lack of urgency with respect to this issue — which involves undoing agreements that in many instances were violations of policy or law — is shocking.

ANALYSIS OF PROBLEM

Background

The IRS generally has ten years to collect a tax liability from a taxpayer.⁹ The CSED is the date the IRS must cease taking collection actions on a taxpayer's account. By statute, various conditions suspend the period and extend the CSED.¹⁰

RRA 98 Changed the Rules for Seeking Collection Statute Waivers.

Before January 1, 2000 (the effective date of section 3461 of RRA 98), the IRS would solicit waivers to extend the CSED to a time when taxpayers could pay their full liabilities or pay in connection with IAs. The IRS initially solicited these waivers on accounts with an open CSED and for periods as long as

⁸ IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS transaction code (TC) 550, definer code (DC) 0 and 1 for Individual Master File (IMF) accounts for tax periods ended on or before December 31, 1998 (April 20, 2013).

⁹ Internal Revenue Code (IRC) § 6502(a).

¹⁰ A number of code sections provide that the statute may be suspended by operation of law. See, e.g., IRC § 6330(e) (after a timely request for a Collection Due Process (CDP) hearing); IRC § 6331(i) & (k) (during the pendency of an installment agreement (IA) or offer in compromise (OIC) investigation, or refund suit for a divisible tax; 30 days after the rejection or termination of an IA, or rejection of an OIC; and for any appeals of a rejected IA or OIC, or a terminated IA); IRC § 6503 (during a deficiency proceeding, and for 60 days thereafter; any period for which a taxpayer is outside the United States for six months or longer; any period for which the IRS holds property wrongfully seized until it returns the property; during the pendency of a substitution of value lien discharge proceeding).

10, 20, 30, 40 or even 50 years.¹¹ Despite adopting the policy on October 30, 1991 of limiting CSED waivers to five years in connection with IAs, the IRS continued soliciting waivers of longer than five years in certain cases until the law changed in 2000.¹² The American Jobs Creation Act of 2004 amended IRC § 6159 to provide for partial payment installment agreements (PPIAs).¹³ The IRS responded by limiting its five-year extension policy to PPIAs.¹⁴

Collection statute extensions concerned Congress in 1998 because the IRS often did not inform taxpayers about their legal rights or consequences of extending statutory periods:

... The Committee is concerned that in some cases taxpayers have not been fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the IRS. Moreover, the Committee believes that the IRS should collect all taxes within 10 years, and that such statute of limitation should not be extended.¹⁵

As part of RRA 98, Congress amended Internal Revenue Code § 6502(a)(2) to restrict the terms under which the IRS and taxpayers could agree to extend the statutory period for collection beyond ten years. Congress provided that the IRS could collect after the statutory period only if the IRS and the taxpayer agreed to extend the statutory period for collection *in connection with* an original installment agreement or before releasing a levy after the ten-year period.¹⁶ Section 3461(c)(2) of RRA 98, which controls most lengthy CSED accounts, states:

— If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of —

- (A) the last day of such 10-year period,
- (B) December 31, 2002, or
- (C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.¹⁷

Taxpayers use Form 900, *Tax Collection Waiver*, to extend the period for collections on accounts beyond the ten-year statutory period for collection. Counsel has concluded, “A tax collection waiver executed pursuant to IRC § 6502(a)(2) is not a contract [that the parties could agree to amend]. See *Florsheim*

11 See Internal Revenue Manual (IRM) 53(11)(1) (Oct. 28, 1993) (stating, “The ten year collection period may, at any time prior to its expiration, be extended for any period of time agreed upon by the taxpayer and the district director.”).

12 IRM 5331.1(12)(b)2 (Oct. 30, 1991).

13 American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108-357, § 843(a) and (b), 118 Stat. 1600 (Oct. 22, 2004). Prior to 1998, IRS employees sometimes entered into monthly payment agreements that would not fully pay the tax liability over the term of the agreement. In 1998, IRS Counsel concluded that these partial payment agreements were not permitted. In 2004, Congress enacted the AJCA to legally provide for partial payment IAs. H.R. Conf. Rpt. 108-755, at 649-650 (Oct. 7, 2004).

14 IRM 5.14.2.1 (July 12, 2005). The procedure permits waivers of five years plus one year may be added for administrative actions.

15 Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, S. Rept. No. 105-174 at 87 (June 24, 1998).

16 IRC § 6502(a)(2); Treas. Reg. § 301.6502-1(b)(2). Even though the IRS currently has no procedures regarding when seeking an extension of the CSED in connection with a levy release might be appropriate, the statute and regulations provide that the IRS may secure a CSED waiver in connection with a release of a levy where the CSED on the underlying tax liability has expired. The agreement to extend the collection statute must be entered into prior to the levy being released.

17 RRA 98, Pub. L. No. 105-206, § 3461(c)(2), 112 Stat. 685, 764 (1998).

Bros. Drygoods Co. v. United States, 280 U.S. 453, 468 (1930). Rather, it is a voluntary, unilateral waiver of a defense by the taxpayer.”¹⁸

The National Taxpayer Advocate Proposes Legislation and Orders IRS Review and Resolution of Lengthy CSED Accounts.

In 2006, the National Taxpayer Advocate proposed legislation to eliminate the IRS’s inventory of over 32,000 accounts affecting approximately 14,000 taxpayers with lengthy CSED extensions.¹⁹ In 2009, the National Taxpayer Advocate recommended that the IRS resolve excessively long CSEDs by writing off accounts with CSEDs greater than the original CSED plus five years (absent other lawful extensions).²⁰

On January 20, 2010, the National Taxpayer Advocate issued TAD 2010-3, directing the SB/SE Commissioner to, among other things, provide employees for an SB/SE-TAS workgroup for review, resolution, adjustment, or correction of all accounts with CSEDs extended beyond 15 years after assessment (plus any statutory suspensions).²¹ On June 10, 2010, the Deputy Commissioner for Services and Enforcement modified the TAD to require SB/SE (as part of the SB/SE-TAS workgroup, and in coordination with the Office of Chief Counsel) to review these accounts on a case-by-case basis and determine whether alternative resolutions could be reached.

The National Taxpayer Advocate’s chief concern is the IRS’s failure to cancel these unreasonable CSED extensions that do not comply with current policies. The IRS has already spent over four years trying to fix this problem, and no resolution is in sight.

The Resolution of All Lengthy CSED Accounts Hinges on Accurate Research of Accounts and Remedies that Comport with the Law.

In response to the TAD, the TAS-SB/SE CSED Workgroup investigated CSEDs extended by taxpayers longer than five years. The group initially determined that 4,466 taxpayers held accounts with extensions exceeding policy limits.²²

The TAS - SB/SE CSED Workgroup Reviews Taxpayer Accounts.

The workgroup is investigating whether it can resolve accounts systemically, rather than case by case.²³ As of December 31, 2013, 2,371 individual taxpayers, who waived the collection statute for more than five years on tax periods before 1999, have open CSEDs.²⁴ Figure 1.13.2 shows the number of taxpayers by length of the waiver, whether the IRS has placed their accounts in currently not collectible (CNC) status, and the percentage of taxpayers in CNC status.

¹⁸ IRS Office of Chief Counsel, Program Manager Technical Advice (PMTA) 2010-10, Memorandum to Director, Collection Policy, Small Business/Self-Employed Division (SB/SE) (Feb. 12, 2010).

¹⁹ National Taxpayer Advocate 2006 Annual Report to Congress 428.

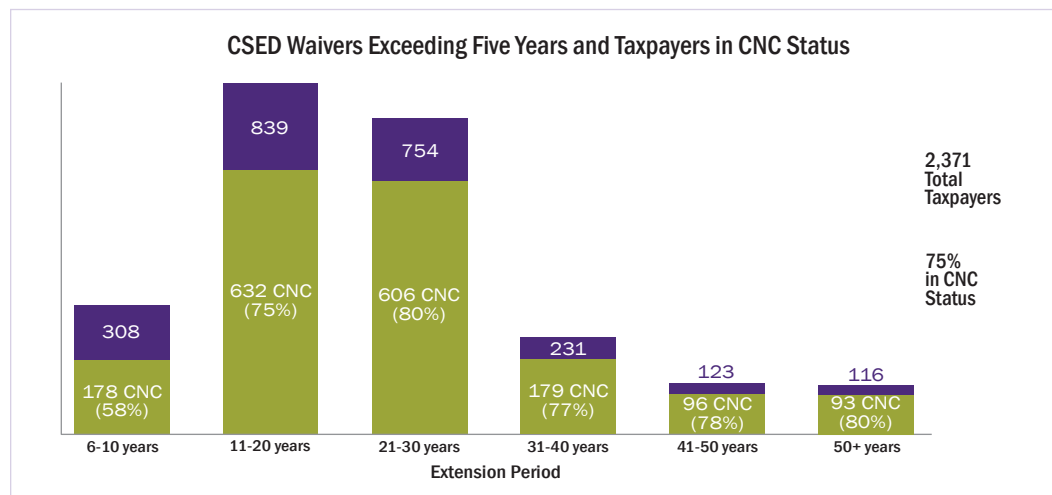
²⁰ National Taxpayer Advocate 2009 Annual Report to Congress 227.

²¹ National Taxpayer Advocate, Taxpayer Advocate Directive 2010-3 (Jan. 20, 2010).

²² National Taxpayer Advocate 2012 Annual Report to Congress 470.

²³ TAS-SB/SE CSED Workgroup, *Memorandum re: Effective Tax Administration Offers In Compromise for Certain Taxpayers Under a Lengthy CSED Extension* (June 21, 2012).

²⁴ *Id.*

FIGURE 1.13.2, CSED Waivers Exceeding Five Years and Taxpayers in CNC Status²⁵

SB/SE Research data on these accounts also show:

- 1,628 or almost 69 percent of these taxpayers signed waivers exceeding five years on or after October 30, 1991 in violation of IRS policy in effect at that time.²⁶
- Over 87 percent only owe income tax liabilities.²⁷
- 295, approximately 12 percent, owe trust fund taxes.²⁸
- 2,209, over 93 percent, defaulted on the IA entered in connection with his or her lengthy CSED waiver.²⁹
- 117, less than five percent, incurred additional tax liabilities after 1998.³⁰

The following chart shows the breakout of taxpayers by active, CNC status (bankruptcy, decedent cases, unable to contact or locate, and economic hardship), and shelved (in the queue or no resources to work) accounts.

²⁵ TAS-SB/SE CSED Workgroup, *Memorandum re: Effective Tax Administration Offers In Compromise for Certain Taxpayers Under a Lengthy CSED Extension* (June 21, 2012).

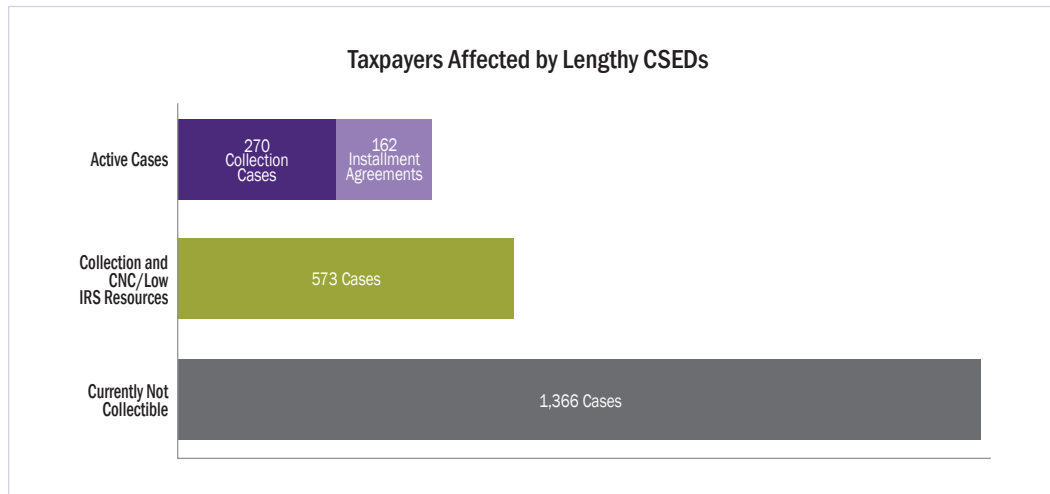
²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* Trust fund taxes refer to taxes collected or withheld under a trust imposed under IRC § 7501. The Trust Fund Recovery Penalty (TFRP) is a penalty that is assessed under IRC § 6672 against the individual or individuals who are responsible for paying the trust fund taxes but willfully did not do so. The amount of the penalty is equal to the amount of the unpaid trust fund taxes.

²⁹ IRS CDW, analysis of IDRS TC 550, DC 0 and 1 for IMF accounts and Masterfile Status code (MF status) (June 25, 2013).

³⁰ IRS CDW, analysis of IDRS TC 550, DC 0 and 1 for IMF accounts (June 25, 2013).

FIGURE 1.13.3, Taxpayers Affected by Lengthy CSEDs³¹

The IRS has not filed or refiled a notice of federal tax lien on almost 14 percent of the taxpayers' tax modules subject to the lengthy CSEDs.³² The majority of these lengthy CSED cases burden taxpayers, who do not appear able to pay or resolve their debts through collection alternatives, and who would not be subject to collection on these IRS debts under current policy and law.

The IRS's Unacceptable Delay in Resolving These Lengthy CSED Accounts Is Due in Part to Chief Counsel's Concerns About The Commissioner's Authority to Undo These Extensions.

In connection with the TAD, the Office of Chief Counsel issued an opinion addressing whether the Commissioner could revoke, modify, or cancel the taxpayers' waivers for lengthy CSEDs, or whether the Commissioner could abate such liabilities as excessive in amount. Counsel concluded that while the Commissioner lacked the authority to modify or rescind a CSED waiver, the Commissioner could place these accounts into a separate noncollectible status "as to which refund offset and state-income tax levy would also be suspended."³³ However, placing the account in this special separate noncollectible status would not entirely solve the matter.

Liens filed against taxpayers facing lengthy CSEDs would continue to attach to their property and continue to harm these taxpayers by negatively impacting their credit score and economic viability.³⁴

³¹ IRS CDW, analysis of IDRS TC 550, DC 0 and 1 for IMF accounts (June 25, 2013).

³² *Id.*

³³ IRS Office of Chief Counsel, Program Manager Technical Advice (PMTA) 2010-10, Memorandum to Director, Collection Policy, Small Business/Self-Employed Division (SB/SE) (Feb. 12, 2010).

³⁴ The Counsel Memo did indicate that the IRS might be able, on a case-by-case basis, to withdraw the lien under the best interest test found in section 6323(j)(1)(D) which would remove the lien from the taxpayer's credit history. On average, a lien filing reduces a taxpayer's credit score by 100 points. The impact of the lien filing is greatest upon the initial filing and diminishes over time. See written response from Vantage Score® (Sept. 17, 2009); National Taxpayer Advocate 2009 Annual Report to Congress 20 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*).

Unpaid tax liens may remain on a taxpayer's credit history, leaving a derogatory mark on the credit history indefinitely.³⁵

Counsel further concluded, "The Commissioner's authority under section 6404(c) to abate tax "under uniform rules" when "the administrative and collection costs involved would not warrant collection of the amount due" would not authorize blanket abatements directed by the National Taxpayer Advocate. These abatements are typically made on a case-by-case basis, as the financial situations of taxpayers vary."³⁶ The National Taxpayer Advocate's position is that the abatement authorization under IRC § 6404(c) contains

no explicit exception or prohibition for applying "uniform rules" for abatement to a group or class of taxpayers. Here, we have clearly defined groups of taxpayers with clearly described similar circumstances. Some of these circumstances fit squarely within the 6404(c) abatement language. The language of 6404(c) does not ignore the needs of administrative efficiency — indeed, the statutory language, together with principles of efficient tax administration, clearly contemplates a blanket abatement in these situations.

In 2012, IRS Chief Counsel concluded that the IRS can only solicit offers in compromise from these taxpayers if it makes determinations of equity or hardship based on the facts and circumstances of each case.³⁷ Most recently, the workgroup requested assistance from Counsel to see whether there was a way to resolve these accounts under the existing statutory scheme. Counsel is in the process of writing a legal memo that we hope will provide a way or ways to resolve these cases. The National Taxpayer Advocate, however, is running out of patience.

The majority of these lengthy CSED cases burden taxpayers, who do not appear able to pay or resolve their debts through collection alternatives, and who would not be subject to collection on these IRS debts under current policy and law.

CONCLUSION

Lengthy CSED accounts are a remnant of the era preceding RRA 98. The IRS continues to burden taxpayers who waived a collection statute for more than five years in connection with an IA. While RRA 98 limited other CSED waivers, the IRS has not yet implemented a plan to resolve lengthy CSED waivers, even though many were solicited in violation of IRS policy. Further, IRS data show little or no collection activity on these accounts. The National Taxpayer Advocate is greatly concerned that the IRS will do nothing and hold these uncollectible debts over taxpayers' heads, rather than resolve all lengthy CSED accounts once and for all as agreed to in response to TAD 2010-3.

35 As a matter of policy, Experian keeps unpaid tax liens on a credit report for 15 years and Equifax for ten years, while Transunion credit reports reflect them indefinitely. Released liens, including those paid off by the taxpayer, are not generally removed from the credit history until seven years from the date of release. See The Fair Credit Reporting Act (FCRA), § 605(a)(3), 15 USC 1681c(a)(3); IRC § 6325(a)(1) (lien will be released if the liability is satisfied or becomes unenforceable). However, California requires that all liens, released and open, be removed from credit histories ten years after the filing date. See Cal. Civ. Code, § 1785.13(d).

36 IRS Office of Chief Counsel, Program Manager Technical Advice (PMTA) 2010-10, Memorandum to Director, Collection Policy, Small Business/Self Employed Division (SB/SE) (Feb. 12, 2013).

37 *Id.*

RECOMMENDATIONS

The National Taxpayer Advocate offers the following recommendations to finally resolve all lengthy CSED accounts:

1. By April 15, 2014, cease collection of payments on all accounts where the collection period was extended in violation of the IRS 1991 waiver policy.
2. By June 30, 2014, abate all such extended CSED accounts under the authority vested in the Commissioner under the Internal Revenue Code.