STATUS UPDATE

PRIVATE DEBT COLLECTION: Forthcoming Changes to the Private Debt Collection Program Will Better Protect Low-Income Taxpayers and Achieve a Program That More Appropriately Respects Taxpayer Rights

RESPONSIBLE OFFICIAL

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TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

PROBLEM

After the passage of the Fixing America's Surface Transportation Act (FAST Act) in 2015, the IRS implemented the Private Debt Collection (PDC) program, and in April 2017, it began assigning accounts to private collection agencies (PCAs).[2] Recently Congress modified the program to better protect taxpayer rights by excluding the accounts of certain low-income taxpayers from assignment to PCAs beginning January 1, 2021.[3] As the IRS implements these changes and the program continues to evolve, the IRS should consider the following issues:

- Accounts of taxpayers who are likely experiencing economic hardship that were assigned to PCAs prior to January 1, 2021 will continue to reside in PCA inventory;
- Complex Business Master File (BMF) accounts assigned to PCAs may prove to be more difficult to resolve;
- Accounts may reside in PCA inventory indefinitely, even though there has been no progress toward resolution; and

1 *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). *See* IRC § 7803(a)(3).

2 *See* FAST Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-1736 (2015) (adding subsections (c) and (h) to IRC § 6306).

3 Taxpayer First Act, Pub. L. No. 116-25, § 1205, 133 Stat. 981 (2019). Congress amended IRC § 6306 to exclude accounts from assignment to PCAs where the taxpayer's gross income is at or below 200 percent of the federal poverty level, or where the taxpayer receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), beginning January 1, 2021.

- Authorization to PCAs to arrange installment payments through direct debit may result in scammers impersonating PCAs.

IMPACT ON TAXPAYERS

Background

Since its inception in April 2017 through September 30, 2019, the IRS has assigned $22,592,758,797 in delinquent tax debt (2,441,382 accounts) to the PCAs.[4] The PCAs have collected $301,771,103 (or just over one percent) of the dollars assigned, and when accounting for the cost of the program, it has begun to generate modest revenue, about $170,029,949 (as of September 30, 2019).[5]

Accounts of Taxpayers Who Are Likely Experiencing Economic Hardship That Were Assigned to Private Collection Agencies Prior to January 1, 2021, Will Continue to Reside in the Inventory

On July 1, 2019, the president signed into law the Taxpayer First Act, which contains two significant changes to the administration of the IRS's PDC program.[6] Effective after December 31, 2020, the following types of tax receivables are no longer eligible for collection by PCAs:

- Where substantially all of a taxpayer's income is attributable to Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI); or
- Where a taxpayer's adjusted gross income (AGI) is at or below 200 percent of the Federal Poverty Level (FPL) based on the most recent taxable year for which such information is available.

Since nearly the inception of the PDC program, TAS has made similar recommendations and believes these changes will result in a program that strikes a better balance between collecting outstanding tax debts and protecting taxpayer rights.[7]

However, the accounts of taxpayers who fall into one of these categories but were assigned to a PCA prior to January 1, 2021, will remain in PCA inventory beyond that date. As of September 12, 2019, there were an estimated 1,162,606 accounts in PCA inventory of individual master file (IMF) taxpayers whose AGI was at or below 200 percent FPL, and an estimated 105,587 accounts of IMF taxpayers who

4 IRS, PDC Program Scorecard for fiscal year (FY) 2019.

5 *Id*.

6 Taxpayer First Act, Pub. L. No. 116-25, § 1205, 133 Stat. 981 (2019).

7 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 72 (Area of Focus: *TAS Will Continue to Advocate for Vulnerable Taxpayers Whose Cases Are Assigned to Private Debt Collection Agencies (PCAs) and for a Reduction of Inactive PCA Inventory*); National Taxpayer Advocate 2018 Annual Report to Congress 277, 288 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*); National Taxpayer Advocate 2019 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 52, 53 (*Amend IRC § 6306(D) To Exclude The Debts of Taxpayers Whose Incomes Are Less Than Their Allowable Living Expenses From Assignment to Private Collection Agencies or, If That Is Not Feasible, Exclude the Debts of Taxpayers Whose Incomes Are Less Than 250 Percent of the Federal Poverty Level*); National Taxpayer Advocate 2017 Annual Report to Congress 10, 17 (Most Serious Problem: *Private Debt Collection: The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*). TAS Research found that 99 percent of the 278,548 taxpayers whose AGI was at or below 200 percent of the FPL had income at or below their allowable living expenses (ALEs), meaning that paying on an outstanding tax liability likely would result in them not being able to pay other necessary living expenses. National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 72, 75 (Area of Focus: *TAS Will Continue to Advocate for Vulnerable Taxpayers Whose Cases Are Assigned to Private Debt Collection Agencies (PCAs) and for a Reduction of Inactive PCA Inventory*).

received SSDI.[8] However, the IRS applied a different calculation than TAS to determine the number of taxpayers who had AGI at or below 200 percent FPL, which identified 783,046 IMF accounts.[9] The IRS's calculation retains about 379,000 IMF accounts in PCA inventory where the taxpayer, based on the most recent income data available to the IRS, likely has AGI at or below 200 percent FPL. These numbers will likely grow, as the IRS plans to continue to assign accounts that fall into these categories until the January 1, 2021, effective date. Congress carved out these vulnerable taxpayers out of concern that they might make payments on their tax debts when contacted by a PCA, even though doing so may impact their ability to pay other necessary living expenses and place them in an economic hardship situation.[10] The National Taxpayer Advocate believes it is prudent to cease assignment of these cases immediately and recall these cases that have already been assigned to PCA inventory.

Complex Business Master File Accounts Assigned to Private Collection Agencies May Be More Difficult to Resolve

In August 2019, the IRS began assigning BMF accounts to PCAs. Although a majority of the BMF accounts have balances below $50,000, these accounts can have liabilities as large as $500,000.[11] Generally, these accounts are older than individual accounts assigned to PCAs, because most BMF work takes longer to reach shelved status – the status from which the IRS selects cases for assignment to PCAs.[12] These factors may make BMF accounts even more difficult for PCAs to collect on than individual accounts.

Additionally, about 13 percent of the BMF accounts are employment tax modules.[13] This means that the business entity is liable for a failure to remit employment taxes, and the responsible individual(s) may have been assessed a trust fund recovery penalty (TFRP).[14] These are two separate liabilities, and payment on one will reduce the other (*i.e.,* the liabilities mirror one another). It is possible that the assignment of BMF cases to the PCAs could include a business entity's employment tax liability, while an individual's TFRP for the failure to remit employment taxes could reside in IRS inventory. Having these liabilities split between the IRS and a PCA increases the prospect of confusion for the taxpayer, particularly where the individual who is responsible for remitting employment taxes (*i.e.,* the individual who has been assessed a TFRP) is also the owner or has partial ownership of the business. Therefore,

8 To identify taxpayers whose income fell within this range, TAS Research used AGI from the most recent return on file from the past two years (*i.e.* TY 2017 or TY 2018). When there was either no return on file, or the most recent return on file fell outside the past two-year timeframe, TAS Research used third-party income information reported to the IRS to determine a taxpayer's gross income.

9 The IRS's calculation always used the most recent return on file to determine a taxpayer's AGI, and never consulted more recent third-party income data, even if the return was filed several years ago. IRS response to TAS fact check (Nov. 21, 2019).

10 165 Cong. Rec. E865-01 (daily ed. June 28, 2019); 165 Cong. Rec. H4352-04 (daily ed. June 10, 2019); 164 Cong. Rec. H10402-01 (daily ed. Dec. 20, 2018) ("For these reasons, I am especially proud of our work to prevent private debt collectors from excessively targeting low-income taxpayers. As a result, our bill will ease the burden on those who are already struggling to keep a roof over their head and food on the table.") (statement of Rep. John R. Lewis).

11 IRS response to TAS information request (July 8, 2019). The maximum liability of the available BMF inventory is $500K, with 94% having a balance less than $50,000.

12 Shelved inventory consists of accounts that are not being worked due to resource limitations. *See* National Taxpayer Advocate 2013 Annual Report to Congress 124, 124 n.4 (Most Serious Problem: *Collection Strategy: The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers*).

13 IRS response to TAS fact check (Nov. 21, 2019).

14 IRC § 6672; Treas. Reg. § 301.6672-1. When a business fails to withhold and remit income tax, Social Security tax, or Railroad Retirement tax for their employees, the individual in the business who is responsible for taking these actions may be assessed a penalty equal to the amount of the trust fund tax (*i.e.*, the amount of income tax, Social Security tax, or Railroad Retirement tax that was required to be withheld from employees' checks).

the IRS should refrain from assigning BMF employment tax accounts to PCAs when a corresponding account with a trust fund recovery penalty resides with the IRS.

Accounts May Reside in Private Collection Agency Inventory Indefinitely, Even Though There Has Been No Progress Toward Resolution

Since the inception of the PDC program through September 12, 2019, the IRS has placed 2,311,295 accounts with PCAs. Out of these accounts, 80 percent of the IMF taxpayer accounts have been in PCA inventory three months or more, yet the PCA has not received any payments on the accounts and has not organized any installment agreements.[15] In fact, these accounts have been in PCA inventory on average about 11 months with no resolution on the account.[16]

PCAs have the discretion to return accounts to the IRS that they have deemed unproductive, but there are no time constraints as to how long a PCA can retain unproductive accounts in inventory.[17] Since the inception of the program through June 13, 2019, PCAs only returned 19,874 accounts out of the 1,927,814 accounts assigned to the PCAs (or just over one percent) that were deemed "unproductive."[18]

Allowing inventory to reside with PCAs for an unlimited amount of time is a significant change from how the IRS administered the prior PDC program when it required PCAs to return accounts that had not been paid or converted to a satisfactory payment plan within 12 months from the date the IRS referred them to the PCA.[19] The current PDC program's omission of a time restriction for how long the PCAs can retain accounts without any resolution allows PCAs to hold accounts in perpetuity in the hopes that they will eventually be successful in contacting the taxpayer and collecting the debt. This essentially converts PCA inventory into another IRS queue, where accounts sit without steps toward resolution.[20] To prevent this conversion, the IRS should reinstate the requirement that PCAs return to the IRS accounts where a satisfactory payment plan or full payment has not been established within 12 months from the date the account was assigned to the PCA.

15 IRS response to TAS fact check (Nov. 21, 2019).

16 *Id*.

17 PCAs conduct operations in compliance with the most current version of the Private Collection Agency Policy and Procedures Guide (PPG). References to the PPG are to the March 8, 2019 version unless stated otherwise. PPG § 102, "… there will be times that the PCA, after having exhausted all reasonable efforts to work the case, determines it can do nothing further (*e.g.*, cannot locate the taxpayer, the PCA is unable to collect) and desires to return the case."

18 IRS response to TAS information request (July 8, 2019). The total number of accounts is taken through June 13, 2019, and the number of accounts returned as deemed "unproductive" was taken through May 16, 2019, so there could be a slight variation in the percentage since these numbers were not extracted at the same time.

19 PPG § 14.2 (Jan. 1, 2007).

20 The Queue is a holding inventory where collection cases sit, usually after being in Automated Collection System (ACS), and before being assigned to the Collection Field function (CFf) or reassignment to ACS. Cases sit in the Queue based on business rules and available resources. *See* National Taxpayer Advocate 2013 Annual Report to Congress 124, 124 n.4 (Most Serious Problem: *Collection Strategy: The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers*).

Authorizing Private Collection Agencies to Arrange Installment Payments Through Direct Debit May Result in Scammers Impersonating PCAs

Beginning October 8, 2019, taxpayers can choose the option of a preauthorized direct debit to make one payment or a series of payments toward their federal tax debt. With direct debit, the taxpayer signs an authorization form giving permission to the PCA to authorize a payment on the taxpayer's behalf to the U.S. Department of Treasury. Although this is a convenient option for taxpayers to pay their outstanding tax liabilities, it comes with some risk, which has caused the Federal Trade Commission (FTC) to prohibit telemarketers from exercising this payment option in other circumstances.[21] As the public becomes aware that PCAs are offering a direct debit payment option for outstanding tax liabilities, PCA impersonators may exploit this option as a way to secure taxpayers' personal bank information to use for malicious purposes.

This is a significant departure from how the IRS administered this PDC program up until this point and the prior program. Previously, the IRS was always able to tell taxpayers that PCAs would never ask for their personal financial information to coordinate a payment to the IRS on an outstanding tax liability. Now this message is more convoluted, making it increasingly difficult for taxpayers to distinguish between a legitimate PCA employee attempting to collect on an outstanding tax liability and an imposter trying to secure personal financial information. In order to minimize this confusion and ensure that taxpayers have the necessary information to distinguish between a genuine PCA assistor and an impostor, the IRS should conduct a public outreach campaign informing taxpayers that PCAs will require a signed authorization form prior to accepting direct debit payments.

CONCLUSION

By preventing the IRS from assigning some accounts to PCAs, the Taxpayer First Act makes an important and significant step toward protecting taxpayers who are likely experiencing economic hardship. The IRS should aim to swiftly implement the changes in the Taxpayer First Act. Moving forward, the IRS should carefully monitor PCAs' success at collecting on older and often more complex accounts such as BMF accounts, and the length of time these accounts reside in PCA inventory without resolution. Finally, providing more convenient payment options to taxpayers comes with the risk of providing PCA impostors an avenue by which they can obtain taxpayers' financial information and the IRS needs to warn taxpayers of this potential scam. TAS will continue to monitor the IRS's PDC program, particularly that the exclusions set out in the Taxpayer First Act are implemented in a manner that best protects taxpayer rights and minimizes harm to taxpayers who are financially distressed.

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21 *See* C.F.R. 310.4(a)(9); Jon Sheldon, *FTC Bans Telechecks, Other Abusive Payments in Telephone Sales*, NCLC (June 10, 2016), https://library.nclc.org/ftc-bans-telechecks-other-abusive-payments-telephone-sales-0; FTC, *FTC Amends Telemarketing Rule to Ban Payment Methods Used by Scammers* (Nov. 18, 2015) https://www.ftc.gov/news-events/press-releases/2015/11/ftc-amends-telemarketing-rule-ban-payment-methods-used-scammers ("… the Federal Trade Commission has approved final amendments to its Telemarketing Sales Rule (TSR), including a change that will help protect consumers from fraud by prohibiting four discrete types of payment methods favored by con artists and scammers.").

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Begin immediately excluding from PCA inventory, accounts of taxpayers who have AGI at or below 200 percent of the FPL, or receive SSI or SSDI, and recall from PCAs cases that currently reside in their inventory and fall into one of these two categories.
2. Not assign a BMF employment tax account to a PCA if a corresponding account with a trust fund recovery penalty resides with the IRS.
3. Reinstate the requirement from the IRS's first PDC program requiring PCAs to return accounts to the IRS when a satisfactory payment plan or full payment has not been established within 12 months from the date the account was assigned to the PCA.
4. Conduct a public outreach campaign informing taxpayers that PCAs will require a signed authorization form prior to accepting direct debit payments.