

#15 REQUIRE THE IRS TO WAIVE USER FEES FOR TAXPAYERS WHO ENTER INTO LOW-COST INSTALLMENT AGREEMENTS AND EVALUATE THE POTENTIAL REVENUE AND COMPLIANCE COSTS OF OTHER USER FEE INCREASES

Present Law

In cases where a taxpayer is unable to pay the full amount of his or her liability in a single lump sum, IRC § 6159(a) authorizes the IRS to enter into an installment agreement (IA) under which a taxpayer will pay the full amount of tax due in monthly installments. A taxpayer can apply for an IA on paper or by using an online payment agreement (OPA).

The Independent Offices Appropriations Act (IOAA) of 1952 (31 U.S.C. § 9701) and Office of Management and Budget (OMB) Circular A-25 authorize the IRS to set user fees by regulation. In 2016, the IRS used this authority to increase the IA fee.⁷⁸ Pursuant to Treas. Reg. § 300.1, the IRS now charges \$225 for entering into paper IAs and \$149 for entering into OPAs. If the taxpayer authorizes the IRS to “direct debit” a bank account each month, the fee is reduced to \$107, unless the taxpayer also applies online using an OPA, in which case it is reduced to \$31. These fees recover the IRS’s full costs of providing IAs. In addition, the fee is set at \$43 for low income taxpayers. However, *The Bipartisan Budget Act (BBA) of 2018* (Pub. L. 115-123, codified at IRC § 6159(f)) requires the IRS to waive the fee for low income taxpayers who enter into direct-debit IAs and to refund the fee for low income taxpayers who cannot use a direct-debit IA (*e.g.*, because they do not have a bank account) but who pay it off in full. This law also prevents the IRS from increasing the IA user fee without legislation.

Reasons for Change

By reducing or waiving the fee for low income taxpayers, the BBA addressed part of the problem but not all of it. Even a modest IA user fee may discourage taxpayers from applying for an IA and paying their taxes voluntarily. Some taxpayers cannot afford to pay a fee, even if they do not qualify as low income. It should be emphasized that taxpayers who require IAs are, almost by definition, experiencing some level of financial hardship. In addition, even taxpayers who qualify as low income sometimes end up paying the full fee.⁷⁹ The cost to the IRS of OPAs and direct debits is so low that if it discourages even a small percentage of taxpayers from paying voluntarily, this reduced compliance is likely to cost the government more—in lost tax revenue and increased enforcement costs—than the user fee brings in. For the same reasons, the IRS should evaluate the potential for lost revenue and increased enforcement costs before imposing or increasing any fees under the IOAA, not just the IA user fees.

Recommendations

Amend IRC § 6159 to require the IRS to waive the user fee for all direct debit IAs.⁸⁰

Also, amend IRC § 7805 to prohibit the IRS from increasing user fees unless it first determines, after considering public comments, that the increase will not: exacerbate financial hardship for taxpayers who are voluntarily trying to pay their tax liabilities, reduce government revenue by eroding voluntary tax compliance,

78 See User Fees for installment agreements (IAs), T.D. 9798, 81 Fed. Reg. 86,955 (Dec. 2, 2016).

79 See American Bar Association Section of Taxation, *Comments Concerning User Fees for Processing Installment Agreements and Offers in Compromise 2* (Oct. 1, 2013) (“many low-income taxpayers are charged the full user fee, despite qualifying for the reduced amount”).

80 For legislative language generally consistent with this recommendation, see Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 301 (2017); Taxpayer Protection and Assistance Act, S. 1321, 109th Cong. § 301 (2006).

or increase government expenses by requiring the IRS to take more costly collection actions against taxpayers who are discouraged by the user fees from complying voluntarily.⁸¹

81 For related recommendations, see National Taxpayer Advocate 2017 Annual Report to Congress 307-313 (Legislative Recommendation: *User Fees: Prohibit User Fees That Reduce Revenue, Increase Costs, or Erode Taxpayer Rights*).