

#28 **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**

Present Law

IRC § 6306(c) requires the IRS to assign certain tax receivables to private collection agencies (PCAs). IRC § 6306(d) lists categories of tax receivables that are not eligible for assignment to PCAs, but the list does not include the debts of taxpayers whose incomes are less than their allowable living expenses (ALEs).

IRC § 7122(d)(2) requires the IRS to develop “national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.” The amount by which a taxpayer’s income exceeds these standards, or ALEs, is the starting point for determining whether the taxpayer can afford to pay the debt immediately in full or over time in installments. If the ALE standards exceed the taxpayer’s income, the taxpayer is presumed unable to pay his or her basic living expenses. In this circumstance, the taxpayer may qualify for collection alternatives such as an offer in compromise (OIC) or the IRS may designate the taxpayer’s account as “Currently Not Collectible (CNC)-Hardship.” IRC § 7122(d)(2), enacted in 1998, codified the IRS’s practice of taking into account a taxpayer’s ALEs both in determining the extent to which the taxpayer can pay off his or her tax liability and in considering collection alternatives.

Both the law and IRS procedures use the measure of 250 percent of the federal poverty level as a proxy for “low income” in several contexts. IRC § 7526(b)(1)(B)(i) provides that taxpayers are eligible for assistance from Low Income Taxpayer Clinics (LITCs) if their incomes do not exceed 250 percent of the federal poverty level. IRC § 6159(f)(2)(A) grants taxpayers a waiver from the requirement to pay a user fee to enter into an installment agreement with the IRS if they make payments via direct debit from their bank account and their adjusted gross income, as determined for the most recent year for which information is available, does not exceed 250 percent of the federal poverty level. IRC § 6159(f)(2)(B) provides that for taxpayers whose incomes do not exceed 250 percent of the federal poverty level and who are unable to make payments via direct debit (commonly because they do not have bank accounts), the IRS shall reimburse the taxpayer in the amount of the user fee when the installment agreement is paid off.

Administratively, the IRS has adopted 250 percent of the federal poverty level for purposes of screening out low income taxpayers from its automated Federal Payment Levy Program. If a taxpayer owes a tax debt and receives federal payments, the IRS ordinarily may offset a portion of the federal payments until the tax debt is satisfied. However, the IRS has implemented a “low income filter” to exclude taxpayers with incomes below 250 percent of the federal poverty level from the automated levy program so that their Social Security retirement benefits or military pensions are not offset to pay delinquent tax liabilities.

Reasons for Change

Low income taxpayers are at high risk of economic hardship. Nevertheless, TAS has found that these taxpayers often make payments even where doing so may leave them unable to meet their basic living expenses. IRC § 7122(d)(2) and other provisions of law described above show Congress does not want the IRS to require taxpayers to pay amounts they cannot afford. The IRS can determine taxpayers’ income levels from information shown on their returns or from reports of income (such as W-2s and 1099s) submitted by third parties. Just as it uses this information for purposes of determining whether a taxpayer qualifies for the

waiver of the installment agreement user fee or should be excluded from automated levies, the IRS can use this information to identify taxpayers whose accounts should not be assigned to the PCAs.

Where the IRS designates a taxpayer's debt as CNC-Hardship, it treats the case as closed and does not assign it to the PCAs. However, the IRS only designates debts as CNC-Hardship if an employee has performed an analysis of the taxpayer's financial condition. (This analysis may be based on oral statements from the taxpayer and may not require substantiation.) Because taxpayers often do not contact the IRS to request a financial analysis of their ability to pay, or because even if they call the IRS they may not know—or be afraid to ask about—CNC-Hardship status, the accounts of many taxpayers whose incomes are below the ALE standards are not designated as CNC-Hardship and continue to be assigned to the PCAs for collection. Then, as discussed above, the PCAs call these taxpayers and some taxpayers feel pressured into making payments they cannot afford.

The National Taxpayer Advocate believes the IRS should develop an algorithm to make preliminary ALE determinations using automation. Automated determinations would allow the IRS to exclude appropriate taxpayers from PCA assignment. These preliminary determinations would also flag the accounts of taxpayers at risk of economic hardship, which would prompt assistors and collection personnel to ask questions that may lead the IRS to place the account into CNC-Hardship status, rather than waiting for the taxpayer to self-identify. Finally, the IRS could use this tool to send letters to these taxpayers, outlining collection alternatives such as OICs and encouraging them to contact the IRS, TAS, or LITCs for assistance in resolving their debts.

Alternatively, if the IRS reasonably determines it cannot perform ALE determinations by automation, it should establish 250 percent of the federal poverty level as a proxy for CNC-Hardship for purposes of PCA assignment, as it already does in other areas. IRS data shows that during fiscal year (FY) 2018, there were 45,371 taxpayers who made payments while their debts were assigned to PCAs. Of these 45,371 taxpayers, 41 percent had incomes at or below their ALEs.⁹⁹ Of the same 45,371 taxpayers, 44 percent had incomes at or below 250 percent of the federal poverty level.

Because the ALE calculations and the 250-percent-federal-poverty-level standard produce similar results, it appears that 250 percent of the federal poverty level is a reasonable proxy for the ALE standards for purposes of determining a taxpayer's ability to pay.

Recommendation

Amend IRC § 6306(d) to exclude from eligibility for assignment to PCAs the debts of taxpayers whose incomes are less than their ALEs. Alternatively, if the IRS concludes it is not feasible to do this, exclude the debts of taxpayers whose incomes are less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent return, or if no return was filed in the last three years, as shown on third-party wage and income reports for the most recent year data is available.¹⁰⁰

99 If no allowance is made for car ownership expenses in calculating allowable living expenses (ALE), 35 percent of the 45,371 taxpayers had incomes at or below their ALEs.

100 See Taxpayer First Act, H.R. 5444, 115th Cong. § 11305 (2018) and Protecting Taxpayers Act, S. 3278, 115th Cong. § 501 (2018), which contain legislative language generally consistent with this recommendation by excluding from assignment to PCAs the debts of taxpayers whose incomes do not exceed 250 percent of the federal poverty level, except that the bills limit the provision to debts identified by the IRS within 180 days of enactment of the Act and ending on Dec. 31, 2019. See also Taxpayer First Act of 2018, H.R. 7227, 115th Cong. § 1205 (2018), which would exclude from assignment to PCAs the debts of taxpayers who receive substantially all of their income from Social Security Disability Insurance or Supplemental Security payments, and those whose adjusted gross incomes do not exceed 200 percent of the federal poverty level, applicable to tax receivables identified after Dec. 31, 2019.