

**Legislative Recommendation #19****Require the IRS to Consider a Taxpayer's Current Income When Determining Whether to Waive an Installment Agreement User Fee****SUMMARY**

- *Problem:* Financially struggling taxpayers who apply for an installment agreement (IA) are ordinarily required to pay a “user fee,” but the law requires the IRS to waive the fee if a taxpayer’s adjusted gross income (AGI) is at or below 250 percent of the Federal Poverty Level. However, the IRS determines whether to waive the IA user fee based solely on the taxpayer’s most recently filed tax return, even if the return was filed years ago and does not accurately reflect the taxpayer’s *current* financial condition.
- *Solution:* Require the IRS to consider the taxpayer’s *current* financial condition in determining his or her eligibility for a waiver of the IA user fee.

**PRESENT LAW**

A taxpayer who is unable to pay a federal income tax liability in full may apply for an IA or an offer in compromise (OIC). For IAs, IRC § 6159(f)(2) provides that the user fee shall not be imposed, or in some cases may be refunded, for any taxpayer with an AGI that does not exceed 250 percent of the Federal Poverty Level “as determined for the most recent year for which such information is available.” For OICs, IRC § 7122(c)(3) similarly provides that the user fee shall not apply to any taxpayer with an AGI that does not exceed 250 percent of the Federal Poverty Level “as determined for the most recent taxable year for which such information is available.”

**REASONS FOR CHANGE**

Although the statutory provisions governing user fees for IAs and OICs are nearly identical, IRS policy in some cases treats taxpayers applying for IA fee waivers less favorably than taxpayers applying for OIC fee waivers. In calculating a taxpayer’s eligibility to have an IA user fee waived, the IRS determines AGI by relying solely on the taxpayer’s last filed tax return, even if the return was filed multiple years in the past and does not accurately reflect the taxpayer’s current financial condition.<sup>1</sup>

As a general matter, tax *liability* determinations are made for the tax period at issue. By contrast, tax *collectibility* determinations are made based on the taxpayer’s current financial condition. User fee waiver determinations should similarly be based on whether the taxpayer can afford to pay the user fee today. Relying on an old tax return to make the determination often will not produce an accurate result. If, for example, a taxpayer last filed a tax return in 2018 and has not had a filing requirement since that time, considering only the taxpayer’s 2018 return will enable the IRS to determine whether the taxpayer could have afforded to pay the user fee in 2018, which is irrelevant to whether he or she can afford to pay the user fee today; the taxpayer’s financial condition may have improved or deteriorated significantly in the intervening years.

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<sup>1</sup> See Internal Revenue Manual (IRM) 5.14.9.10(5), Installment Agreement User Fees: Authority and General Information (Oct. 7, 2019), [https://www.irs.gov/irm/part5/irm\\_05-014-009](https://www.irs.gov/irm/part5/irm_05-014-009) (providing that for IAs filed after April 10, 2018, a taxpayer’s AGI should be considered “as reported on their most recently filed tax return”).

In contrast to the IRS's policy of relying solely on the taxpayer's last filed return to make low-income fee waiver determinations for purposes of IAs, the IRS's policy for making low-income waiver fee determinations for OICs is more flexible. If the taxpayer does not qualify for a fee waiver based on the last-filed return for purposes of an OIC application, the IRS will determine whether the taxpayer qualifies for a fee waiver based on the taxpayer's current income and household size.<sup>2</sup> Thus, the OIC review process considers more current information when the taxpayer does not qualify based solely on AGI, whereas the IA review process does not.

To protect taxpayers' *right to a fair and just tax system*, user fee waiver determinations for IAs and OICs should be consistent and based on the taxpayer's current financial condition to the maximum extent possible. We recommend Congress clarify the law to require the IRS to consider a taxpayer's current income when determining eligibility for the IA user fee waiver if no recent return has been filed (*i.e.*, if the taxpayer has not filed a tax return within the last two years or indicates that his or her financial condition has worsened).

## RECOMMENDATION

- Amend IRC § 6159(f) to require the Secretary to consider a taxpayer's current income when determining whether to waive an IA user fee.<sup>3</sup>

2 IRM 5.8.2.4.1(6), Determining Processability (Sept. 2, 2022), [https://www.irs.gov/irm/part5/irm\\_05-008-002](https://www.irs.gov/irm/part5/irm_05-008-002). A similar issue arises in the context of the private debt collection program authorized by IRC § 6306. That statute provides that the account of a taxpayer with AGI at or below 200 percent of the Federal Poverty Level may not be assigned to a private collection agency, and it directs the IRS to make the AGI determination on the basis of "the most recent taxable year for which such information is available." The IRS currently will look for returns going back up to ten years – which clearly do not reflect the taxpayer's current income – but will not consider information reporting documents or other current income information. For our recommendation to change that approach along the same lines as this recommendation, see *Revise the Private Debt Collection Rules to More Accurately Identify and Protect Taxpayers With Incomes Below 200 Percent of the Federal Poverty Level*, *infra*.

3 We believe existing law provides the IRS with this authority, but the IRS has not agreed. The IRS has stated in the past that it can only determine "gross income" and not "adjusted gross income" (the statutory basis for a waiver) from information reporting documents. We believe the agency can implement a common-sense alternative method to assess a taxpayer's current financial condition for purposes of the IA user fee waiver since that is the point of the statute, and the fact that the IRS is doing exactly that in the context of OIC fee waivers shows its position is not applied consistently.