October 1, 2013

Mr. Daniel Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Comments Concerning User Fees for Processing Installment Agreements and Offers in Compromise

Dear Acting Commissioner Werfel:

Enclosed are comments concerning user fees for processing installment agreements and offers in compromise. These comments represent the view of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association, and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Michael Hirschfeld
Chair

Enclosure

cc: Nina Olson, National Taxpayer Advocate, Taxpayer Advocate Service
Mark J. Mazur, Assistant Secretary (Tax Policy), Department of the Treasury
William J. Wilkins, Chief Counsel, Internal Revenue Service
Emily S. McMahon, Deputy Assistant Secretary (Tax Policy), Department of Treasury
These comments ("Comments") are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Paul Harrison and Andrew J. VanSingel of the Pro Bono and Tax Clinics Committee of the Section of Taxation. Substantive contributions were made by Susan E. Morgenstern, Vice-Chair of the committee. The Comments were reviewed by George L. Willis, Committee Chair. The Comments were further reviewed by T. Keith Fogg of the Section’s Committee on Government Submissions and by C. Wells Hall, III, Council Director, for the Pro Bono and Tax Clinics Committee.

Although the members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the federal income tax principles addressed by these Comments, no such member or the firm or organization to which such members belong have been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: October 1, 2013
INTRODUCTION

The Internal Revenue Service (IRS) issued a notice of proposed rulemaking and notice of public hearing regarding increased user fees for installment agreements and offers in compromise.\(^1\)

The proposed increases would raise the user fee for installment agreements from $105 to $120, and raise the user fee for offers in compromise from $150 to $186, effective January 1, 2014. The user fees for low-income taxpayers would remain unchanged; however, we believe that user fees for low-income taxpayers should be waived entirely.

User fees are a barrier and discourage low-income taxpayers from voluntary tax compliance. They create a barrier to compliance in tax return filing and compliance in collection. Further, when negotiating installment agreements, many low-income taxpayers are charged the full user fee, despite qualifying for the reduced amount.

We recommend that the IRS: 1) adopt a full waiver of the user fee for installment agreements for low-income taxpayers; 2) implement training and controls that will avoid requiring low-income taxpayers to pay the full user fee; and 3) provide training to IRS employees that will promote viable payment plans and avoid unrealistic installment agreements for low-income taxpayers.

COMMENTS

1. The IRS should adopt a full waiver of the user fee for installment agreements for low-income taxpayers.

In 1995, the IRS implemented a $43 user fee for all installment agreements. This rate remained unchanged until 2007, when the IRS increased the user fee from $43 to $105, but left the rate at $43 for low-income taxpayers.

The proposed regulations propose another increase in user fees from $105 to $120; however, the user fee for low-income taxpayers would remain unchanged at $43. We commend the IRS for not increasing the user fee for low-income taxpayers. However, we believe that any user fee discourages low-income taxpayers from entering into installment agreements, as many of them do not have the means to pay the user fee, even at the reduced rate. By way of example, low-income taxpayers often enter into installment agreements as low as $20-30 per month based on their available net income. An upfront $43 fee makes it difficult for the taxpayer to enter into a voluntary installment agreement.

We suggest that a better option would be to mirror the user fee structure of the offer in compromise program, which completely waives the user fee for qualified low-income taxpayers. As background, in 2003, the IRS issued regulations authorizing a user fee for offers in compromise as a way of offsetting costs and discouraging frivolous offers. The regulations also

provided for a fee waiver for individuals whose income is less than 100 percent of the HHS Poverty Guidelines. In 2007, this threshold was increased to 250 percent of the HHS Poverty Guidelines.

It is unclear why the offer in compromise program offers a fee waiver and the installment agreement program does not. It appears that the reason for the difference may simply have resulted from the timing of the imposition of the fee. In 1995 when the installment agreement fee began, the IRS had not yet begun differentiating between low-income taxpayers and other taxpayers with respect to fees. The continuation of the installment agreement fee seems rooted in the historical timeframe when the fee began without an analysis of the shift in perception for charging such fees.

From a fiscal perspective, an offer in compromise costs significantly more than an installment agreement. The IRS recently reported that servicing an offer in compromise costs $2,718, compared to the cost to service an installment agreement, which is $282. If the user fee may be waived entirely for an offer in compromise, we see no reason why it should not be waived for an installment agreement, which many times costs less to set up and service.

Unfortunately, low-income taxpayers who cannot afford the user fee often opt to be placed into Currently Not Collectible (CNC) status, which has no user fee because the taxpayer has proven hardship status. Many tax professionals may recommend that their clients request CNC status and pay down the balance as they are able, which avoids the user fee and the potential reimposition of the user fee if payments are missed. Like installment agreements and offer in compromises, there is a labor cost to the IRS to set up and service an account in CNC status, including additional costs when a Notice of Federal Tax Lien (NFTL) is filed.

However, CNC status does not encourage tax payment compliance. It simply stops forced collection actions such as a wage garnishment or bank account levy. From the taxpayer’s perspective, CNC status is a no-cost path of least resistance. Under this collection alternative, the IRS often receives nothing. The tax owed continues to increase, and further reduces the likelihood of repayment through an installment agreement. It does, however, increase the likelihood that an offer in compromise will be filed and the IRS will collect less overall tax than if it had allowed the taxpayer to enter into an installment agreement with a fee waiver.

To illustrate how the user fee can encourage CNC status (and less overall tax collected), take the following example. A taxpayer with a deficiency of $350 has the ability to make payments of $30 per month. Assume that twelve $30 payments ($360 total) would satisfy the deficiency in full. If the taxpayer qualifies for the low-income user fee of $43, then the aggregate payments plus fees will total $403. In other words, the cost, or “finance fee” associated with settling a $350 tax debt in one year would be $53, which is approximately 14 percent. However, if the same taxpayer requested CNC status and did not make any payments, the balance would not accumulate to $403 for almost 19 months. Under these facts the client

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3 See note 1, supra at 53,703.
4 This includes a discounted 5.5% failure to pay penalty and 3% interest rate and no refund offsets during the payment plan.
benefits by sending the IRS voluntary payments without entering into a formal installment agreement, which would circumvent the user fee.

This outcome is further skewed in cases where the taxpayer is charged the full user fee of $105. In this example, it would cost the taxpayer $115 to settle the same $350 debt, which is effectively a 29 percent interest rate. In cases where the tax debt is relatively low, the user fee is comparatively high, which makes CNC status more appealing to the taxpayer.

Barriers to account resolution have significant adverse effects on taxpayers. When taxpayers are not able to resolve their matter, they fall out of filing compliance and stop corresponding with the IRS. Notices go unopened, returns are not filed, and taxes remain unpaid. These taxpayers then come back years later to submit an offer in compromise (for no fee), thus eliminating the tax debt for a minimal amount. The IRS estimates its processing cost for these offers to be $2,718.5

We suggest that the IRS should not charge a fee to collect money from low-income taxpayers. The IRS should encourage payment plans, and enable low-income taxpayers to enter into installment agreements at no cost. There is a clear benefit to the IRS in accepting payments instead of placing accounts in CNC status. The process of requesting an installment agreement should be the path of least resistance, with as few barriers as possible. The IRS has already made significant improvements to this process under the Fresh Start Initiative, and provides special procedures via its streamlined installment agreement program. The next logical step is to remove the user fee for low-income taxpayers seeking installment agreements.

2. **Implement training and controls to avoid requiring low-income taxpayers to pay the full user fee.**

Regardless of whether the reduced user fee for low-income taxpayers is eliminated or retained, IRS employees should be required to investigate whether a taxpayer is a low-income taxpayer in each installment agreement request. The reduced fee is not a new rule or a change in practice, yet it appears that the full user fee is regularly being charged in cases where the taxpayer qualifies for the reduced fee.

Correcting this problem is relatively easy through proper training and implementation of revised scripts and updated computer screens. IRS employees should be apprised of the reduced fee and know how to solicit information regarding the taxpayer’s household size and monthly income. Obtaining this information will enable IRS employees to determine if the taxpayer qualifies for the reduced user fee.

3. **Provide training to IRS employees that will promote viable collection plans and avoid unrealistic installment agreements for low-income taxpayers.**

Many low-income taxpayers find that resolving an issue with the IRS can be a difficult, aggravating, and intimidating endeavor. Many delinquent taxpayers share a common issue—a

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5 See note 1, *supra* at 53,703.
debt that they want to pay, but lack the finances. They contact the IRS to discuss the tax debt, and how they intend to pay the balance. Unfortunately, they often enter into an installment agreement which they cannot afford.

Section 5.14 of the Internal Revenue Manual emphasizes efficient and speedy collection of unpaid taxes. This emphasis may be counterproductive when dealing with low-income taxpayers. For example, a low-income taxpayer with a $2,000 tax debt may be directed to make monthly payments of $200 by an IRS employee. Although the plan is efficient and speedy, it can place a significant hardship on the taxpayer and leaves little room for unforeseen expenses or emergencies. It is important to note that low-income taxpayers can lead relatively unstable lives, and do not have the same safety nets that higher income individuals and families enjoy. When a disruption occurs, it is difficult for the taxpayer to rebound. If the taxpayer misses a $200 payment, it is unlikely that the taxpayer will be able to make up the payment, and the payment plan will likely default. The default forces the taxpayer to renegotiate the payment (with an added reinstatement fee), or worse, the taxpayer does nothing, and falls out of compliance, exposing the taxpayer to potential liens or levies. Instead, it may be better for the taxpayer to enter into an installment agreement for a significantly lower amount. Although it obligates the taxpayer for a much longer period, the reduced amount is more viable in the long run.

This point is illustrated by a recent client of a low-income tax clinic. A taxpayer contacted the IRS to set up a payment plan. The taxpayer’s monthly income is $1,256 and her monthly rent is $703, leaving $553 to cover all other monthly expenses. This taxpayer was charged the full user fee, and the IRS employee processed an installment agreement for $335 per month. The taxpayer thought that she had no choice but to accept the proposal. This type of plan is set for failure from the beginning, and IRS employees should be trained not to set up such unrealistic payment plans.

We feel that it is necessary that the IRS revise its procedures in the Internal Revenue Manual to place less emphasis on speedy collection practices and more emphasis on viable collection practices. In particular, these revisions should empower employees to allow payment plans that offer lower payments over longer periods instead of more rapid collection methods, even for small balances.

CONCLUSION

We believe that it will improve the efficiency of the collection process to eliminate barriers for low-income taxpayers to enter into installment agreements. We recommend that the IRS waive the user fee for installment agreements for low-income taxpayers, using the same criteria as the offer in compromise program. In addition, we recommend that training and systems put into place to ensure that those who qualify for a reduced or eliminated user fee are not charged the full fee. Finally, we recommend that additional training be provided for IRS employees who process installment agreements to encourage the acceptance of viable payment plans and prevent plans that require unrealistic payments relative to the taxpayer's income.