October 17, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Comments on User Fees for Installment Agreements

Dear Commissioner Koskinen:

Enclosed please find comments on proposed regulations regarding user fees for installment agreements (“Comments”). These Comments are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

The Section of Taxation would be pleased to discuss the Comments with you or your staff if that would be helpful.

Sincerely,

William H. Caudill
Chair, Section of Taxation

Enclosure

cc: Hon. William J. Wilkins, Chief Counsel, Internal Revenue Service
    William M. Paul, Deputy Chief Counsel (Technical), Internal Revenue Service
    Drita Tonuzi, Associate Chief Counsel (Procedure & Administration), Internal Revenue Service
    Maria D.P. Puerto, Attorney, Office of Associate Chief Counsel (Procedure & Administration), Internal Revenue Service
    Nina Olson, National Taxpayer Advocate, Internal Revenue Service
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 Andrew J. VanSingel of the Pro Bono and Tax Clinics Committee of the Section of Taxation. Additional contributions were made by Committee members Frank DiPietro and Molly Recar. The Comments were reviewed by Christine Speidel, Chair of the Pro Bono and Tax Clinics Committee. The Comments were further reviewed by Joseph Barry Schimmel of the Section’s Committee on Government Submissions; T. Keith Fogg, Council Director for the Pro Bono and Tax Clinics Committee; and Julian Y. Kim, the Section’s Vice Chair (Government Relations).

Although the members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the federal tax principles addressed by these Comments, no such member or the firm or organization to which such member belongs has 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 17, 2016
EXECUTIVE SUMMARY

These comments are in response to a notice of proposed rulemaking and request for comments published in the Federal Register on August 22, 2016 (the “Proposed Regulations”), regarding user fees for installment agreements between taxpayers and the Internal Revenue Service (the “Service”).1 The Proposed Regulations would add two types of installment agreement user fee options for a total of six repayment options. The Proposed Regulations would also raise the user fee for installment agreements from $120 to $225 for regular installment agreements. The user fee for low-income taxpayers (those taxpayers whose income is below 250% of the federal poverty level) remains unchanged at $43. The Proposed Regulations also introduce a reduced fee for low-income taxpayers to restructure or reinstate defaulted installment agreements.

We commend the Service for not increasing the user fee for low-income taxpayers; however, we believe waiving this fee would help remove a barrier for low-income taxpayers and encourage voluntary payment compliance. We encourage the Service to eliminate the fee for low-income taxpayers who wish to enter an installment agreement, which is the same position the Section of Taxation took in 2013, when the Service last proposed increases to user fees.2

We have ongoing concerns regarding the administration of the installment agreement program given the increased fees and complexity of options set out in the Proposed Regulations. We urge the Service to consider these concerns and our suggestions in finalizing its Proposed Regulations. We believe it is important that low-income taxpayers not be charged the full user fee when entering into an installment agreement, despite qualifying for the reduced amount. In addition, the Service could do a better job disclosing user fees in its various publications (specifically Publication 594, the Collection Process) to assist taxpayers in making informed decisions on what type of repayment method is most suitable.

These comments recommend that the Service: 1) adopt a full waiver of the user fee for installment agreements for low-income taxpayers; 2) clarify related guidelines in internal guidance and ensure that internal guidance is harmonized with the Proposed Regulations when finalized; and 3) increase transparency in user fees for installment agreements by publicizing the amounts of the user fees.

**COMMENTS**

1. **Waiving the user fee for installment agreements for low-income taxpayers would help remove barriers for low-income taxpayers and encourage voluntary compliance.**

   In 1995, the Service implemented a $43 user fee for all installment agreements. This rate remained unchanged until 2007, when the Service increased the user fee from $43 to $105, but left the rate at $43 for low-income taxpayers. The rate increased again in 2014, from $105 to its current rate of $120, although the rate for low-income taxpayers remained at $43. The Proposed Regulations include a significant increase in user fees from $120 to $225, while the user fee for low-income taxpayers remains at $43. The Service previously determined that the fee should remain at $43 for low-income taxpayers because requiring the full fee would be burdensome and because many low-income taxpayers do not have bank accounts and therefore cannot take advantage of the reduced fee for direct-debit installment agreements.

   We agree with the Service that there are compelling tax administration reasons to provide services to low-income taxpayers at less than full cost. We commend the Service for not proposing to increase the user fee for low-income taxpayers. However, any user fee is likely to create a financial and psychological barrier to entering into an installment agreement. By way of example, a low-income taxpayer may commonly enter into installment agreement, agreeing to pay as little as $20 per month based on their available net income. A fee of $43 makes it financially difficult for the taxpayer to pay the fee if they are under the impression that the fee must be paid up front. If the fee is not paid up front, any payment received will first apply to the user fee until it is paid in full, and then payments are applied to the tax debt. We suggest the Service clarify that the user fee can be paid in installments if the taxpayer’s monthly installment payment is less than the user fee.

   The two most prevalent collection alternatives for low-income taxpayers are installment agreements and Offers in Compromise based on doubt as to collectability. These alternatives serve the same purpose – they permit and encourage taxpayers to pay what they can towards their tax liabilities. Collection alternatives are in the best interests of the Service and the taxpayer. They keep financially stressed taxpayers engaged with the Service and promote voluntary compliance. In the Offer in Compromise (“OIC”) context, the Service waives the entire user fee for qualified low-income taxpayers. We suggest the Service adopt the same policy for low-income installment agreements.

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6 In this scenario, if the taxpayer can only afford a payment of $20, the payments would first be applied to the user fee of $43. Therefore, it would not be until the third month that the taxpayer’s payments are going towards the underlying tax debt.
7 T.D. 9647, supra note 5.
A commenter raised this suggestion in the 2013 rulemaking process and the Service’s response was that:

[T]he fee for an offer in compromise is charged for the mere consideration of the offer and is not refunded if the offer is not accepted. Therefore, the fee for an offer in compromise could dissuade a low-income taxpayer from making an offer because the taxpayer cannot be assured of reaching an agreement.\(^8\)

However, the Service contradicted in part this point by stating, “The purpose of a fee, however, is to recover the cost to the Government for a particular service to the recipient” (emphasis added).\(^9\) From a fiscal perspective, an OIC costs significantly more than an installment agreement. In 2013, servicing an OIC cost $2,718, compared to $282 to service an installment agreement.\(^10\) In addition, the original OIC user fee was intended to discourage frivolous offers.\(^11\) We believe the desire to discourage frivolous requests and recover costs is outweighed by the policy goal of keeping financially struggling taxpayers engaged and encouraging maximum compliance.

The elimination of the low-income taxpayer user fee for installment agreements could increase the number of low-income taxpayers who make payments on their tax liabilities. Low-income taxpayers who cannot afford the user fee but could make nominal monthly payments would likely qualify for the temporary hardship status known as Currently Not Collectible (“CNC”) status.\(^12\) Placing an account in CNC status costs the taxpayer nothing, and gives an incentive for taxpayers to avoid entering into an installment agreement. CNC status does not encourage tax payments. It simply stops forced collection actions such as a wage garnishment or a bank account levy. From the taxpayer’s perspective, CNC status is a no-cost path of least resistance. Under this collection alternative, the Service often receives nothing. The balance owed continues to increase. The Service will still incur costs to service the account, including the request for CNC status. It is also possible that the taxpayer will submit an OIC at some point, pay no user fee, and the Service will collect less tax overall than if it had allowed the taxpayer to enter into an installment agreement with a fee waiver.

To illustrate how user fees may create such disincentives, take the following example: A taxpayer with a deficiency of $350 has zero collection potential based on the Service’s collection financial standards, but in the interest of resolving the debt, the taxpayer will cut back on his standard allowable expense (e.g., food, clothing, and personal care) so he can pay $30 per month. Assume that twelve $30 payments ($360 total) would satisfy the deficiency in full, including penalties and interest.\(^13\) If the taxpayer qualifies for the low-income user fee of $43, then the aggregate payments plus

\(^{8}\) T.D. 9647, supra note 5, at 817.
\(^{9}\) Id.
\(^{12}\) I.R.M. 5.16.1.
\(^{13}\) This includes a discounted failure to pay penalty of 0.25% per month, 3% interest compounded daily, and no refund offsets during the payment plan. After 12 months of payments, the taxpayer would have a small amount of interest (less than $2) remaining. The calculations assume any user fee is paid up front.
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%. However, if the same taxpayer requested CNC status, and did not make any payments, the balance at the end of the same 12-month period would be just under $382.\textsuperscript{14} The outstanding liability would not reach $403 for 20 months. Under these facts, the taxpayer is better off by circumventing the user fee by sending the Service voluntary payments outside of a formal installment agreement.\textsuperscript{15} This outcome is further skewed in cases where the taxpayer is incorrectly charged the full user fee of $225, which happens on occasion to low-income taxpayers. In this example, it would cost the taxpayer $585 to settle the same $350 debt, which is effectively a 62% interest rate. A commenter raised this point in the 2013 rulemaking process\textsuperscript{16} and the Service responded that:

Generally, a taxpayer who has the ability to pay his tax liability over time (and thus is eligible for an installment agreement) will not qualify for CNC status. The IRS places a taxpayer in CNC status on the basis of hardship when it determines that the taxpayer cannot pay the tax debts after paying reasonable living expenses.\textsuperscript{17}

This statement fails to account for the reality that many taxpayers that qualify for CNC status are nonetheless placed into installment agreements for any number of reasons, be it that they feel pressured into proposing some form of repayment, they grossly underestimate their actual expenses and appear to have disposable income, they do not account for standard allowable expenses, or they are willing to cut back on allowable expenses in an effort to resolve their tax matter. The Service also stated that an installment agreement is preferable because the taxpayer would get a reduction in the penalty rates when entering into an agreement; however, on a nominal balance, these abatements would not offset the $43 user fee.\textsuperscript{18}

Congress and the Service have both determined that 250% of the poverty level is an appropriate place to draw the line identifying taxpayers who have special financial challenges and may need extra consideration.\textsuperscript{19} Waiver of the installment agreement user fee for low-income taxpayers would promote voluntary compliance while being consistent with these policy determinations. Currently, any taxpayer who could qualify for CNC status has a disincentive to enter a partial-pay installment agreement as opposed to making voluntary payments while in CNC status. The Treasury would most

\textsuperscript{14} This calculation assumes a failure to pay penalty of 0.5% per month, 3% interest compounded daily, and no refund offsets.
\textsuperscript{15} Although this client would be better off making sporadic voluntary payments, the Service’s interests would be better served if the taxpayer had the structure of an installment agreement, as it admittedly is unlikely that a taxpayer would make voluntary payments outside of a formal agreement.
\textsuperscript{16} See supra note 5, at 817.
\textsuperscript{17} See supra note 5, at 817.
\textsuperscript{18} See supra note 5, at 817. The failure to pay penalty is 0.5% per month, and while in an installment agreement, that amount is reduced to 0.25% per month (provided that the return was filed timely). This reduction only applies to the failure to pay penalty. I.R.C. § 6651(a)(2), (h). As a result, the installment agreement in the above example would reduce the failure to pay penalty by less than $9.
\textsuperscript{19} See e.g., I.R.C. § 7526(b) (defining low-income taxpayers to be served by low-income taxpayer clinics).
likely collect more from an installment agreement than from voluntary payments. Without a monthly payment reminder, taxpayers in CNC status will likely make less frequent payments, even if they intend to make voluntary payments in good faith. Also, partial-pay installment agreements can provide more revenue to the Treasury than an OIC from the same taxpayer would, particularly if the individual qualifies for CNC status. We believe the beneficial compliance effect of a fee waiver merits serious consideration.

The current structure creates barriers to account resolution, which have significant adverse effects on taxpayers. When taxpayers are not able to resolve their tax disputes, they fall out of filing compliance and stop corresponding with the Service. They ignore notices, they cease filing returns, and their taxes remain unpaid. Some of these taxpayers may get into compliance years later, but only in order to submit an OIC, where they can pay no user fee and compromise their entire debt for as little as $1. Meanwhile, the Service will spend almost $3,000 processing the offer.

It would be helpful for low-income taxpayers if the Service removed the user fee to collect money from low-income taxpayers. Doing so incentivizes low-income taxpayers to enter into payment plans and strengthens compliance. There is a clear benefit to the Service in accepting payments instead of placing accounts in CNC status. We believe the process of requesting an installment agreement should have as few barriers as possible.

2. **The Service’s internal guidance should be updated to reflect the policy objectives of the Proposed Regulations.**

We commend the Service on the proposed regulatory language concerning low-income taxpayers, and on its broader efforts to promote voluntary compliance and prudent tax administration that recognizes the circumstances facing many low-income taxpayers. The Service in its Proposed Regulations reaffirms that there is a compelling tax administration reason to provide installment agreements to low-income taxpayers at less than full cost. The Section agrees, and urges the Service to ensure that its internal guidance is harmonized with this policy so that it will be uniformly and effectively implemented. This is particularly important in light of the proposed fee increase.

Service employees have a duty to ensure that taxpayers are paying the appropriate fee. The reduced fee is not a new rule or a change in practice, yet in our experience certain taxpayers who qualify for the reduced fee are charged the full amount. Under the proposal, this will increase to more than five times the reduced amount.

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20 Another way to incentivize entering into an installment agreement is to waive the fee if the low-income taxpayer successfully completes the installment agreement.
21 See supra note 1, at 56,544.
22 I.R.M. 5.14.1.2(8)(C) states that in discussing installment agreements, the Service’s agent is to inform taxpayers that "low income individual taxpayers have the right to apply for a reduced user fee of $43 for entering into an installment agreement or a direct debit agreement." The section further provides that agents are to inform taxpayers, "if they feel that their current circumstances would qualify them for the reduced user fee[,] the reduced user fee application, Form 13844, is available at www.irs.gov or by phone
The Proposed Regulations provide that “an individual who falls at or below 250 percent of the dollar criteria established by the poverty guidelines” qualifies for the reduced user fees.23 We support this language. Currently the Service charges the regular or reduced user fee based on a taxpayer’s account history.24 This creates a problem for taxpayers whose current financial circumstances have changed from what is reflected on their last filed return. When establishing a streamlined installment agreement,25 Service employees do not always ask about the taxpayer’s current income. In our experience, certain taxpayers will agree to a streamlined agreement, and are unaware of lower, income-based installment agreement options. This not only creates a danger that taxpayers will be enrolled in unaffordable agreements, but can result in a taxpayer paying the regular installment fee when they qualify for a reduced fee.26

Section 5.14 of the Internal Revenue Manual ("IRM") emphasizes efficient and speedy collection of unpaid taxes. This emphasis may be counterproductive when dealing with low-income taxpayers and may lead to outcomes contrary to the Service’s policy objectives set forth in the regulation. For example, a low-income taxpayer with a $2,000 tax debt may be directed by a Service employee (or, in the future, by a private collection agency) to make monthly payments of $200. 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 may have. When a disruption occurs, it is difficult for the taxpayer to rebound. If the taxpayer misses a $200 payment, the taxpayer is unlikely to be able to make up the payment, and the installment agreement will default. The default may force the taxpayer to request a reinstatement of the installment agreement (for an added fee, which will increase from $50 to $89 under this proposal), or worse, the taxpayer will do nothing and fall out of compliance, exposing the taxpayer to lien or levy action.

An example based upon an actual taxpayer illustrates this point: The taxpayer’s monthly income was approximately $1,300 and her rent was approximately $700, leaving $600 for all other monthly expenses. Prior to requesting assistance, she contacted the Service and was placed into an installment agreement with a payment of $335 per month. She was under the impression that she had no choice but to accept the proposal, and to make

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23 See supra note 1, at 56,550 (proposed §§ 300.1(b)(3), 300.2(b)).
25 See IRM 5.14.5.2. The only requirements for a streamlined installment agreement are that the tax debt be less than $50,000, the installment payments be sufficient to pay off the current tax debt within 72 months, and to pay off the entire tax debt prior to the expiration of the Collection Statute Expiration Date (CSED). The taxpayer’s income is not taken into consideration in this process.
26 Correcting this problem is relatively easy through additional training and implementation of revised scripts and computer prompts. Service employees accepting installment proposals should obtain information regarding a taxpayer’s household size and current income, outside of any systemic controls linked to the taxpayer’s account history. Obtaining this information will enable Service employees to determine if the taxpayer qualifies for the reduced user fee. The IRM could also address real life situations such as change in family size or unemployment, which may justify the fee waiver (or the low-income fee) despite the prior year return information.
matters worse, the Service charged her the full user fee despite being well under 250% of the federal poverty level. Clearly, this plan sets the taxpayer up for failure from the beginning.

It would be more consistent with the policy towards low-income taxpayers reflected in the Proposed Regulations if the Service revised its procedures in the IRM to place less emphasis on *speedy* collection practices and more emphasis on *viable* collection practices. We support the Service’s commitment to just tax administration for low-income taxpayers, and we urge the Service to ensure that its internal guidance is aligned with that policy.

3. **The Current User Fee Structure Lacks Transparency and Discriminates Against Low- to Moderate-Income Taxpayers**

The Proposed Regulations add two types of installment agreement options for a total of six. Each option has a different user fee ranging from $31 to $225. If the Proposed Regulations are finalized, we urge the Service to communicate all options and costs to taxpayers, both through its website and through publications. The current fee structure lacks transparency because the Service fails to disclose the fee schedule. An online search query of “IRS installment agreement” will likely yield the following results: Payment Plans, Installment Agreements,27 Apply for an Online Payment Agreement for Individuals or Businesses,28 and Publication 594, The Collection Process.29 Only one of these results (the second one) details the amounts of the user fees.

Publication 594, which typically is provided to taxpayers with their initial collection notice, reads:

> With an Installment Agreement, you can pay by direct debit, through payroll deductions, electronic funds transfer or check. There’s a user fee for Installment Agreements. If you meet our low-income guidelines, you can pay a reduced user fee. For more information, see Form 13844, Application for Reduced User Fee for Installment Agreements. You do not need to submit the user fee for an installment agreement with the application.

The lack of a fee schedule in Publication 594 is problematic, especially if the complex proposed fee schedule is adopted. The fee for entering an installment agreement via “traditional methods” (such as contacting the Service in person, by phone, or by mail, and agreeing to pay by check or through the EFTPS) will be $225, whereas the fee for a setting up the installment agreement online and paying using the Direct Debit Installment Agreement (“DDIA”) is only $31. It is critical that taxpayers have access to the fee schedule so that they may make an informed decision on the type of installment agreement they elect to enter into.

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Disclosing the fee structure only on the IRS.gov website effectively discriminates against taxpayers that lack ready access to the internet. Statistically, these groups tend to be elderly, be less educated, earn less income, have disabilities, or speak English as a second language.\(^{30}\)

We also note that the fee for low-income taxpayers is not the lowest fee in the schedule. In 2006 and 2013, the last two times fee increases were proposed, the Service stated “that the fee should remain $43 for low-income taxpayers because requiring the full rate would be burdensome and many low-income taxpayers do not have bank accounts and cannot take advantage of the reduced fee for direct-debit installment agreements.” At that time, the DDIA fee was $52; however, the new fee structure proposes a fee of $31 for DDIA that are set up online.

The proposed fee structure incentivizes taxpayers to interact with the Service exclusively online by offering significantly lower user fees through online-only interactions. Low-income taxpayers are least likely to be able to interact with the Service exclusively online and are most likely to need assistance in establishing the most appropriate and viable payment plan. In discussing the Service’s Future State vision,\(^{31}\) the Commissioner has provided assurance that the Service is not getting out of the business of talking to taxpayers.\(^{32}\) The user fee regulations would be more consistent with the Commissioner’s statement if taxpayers who lack access to the internet, lack computer proficiency, lack a bank account, or have disabilities or other barriers to interacting exclusively through online channels were not subject to higher fees.

**CONCLUSION**

The efficiency of the collection process will be improved by eliminating barriers for low-income taxpayers to enter into installment agreements. The Service’s internal guidance should be updated to reflect the policy objectives of the Proposed Regulations. Finally, the Service needs to be more transparent in marketing the user fees, and in assessing the impact of those fees on vulnerable populations.

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\(^{32}\) See, e.g., Commissioner Koskinen’s Speech to the National Press Club (March 24, 2016), available at https://www.irs.gov/uac/march-24-2016-commissioner-koskinen-speech-to-national-press-club (“For example, while we will continue to offer more web-based services, taxpayers will still be able to call our toll-free help lines or obtain in-person assistance if that’s what they prefer. In fact, improving the online experience for those who want to deal with us that way will free up resources to make it easier for those who want to call us or visit us in person to get help.” (emphasis added)).