OPINION POINT

Internal Revenue Service Collection—Service or Enforcement?

By Scott A. Schumacher*

Through its collection function, the Service touches, and mostly in an adverse way, millions of taxpayers per year. In the years since the 1998 IRS Restructuring and Reform Act, the emphasis within Collections has swung between customer service and collection enforcement. This short article examines whether the Service has achieved the appropriate balance between service and enforcement and what, if anything, can be done to improve these seemingly conflicting goals.

Brief Historical Review

For many decades before 1988, the Service had nearly free rein in collection matters. While there were some administrative and judicial checks, for the most part Revenue Officers could exercise their lien and levy authority without restriction. This led, as is often the case with unrestrained power, to abuses or at least perceived abuses. As a result, Congress was obliged to step in. In the Taxpayer Bill of Rights in 1988, Congress adopted new taxpayer protections, including extending the notice period before a levy could take effect from 10 days to 30 days, and requiring banks to hold levied funds for 21 days prior to payment to the Service. Then in 1996, in the Taxpayer Bill of Rights II, Congress (among other things) established the office of the Taxpayer Advocate (TAS), permitted the Service to withdraw tax liens and the return of levied funds in certain circumstances, and required the Service to send a 60-day notice of a proposed assessment before making notice and demand for payment of the section 6672 penalty. These changes, while important, only delayed the inevitable, and the Service's collection authority remained essentially unrestrained.

Fundamental change came in 1998 with the IRS Restructuring and Reform Act of 1998 (RRA 98). Among the most significant changes made by RRA 98 were the additions of sections 6320 and 6330. These sections introduced the Collection Due Process (CDP) regime, which requires Collections to provide a Notice of Intent to Levy 30 days prior to any levy and a Notice of Federal Tax Lien when a lien is issued. Each of these notices gives the taxpayer the right to seek review of the proposed collection action, first before Appeals and ultimately before the United States Tax Court. The review procedures have provided real benefits to taxpayers, with the decision in *Vinatieri* being just one example. *Vinatieri v. Commissioner,* 133 T.C. 392 (2009) (levy causing a hardship must be released regardless of whether taxpayer is in compliance with return filing requirement). Perhaps even more significantly, once a CDP appeal is filed, all collection activity is suspended during the pendency of the CDP process, and the case is transferred out of Collections. Thus, for the first time, Service collection actions could be stopped merely by filing a CDP appeal, with the filing fee for these injunctions being the price of a first-class stamp. The CDP regime fundamentally changed the dynamic between Collections and taxpayers: Revenue Officers, knowing that their enforcement actions could be stopped prior to implementation, were required genuinely to work with taxpayers to resolve their outstanding liabilities.

At the same time that these new provisions were being implemented, and in keeping with the title of RRA 98, the Service was "restructured" and "reformed." As part of that process, Revenue Officers and other Service personnel were sent for retraining, where the lexicon changed "taxpayers" to "customers." Revenue Officers were instructed to be nicer to their customers, and managers no longer reviewed their line personnel on dollars collected. This meant that for a period of time after the enactment of RRA 98, enforcement dropped off precipitously. During one phone call to a local Service office near Seattle, I was told the Revenue Officer I wished to speak with was not in. When I inquired as to whether I could speak to her manager or someone else, I was told, "No one is here, they've all gone for retraining."

Service Reaction to Decline in Collections

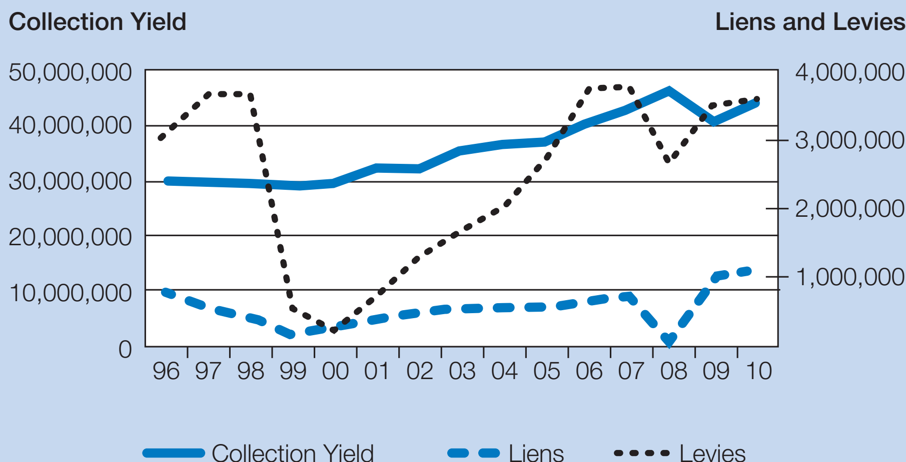
A neutered Service may be good for taxpayers, but in the years following the implementation of RRA 98, revenue dropped from more than $2 trillion in 2000 to $1.78 trillion in 2003. Moreover, the tax gap for 2001 was estimated to be $345 billion. As a result, Congress naturally inquired of the Commissioner why the Service was not bringing in more tax dollars. The Service responded with increased enforcement actions against its "customers."

* Associate Professor of Law and Director, Graduate Program in Taxation, University of Washington School of Law, Seattle, WA.

Over the intervening years, the number of enforced collection actions (liens and levies) has waxed and waned, and Collections has not applied a uniform standard in its collection decisions. For example, an offer in compromise that one year might be readily accepted could be rejected out-of-hand the following year. With the financial crisis and general downturn in the economy in recent years, the Service has become more charitable in its dealings with taxpayers. Given the Service's experience since RRA 98, has the appropriate balance between service and enforcement finally been reached? In my opinion, this is asking the wrong question. Increased enforcement does not necessarily result in increased revenue, and more customer service, or at least better customer service, might actually increase taxpayer compliance, and therefore revenue.

A report drafted by Michael McDermitt, TAS Collection Technical Liaison, and Nina E. Olson, National Taxpayer Advocate, and included in the NTA's 2010 Annual Report to Congress shows that fluctuations in lien and levy activity have little correlation with the revenue Collections generates. As the table compiled by Mr. McDermitt shows, the pendulum swings in enforcement actions have no direct correlation with collection yield. The number of levies has fluctuated between a low of 220,000 and a high of more than 3.7 million. Liens have been more constant, but have nevertheless varied between 168,000 and 1,096,000 per year. Yet, despite these dramatic fluctuations in enforced collection actions, collection yields have, for the most part, risen at a constant level. Thus, the data indicates that more enforced collection activity does not increase tax collection.

My experience in both private practice, and for the past 11 years as director of a low-income taxpayer clinic, confirms that many liens and levies generate little in the way of dollars collected. A Notice of Federal Tax Lien is automatically issued if the tax owed is over the threshold amount, currently $10,000. These liens are issued regardless of whether the taxpayer has any assets to which the lien could attach and prior to any personal contact being made by collection personnel. These liens are mostly generated automatically by a Service Center computer. Thus, in the name of efficiency, the Service sends numerous Notices of Federal Tax Lien that are of little or no effect to millions of taxpayers a year. These pointless liens are costly to the Service in paper and postage, as well as in the hours wasted if the taxpayer files a CDP appeal.



Many levies are even more harmful, both to taxpayers and the Service. For example, the Service routinely levies Social Security benefits, both retiree benefits and disability benefits, without any personal contact with the taxpayer. In addition, a Notice of Intent to Levy need only be sent to the taxpayer's last known address, which is the address on the most recently filed tax return. Given that taxpayers who only receive Social Security benefits are not required to file a tax return, the most recently filed return is often from many years prior and may show a previous address. As a result, these most vulnerable of taxpayers often have no notice that their benefits will be levied. While these levies can ultimately be halted, this only occurs after desperately needed funds are levied.

The automated lien and levy programs, while efficient on one level, ultimately create more work for Collections, Taxpayer Advocate Service case officers, and Appeals. Indeed, more than one-half of the cases filed with Appeals in the past two years are collection cases. As the National Taxpayer Advocate stated in her 2010 report to Congress (vol. 2, at 43), "While enforcement tools such as liens and levies are appropriate and necessary to address situations involving taxpayers who refuse to comply with the tax laws, these tools are not well suited to be the foundation of the IRS's contact strategy." Instead of this automated-but-inefficient program, the Service should rely on a combination of initial personal contacts, clear and helpful notices, and targeted use of its enforced collection tools.

Suggested Reforms

The Service should determine whether there is reasonable collection potential before enforcement takes place. As discussed above, it does little good to issue a federal tax lien when the taxpayer has no assets and no hope of obtaining assets. The Internal Revenue

Manual (IRM) requires the Service to make reasonable efforts to contact the taxpayer before filing a lien. However, the IRM defines "reasonable efforts" as issuing a statutory assessment notice and sending a balance due notice. IRM 5.12.2.3 (May 20, 2005). Personal contact, by a real human being rather than a collection notice, would allow the Service to obtain the taxpayer's current address and would also allow it to determine whether a levy is appropriate and whether collection alternatives are available. In this regard, ACS, with properly trained employees, could be used more as a customer service function than an enforcement function. A separate function could then be used, either from campuses or local offices, to undertake enforcement if appropriate.

The other needed reform is to revise the tenor and purposes of collection notices. As indicated, the Service relies heavily on notices to inform taxpayers that they have a balance due and the collections process. The Service has recently begun revising many of its notices in an effort to make them more understandable by taxpayers. This effort is to be applauded. However, in order for this effort to be successful, the Service must learn to draft a notice that does not appear to be threatening, something it has been unable or unwilling to do. Even the Reminder of Tax Due notices sent annually to delinquent taxpayers have language that demands payment, regardless of whether the taxpayer is in Currently Not Collectible status, where the Service clearly does not expect payment. The CP-504 notice is probably the worst example. This collection notice begins with the words "Notice of Intent to Levy," even though it is not a Notice of Intent to Levy within the meaning of section 6330 and the taxpayer has no right to a hearing with respect to this Notice. This choice of language causes needless confusion and angst. Given the stringent review Service notices receive, the language chosen cannot be an accident. Collection notices, like many of the notices and publications the Service drafts, should be designed to inform and educate, not threaten.

Customer service and increased revenue are not mutually exclusive; in fact the opposite is true. By using a combination of personal contacts, and helpful and informative notices, followed by effective and targeted enforcement actions, the Service will stop the pendulum swings between service and enforcement and will improve collections. ■

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The IRS Is Not Adequately Funded to Serve Taxpayers and Collect Taxes

Section 7803 requires the National Taxpayer Advocate to prepare an Annual Report to Congress that includes, among other things, legislative recommendations to resolve problems encountered by taxpayers. In her 2011 Annual Report to Congress, the National Taxpayer Advocate, Nina E. Olson, describes the increasing workload of the Service along with its declining budget. In her report, the National Taxpayer Advocate compares this timeframe to that of 1998 when Congress reduced the Service's budget while seeking additional revenue and concludes that this same formula threatens taxpayer protections and prohibits the Service from maximizing revenue collection. Specifically, the increasing complexity of the Code, coupled with more automation and further budget reductions, prevents the Service from answering 30% of phone calls, failing to respond to correspondence for at least 45 days in 47% of taxpayer interactions (up from 11.5%), and losing the ability to collect revenue at a rate of $200 for every $1 appropriated to the Service. The Report proposes that Congress develop new budgeting procedures for the Service, remove it from discretionary budget freezes, and exempt it from spending ceilings or move it "off-budget."

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— Christopher M. Pietruszkiewicz, Vice Chancellor for Business and Financial Affairs and J.Y. Sanders Professor of Law, LSU Law Center, Baton Rouge, LA