

## Part IV- Items of General Interest

The Announcement provides an overview of the IRS's use of private collection agencies (PCAs) in 2006

### ANNOUNCEMENT 2006-63

Section 881 of the American Jobs Creation Act, Pub. L. No. 108-357, enacted new section 6306 of the Internal Revenue Code (the Code), which authorizes the Internal Revenue Service to enter into contracts with private collection agencies (PCAs) to assist in the collection of delinquent Federal tax liabilities. Shortly, three PCAs will begin to assist the IRS with the collection of Federal tax debts pursuant to section 6306. This announcement describes certain aspects of the IRS's contracts with PCAs, IRS monitoring of PCA compliance with these provisions, and protections for taxpayers whose accounts are being assigned to PCAs for collection activity.

#### THE ROLE OF PRIVATE COLLECTION AGENCIES

Code section 6306 limits the role of PCAs to three specific functions:

- Locating and contacting taxpayers specified by the IRS concerning tax debts specified by the IRS;
- Requesting payment of specified taxes in a lump sum or, for taxpayers who cannot pay all at once, by installment agreement providing for full payment over a period of not more than five years; and
- Obtaining taxpayer financial information specified by the IRS.

In addition, the IRS has further refined the role of PCAs. To be eligible for an installment agreement, a taxpayer must file all required Federal tax returns. PCAs will request that the taxpayer provide information regarding tax return filing compliance. To verify the accuracy of the taxpayer's responses regarding whether the taxpayer has filed all returns, the PCAs must confirm the information with the IRS. Only IRS employees will have access to IRS records to investigate the issue.

Although the IRS retains the right to approve or reject any installment agreement negotiated between PCAs and taxpayers, PCAs must obtain specific IRS approval of any installment agreement involving payment of more than \$25,000 or covering a period of more than 36 months. During evaluation of payment arrangements, the PCA may request taxpayer financial information that will be forwarded to the IRS. PCAs are not authorized to negotiate installment agreements for periods exceeding 60 months or that provide for less than full payment of the taxpayer's liability. In such cases, PCAs will serve only to gather financial information for transmittal to the IRS.

Subject to certain limited exceptions, PCAs are restricted from contacting third parties during the course of their work on behalf of the IRS. In the course of their efforts to locate or obtain financial information about a taxpayer, PCAs may access non-IRS computer databases or web sites. PCA employees are not permitted to call or write any third party, such as the taxpayer's employer, bank, or neighbors, to ask about the taxpayer's financial condition. PCA employees may speak to intermediaries, such as a taxpayer's spouse, or leave a message

on an answering machine, for purposes of trying to contact the taxpayer by phone. Once the PCA knows how to reach a taxpayer directly, a PCA employee may not contact third parties in an effort to reach the taxpayer at a different temporary location.

#### PCA EMPLOYEES MUST SAFEGUARD TAXPAYER INFORMATION

PCA employees may be given certain tax return information necessary to perform services for the IRS. PCA employees are prohibited by Code section 6103 from disclosing the tax return information they receive from the IRS or from taxpayers to the same extent as are IRS employees. PCA employees are also prohibited from gaining access to tax return information that is not necessary to the performance of their duties. If PCA employees violate their obligation to keep tax return information confidential or if they gain access to tax return information that is not necessary to the performance of their duties under the contract with the IRS, the PCA employees may be subject to criminal prosecution under Code section 7213 or 7213A. The taxpayer whose return information was improperly disclosed may also have a civil cause of action under Code section 7431.

The IRS will not provide PCAs with copies of a taxpayer's filed returns or with access to any information the IRS has concerning the taxpayer that is not necessary for PCA employees to perform their jobs. When the IRS refers a taxpayer's account to a PCA, the information the IRS will provide to PCAs includes:

- The taxpayer's name and social security number (or taxpayer identification number);

- If the taxpayer's spouse jointly owes the tax liability, the name and social security number of the spouse;
- The taxpayer's last known address;
- The tax year and amount of the assigned debt, and the date when the statute of limitations for collection expires; and
- The name, address, telephone number, and authority level of any person the taxpayer has given a power of attorney or taxpayer information authorization.

If a taxpayer requests an installment agreement and the PCA has been informed that the taxpayer has not filed all required returns, PCA employees will advise the taxpayer to file any delinquent returns and make any payments to a designated IRS address, rather than to the PCA. If a taxpayer mistakenly sends a return or payment to the PCA, the PCA will immediately transmit the return or payment to the IRS.

After a PCA's contract with the IRS concludes, or after a particular taxpayer's account is recalled from a PCA by the IRS, the PCA may retain any records it has concerning the taxpayer only for the limited time periods specified in the PCA's contract with the IRS. A PCA and its employees are strictly prohibited from using any information obtained about a taxpayer in the course of working on the contract with the IRS for any purpose other than working on the contract.

If a taxpayer disputes the existence of a debt with the IRS or the amount of the taxpayer's prior payments on a debt the IRS has referred to a PCA, the

PCA will refer that dispute to the IRS for resolution. If the IRS determines that the existence and amount of the debt is accurate and provides the taxpayer with appropriate verification of the debt, the PCA will continue to work the account.

#### PCA EMPLOYEES MUST RESPECT ALL TAXPAYER RIGHTS

The law which enables the IRS to use PCAs also provides explicit protections of taxpayer rights by PCAs, including:

- PCAs and their employees are required by Code section 6306(b)(2) to observe all of the Internal Revenue Code's protections for taxpayer rights in the collection process to the same extent as IRS employees;
- PCAs may be sued by the taxpayer under Code section 7433A and may be liable for damages if they fail to observe all of the Internal Revenue Code's protections for taxpayer rights in the collection process;
- PCAs and their employees must obey all other federal and state restrictions that apply to private debt collectors, pursuant to Code section 6306(e) and 15 U.S.C. section 1692n. Pursuant to Code section 7433A(b)(3), PCAs enjoy no special immunity from being sued while working for the IRS;
- PCAs are specifically obligated to comply with the provisions of the Fair Debt Collection Practices Act, except when those provisions are inconsistent with the Internal Revenue Code, pursuant to Code section 6306(e);
- PCA employees will be disqualified from further work on the IRS contract if they are found to have committed any act of misconduct described in

section 1203(b) of the IRS Restructuring and Reform Act of 1998, pursuant to section 881(d) of the American Jobs Creation Act; and

- PCAs are subject to Taxpayer Assistance Orders issued by the National Taxpayer Advocate to the same extent as the IRS, pursuant to Code section 7811(g).

Important taxpayer rights that apply to a PCA's work for the IRS include:

- A PCA's employees may not contact the taxpayer at any unusual time or place, or at a time or place that the PCA should know to be inconvenient, without a taxpayer's prior consent. Generally, no contacts will be made earlier than 8 a.m. or later than 9 p.m. local time at the taxpayer's location, pursuant to Code section 6304(a);
- PCA employees may not suggest or imply to the taxpayer or to any other person that the PCA may be able to initiate enforced tax collection activity (for example, file a lien, issue a levy, make a property seizure, or commence a legal action) or recommend enforced collection action to the IRS, pursuant to the IRS contracts with the PCAs and 15 U.S.C. section 1692e;
- PCA employees may not suggest or imply that the taxpayer's failure to pay the tax debt may affect the taxpayer's credit rating or that the unpaid tax debt may be reported to a credit bureau, pursuant to Code section 6103 and 15 U.S.C. section 1692e; and
- If the taxpayer proposes an installment agreement to the PCA and the IRS rejects the proposed installment agreement, the taxpayer may appeal the

rejection to the IRS. If the IRS assigns a PCA to monitor an installment agreement and the PCA determines the taxpayer is in default, the taxpayer may appeal to the IRS if the installment agreement is terminated. In both situations, the taxpayer must first appeal to the IRS office supervising the PCA's day-to-day work, but if not satisfied the taxpayer may continue the appeal to the IRS Office of Appeals, pursuant to the IRS's contracts with the PCAs and the IRS's implementation procedures for Code sections 6159(e) and 7122(d)(1).

#### WHAT A TAXPAYER SHOULD EXPECT FROM PRIVATE DEBT COLLECTION

After the IRS notifies the taxpayer that the taxpayer has an unpaid Federal tax debt, the IRS may refer the taxpayer's account to a PCA for collection. When the IRS refers an unpaid tax debt to a PCA for collection, the IRS will mail the taxpayer a letter enclosing the new IRS publication, "What You Can Expect When the IRS Assigns Your Account to a Private Collection Agency." The IRS mailing will provide the taxpayer with the PCA's name, address, and telephone number, and will address frequently asked questions on the private debt collection process. The mailing will also include telephone numbers if a taxpayer wants to contact the IRS office overseeing the PCA or the Taxpayer Advocate Service (TAS). The mailing will explain that a taxpayer may request in writing to work with the IRS instead of with a PCA to resolve the outstanding debt.

If a taxpayer requests TAS assistance or describes circumstances meeting TAS criteria to a PCA, the PCA must immediately complete an application for a taxpayer assistance order with the relevant facts and provide the

form to an IRS employee who serves as a liaison between the PCA and TAS. Criteria for referring a taxpayer account to TAS include circumstances when a taxpayer has experienced a delay of more than 30 days to resolve a taxpayer account problem with the IRS or when a taxpayer is experiencing or is about to suffer economic harm.

Within ten days after the IRS refers an account, the PCA should send a letter to the taxpayer with copies to the taxpayer's authorized representatives. The letter will introduce the PCA, provide information on the balance due to the IRS, and provide a scannable payment coupon for the taxpayer to make a payment to the IRS. Although the IRS may pay PCAs a fee for their collection efforts, a taxpayer will receive credit for the full amounts paid to the IRS.

The PCA may use techniques approved by the IRS and in compliance with the Fair Debt Collection Practices Act to locate and contact the taxpayer by telephone. A PCA employee will discuss payment options with the taxpayer. If the taxpayer cannot pay in full immediately, the PCA will discuss the option of payment by means of an installment agreement. Some types of installment agreements will require the PCA to obtain financial information from the taxpayer. Although installment payments will be made directly to the IRS, PCAs may be used to monitor a taxpayer's compliance with installment agreements. PCAs are not authorized to discuss offers-in-compromise. PCA employees will direct a taxpayer who wishes to discuss an offer-in-compromise to contact the IRS. Taxpayers who indicate that their financial situations make them unable to pay the amount of the debt may also be referred to the IRS.



## IRS MONITORING AND OVERSIGHT

The IRS has created special units of IRS employees to provide monitoring and oversight for all PCA operations on behalf of the IRS. The IRS also has trained key personnel in each PCA concerning taxpayer privacy, other taxpayer rights and IRS procedures, and has provided the PCAs with videos, instructional materials and operational handbooks. Training programs delivered by key personnel with each PCA to other PCA employees, in turn, were reviewed and approved by the IRS. The IRS also carefully reviews and approves standard PCA correspondence, telephone scripts and checklists.

PCAs must keep telephone logs of all incoming and outgoing calls, and must make these logs available to the IRS. The IRS will randomly monitor PCA calls to assure that taxpayers are treated fairly and professionally.

Taxpayers may contact the PCA or the IRS concerning the conduct of any PCA employee. In the event of a complaint about a PCA, the IRS will direct the PCA to suspend collection activity on the account until the PCA and IRS have evaluated the complaint. Each PCA is required to keep a complaint log, accessible to the IRS, including employees of the TAS, and to the Treasury Inspector General for Tax Administration.

## CONTACT INFORMATION

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