

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:PA:04:JABremer  
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to: Bill R. Banowsky  
Director, Collection Planning and Performance Analysis  
(Small Business/Self Employed)

from:   
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(Procedure & Administration)

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subject: **New IRC 6306(c): IRS Discretion To Prioritize Cases For Immediate Assignment**

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

You have asked about the scope of cases that the Internal Revenue Service (Service) must assign to a private collection agency (PCA) for the collection of delinquent federal tax debts under recently enacted Code section 6306. We conclude that while the Service cannot create categorical exclusions from the program other than those enumerated by Congress, the Service does have the discretion to prioritize the assignment of available cases and may select for immediate assignment those cases it determines are best suited for successful collection by PCAs.

#### **Background**

Section 6306 of the Code was enacted as part of the American Jobs Creation Act of 2004 (P.L. 108-357). The 2004 legislation provided that nothing prevented the Service from entering into "qualified tax collection contracts" with private collection agencies (PCAs) to assist in the collection of delinquent federal tax debts. Pursuant to this legislation, in September of 2006, the Service initiated a program in which it contracted with PCAs for the collection of certain federal tax debts. During this program, which lasted until March of 2009, IRS leadership determined that certain cases were not suitable for assignment to PCAs for collection. Cases involving anything more than simple administrative collection functions were not assigned and if any other issues or complications arose during the PCAs' collection efforts, the PCAs sent the case to a Service Referral Unit.

The recently enacted FAST Act (P.L. 114-94, signed into law on December 4, 2015) includes legislation amending section 6306. New section 6306(c) requires the Service to enter into qualified tax collection contracts:

(c) COLLECTION OF INACTIVE TAX RECEIVABLES

(1) IN GENERAL. – Notwithstanding any other provision of law, the Secretary *shall* enter into one more qualified tax collection contracts for the collection of *all* outstanding inactive tax receivables.

(emphasis added). The term “inactive tax receivables” is defined broadly as any inactive, outstanding assessment that the Service includes in potentially collectible inventory. I.R.C. § 6306(c)(2)(B).

New section 6306(d) provides that certain tax receivables are not eligible for collection pursuant to a qualified tax collection contract. These ineligible receivables include: receivables that are subject to a pending or active offer-in-compromise or installment agreement; receivables classified as an innocent spouse case; receivables that are currently under examination, litigation, criminal investigation or levy; receivables currently subject to a proper exercise of a right of appeal; and receivables involving a taxpayer who is deceased, under the age of 18, in a designated combat zone, or a victim of tax-related identity theft.



### Analysis

Strictly construed, the language of section 6306(c) requires that the Service shall assign all cases, except those involving ineligible tax receivables under section 6306(d), to PCAs for collection. This language evidences Congress' expectation that all cases either be actively worked by the Service or be assigned to a PCA for collection, rather than being shelved. See S. REP. 97-378, pp. 19-20 (“collection agencies should be used much more extensively by the federal government”). The plain language of section 6306(c) indicates that the Service has little discretion regarding which cases are assigned to PCAs.

Under the directive of Congress, in ideal circumstances, the Service would, from the beginning of this program, assign to PCAs all inactive, outstanding assessments that the Service includes in potentially collectible inventory. 

 we conclude that the Service has the discretion to

prioritize its inventory of inactive tax receivables, and to determine which cases are best suited for immediate assignment to PCAs.

The Commissioner has been delegated broad powers to administer and enforce the internal revenue laws. See I.R.C. §§ 7801-7805. The effect of the provisions in sections 7801-7805 is to authorize the Commissioner to have general superintendence over all of the internal revenue laws, including collection. Part of the Commissioner's discretionary authority in administering the internal revenue laws is to determine how available resources should best be employed in the overall tax assessment and collection process. We do not believe that the language in section 6306(c) should be interpreted to divest the Service of its authority and discretion to determine based on resource allocation which cases are best suited for immediate assignment to PCAs.

The use of the phrase "the Secretary shall enter into one or more qualified tax collection contracts for the collection of all outstanding inactive tax receivables" (emphasis added) in section 6306(c) does not alter our view. When construing similar language elsewhere in the Code, our office has expressed the view that the use of such mandatory language does not serve as a limitation on the Service's discretion, at least where the provision employing the language does not affect taxpayer rights. See, e.g., [REDACTED]

[REDACTED] GCM 33366 (November 3, 1966) (Office of Chief Counsel reasoned that the mandatory "shall assess" language in section 6213(c) was used "to set a limit on what the taxpayer could demand by way of administrative appeals") [REDACTED]

To be sure, the use of both "shall" and "all" in section 6306(c) creates a stronger inference than in other Code sections that strict compliance with the statute is expected. Nevertheless, a reasonable interpretation of the language in section 6306(c) would allow the Commissioner to use his resources in a way he deems most effective to carry out his statutory duties. [REDACTED]

[REDACTED]

**Recommendations**

Although the language of section 6306(c) evidences Congress' clear intent to maximize the use of PCAs in the collection of delinquent federal tax debts, we believe the Service nevertheless has the discretion to prioritize cases most suitable for immediate assignment.

[REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please do not hesitate to contact Frank McCormick at 202-317-5476 or Jason Bremer at 202-317-5199 with any questions or concerns.