

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:WI:JBMinsky

date: September 19, 2005

to: Deborah A. Wolf, Director,
Filing & Payment Compliance Modernization Office

from: Carol A. Campbell
Division Counsel
(Wage & Investment)

subject: Private Collection Agencies Authority to Monitor Installment Agreements with Terms
Beyond 60 Months

Issue:

You have asked whether it is permissible to include procedures within the Statement of Work to transfer accounts to the selected Private Collection Agencies in which the IRS has entered into an installment agreement, the terms of which extend beyond 5 years.

Conclusion:

PCAs are not authorized to monitor taxpayer compliance with installment agreements that extend beyond 5 years. IRC § 6306(b)(1)(B). However, PCAs are authorized to be compensated for obtaining financial information from a taxpayer that would permit the IRS to determine whether it should enter into an installment agreement that exceeds 5 years. IRC § 6306(b)(1)(C) and § 6306(c)(1).

Discussion:

Internal Revenue Code § 6306(a) authorizes the Secretary to enter into "Qualified Tax Collection Contracts". IRC § 6306(b) defines a "Qualified Tax Collection Contract" as any contract which is for the services of any person (other than a Treasury employee)

- (A) to locate and contact any taxpayer specified by the contract,
- (B) to request full payment from the taxpayer of the amount specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and
- (C) to obtain financial information specified by the Secretary with respect to such taxpayer.

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On its face, the statute authorizes the Secretary to enter into contracts that allow the contractor to engage in four specific activities. The only permissible activities related to the actual collection of tax payments are 1) requesting full payment of the amount specified by the Secretary, or 2) offering a full pay installment agreement for a period that does not exceed 5 years. There is nothing in IRC §6306 that would permit the Secretary to enter into a contract for services that fall outside the definition of a Qualified Tax Collection Contract.

Additionally, there is no language in the House Report, Senate Report or Conference Agreement that would result in a different answer. The House bill, H.R. 4520, provided for the addition of IRC §6306. Specifically, §6306(b) is the same language that was proposed in the House bill. In discussing the provision, the House Committee explained that under its plan a contractor would 1) contact the taxpayer by letter, 2) telephone the taxpayer to request full payment, and 3) if the taxpayer is unable to full pay the liability, offer the taxpayer an installment agreement providing for full payment for a period of up to five years. H. R. Rep. No. 108-548, pt. 1. The House Report further provided “[I]f the taxpayer is unable to pay the outstanding tax liability in full over a five-year period, the private debt collection company obtains financial information from the taxpayer and will provide this information to the IRS for further processing and action by the IRS. *Id.* The Conference Agreement followed the House bill, with the addition of two Senate amendments, unrelated to this aspect of the private debt collection process. H.R. Conf. Rep. No 108-755.

While a Qualified Tax Collection Contract cannot permit a contractor to monitor an installment agreement that extends beyond 5 years, under IRC §6306(b)(1)(C) a Qualified Tax Collection Contract may permit a contractor to obtain financial information with respect to a taxpayer whose account is assigned to the PCA. Additionally, IRC §6306(c)(1) specifically authorizes the Secretary to use up to 25 percent of the amount collected under the Qualified Tax Collection Contract to compensate the PCA for services performed under the contract. Therefore, the IRS is permitted to pay a PCA to obtain from a taxpayer the financial information necessary for the IRS to determine whether it should enter into an installment agreement with the taxpayer that has a term beyond 5 years. While this arrangement is not as financially lucrative to the PCA, it will at least provide an incentive for the PCA to obtain information when it is clear that an account will not be able to be full paid within the 5 year period. Further, because the IRS will need to approve all installment agreements that extend beyond 36 months, IRS will have the ability to ensure that PCAs do not push taxpayers into unrealistic installment agreements just so they can be paid. Moreover, if the PCA tries to force a taxpayer into an installment agreement that is not feasible, the taxpayer is more likely to default, and neither the PCA or the IRS will be paid.