Collecting More with Less: How the Federal and State Governments Are Expanding Their Use of Tax Compliance Tools

By Fran Obeid*

Fran Obeid examines how, despite strained government budgets, the IRS and the State of New Jersey are utilizing various tools in their efforts to collect taxes from delinquent taxpayers.

On June 21, 2018, as part of the New York University Tax Controversy Forum, I had the pleasure of moderating a panel featuring Mary Beth Murphy, the Commissioner of the Small Business/Self-Employed Division, Paul Mamo the Director of Collection in the Small Business/Self-Employed Division and Tom MacDonald, Chief of Field Investigations for the State of New Jersey. The panel was entitled, "Collecting More with Less," and discussed how despite strained government budgets the IRS and the State of New Jersey are utilizing various tools in their efforts to collect taxes from delinquent taxpayers with effective results.

Once such tool discussed by Mr. Mamo was the IRS' use this year of certifying tax debt as "seriously delinquent," and notifying the taxpayer and the State Department. A tax debt qualifies as "seriously delinquent" if it is greater than $50,000 (indexed for inflation—now $51,000 including penalties and interest) and a levy has been issued; or a notice of federal tax lien has been filed and the taxpayer's right to a hearing has been exhausted or lapsed.[1]

Once the State Department receives the certification from the IRS, it is compelled to not renew a taxpayer's passport or not issue an initial passport to the taxpayer. Commissioner Murphy noted that the IRS is carefully rolling out this tool and measuring the impact and results. At the time of the panel, the debts of 30,000 taxpayers had been certified as "seriously delinquent." Ms. Murphy further explained that while the State Department may revoke valid passports once a certification is received, passport revocations had not yet started (as of the time of the panel) due to the careful rollout of the program.

It was noted that a tax debt is not considered "seriously delinquent" under the statute if it is being timely paid under an installment agreement or accepted offer in compromise or if collection has been suspended because of a request for a due process hearing; or innocent spouse election; or if the taxpayer is in a combat zone.

FRAN OBEID is the Founder of MFO Law, P.C., a tax controversy and litigation firm in New York City.

The IRS has also made discretionary exceptions that it will not certify debt as seriously delinquent when a taxpayer is in currently not collectible status or bankruptcy; there is a pending installment agreement or pending offer in compromise, the debt resulted from identify theft or the taxpayer is located within a federally declared disaster zone. The IRS will reverse a certification and notify the State Department within 30 days of a taxpayer paying the full amount owed; entering into an installment agreement; acceptance of an offer in compromise; or requests innocent spouse relief. Commissioner Murphy observed that this new tool by the IRS has brought taxpayers into compliance, as they do not want to have issues with their passports.

Another tool that the IRS is increasingly utilizing in these times of a strained agency budget is private debt collection of tax debt, which was authorized by the same legislation in 2015 as the certification of tax debt leading to the denial of a taxpayer's passport (the FAST Act). The law requires the IRS to use private debt collection agencies for the collection of "inactive, outstanding tax receivables," defined as a receivable that the IRS has removed from its inventory for lack of resources or inability to locate the taxpayer; or if more than 1/3 of the applicable statute of limitations period has expired without the receivable being assigned to an IRS employee for collection; or if more than 365 days have passed without interaction with the taxpayer.

The IRS excludes certain accounts from assignment to a private debt collector if the taxpayer is deceased; under the age of 18; in a designated combat zone; a victim of tax-related identity theft; under examination, litigation, criminal investigation or levy; subject to a pending or active offer in compromise; subject to an installment agreement; subject to a right to appeal; classified as an innocent spouse case; or in a presidentially declared disaster zone requesting relief from collection. If a taxpayer's debt has been assigned to a private debt collector, the taxpayer will receive a letter from both the IRS and the debt collection agency. The private collectors can set up and monitor payment arrangements that will full pay within the earlier of 5 years of the collection expiration date. Payment arrangements between 5 and 7 years require IRS approval. There are no fees to the individual taxpayer who sets up a payment plan with a private collection agency. The IRS started private debt collection of individual accounts in April 2017. From program start through September 13, 2018 the IRS delivered over 700,000 cases to private collection agencies and the program had generated over $88 million in revenue. Mr. Mamo noted that by the end of 2018, another 500,000 to 600,000 cases could be on their way to private debt collectors, which is worth billions of dollars of inactive tax receivables. In March 2019, the IRS intends to expand private debt collection to delinquent business accounts.

While the IRS uses private debt collectors for its oldest tax debts, Mr. MacDonald, Chief of Field Investigations for New Jersey, noted that New Jersey has used private debt collection since 1993 for its newest personal and business tax debts, freeing up its agents for the harder to collect cases. New Jersey uses Pioneer as its private debt collector (which is one of the agencies used by the IRS) and has personnel from the Tax Division stationed on site with Pioneer to assist. Pioneer is authorized to file a lien and assist the taxpayer with a payment plan, abatement, and/or a closing agreement. New Jersey sends approximately 20,000 cases per month for private debt collection. New Jersey pays the private debt collection agency a percentage of what is collected; taxpayers whose cases have gone to private debt collection are charged a cost recovery fee of 10.7% which is paid to the State of New Jersey. Mr. MacDonald noted that private debt collection has been a successful tool for New Jersey and that since 2011 the agency has collected $1,337,000,000. Mr. MacDonald also noted that New Jersey's license suspension programs have been another effective tool in collecting delinquent taxes and obtaining delinquent tax returns.

The panel made clear that despite strained federal and state tax agency budgets, these agencies are able to "collect more with less" by (i) utilizing tools that take away privileges issued by the federal and state governments until delinquent taxpayers come into compliance; and (ii) by utilizing private debt collectors.

ENDNOTES

* Fran Obeid, MFO Law, P.C., represents clients before the Internal Revenue Service, state and city tax agencies, the U.S. Attorney's Office, the District Attorney's Office as well as other government agencies. The firm represents clients in administrative proceedings as well as federal and states courts.

1 *See* Code Sec. 7345.