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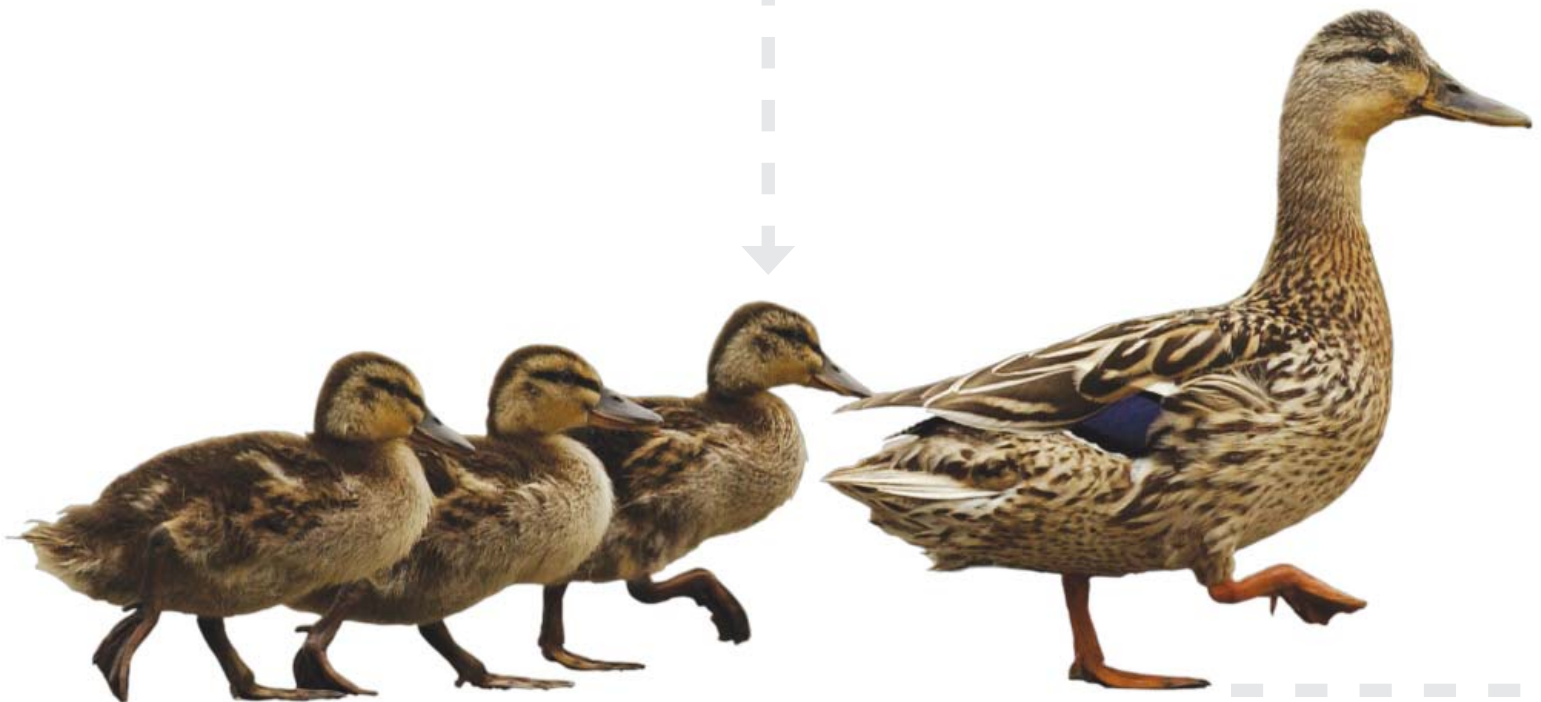
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PROTEC



TING

your **Clients** in the face of **IRS Collection**

By Richard Davidson, Esq., EA

As a tax resolution specialist, protecting your clients from enforced collection (levies) while resolving their liability is of the utmost importance. When a client owes the IRS, suffice it to say, cash flow is tight. An unanticipated levy at a time when you are negotiating a resolution can quickly derail the process. This article addresses the steps you need to take to ensure your client will not face enforcement action while you are attempting to resolve his or her liability through an installment agreement.

The key to preventing the IRS from taking enforcement action is to make certain the IRS representative places the installment agreement proposal in “pending” status. In order for an installment agreement proposal to be placed in pending

the taxpayer must be in compliance with his or her federal tax deposit (FTD) requirements.¹ Some take it a step further and claim that the taxpayer must be making good faith payments. While neither is required at the proposal stage, only

as a request made to delay enforcement action [see IRM 5.14.3.2(3)(e)].

On its face, IRM 5.24.1.5 would appear to give an IRS representative carte blanche to ignore the proposal and levy at will. However, IRM 5.14.3.2(3) qualifies section 2 and states, as provided in IRM 5.14.3.2(1) and IRM 5.14.3.2(2), “pending” status will not be identified if:

- There is no economic reality to the request. This applies if the proposed monthly payment amount is nominal (for example \$1 per month) or so small it does not come close to reflecting the taxpayer’s ability to pay, or it is made without reference to ability to pay after such reference is requested.
- The request does not address changes requested in response to prior requests. If, after rejection of prior installment agreement request(s), taxpayers submit new requests that are not materially different from the prior request or requests, or do not address modifications (for example, taxpayers were provided acceptable monthly payment amounts), or do not address previously disallowed or undocumented expenses, then the (subsequent) request or requests do not result in identification of a pending installment agreement.
- The request ignores direction provided by revenue officers. Pending status will not be identified when a revenue officer requests that the taxpayer fully pay accounts (based on financial statement analysis) or submit documentation to support analysis of a financial state-

“Enforcement action by the IRS is at an all-time high.”

status, it must be (1) valid on its face, and (2) not deemed by the IRS to have been made to delay collection.

For a proposal to be valid, IRM 5.14.1.3(4) (09-26-2008) states that a proposal must:

- Provide information sufficient to identify the taxpayer—generally, the taxpayer’s name and taxpayer identification number (TIN). If a taxpayer furnishes a name, but no TIN, and the taxpayer’s identity can be determined, then pending status should be identified.
- Identify the tax liability to be covered by the agreement.
- Propose a monthly or other periodic payment of a specific amount.
- Be in compliance with filing requirements [see IRM 5.14.1.4(1)].

It’s important to note that in submitting a viable installment agreement proposal, the taxpayer need not be in compliance with estimated payment requirements or federal tax deposit (FTD) requirements, only filing requirements.

Many Automated Collection System (ACS) representatives and revenue officers mistakenly believe

compliance with FTDs is required for acceptance.²

The greater challenge to achieve pending status is to make certain that the proposal is not deemed a “made to delay” collection. If the proposal is treated as made to delay collection, the IRS does not have to act on the proposal and can immediately move forward with collection and enforcement action. The installment agreement request considered “made to delay” is not entitled to independent review or appeal rights. IRM 5.14.1.5(2) (2) states that in order to identify whether requests are made to delay collection (or enforcement) action at least one of the following must apply:

- There is no economic reality to the request [see IRM 5.14.3.2(3)(a)]; or
- The request does not address changes requested in response to a prior request [see IRM 5.14.3.2(3)(b)]; or
- The request ignores direction provided by revenue officers [see IRM 5.14.3.2(3)(c)]; or
- The request is made by a taxpayer who has defaulted prior installment agreements [see IRM 5.14.3.2(3)(d)]; or
- The request is made at a time that causes it to be classified

ment, yet this direction is not followed. When the taxpayer fails to comply with one of these requests and then subsequently requests an installment agreement, this is considered a delay action.

- The request is made by a taxpayer who has defaulted on prior installment agreements. If taxpayers request installment agreements after a default of a prior agreement, the new agreement request will not result in identification of a “pending” agreement if (1) the ability to pay has not changed since default of the prior agreement, or (2) the taxpayer has demonstrated a history of noncompliance with federal tax deposit requirements, ES payment requirements, proper payroll withholding, or filing tax returns when due.
- The request is made at a time that causes it to be classified as a request made to delay enforcement action. See IRM 5.11.1.3.9 regarding levies relative to pending and active installment agreements. See IRM 5.10 regarding seizure and sale. See the important note below regarding requests for agreements in the case of sale of property.

Even if the proposal is deemed to be made to delay, the IRS cannot immediately levy the taxpayer. The revenue officer or IRS employee must inform the taxpayer that the request was not identified as pending and is considered “made to delay.” This can be done in person, by telephone, in writing, or by any means of communication that is customary or usual between the taxpayer and the IRS, and must

be noted in the case history. [IRM 5.14.3.2(6)]

Of the five situations in which a proposal will not be coded as pending, “the request does not address changes requested in response to prior requests” and “the request is made by a taxpayer who has defaulted prior installment agreements” are the two most common. As a tax practitioner, you must demonstrate to the IRS that the proposal is materially different than a prior proposal. First, the amount of the monthly payment should differ from the prior proposal. Second, new financials need to be submitted that show a change in circumstances from the prior proposal. Third, any questions or concerns the IRS had with the prior proposal need to be addressed. Finally, you must demonstrate that the taxpayer is in compliance and has the ability to stay in compliance.

If the proposal is valid on its face and not deemed “made to delay” collection, the request should be placed in pending status. As a practitioner, it is your

responsibility to ensure this occurs. Only pending status (coded: TC 971 AC 043) will protect your client from levy action. Once in pending status, the proposal will be worked by the IRS. The Service will review the proposal and supporting documentation and either request additional information or make a determination on the proposal. If the determination is to reject the installment agreement, it is entitled to independent administrative review.

As a practical matter, the independent reviewer will generally agree with the assessment of the revenue officer.

Upon rejection of the proposal, the taxpayer must be notified of the rejected installment agreement and given appeal rights. Prior to submitting a collection appeal request, the practitioner must request a conference with the revenue officer’s group manager. During this conference (which can occur by phone) the practitioner will have one final opportunity to negotiate an installment agreement before going to Appeals.

IRM 5.14.5 discusses levy restrictions and installment agreements. It specifically states no levy may be made on taxpayer accounts:

- While requests for installment agreements are pending;



- While installment agreements are in effect;
- For 30 days after requests for agreements are rejected;
- For 30 days after agreements are terminated; and
- While an appeal of a default, termination or rejection is pending or unresolved.

IRM 5.14.5 also states that levies may be served during the periods described in IRM 5.14.1.5(1) above:

- If taxpayers waive the restriction in writing (see Exhibit 5.14.1–3);
- If collection is in jeopardy (i.e., if a condition allowing a jeopardy assessment exists.) In these situations CP 523 (Letter 2975 for MMIA) is not required. Unless notice of the right to appeal was previously provided, taxpayers must be notified of their appeal rights after jeopardy levies. (See Policy Statement P–4–88. See also IRM 5.11.1.3.9 and Exhibit 5.11.1–1 for approval levels for jeopardy levies. Approval level depends on whether notices described in IRM 5.11.1.2.1 were sent, and if required waiting periods have passed);
- For balance due accounts not included in current installment agreements. (The new tax periods are not affected by the appeal period for defaulted installment agreements.)

Enforcement action by the IRS is at an all-time high. A practitioner must be diligent in protecting his or her client through the collection process. Only by submitting a repayment request that is valid on its face, not deemed “made to delay,” and coded as pending, will your client be protected from enforcement action. By following the above-referenced steps and being proactive with the IRS, you’ll not only protect your client from enforced collections, but significantly increase the likelihood of having your installment agreement proposal accepted. ▽

- 1 IRM 5.14.1.3(5) indicates that requests that meet the criteria in IRM 5.14.1.3(4)(a) through (d) will be identified as pending installment agreements even if taxpayers are not in compliance with estimated (ES) payment requirements, or federal tax deposit (FTD) requirements unless the procedures in IRM 5.14.3.2 apply.
- 2 IRM 5.14.3.1(1) states that acceptance of an installment agreement cannot be conditioned on requested or voluntary payments: Acceptance of an installment agreement request cannot be conditioned on receipt of a series of payments requested (or pledged voluntarily) prior to the granting of an agreement. Therefore, failure to make a requested (or proposed) series of payments is not justification for recommending rejection of proposed installment agreements. Installment payments are required only after installment agreements are approved. A series of requested payments should not be substituted for an installment agreement if the facts of the case indicate an installment agreement is warranted.

IRS Tax Liens on the Rise

On July 7, 2010, National Taxpayer Advocate Nina E. Olson released a report to Congress expressing continuing concern that IRS collection practices emphasize collection of past-due liabilities even where doing so inflicts unnecessary or disproportionate harm on taxpayers and jeopardizes future tax collection. “The conventional wisdom seems to be that more hard-core enforcement actions like liens and levies mean more revenue,” Ms. Olson said. “But since FY 1999, the IRS has increased lien filings by about 475 percent and levies by about 600 percent, yet inflation-adjusted revenue raised by the IRS Collection function has actually declined by about seven percent over that period.”

Lien filings can badly damage a taxpayer’s financial viability because they appear on credit reports, causing the taxpayer’s credit score to drop an average of about 100 points immediately; they typically remain on the taxpayer’s credit record for at least seven years. Many employers, mortgage companies, landlords, car dealerships, and credit card issuers check credit reports, so the filing of a tax lien can adversely affect the taxpayer’s ability to obtain and retain a job, purchase a home, rent an apartment, or obtain credit generally. Accordingly, a lien filing may reduce the taxpayer’s income or increase his expenses, thereby impairing his ability to pay tax in the future. Last year, the IRS filed nearly one million liens against taxpayers.

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