

A Conversation about Private Debt Collection & the IRS with CBIZ's Bill Smith

This month, the Internal Revenue Service (IRS) began implementing the private debt collection program approved through the 2004 American Jobs Creation Act. Intended to reduce the growing amount of uncollected tax liabilities, the program has raised concerns among tax preparation professionals and others, which have not been appeased by the safeguards put in place by the IRS.

One of those having concerns is Bill Smith, Director of the National Tax Office at CBIZ Accounting, Tax & Advisory, who recently talked with AccountingWEB Managing Editor Jay Hammond about the private debt collection program, its effects on the reputation of the IRS, its implications for American taxpayers and potential conflicts of interest within the program.

"The most important thing [for accounting professionals] to know about this program is that taxpayers can immediately request that their case be returned to the IRS from the private debt collection agencies," Smith told AccountingWEB. He also recommends professionals "become familiar with the safeguards because there are things the private collection agencies can't do – prepare a list of questions for taxpayers contacted by private collection firms to determine whether any prohibited activities have taken place."

Earlier this month, the program began assigning taxpayers owing back taxes to third-party debt collectors. The IRS will initially contact, by mail, taxpayers whose debt has been transferred to private debt collection agencies. They will then be contacted, also by mail, by the private debt collector. The companies who have been awarded debt collection contacts by the IRS are:

- The CBE Group Inc., Waterloo, Iowa
- Linebarger Goggan Blair & Sampson, LLP, Austin, Texas, and
- Pioneer Credit Recovery, Inc., Arcade, New York.

Smith had not heard of anyone being contacted, as of press time. This early in the program, he explained, most of those who have been contacted by the IRS have not yet been contacted by the private collection agencies, since initial contact by both the IRS and the debt collector is made by mail.

It would be nice to think this early adherence to the rules will continue. Unfortunately, this may not be a reasonable expectation, given that consumers filed more than 66,000 complaints with the Federal Trade Commission (FTC) about third-party debt collectors in 2005. More complaints, in fact, than were filed against any other specific industry. Complaints against third-party debt collectors accounted for 19.1 percent of all complaints received by the FTC in 2005. Both the number of complaints and the percentage they represent increased in 2005, up from the 58,698 complaints, representing 17 percent of total complaints in 2004. Although third-party debt collectors contact millions of consumers annually, the FTC believes that only a relatively small percentage of consumers who actually experience problems with these companies file complaints with the agency.

Similar concerns regarding the conduct and tactics of collections agencies may explain why the initial phase is limited to 12,500 taxpayers who have acknowledged but not paid the debt. It may also explain why the IRS notification letter will detail how the collection process works, the taxpayer's rights, payment options and a list of frequently asked questions about what to expect when the IRS assigns a taxpayer's account to a private collection agency.

The real test will come after taxpayers are initially contacted. Although the initial contacts must be made by mail, the third-party collectors may use other methods of contact, including phoning the taxpayer or their employer, according to Smith.

Using private debt collection agencies to collect taxes is not a new idea. According to Smith, the IRS tried the private approach once before, in the late 1990's, without much success. Several states currently employ such firms to assist their tax collection efforts, as well.

"The vast majority of states use private firms to help collect delinquent taxes. The new authority that Congress gave the federal government allows us to use private firms as well," IRS Commissioner Mark W. Everson said in a statement to the media in March. "We have carefully considered all of the concerns expressed about this project,

which involves work traditionally done by the government. As a result, we are putting tough safeguards in place to protect taxpayer rights and privacy. We will be closely monitoring contractor performance to make sure they're following the law, as well as our own internal standards."

One of the most common concerns expressed about the program is the security of taxpayer information. In fact, the concern is great enough for the IRS to require the third-party collection agencies to have a separate, secure facility for IRS collections. Smith told AccountingWEB that the private debt collectors will not be able to access the taxpayer's transcripts.

Employees of private debt collection companies are not revenue agents, however. There are no minimum qualifications for private debt collectors, although the IRS is requiring debt collectors to pass a background check and be fingerprinted. The companies are also prohibited from hiring subcontractors. Although the debt collection companies may receive training on the policies and procedures they are expected to follow, no training is mandated for their employees, according to Smith. Details were not available of the monitoring the IRS says will ensure compliance with established policies and procedures and ensure protection of taxpayer rights and personal information.

"Theoretically, the companies are schooled in what they can and can't do," Smith explains. "I'm not sure that occurs at the level of the individual collector level, but companies should train their own staff."

It is not just lack of training that concerns Smith. An inherent conflict of interest exists with third-party debt collection companies which doesn't exist with employees of the IRS. Even if the debt collections companies are prohibited from tying employee compensation to the amounts they collect, the compensation the company receives probably depends to some degree on how effective it is in collecting unpaid taxes from taxpayers.

"Debt collectors working on contingency have a strong incentive to get the money in the door," states Smith. "That isn't true for the career IRS agent who doesn't get paid a bonus for the debts they collect."

Further, non-IRS employees without access to the taxpayer's IRS file may be unable to confirm that payments are credited properly. It is also unlikely they will advise taxpayers to pay their current tax obligations first, in order to avoid penalties, then take care of their outstanding debt. Smith says it is common for IRS agents to provide such advice to taxpayers.

"Although the safeguards are a positive step in attempting to protect the rights of taxpayers, it is virtually impossible to address the inherent conflict of interest of the collection agencies," Smith said, adding that the entire program challenges the integrity of the IRS and is a tacit admission that the IRS is not competently administering current tax laws. "Such programs have failed in the past, are the subject of widespread taxpayer complaints, and have historically turned out to be a waste of taxpayer money."

From the taxpayer and tax professional perspective, there isn't much to be gained from dealing with a private debt collection agency. Fortunately, taxpayers have every right to get back into the normal IRS' tax collection process. Evidence supporting the conclusions of reports indicating that the increased cost of hiring third-party debt collection companies will be offset by increased revenues resulting from more collections is not yet available. If these conclusions do not hold up, ending the private debt collection process, now that it has been implemented, will probably require another act of Congress.

Focusing on concerns about the details of the program does draw attention away from what may be the most significant concern: what message outsourcing a fundamental responsibility of the government, collecting taxes, even in a limited fashion, sends to taxpayers.

"What [harm] can you do to the reputation of the IRS, which is already bad enough?" Smith asked. "No one likes dealing with the IRS. At the same time, they may be bureaucratic, but they get the job done."

"Turning it [collection of tax debts] over to private debt collection firms signals that the IRS has given up on part of what it is supposed to do," Smith concluded. "[It's] an issue that the average Joe can look at and say 'what is going on with my government?'"

A very good question.

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