TAX UPDATE

2004 Tax Legislation Impacts IRS Collection Procedures

By Eric L. Morgenthal

On October 22, the American Jobs Creation Act of 2004 (P.L. 108-357) was signed into law. The new tax law addresses the export tax regime, provides tax relief for domestic manufacturers, U.S. multinationals, businesses and individuals. The focus of this article is to highlight the most important changes and additions to the IRS tax collection procedures.

IRS TO USE PRIVATE DEBT COLLECTORS

Sorry, but the do-not-call list won't help you here. Effective as of the date of enactment, the IRS will begin using Private Debt Collectors (called PDC's in IRS parlance) to both locate and contact delinquent taxpayers. These PDC's will only be contacting taxpayers with outstanding assessments[1] and are being instructed to offer them an installment arrangement to extinguish taxes owed over a five-year period. Those who can't afford the payments under a five-year term would be redirected back to the IRS after providing requested financial data. tively indicate that they are represented by counsel to secure FDCPA compliance by the PDC.

PARTIAL PAYMENT ARRANGEMENTS ADOPTED

Cash strapped delinquent taxpayers typically face a standard set of options. Full payment, installment payments, no payment or an Offer-in-Compromise (partial payment in full satisfaction of all outstanding tax deficiencies.) Under the 2004 Jobs Act, a new option is now available...partial payment. This provision appears to empower the IRS a bit more than the taxpayer. It is being described under the Committee Report as an option for those who are "unable or unwilling to enter into a realistic Offer-in-Compromise." Effectively, the IRS is improving the collection of revenue by setting forth that, "well, you can pay atleast part of it...can't you?" Moreover, this new mechanism may weaken the taxpayer's argument that an Offer-in-Compromise is the only viable option.

A partial payment arrangement allowed will be reviewed bi-annually by the IRS for either hardship suspension (called 53ing a case) or any newly found ability to extinguish the tax in full. Under certain circumstances, a full-pay arrangement will be required. Namely, when the total tax liability does not exceed $10,000 and it may be paid off within three years.

An issue at this point is whether a partial payment arrangement would be tantamount to a partial installment agreement. Specifically, the Code prevents the IRS from levying against a taxpayer's assets while an installment agreement is pending or in effect.[6] So the question remains...if a partial payment arrangement is considered an installment arrangement, then can partial payment be utilized to prevent a levy from being made? The IRS may allow this decision to remain within the Revenue Officers discretion.

The 2004 tax legislation has also brought S-Corporation simplification and reform. **There is a lunch 'n' learn rescheduled for Wednesday, January 26th to discuss Income and Estate Planning issues faced by S-Corporations and their shareholders.** The new laws instituted under the American Jobs Creation Act of 2004 will be integrated into the materials presented. All are invited to attend.

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Footnotes

1 Specifically, the Committee Report indicates that there must be an assessment made pursuant to Section 6201 in order to be deemed an outstanding tax liability.
2 Section 7811 (g) of the Internal Revenue Code of 1986 as Amended
3 Section 7433A ofthe Internal Revenue Code of 1986 as Amended
4 Treasury Reg. Sec. 601.506(a)
5 Treasury Reg. Sec. 601.506(a)(3)
6 Section 6331(k) ofthe Internal Revenue Code of 19X6 as Amended

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Notice Of Public Hearings From

The PDC's will also be required to inform taxpayers that they may utilize the services of the Taxpayer Advocate (an independent division at the IRS) to assist with resolving their tax issues. Ultimately, the IRS continues to carry the controlling hand. The new statute indicates that "any order issued or action taken by the National Taxpayer Advocate"[2] shall be observed by the PDC.

Knowledge of the Fair Debt Collection Practices Act (FDCPA) and IRC Section 6304 (Fair Tax Collection Practices by the IRS) will now be critical for Tax Advisors. Under the new law, the IRS "shall not be liable for any act or omission" carried out by PDC's in furtherance of their collection activities.[3] The taxpayer will be required to assert any civil action for wrongful collection activities against the PDC itself.

The sticky issue which emerges under this new legislation involves the effectiveness of an IRS Power of Attorney (Form 2848) in connection with PDC's. The Statement of Procedural Rules indicates that "any notice or other written communication (or copy thereofl required or permitted to be given to a taxpayer must be given the taxpayer and to the representative."[4] "Failure to give notice....will not affect the validity of the notice or other written communication."[5] The problem posed is that Line 7a of Form 2848 enables the designated tax representative to obtain a copy of each correspondence mailed to the taxpayer. This keeps the attorney informed as to the status of the tax collection matter. However, the new legislation does not require PDC's to provide a copy of correspondence to the representative designated on the IRS Power of Attorney form. Therefore, contact to the client may potentially be made without the Attorney's knowledge. The FDCPA prevents direct client contact if the debt collector has been informed that the party is represented by counsel. As a result, the client may need to affirma-