

August 30, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Koskinen:

The undersigned consumer, low-income taxpayer, advocacy, and other groups, and representatives of academic Low Income Tax Clinics, write to urge you to establish strong protections for taxpayers, especially low-income taxpayers, affected by the IRS private debt collection program. In particular, the IRS should:

1. Exclude taxpayers from the private debt collection program whose incomes are less than 250% of the poverty level;
2. Exclude tax debts arising from penalties under the Affordable Care Act;
3. Require that private debt collectors make their telephone scripts public;
4. Prohibit private debt collectors from making robo-calls; and
5. Establish procedures that would permit taxpayers to distinguish real private collector calls from scam calls by fraudsters.

We recognize that the IRS is under a statutory mandate to contract with private debt collection agencies for the collection of “all outstanding inactive tax receivables.” Internal Revenue Code § 6306(c). However, this statutory mandate does not prevent the IRS from instituting important measures to protect taxpayers from abuse.

1. The IRS should exclude all taxpayers from the private debt collection program whose incomes are less than 250 percent of the federal poverty level.

The IRS must establish procedures to protect taxpayers whose incomes are simply too low to repay their tax debts without undue hardship. If measures aren't in place, private debt collectors are likely to strong-arm financially vulnerable taxpayers to extract payments at the expense of their ability to pay the rent, feed their families, and afford other household necessities. Consumer advocates know all too well that private collectors are adept at getting “blood from a stone.”¹

We agree with the National Taxpayer Advocate's recommendation that the IRS should exclude from the private debt collection program the accounts of taxpayers who would not be subject to the Federal Payment Levy Program because they receive SSDI or SSI benefits, or because their

¹ For a discussion of these strong arm tactics, see generally National Consumer Law Center, Fair Debt Collection §§ 1.4 and 1.5.4 (8th ed. 2014), *updated at* www.nclc.org/library. Examples of abuses in student loan collections are documented in Deanne Loonin and Persis Yu, National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs Of The Government's Partnership With Debt Collection Agencies, Sept. 13, 2014, available at <http://www.nclc.org/issues/pounding-student-loan-borrowers.html>.

Social Security or Railroad Retirement benefits are under 250 percent of the federal poverty guidelines.² We also agree with the National Taxpayer Advocate that the IRS has the authority to exclude these accounts by providing that they are not “potentially collectible inventory” under I.R.C. Subsection 6306(c)(2)(B), which defines the term “tax receivable.” Section 6306(c)(1) only requires that “inactive *tax receivables*” be placed with private debt collectors.

However, we think the IRS should go even further by excluding all taxpayers whose incomes are under 250 percent of the federal poverty guidelines from the scope of “potentially collectible inventory.” Setting a general threshold of 250 percent of federal poverty guidelines will protect low-income working taxpayers who earn little from being unnecessarily dunned and squeezed. The Service could determine which taxpayers meet this threshold by taking an average of the past three years’ incomes, as reported on their Forms 1040.³

At a minimum, private debt collectors should be required to inform all taxpayers that “if your income is below 250 percent of federal poverty guidelines, you can apply to be exempt from having us call you” and provide them with an IRS Form 433-F or another application for exclusion. This alternative would not be as effective as an automatic exclusion, though, and we anticipate that many eligible taxpayers would fail to apply due to educational, logistical and other barriers. Furthermore, if the Service adopts this approach, it must also provide an incentive to private collectors for returning accounts based upon the taxpayer’s income falling below 250 percent of the federal poverty guidelines.

In general, the Service must provide incentives to private collectors to return accounts based on inability to pay. Otherwise, the only incentive driving a private debt collector is the 25 percent commission when it obtains a payment, with no counterbalance to prevent payment extraction from destitute taxpayers.

2. The IRS should exclude tax debts arising from the Affordable Care Act from the private debt collection program.

As the IRS knows, there are a number of individual taxpayers whose tax debts consist primarily or solely of individual shared responsibility penalties stemming from the Affordable Care Act. These debts should not be considered “potentially collectible inventory” to be assigned to private debt collectors.

When Congress created the federal tax penalty for failing to obtain appropriate health insurance, it put significant limitations on the ability of the Service to collect this debt. It did so because of the special nature of this debt. The Service cannot use its levy power to collect this debt nor can it file a notice of federal tax lien.⁴ The restrictions Congress placed on the collection of this debt essentially limited the Service to using only offset and a modified version of its collection notice letters (modified because of the restriction on the use of levy).

² National Taxpayer Advocate, FY 2017 Objectives Report To Congress, July 2016, 85-93.

³ If the taxpayer has not filed returns, the IRS should consider using any third-party information available to the Service.

⁴ I.R.C. § 5000A(g)(2)(B); IRS, Publication 594 – the IRS Collection Process (Jan. 2015).

The recognition of this type of debt as requiring special handling should carry forward to the decision to place it in the hands of private debt collectors. At the time of the passage of the ACA, private debt collection did not exist. Therefore, Congress did not need to add the referral to private collectors to the list of restrictions on collection. However, keeping this type of debt out of the hands of private debt collectors is consistent with the other restrictions on collection Congress did impose. We urge that you follow the spirit of the law in the collection of the ACA of individual shared responsibility penalties and keep these liabilities off of the list of the types of debts referred to private debt collectors.

3. *The IRS should require private debt collectors to make their scripts public.*

As the National Taxpayer Advocate has noted, private debt collectors during a previous iteration of the PCA program were caught using telephone scripts that used “‘psychological’ techniques to pressure taxpayers to agree to payments.”⁵ The use of such scripts to collect debts on behalf the United States government is outrageous, and the IRS should not permit this unconscionable practice.

We agree with the National Taxpayer Advocate that her office must have access to the collection scripts of private debt collectors with whom the Service contracts.⁶ Furthermore, these scripts should be made publicly available. Making the scripts public is more than justified, given that these debt collectors are engaged in a public function, and are being funded by tax dollars. Sunshine is the best disinfectant and, as proven by the 2006-2009 private collection program, private debt collectors will resort to unfair tactics if they are not required to disclose their scripts.

4. *The IRS should prohibit private debt collectors from making any robo-calls and should implement procedures to allow taxpayers to distinguish real debt collector calls from scam calls by fraudsters.*

Section 301 of the Bipartisan Budget Act creates an exception from the Telephone Consumer Protection Act,⁷ permitting entities that are collecting debts on behalf of the federal government to place auto-dialed calls, or “robo-calls,” without the consumer’s permission.⁸ Despite this authorization, the Service itself can and should prohibit private debt collectors with whom it contracts from making such calls. There is no requirement in Section 6306(b) that the IRS allow private collectors to make robo-calls to taxpayers.

⁵ Letter from Nina Olson, National Taxpayer Advocate, to Senate Committee on Finance and House Ways & Means Committee, regarding the use of private collection agencies (PCAs) to collect delinquent federal tax debts, May 13, 2014, at 12, available at http://taxpayeradvocate.irs.gov/userfiles/file/nta_pdc_letter.pdf.

⁶ National Taxpayer Advocate, FY 2017 Objectives Report To Congress, July 2016, 85-93.

⁷ 47 U.S.C. § 227.

⁸ Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* at § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B) to read, in part, that artificial- or prerecorded-voice calls cannot be made to a residential telephone line without the consent of the called party unless the call is “made solely pursuant to the collection of a debt owed to or guaranteed by the United States”). The Federal Communications Commission has interpreted the TCPA to apply both to voice calls and to text messages. 2015 TCPA Declaratory Ruling and Order at 8016-17, ¶ 107.

As a general matter, robo-calls are intrusive, unwanted, an invasion of consumers' privacy and—for the 75 million consumers relying on cell phone plans with limited minutes—expensive. An average of 184,000 complaints were made to the Federal Trade Commission (FTC) *every month* in 2015 about robo-calls.⁹ Indeed, some estimate that 35 percent of all calls placed in the U.S. are robo-calls.¹⁰

More importantly, allowing robo-calls to collect federal tax debt would be extremely dangerous in light of the recent proliferation of highly successful offshore scams in which organized crime syndicates pose as IRS collection representatives. According to the Better Business Bureau, these scams occupy the number one spot on that agency's list of Top Scams for 2015.¹¹ A whopping 24 percent of the scam reports processed by the BBB last year dealt with impostors pretending to be either the IRS or its Canadian equivalent, and there were more complaints about tax impostor scams than the next three categories combined.¹²

This past January, the Treasury Inspector General for Tax Administration (TIGTA) reported that, since October 2013, it had received nearly 900,000 reports about impostors claiming to be calling from the IRS.¹³ TIGTA reported that it knew of over 5,000 victims who had paid the scammers more than \$26.5 million during that time period.¹⁴

If private collectors are permitted to robo-call taxpayers without consent, it will be almost impossible for consumers to determine the difference between real collectors for the IRS and scammers. Allowing these calls will directly conflict with the explicit advice of the IRS,¹⁵ FTC¹⁶ and TIGTA¹⁷ that the IRS does not initiate contact with taxpayers by phone. The National Taxpayer Advocate aptly summed up the quandary when she stated:¹⁸

There has been a huge spike in the number of scam callers seeking immediate 'tax payments' from unsuspecting taxpayers in the last couple of years. The IRS has responded by emphasizing it doesn't make outbound calls of that kind. As this program

⁹ Federal Trade Commission, National Do Not Call Registry Data Book, FY 2015, at 5 (Nov. 2015).

¹⁰ *Rage Against Robocalls*, Consumer Reports (July 28, 2015) .

¹¹ Better Business Bureau, BBB Top Ten Scams of 2015: Tax Scam is #1, Dec. 14, 2015, *available at* <https://www.bbb.org/top10scams/>.

¹² *Id.*

¹³ Press Release, TIGTA, J. Russell George Urges Taxpayers to Remain on "High Alert": Expanded Outreach Effort Announced to Prevent More Losses to IRS Impersonators (Jan. 20, 2016), *available at* https://www.treasury.gov/tigta/press/press_tigta-2016-01.htm.

¹⁴ *Id.*

¹⁵ Internal Revenue Service, *Phone Scams Continue to be a Serious Threat, Remain on IRS "Dirty Dozen" List of Tax Scams for the 2016 Filing Season* (Feb 2, 2016) *available at* <https://www.irs.gov/uac/newsroom/phone-scams-continue-to-be-a-serious-threat-remain-on-irs-dirty-dozen-list-of-tax-scams-for-the-2016-filing-season>.

¹⁶ Jon Morgan, Federal Trade Commission, *It's the IRS calling...or is it?* (Mar. 12, 2015) ("This has all the signs of an IRS imposter scam. In fact, the IRS won't call out of the blue to ask for payment, won't demand a specific form of payment, and won't leave a message threatening to sue you if you don't pay right away.")

¹⁷ Press Release, TIGTA, J. Russell George Urges Taxpayers to Remain on "High Alert": Expanded Outreach Effort Announced to Prevent More Losses to IRS Impersonators (Jan. 20, 2016), *available at* https://www.treasury.gov/tigta/press/press_tigta-2016-01.htm.

¹⁸ Joe Davidson, *Will scammers hide behind new law for private tax collectors?*, Washington Post, Dec. 20, 2015 (quoting Nina Olson), *available at* <https://www.washingtonpost.com/news/federal-eye/wp/2015/12/20/will-scammers-hide-behind-new-law-for-private-tax-collectors/> .

starts up, there is a risk calls from private debt collectors will muddy that message. There is also a risk scammers will study the dynamics of the private collection agency calls and try to mimic them to fool taxpayers.

The ideal solution to this problem is for the Treasury Department to prohibit all robo-calls in its contracts with private debt collectors, prohibit the leaving of voicemail messages, and only permit calls from a real, live person working for the private collection agency. Furthermore, the IRS must also implement measures to prevent scammers from exploiting the fact that private collectors are now calling about tax debts. For example, Treasury could require that private collectors must first send a letter informing taxpayers that an account has been placed with the collector, with a specific code in the letter to be used by the private collector in subsequent phone calls.

Conclusion

While the IRS may be under a statutory mandate to outsource certain tax receivables to private collectors, it can and should take steps to ensure taxpayer protections, especially where vulnerable low-income taxpayers and their families are concerned. We understand the IRS faces a difficult task. We respectfully request a meeting with you or the head of the IRS Private Debt Collection program to follow up on this letter.

If you or your staff has questions or wishes to discuss this letter, please contact Chi Chi Wu at cwu@nclc.org/617-226-0326 or Professor Keith Fogg at kfogg@law.harvard.edu.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform
Bet Tzedek Legal Services
Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys
National Center for Law and Economic Justice
Administer Justice
Center for Economic Progress
Colorado Fiscal Institute
Community Tax Law Project
Connecticut Association for Human Services
Connecticut Legal Services, Inc.
Florida Alliance for Consumer Protection
Georgia Watch
Greater Boston Legal Services
Health, Education, and Legal Assistance Project

Heartland Alliance for Human Needs & Human Rights
Illinois Asset Building Group (IABG)
Just Harvest: A Center for Action Against Hunger
Kentucky Equal Justice Center
Koreatown Youth and Community Center (KYCC) Low Income Taxpayer Clinic (LITC)
Legal Aid Society of Milwaukee
Maryland CASH Campaign
Michigan Economic Impact Coalition
Neighborhood Housing Services of Greater Cleveland
New Hampshire Bar Association
Prepare + Prosper
Public Justice Center
Reinvestment Partners
Texas RioGrande Legal Aid, Inc.
Vermont Legal Aid, Inc.
Western New York Law Center
Woodstock Institute

Directors of Academic Low Income Tax Clinics

Keith Fogg, Harvard University
Nancy Abramowitz, American University
Nicole Appleberry, University of Michigan
Frank DiPietro, University of Minnesota
Michelle Drumbl, Washington and Lee University
Jacqueline Lainez, University of District of Columbia
Rob Nassau, Syracuse University
Jan Pierce, Lewis & Clark
Scott Schumacher, University of Washington
Caleb Smith, Harvard University
Lisa H. Sperow, Cal Poly, San Luis Obispo
Alice Stewart, University of Pittsburgh
Patrick W. Thomas, Notre Dame University
Joshua Wease, Michigan State University
George Willis, Chapman University
Beverly Winstead, University of Maryland

cc: Nina Olson, National Taxpayer Advocate