Tax Notes Today

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DEPARTMENT: Regulations and Comments; Public Comments on Regulations

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HEADLINE: 2006 TNT 192-18 LEGAL AID GROUP SAYS PROPOSED REGS TO INCREASE INSTALLMENT AGREEMENT FEES WOULD DISCRIMINATE AGAINST POOR. (Section 6159 -- Tax Installment Agreements;) (Release Date: SEPTEMBER 22, 2006) (Doc 2006-20420)

CODE: Section 6159 -- Tax Installment Agreements;
Section 6331 -- Levy and Distraint

ABSTRACT: Susan Morgenstern and David Koeninger of the Legal Aid Society of Cleveland have expressed concerns that proposed regulations to increase user fees for individuals who wish to pay their liabilities through installment agreements would discriminate against low income taxpayers, especially those too poor to maintain bank accounts.

SUMMARY:

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Susan Morgenstern and David Koeninger of the Legal Aid Society of Cleveland, Cleveland, have expressed concerns that proposed regulations (REG-148576-05) to increase user fees for individuals who wish to pay their liabilities through installment agreements would discriminate against low income taxpayers, especially those too poor to maintain bank accounts.

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User fees
Cross Reference:
For REG-148576-05, see Doc 2006-16408 or 2006 TNT 168-3.

TEXT:

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September 22, 2006

CC:PA:LPD:PR (REG-148576-05)
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington, DC 20044

RE: NOTICE OF PROPOSED RULEMAKING ON USER FEES FOR PROCESSING INSTALLMENT AGREEMENTS

Dear Internal Revenue Service:

We write to submit the following comments in opposition to your proposed increase in user fees for taxpayers wishing to pay their outstanding liabilities to the IRS through the use of Installment Agreements, as published in 71 Fed. Reg. 168 at 51538 (August 30, 2006).

The proposal to increase the user fee fails to meet the requirements of the Independent Offices Appropriations Act (IOAA), codified at 31 USC section 9701 and cited in the Notice of Proposed Rulemaking. Quite simply, the proposed fee increase is not fair and represents poor public policy because it discriminates against low-income taxpayers -- more specifically, those too poor to be able to maintain bank accounts.

The most cursory review of the proposed regulation reveals its stark inequality. For high earning taxpayers who have the financial wherewithal to maintain a bank account, the proposed user fee increase is a mere $ 9.00, less than 25% over the present fee of $ 43.00. Indeed, the Notice of Proposed Rulemaking emphasizes that such a charge is far less than the actual cost of the installment agreements. In contrast, the unbanked poor will be required to pay an installment agreement user fee of $ 105, almost 250% over the current fee.

The size of this increase is likely to place the installment agreement resolution system off limits for most low-income taxpayers. This, in turn, will mean that there are two systems of tax collection: one for the wealthy and middle class whose facility with and access to traditional banking systems give them a debt resolution break with the IRS, and one for the poor whose access to banking is thwarted by their lack of financial savvy or by their bad credit history. For this group, the only option would be income levies. Such a suggestion is not mere hyperbole, but is based solidly in the relevant literature on the financial patterns of low-income taxpayers.

Numerous studies confirm that the lower one's income, the less likely the individual is to have a bank account. A recent analysis of these data confirming this conclusion can be found at E. Seidman, et al., A Financial Services Survey of Low- and Moderate-Income Households, The Center for Financial Services Innovation, www.cfsinnovation.com. Table 1 is excerpted from that Report and is attached hereto. A significant percentage of the population: 83% of those earning $ 25,000 per year or less -- 8.4 million families -- do not maintain a bank account. M. Barr, Banking the Poor: Policies to Bring Low-Income Americans Into the Financial Mainstream, The Brookings Institution Metropolitan Policy Program, September 2004, www.brookings.edu. Indeed, even the federal government's own federal benefit electronic funds transfer program does not entice the poor to open bank accounts. See Federal Reserve Bank of St. Louis, Understanding the Emotional Attachment to Checks: A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit, OMB Control Number 1510-0074, June 2004, at 7: 68% of those receiving SSI (the federal disability assistance program for the poor) are unbanked.

Thus the IRS will become just another financial bottom-feeder preying on the poor. Moreover, one can easily imagine additional non-bank services springing up to offer tax debt payment alternatives to the poor thus further ensnaring this financially vulnerable population in a further debt spiral. Indeed, studies show that even where a low-income individual has opened a bank account, s/he is likely to use non-bank products and services despite their cost. The most glaring example is found in the tax community itself: 78% of 2004's taxpayers with an adjusted gross income of $ 35,000 or less sought a refund anticipation loan which included a temporary bank account. C. Wu & P. Woodall, Another Year of Losses: High Priced Refund Anticipation Loans Continue To Take A Chunk Out Of Americans' Tax Refunds, The NCLC/CFA 2006 Refund Anticipation Loan Report, January 2006, www.nclc.org. A September 2005 publication of a 2003-04 survey of three major metropolitan areas' banking behaviors also shocks: two-thirds of the 70% of the respondents who are banked use non-bank products and services. E. Seidman, et al., Getting to Know Underbanked Consumers: A Financial Services Analysis, The Center for Financial Services Innovation, September 2005, www.cfsinnovation.com.

In addition to being grossly unfair and giving rise to additional financial traps for low-income taxpayers, the proposed installment fee increases will surely fail their stated purpose: compensating the IRS for the cost of the installment agreement program. As proposed, only the unbanked taxpayers will pay the full cost of the program. But the large increase in the user fee will price them out of the program altogether. The result would be ironic, for those who are most able to pay the user fee would pay the least. The IRS has not presented clear data to indicate this cost differential will be made up by additional revenue generated by use of the direct debit payment system.

Accordingly, we believe a more effective way to generate the revenue to cover the installment agreement program's costs would be to charge user fees on a sliding scale, in a fee system based on the taxpayer's ability to pay. This method would enable the IRS to pursue its goal of tax collection without swamping the poor with unwieldy debt.

In summary, the IRS's proposal to charge a higher installment fee amount for those who do not use bank accounts hurts the poor the most. It penalizes a population already driven to costly alternative money services, without even offering an income-based sliding scale. While the costs of administering the installment agreement program may be increasing, it is simply wrong to place the burden of that cost on the poor.

We urge the IRS to reconsider and reject its current proposal to increase user fees. Thank you.

Sincerely,

Susan Morgenstern
Attorney at Law

W. David Koeninger
Attorney at Law

Table 1: Demographic Comparison of Banked and Unbanked Households

	Banked	Unbanked	Total
Race/Ethnicity			
White	28.9%	2.4%	21.0%
Black	38.1%	50.8%	41.9%
Other	6.5%	1.8%	5.0%
Hispanic	26.5%	45.1%	32.0%
Highest Education Level			
Less than high school	18.3%	45.9%	26.6%
GED	3.1%	6.4%	4.1%
High school	19.7%	26.1%	21.6%
Some college	24.4%	15.6%	21.8%
Community college	4.3%	2.6%	3.8%
Tech school	1.5%	1.4%	1.5%
College grad	17.3%	1.9%	12.7%
Some post-college	1.7%	0.0%	1.2%
Graduate Degree	9.6%	0.2%	6.8%
Income			
Less than $ 10,000	18.7%	41.4%	25.5%
$ 10,000-14,999	14.0%	25.5%	17.4%
$ 15,000-24,999	17.5%	24.7%	19.6%
$ 25,000-34,999	17.2%	6.5%	14.0%
$ 35,000-49,999	14.7%	1.1%	10.6%
$ 50,000-74,999	11.2%	0.1%	7.9%
$ 75,000 and up	6.7%	0.8%	5.0%

Tenure			
Rent	60.7%	90.2%	69.3%
Own	39.3%	9.8%	30.8%
Nativity			
Immigrant	24.1%	35.9%	27.6%
Native Born	75.9%	64.1%	72.4%
Marital Status			
Single	62.0%	72.4%	35.0%
Married	38.0%	27.6%	65.0%
Average Age	47.3	38.2	44.5
Number of Children	1.0	1.6	1.2

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