



Updated February 10, 2023

The Internal Revenue Service's Private Tax Debt Collection Program

For the third time in its history, the Internal Revenue Service (IRS) is managing a program to collect certain delinquent individual income tax debt using private debt collection agencies (PCAs). Section 32102 of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94) directed the IRS to revive the private tax debt collection program it operated from 2006 to 2009, with several changes.

IRS's Previous Experiences with Private Debt Collectors

Before the FAST Act, the IRS twice used PCAs to collect delinquent income tax debt. In both cases, the agency sought the authority to establish and manage the programs, which Congress granted.

1996 to 1997

The first experience was a pilot program known as the Contracting Out Collection Agencies Project. It was funded under the Treasury, Postal Service, and General Government Appropriations Act, 1996 (P.L. 104-52). Although the project was authorized to last two years, the IRS shut it down after one year, citing disappointing results and opposition from Congress and the Clinton Administration. According to a 1997 assessment of the program by the (then-named) General Accounting Office (GAO), the five PCAs hired for the program collected \$3.1 million in delinquent taxes from October 1996 to January 1997, but the total cost for the program (i.e., the fees paid to the PCAs, the project's opportunity cost, and its design, start-up, and administration expenses) during that period was \$21.1 million, nearly seven times larger than the revenue gain.

2006 to 2009

The second experience was more ambitious in scope. It resulted from the creation of Internal Revenue Code (IRC) Section 6306 by the American Jobs Creation Act of 2004 (AJCA; P.L. 108-357). The provision authorized the IRS to enter into contracts with qualified PCAs to collect delinquent individual income tax debt that the IRS was not pursuing because of a lack of resources. The Treasury Department had asked Congress in its FY2004 budget request for statutory authority to hire PCAs for this purpose.

IRC Section 6306 required the IRS to use PCAs in a manner that protected taxpayer rights, prevented the use of abusive collection practices, and complied with federal regulations and laws governing the outsourcing of activities deemed inherently governmental, such as tax collection.

In addition, the provision specified that the IRS could use PCAs for two purposes only: (1) to locate and contact

individuals with overdue income tax liabilities who were not contesting the amount owed, and (2) to arrange for the payment of back taxes.

Payments went into a revolving fund. The IRS was allowed to use up to 25% of the money in the fund to compensate PCAs for their services, and another 25% of the money to fund its enforcement activities.

In early 2005, the IRS began a PCA program based on the guidelines laid down in IRC Section 6306. After a series of court challenges to the IRS's initial solicitation of bids for collection contracts, the agency signed one-year contracts with three PCAs in March 2006. Collection activities commenced in September 2006. In February 2007, the IRS extended the contracts with two of the companies through March 2008, and a second time through March 2009.

The IRS notified the two contractors in February 2007 that it was evaluating the cost-effectiveness of the collection program and would let them know by March 6 whether their contracts would be extended for another year. The study found that between the first quarter of FY2004 and the first quarter of FY2009, the cost to the IRS of designing, implementing, and managing the collection program totaled \$82.9 million, which was \$0.4 million more than the \$82.5 million in gross revenue the PCAs collected. A subsequent IRS analysis found that the program had produced a net loss of \$4.5 million.

On March 5, 2009, the IRS informed the two remaining PCAs that their contracts would not be extended (IR-2009-019). Then-IRS Commissioner Doug Shulman cited three reasons for terminating the program. First, the total cost of the private tax debt collection program (including start-up expenses going back to FY2004 but excluding opportunity costs) exceeded the revenue it collected. Second, as a 2009 study by the IRS and an independent reviewer showed, IRS employees were more cost-effective than PCAs in handling the same inventory of delinquent tax cases. Third, the collection work "was best done by IRS employees who had more flexibility in resolving cases," especially those involving taxpayers with financial difficulties.

FAST Act and the Third Private Tax Debt Collection Program

The FAST Act required the IRS to revive the 2006-2009 PCA program, but with a few changes. According to a Joint Committee on Taxation revenue estimate, the new program was expected to collect \$2.4 billion in delinquent individual income tax debt from FY2016 to FY2025.

The act required the IRS to enter into “one or more qualified collection contracts for the collection of all outstanding inactive tax receivables” within three months of the act’s enactment.

The act defined such a receivable as any assessment in the IRS’s inventory of potentially collectible taxes that satisfied at least one of four criteria: (1) the assessment had been removed from the active inventory because the IRS lacked the resources to collect it or could not locate the taxpayer; (2) more than one-third of the 10-year statute of limitation had lapsed; (3) the assessment had not been assigned to an IRS employee for collection; and (4) more than 365 days had passed since the last communication between the IRS and the taxpayer about collecting the tax owed.

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A PCA was not allowed to collect delinquent taxes from someone who was under the age of 18, served in a combat zone, or was a victim of tax refund fraud related to identity theft. In addition, a PCA could not collect delinquent taxes from taxpayers who had a pending or active “offer in compromise” or installment agreement with the IRS, were classified as an innocent spouse case, or were involved in an active examination, litigation, criminal investigation, levy, or appeal.

Like the 2006-2009 PCA program, the IRS could keep up to 25% of the amount collected through PCAs. The funds had to be deposited in a new account for the hiring and training of “special compliance personnel” (SCP), known as the SCP Program Fund. Upon completing their training, these employees would be assigned to work as field collection officers or representatives of the IRS’s Automated Collection System.

Amounts collected by PCAs go into the SCP Program Fund and Cost of Services Fund. The IRS pays PCAs commissions of up to 25% of the amount collected from the latter fund.

The FAST Act required the IRS to report to the House Ways and Means and the Senate Finance Committees in March of each year on the cost of the program, the amount of revenue it raised in the previous fiscal year, and the expected cost and revenue collection for the current year. In a separate report, the IRS had to provide details on the total amount collected by each contractor, the collection costs incurred by the IRS, the total amount of fees retained by the IRS, and the agency’s use of the funds.

The IRS began referring cases to the four PCAs (CBE Group, ConServ, Performant Recovery, and Pioneer Credit Recovery) with collection contracts in April 2017.

From the start of private collection activity through the end of FY2021, the IRS assigned 4.0 million delinquent accounts with total delinquent debt of \$36.8 billion to the PCAs for collection. They collected over \$1.0 billion in commissionable payments and \$68.7 million in payments not eligible for commissions in that period. After covering

IRS expenses of \$370.2 million, the PCA program collected \$720.8 million in net revenue from FY2017 to FY2021.

The IRS renewed contracts with two of the original PCAs and entered into a contract with a new PCA in September 2021. The current PCAs are CBE Group, ConServe, and Coast Professional, Inc. Repayment agreements with taxpayers reached by the two companies whose contracts were not extended are no longer valid, but the tax debts are still collectable.

Pros and Cons of the PCA Program

Proponents of the current PCA program argue that without the use of private debt collectors, little or none of the tens of billions of dollars in the IRS’s inventory of inactive but collectible individual tax debt would ever be collected.

They maintain that the IRS lacks the resources to collect all this debt and thus assigns a low priority to doing so. Some add that private firms are likely to be more efficient than the IRS in collecting this debt.

Critics say that the current PCA program does not serve the public interest. They contend that it would be more cost-effective to provide the IRS with the resources needed to collect inactive but potentially collectable tax debt. Another concern with the program, critics say, is that unlike PCAs, the IRS has the flexibility to enter into installment agreements and offers in compromise with taxpayers who cannot pay off their tax debt all at once. Some also charge that the PCA program imposes economic hardships on low-income taxpayers.

Taxpayer First Act

The Taxpayer First Act (TFA, P.L. 116-25) addressed some of the concerns about the PCA program by instituting certain changes that affected tax debt accounts assigned to PCAs after December 31, 2020.

First, the act bars the IRS from assigning to PCAs the tax debts of taxpayers who receive much of their income from Supplemental Social Security benefits or Social Security Disability Insurance benefits, or whose adjusted gross income is 200% or less of the federal poverty level, which is \$30,000 for a family of four in 2023.

Second, the TFA specifies that tax debt eligible for PCA collection must be at least two years old, from the date of initial assessment. Under previous law, PCA-eligible tax debt had to be at least one year old.

Third, the TFA allows taxpayers up to seven years to pay off a tax debt assigned to a PCA for collection through an installment agreement; previous law limited the pay-off period to five years.

In a December 2022 report, the Treasury Inspector General for Tax Administration identified 14,141 low-income taxpayers whose tax debt should be exempt from collection under the PCA program. The IRS has disputed the claim by noting that those taxpayers’ accounts had been assigned to PCAs before the income limits began on January 1, 2021.

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