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Secretary Henry M. Paulson, Jr.
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

RE: Internal Revenue Service (IRS)

Dear Secretary Paulson:

I am writing to alert you of an oversight committed by the Internal Revenue Service (IRS). The oversight concerns the IRS's failure to update its allowable standards for living expenses.

As you may know, there are many taxpayers who owe the IRS back taxes. Many of these taxpayers cannot possibly afford to completely pay the total balance owed in a single lump sum payment. In fact, many taxpayers cannot afford to pay the IRS at all. In response, the IRS has developed multiple forms of resolution to offer to taxpayers. These forms of resolution include a monthly payment plan (i.e. Installment Agreement), an Offer in Compromise, and IRS recognition of a financial hardship (i.e. Currently Not Collectible status).

In order to determine whether a particular taxpayer qualifies for a proffered form of back tax resolution, the IRS conducts a financial analysis of the taxpayer. The financial analysis consists of comparing the taxpayer's gross monthly income from all sources to the taxpayer's monthly allowable expenses. As you may know, monthly allowable expenses do not include all of the taxpayer's monthly living expenses. Instead, they are limited to those expenses, "necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income." See Internal Revenue Manual, Part 5, Chapter 15, Section 1, Subsection 7 (i.e. IRM 15.5.1.7).

In order to further limit the amount of expenses the IRS deems "allowable" it developed maximum amounts for monthly food, housekeeping, clothing, personal care, entertainment, housing, utilities, vehicle, and vehicle operating expenses. These maximum allowable amounts – or allowable standards as called by the IRS – are the amounts that the IRS allows taxpayers to claim for each expense type. The IRS quantifies the amount for a particular taxpayer given his or her household size, income, and geographical location. For example, this means that a family of four will have a higher allowable standard when compared to their next-door neighbors – a married couple earning the same amount of income.

As you can imagine, the IRS derives the allowable standards from statistical data collected by a variety of governmental organizations. Specifically, the food, housekeeping, clothing, personal care, entertainment, miscellaneous, and utilities allowable standard is determined by the national and annual Bureau of Labor Statistics Consumer Expenditure Survey. The housing allowable standard is determined by the most recently completed census and adjusted by the Consumer Price Index. The transportation allowable standard has a regional component – operating expenses – that is determined by the national and annual Bureau of Labor Statistics Consumer Expenditure Survey. The transportation allowable standard also has a national component – ownership expenses – based upon data released by the Board of Governors of the Federal Reserve System. Finally, the allowable standards used by the IRS for any given calendar year is based upon statistical data gathered two calendar years earlier. For example, this would mean that the allowable standards used by the IRS in 2005 are based upon statistical data gathered from 2003.

Using outdated statistical data is simply unacceptable. It does not account for the ebbs and flows of the economy. This would mean that in 2005, the IRS was using vehicle operating expenses calculated based upon data available at the end of 2003. Well, in 2003 a gallon of gasoline on average cost \$1.44. By 2005, gasoline cost jumped to \$2.19 per gallon on average. The reality of a roughly 50% increase in cost for this everyday expense was simply ignored by the IRS in 2005. As you can imagine, the IRS disregarded all of the increases in everyday expenses and continued to use 2003 data. The same was the case in 2006, using 2004 data.

If this was not bad enough, in 2007 the IRS chose not to update its allowable standards. For whatever reason, the IRS continues to use the allowable standards it set on February 1, 2006. This means the IRS is using statistical data gathered at the end of 2004 to determine the maximum amounts American taxpayers can claim as expenses when determining the appropriate resolution to their IRS back tax liabilities. This means the standards come from data collected at least 42 months ago! This is appalling.

In the face of this egregiously outdated information, one would think that the IRS would be amenable to allowing taxpayers to exceed the allowable standard by providing proof to the contrary. If you assumed as much, consider yourself disappointed. In fact, the IRS Automated Collection Service (ACS) will never exceed the allowable standards. Even in the face of overwhelming statistical data gathered by taxpayers to support his or her claimed expense amount, the IRS ACS has refused to budge. Moreover, this is in complete contradiction to the IRS Internal Revenue Manual, which states, “National [and] local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation.” See IRM 5.15.7.1.7.

At this time, I plea that you direct the IRS to immediately update the IRS allowable standards using the same formulae it has in the past. I also ask that you establish a joint committee between U.S. Departments of Treasury and Justice to establish a flexible and proactive approach for updating the allowable standards. I suggest the Treasury and Justice Departments for it is my understanding that the U.S. Bankruptcy courts also use the allowable standards to conduct its review of bankruptcy petitions.

At a minimum, the committee should examine updating the allowable standards on a more frequent basis. The current timeframe – 18 months and counting – is unacceptable. It should also consider using more up-to-date statistical data on expenses than two-year-old data. Personally, I would think that in the midst of the “Information Age” the U.S. government could update the standards on a quarterly basis using year-to-date statistical data.

Finally, I suggest that you reprimand the IRS ACS for not following the Internal Revenue Manual. Please remind the unit, along with all IRS employees, that it can and must deviate from the standards in the face of evidence to the contrary. When the taxpayer can demonstrate that he or she is living within the average of their community, and the allowable standard is no longer reflective of that average, then the IRS employee must deviate to the taxpayer-requested amount. The employee must also make a request to the appropriate joint committee to reexamine the allowable standard for that specific expense, region, state, and/or county.

On behalf of the American taxpayer, I ask that the IRS stop stacking the deck. Economic downturns can devastate families. It takes time for those impacted to make the necessary adjustments to their lifestyles to honor all of their commitments, including the IRS. In the face of the resulting turmoil, the taxpayer expects – at a minimum – to be treated fairly by the federal government. Using outdated allowable standards, refusing to update those standards, and failing to accommodate in the face of clear and convincing evidence to the contrary is not playing fair. It is just playing with power.

Very truly yours,

Roni Lynn Deutch
Owner, President

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