IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Brian P. Carr, Rueangrong Carr, and Buakhao Von Kramer Plaintiffs versus United States, US Department of Justice, USPS, USPS OIG, USPS BoG, US CIGIE, Department of State, Department of State OIG, USCIS, DHS OIG, and SSA Defendants	Civil No. 3-23CV2875 - S Verified[1] Brief of Mr. Carr IRS Must Provide Estimated Tax Payment Penalty Relief And Better Tools

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1 The Verification of this document is at the end of this document.

IRS Must Provide Estimated Tax Payment Penalty Relief And Better Tools

Introduction

At first appearance, the Internal Revenue Code for penalties for failure to make timely estimated tax payments[2] is unconstitutional as it is too complex and there is not sufficient help for the individual taxpayer to comply without hiring a professional. Fortunately, the IRS Commissioner is also given broad authority to make revisions. As the IRS must abide by the constitution and due process for individual taxpayers that discretion must be applied as requested (reducing normal executive discretion to preserve constitutionality of the statutes themselves).

The IRS must grant forgiveness of penalties in problematic circumstances and better taxpayer support until better tools can be provided to taxpayers. I will suggest possible tools which could be developed using existing IRS staff.

History of Estimated Tax Payments for Income Tax

'Pay as You Go' Introduced to Income Taxes

Estimated Tax Payment Due Date Before End of Quarter

'The Current Tax Payment Act of 1943' extended the employer withholding from the preceding social security taxes and Victory Tax (1942) and added estimated tax payment dates of 15 Mar, 15 Jun, 15 Sep, and 15 Dec. All estimated payments were before the end of the quarter with the tax year ending on 31 Dec and 'tax day' was 15 Mar when the final payment and tax forms were required. There was no systematic enforcement of estimated tax payments so these payment dates were largely symbolic. It was suggested that there be four equal payments.

2 Internal Revenue Code 6654 is 26 USC § 6654 - Failure by individual to pay estimated income tax

Estimated Tax Payment Date for Fourth Quarter Moved To After Quarter

Individual Income Tax Act of 1944 : P.L. 315, Ch. 210, May 29, 1944 moved the last estimated tax payment date to 15 Jan, 15 days after the end of the quarter and tax year. This was an obvious requirement of due process as it allowed the taxpayer to make the final estimated tax payment after the total income was known and the tax payment could be based known facts rather than conjecture.

Estimated Tax Payment Date for First Quarter Moved To After Quarter

2nd And 3rd Quarter Estimated Tax Payment Still Before Quarter End

The Internal Revenue Code of 1954 moved tax day from 15 Mar to 15 Apr but it also moved the estimated tax payment date for the first quarter to 15 Apr, 15 days after the end of the first quarter of the new tax year. This change allowed more time for the preparation of last years tax forms and allowed the first estimated tax payment to be based on the results of last years filing as well as the actual income from the first quarter. However, it left second and third tax payment before the end of their respective quarters with the inherent problems that brings up. Of course, estimated income tax payments were still substantially voluntary beyond wage withholding so there was little cause for concern.

Penalties for Failure to Make Required Estimated Payments Added

No Provisions for Income Not Distributed Evenly Through the Year

A review of previous IRS forms and instructions shows that until the 1958 tax year, the IRS would send 1040-ES forms to any taxpayers who should pay estimated taxes (no standardized penalties).

However, with the Technical Amendments Act of 1958, form 2210 for 1959 tax year was introduced to include penalties for insufficient estimated tax payments and unequal payments through the year. There were no formal provisions in the early form 2210 for how to process substantial income payments which were not evenly distributed through the year.

It is presumed that the IRS informally handled such discrepancies between the law requiring equal payments and the reality that taxpayers are not prescient and can not make estimated payments before they had or even knew future income. It is likely the IRS simply forgave any such penalties once it learned of the unequal income distribution.
Similarly, unexpected income after the estimated tax payment date for the 2nd and 3rd quarters must have been routinely forgiven by the IRS as individual taxpayers are not prescient and can not be penalized for that lack.

First Income Worksheets Introduced

No Provisions for the Short Second Quarter

The Tax Reform Act of 1984 dealt with the absurdity of insisting that individuals pay estimated tax payments in four equal payments even when the income was not received or even known until late in the tax year, possibly the fourth quarter. It introduced the annualized income formulas though the required estimated payments were only 80% rather than the current 90% giving taxpayers a larger buffer (20%) to get it right without penalties.

This 20% buffer is important as the formulas for the 2nd tax period which was now only two months long, insist on estimated payments of 40% (1/2 of the annual estimated tax requirement of 80%) but that annualized income at the end of the second tax period is only 5 / 12 ths, which is almost 42%. Only a 2% buffer but still not a guaranteed penalty if the taxpayer paid the full 5 / 12 ths of tax due on actual income as annualized.

W-2 Employees Granted Explicit Exception from 2nd Quarter Penalties

The Tax Reform Act of 1984 also added the provision that:

> (g) APPLICATION OF SECTION IN CASE OF TAX WITHHELD ON WAGES...
>
> For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year

This is an overt acknowledgment of the problem with the short second tax period (only 2 months long) being assigned the full 3 months of required payment. Were it applied strictly to withheld tax payments then W-2 employees would incur a penalty for the second and third tax periods even if they paid 97% of the pro-rated amount due. Further, W-2 employees have no real ability to increase their tax payments for the short two month tax period to cover the required three months payment.

1099 Workers and Family Farmers Not Protected from 2nd Quarter Penalties

Sadly there was no such relief for family farmers or 1099 workers such as cleaning ladies and gardeners (e.g. periodic and seasonal lawn maintenance work) who are often the bottom rung of workers (paid wages below W-2 employees especially when benefits are considered) and so have even less ability to compute the required additional payment (no tax professional to assist them) or even make the payment (less excess funds to pay the government taxes early, before they have received the income to support the payment). How are they supposed to borrow the excess tax payment for six months if they don't have it?

Basic Estimated Tax Payment Requirement Increased From 80% To 90%

Tax Penalty Almost Guaranteed for Low End 1099 Workers

The Tax Reform Act of 1986 (TRA) increased the basic requirement for estimated taxes to 90% but the implementation was delayed until the Technical Corrections Act of 1987 for the 1988 tax year.

W-2 employees were protected from the injustice of the requirement of pre-payment of taxes for the short second tax period, but family farmers and 1099 service workers such as cleaning ladies and gardeners had no buffer. If they reliably paid their estimated taxes at the 100% rate each month on the 5th of the month (as they received the money and could make the payment), then they would have a penalty due that would accrue until the long fourth quarter tax period. For the short second tax period they would have paid 5 months of estimated payments (almost 42%) but the law required that they pay one half (or six months worth which would be 45%) by June 15th.

Form 2210 Annualized Income Worksheet Too Complex

It appears that the IRS responded to the annualized income in the 1988 tax year with a complex worksheet in the form 2210 instructions (not available from the IRS at this time). However, in 1992 tax forms the IRS added the annualized income schedule to 2210 (not present in 1991 version).

This annualized income schedule and worksheet are so tedious and complex as to requires a PC and software spreadsheet to compute the required estimated tax payments. Such devices were available at the time for high income 1099 workers who had access to PC's and spreadsheets as well as professional assistance, but for low end 1099 workers there was no such relief, only the hope of being ignored by the IRS because of their low income.

Long Term Capital Gains and Qualified Dividends Not Addressed

Form 2210 Deficient, Does Not Support Proper Calculation of Penalty

The Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003 created qualified dividends and restored somewhat standardized long term capital gains. The existing Form 2210 does not address the required allocation of long term capital gains or qualified dividends. It simply directs the taxpayer to compute the tax on the annualized amount but this computation is not possible unless the preceding computations preserved long term capital gains and qualified dividends as separate categories of income, each annualized separately. Further, the individual taxpayer can not know the amount of qualified dividends (a subset of the ordinary dividends paid on a periodic basis) until after the end of the tax year when the paying corporation can properly determine how much were qualified dividends.

The IRS Must Provide Relief To Ameliorate Defects in Current Tax Law

IRS Commissioner Has Authority to Forgive Penalties

As discussed above, estimated tax payments with the Annualized Income Tax Schedule is so complex that family farmers and low end 1099 workers have little hope of consistently avoiding penalties. In the separate brief concerning Due Process and its historical development (ECF 71-8) constitutional due process prevents the government from requiring the average taxpayer being prescient (knowing the future), omniscient (all knowing) or omnipotent (all powerful) to avoid being penalized. The existing publications, tools, and tax assistance are not up to the requirement of informing the low end 1099 workers how much they need to pay as their estimated tax payments. It is not reasonable to exempt W-2 employees from these insurmountable hurdles without also granting relief to low end 1099 workers.

Fortunately 26 USC § 6654 states:

> (e) Exceptions …
> (3) Waiver in certain cases
> (A) In general
> No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience…
> (n) Regulations
> The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

The IRS has executive discretion to correct problems with the statute.

Infringing on Executive Discretion Better Than Discarding Statute

IRS Must Grant Forgiveness of Penalties and Better Taxpayer Support

The IRS has the ability to forgive these penalties as necessary to support 'equity and good conscience' for 'unusual circumstances' such as Congress passing statutes which would otherwise be unconstitutional violations of individuals taxpayers right to due process. It is preferable to infringe on the IRS's normal 'Executive Discretion' rather than discarding the entire estimated tax payment statute as unconstitutional.

To correct the explicit failings in the statute, the IRS must:

1. grant first time forgiveness to individual taxpayers who paid the nominal estimated taxes (commonly 90%) but where the estimated tax payments were predominantly later in the year (unequal estimated tax payments) and
2. provide extensive support (individual advisers assigned to each taxpayer with past estimated tax problems to help taxpayers compute the required estimated tax payments throughout the tax year until better tools or simpler requirements are available.[3]

The initial first time forgiveness would be extended to each taxpayer who was not provided with sufficient advice in a subsequent tax year.

IRS Must Automatically Grant Relief for Short 2nd Tax Period

Similarly, the IRS must prescribe that enforced tax penalties for the second tax period are reduced to required payments of 5/12ths (of 90%) rather than the listed 25% (of 90%) and the third tax period required payments are reduced to 2/3rds (of 90%) from the current 75% (of 90%). The fourth tax period payments will remain at 100% (of 90%). Again these adjustments are better than discarding the estimated tax payments penalties in their entirety and they could be considered as an automated forgiving of those portion of the penalties which would violate due process.

The individual tax payer can not know the income for the entirety of June on 15 June and the may not have enough money to pay taxes on income they have not yet received.

3 Realistically, the IRS could simply decide to not pursue penalty notices in those cases where it does not have sufficient resources to provide advice in the coming tax years.

Technology Available Not Used in Existing IRS Tools

Technology Availability to Support Annualized Income Worksheets

Appropriate tools for annualized income schedule computations were available on PC's since 1983 with Lotus 1-2-3 (based on 1979 VisiCalc technology) which were widely available to high end 1099 workers, tax professionals, and specialized IRS employees.

It is important to note that in this early phase of computer spreadsheets many spreadsheet experts would program their spreadsheets to act as limited word processors but with vastly improved programability and underlying computation capabilities. At this time most IRS forms were likely developed in Word Perfect and later Microsoft Word with output in PostScript for specific printers. PostScript was later supplanted with the more generic pdf files.

The IRS released a withholding calculator on the web in 2001 to help W-2 employees avoid estimated tax payment penalties, but they were already protected from the 'equal payment' or annualized income penalties as all withheld taxes were automatically attributed as four equal payments.

The now standard document format of pdf files were first available in 1993 as a proprietary document exchange format that was made available as an open standard in 2006.

In 1998, the World Wide Web Consortium introduced the first specification of the Extensible Markup Language (XML) which became the internet standard for the saving, exchanging, and restoring computer data over the internet.

In 2002 OpenOffice offered a free open source spreadsheet application for numerous platforms and the spreadsheet files (.ods) were adopted as a public standard in 2005 with google sheets (a cloud based free spreadsheet application) supporting these files in 2006 (on even more platforms). At this time most libraries offered computers with internet access and often had Microsoft Office (with Word and Excel) installed.

In 2007 Apple introduced the iPhone which was instrumental in making smart phones a common consumer commodity so that now a majority of adults in even poor and developing countries have access to a basic function smart phone.

With LibreOffice (the free open source branch from OpenOffice) Calc (their spreadsheet application) available on smart phones and Google Sheets as a cloud spreadsheet application the time is right to develop IRS forms as ODS files with widespread availability and vastly improved computation and program-ability.

A Series of IRS Tools and Forms Could Be Developed to Resolve Problems

Estimated Tax Payment Tool

I personally estimate that with a team of six spreadsheet experts (which are distinct from normal software engineers) an estimated tax tool could be developed in six months that would require only the input:

1. estimated income for the year (could be based on last years income) and
2. specific known income for particular dates with specific types separating out long term capital gains and anticipated qualified dividends from general income

It could then compute the required estimated tax payment for each tax period.

It could also produce an XML file to preserve the input income and dates for reuse with the next tax period.

Form 2210 and Annualized Income Schedule as ODS Form

The same team could then enhance this tool to produce a Form 2210 which would automatically compute any penalties listing the penalties and their accrual from the different estimated tax payments based on the same income inputs (carried forward from the tool's XML files). As an added benefit it could compute the Schedule D Income Tax Worksheet tax as needed and the total tax due as well.

This would be another six month effort by my estimates.

Form 1040 and all Common Schedules as ODS Form

This same team could then enhance this form to support all the common 1040 forms and common schedules. The team would need to be expanded as necessary to include experts from different forms and schedules as well as from online filing support.

This would be a full year development effort by my estimates.

Assistance Sought From Commercial Partners

The IRS could solicit contributions from LibreOffice and Google (two common supporters of open source development projects) to insure easy integration with their platforms. Similarly, other commercial enterprises could be invited to participate, e.g. Microsoft, Turbotax, H & R Block, and others though they have less familiarity with open source projects and their development style. However, their participation could improve integration with their various products.

Summary

While estimated tax payments were a reasonable addition to the 'pay as you go' concept introduced with employer withholding, they were not well thought out or adequately supported. The ad hoc adjustment of the length of the tax periods and the insistence on equal tax payments for unequal tax periods made these estimated tax payments untenable in light of income not distributed through out the year.

Fortunately the IRS has the authority through executive discretion to resolve these problems[4] until it can provide adequate tools to correct the current defects.

Respectfully submitted,

Verification of Document

Mr. Carr hereby affirms under penalty of perjury in both the United States and Thailand that as an individual:

1. I have reviewed the above affirmation and believe all of the statements to be true to the best of my knowledge.
2. I have reviewed the associated documents and exhibits and believe them to

4 Sadly, as the IRS has not used its executive discretion to resolve these serious problems, the courts will need to usurp the executive discretion using judicial discretion until Congress chooses to make the necessary corrections.

be true and accurate copies with the exception of the documents identified as being redacted. The redacted documents have only been altered to remove sensitive personal information or other redactable information (as cited in the redaction) according to normal redaction procedures.

I hereby reaffirm that the above is true to the best of my knowledge under penalty of perjury in both the United States and Thailand.

/s Brian P. Carr

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Brian P. Carr
1201 Brady Dr
Irving, TX 75061

Date: 7. Jun. 2025

Location: Irving, Texas

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