

**WRITTEN TESTIMONY OF THE
COMMISSIONER OF INTERNAL REVENUE
MARK EVERSON
BEFORE
SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND
WHAT SHOULD BE DONE ABOUT IT
MARCH 20, 2007**

Good morning Chairman Levin, Ranking Member Coleman and members of the Permanent Subcommittee on Investigations. I am pleased to appear before you to discuss Medicare payments made to providers who may be delinquent on their Federal tax obligations and the IRS' ability to claim what is owed through the Federal Payment Levy Program (FPLP).

This is my fourth time before this subcommittee on issues related to FPLP. I first appeared in 2004 to respond to the Governmental Accountability Office (GAO) report on 47 Department of Defense (DOD) contractors who were delinquent on their taxes. I appeared again in 2005 to discuss 50 civilian contractors that GAO had identified as also being delinquent. At that time, I pointed out the progress that the IRS had made working with the Financial Management Service (FMS), the General Services Administration (GSA), the DoD, the Office of Management and Budget (OMB), and the Department of Justice (DOJ). Together these agencies formed the Federal Contractor Tax Compliance (FCTC) Task Force.

Last year I testified as to the continued progress we are making with the FCTC task force, and discussed actions we were taking independently of the task force as well as the status of the contractor cases cited by the GAO. Today, I want to update the committee on our continued progress and then focus my discussion on the issue that is the specific subject of this hearing --- the possibility of including Medicare payments made to providers by the Centers for Medicare and Medicaid Services (CMS) in the FPLP.

I also want to thank this Subcommittee for its continued interest in the broad issue of using the FPLP as a means of collecting tax debt. Much of the progress we have made in the past four years has been the direct result of the interest and persistence of the Subcommittee Members and its staff.

Progress Report

Perhaps the best indicator of the progress made since the creation of the FCTC task force has been the increase in the amount of tax debts that are available to the FMS' Treasury

Offset Program (TOP). On January 31, 2004, there was only \$73 billion in tax debt referred to FMS. As of January 31, 2007, that number had grown to \$114 billion, a 56 percent increase.

Corresponding to this increase in tax debt referred to FMS has been the decline in the number of tax debts that are excluded from the FPLP. In FY 2004, \$195 billion had been excluded. By FY 2006, that number fell to \$149 billion.

As the Subcommittee knows, there are both statutory and operational exclusions to tax debt being referred to the FPLP. While the statutory exclusions have actually increased between FY 2004 and FY 2006, from \$61 billion to \$70 billion, the operational exclusions have declined from \$106 billion to \$78 billion.

This increase in the overall level of tax debt referred to the FPLP and the decline in the operational exclusions has been the result of a number of actions by the IRS over the last several years. These include:

- Elimination of the one year waiting period for Deferred and Queue cases for selection into the FPLP.
- The addition of all field Revenue Officer cases, more Automated Collection System cases, and certain Criminal Investigation cases into the FPLP.
- The addition of the secondary TIN on joint income tax and sole proprietor tax liability accounts.
- The addition of historical business names to improve matching with FMS.
- Adding additional defaulted installment agreements due to programming fixes.
- Adding adjustment claims, pending installment agreements with existing levies, and certain Collection Statute Expiration Date accounts.

Total revenue collected through the FPLP has also increased substantially. In FY 2003 there was \$89 million in revenues from the FPLP. This had risen to \$299 million by FY 2006. The growth has continued in FY 2007 as revenues to date have been \$141 million as compared to \$104 million for the same period last year.

Looking at the subset of contractors, revenues collected from all contractors showed similar growth rising from \$7 million in FY 2003 to \$55 million in FY 2006. Defense contractor revenues have gone from \$1 to \$26 million over the same period.

Not all the tax debt referred to the FPLP can be immediately levied. That is because we have not completed the notice and review process that is legally required prior to the activation of the levy. Of the \$114 billion in tax debt referred to the FPLP inventory, \$57

billion, or approximately half is not currently available for levy. We continue our efforts to accelerate the notice process so that the debts can be levied as soon as legally possible.

In that regard, there is a provision included in the President's FY 2008 Budget request that would permit us to issue post-levy due process notices under certain circumstances. This change could significantly increase collections for employment tax liabilities prior to a Collection Due Process (CDP) hearing in a fashion similar to levies issued to collect a federal tax liability from a state income tax refund. Taxpayers would have the right to a CDP hearing on these liabilities within a reasonable time after the levy.

While the CDP rules provide important safeguards, they raise unique problems in the context of employment taxes. Frequently, an employer who fails to satisfy its Federal tax liabilities for one period will also fail to satisfy them for later periods resulting in a "pyramiding" of unpaid taxes. Some employers who request a CDP hearing or judicial review for one tax period will continue to accrue, or pyramid, their employment tax liabilities during the CDP proceedings. Liabilities for the subsequent periods cannot be collected by levy until the employer has been given notice and opportunity for hearing and judicial review for each period, thus the need for a post levy CDP hearing.

We are also making some changes in the IRS case criteria for the purposes of the FPLP. These include:

- Levying Federal employee salary payments from the Departments of Energy, HHS, and Veterans Administration, as well as Defense Department civilian employee salary and military retiree income payments beginning in January 2008.
- Keeping taxpayers who subsequently request an installment agreement (IA) or adjustment claim in the FPLP until a formal IA is established or the adjustment claim remains in a balance due status. This started in January 2007, and thus far we have been able to keep \$454 million in the FPLP.
- Keeping in the FPLP levied contractor or Federal employee accounts until 30 days prior to the collection statute expiration date (CSED). Prior to this change, these accounts were removed 90 days prior to the CSED. This also started last January and the results should be known by May 2007.
- A greater number of defaulted installment agreements have been added to the FPLP. This has resulted in 105,000 accounts being eligible for the FPLP.

FCTC Task Force Addresses Key Issues

Working with FMS, GSA, DoD and other members of the task force, we have made considerable progress on a number of other key issues of interest to this Subcommittee.

- We are developing a regulatory, programming, and operational process to add a Federal debt indicator or "flag" on the Central Contractor Registration (CCR).

This “flag” will indicate that the contractor/vendor will require an alternative payment method (that is subject to the FMS’ TOP) instead of the Purchase Card program. FMS will complete its programming to implement this process this month and flagging should begin when the changes to the Federal Acquisition Regulations (FAR) are finalized.

- Another proposed change to FAR will implement a 3 year Federal and state tax compliance certification clause on awarded contracts. This clause will require contractors to self certify that they have no civil tax judgment and/or conviction; no receipt of Federal or state tax lien notice; or notification of an IRS unpaid tax liability. Prospective contractors who certify falsely risk disbarment from the procurement system and, potentially prosecution for perjury.
- By the end of this month, we intend to post on the IRS Master File an indicator, which will identify all Federal contractors in our Individual Master File data base. In August 2007, this indicator will be identified in our Business Master File data base. This indicator will assist us in developing an overall collection strategy and prioritization on our entire corporate collections inventory.
- FMS is continuing to bring new payments into the TOP. For example, payments to vendors or contractors of the Army Corp of Engineers and the U.S. Postal Service will be included in the offset program by June 2007.
- Since October 2005, all CCR yearly registrants must validate their Taxpayer Identification Numbers (TINs) with the IRS. In the first full year (FY 2006) of implementation, there were 495,000 CCR registrants that went through the TIN validation process and 82 percent of those had their TINs successfully validated.
- The Defense Finance and Accounting Service (DFAS) has added all of its payment files into TOP for levy and offset. It has also implemented the 100 percent levy provision on all payment systems and centralized its locations to process paper levies issued by the IRS.

Levying CMS Payments to Medicare Providers

Another step in continuing the progress of the task force has been the inclusion of the Centers for Medicare and Medicaid Services in our work.

The GAO has estimated that Medicare physicians and related suppliers (such as ambulance companies and medical laboratories) owe approximately \$1 billion in unpaid Federal taxes. GAO estimates that between \$50 million and \$140 million could have been collected had the payments been subject to the FPLP.

Medicare payments are, of course, property subject to levy to collect unpaid taxes. As Federal payments, they are further subject to the continuous levy provisions of section 6331(h). Currently, most Medicare payments are not part of the FPLP because they are

not processed by FMS and are excluded from the Treasury Offset Program, our only automated mechanism for levying Federal payments.

IRS, FMS and CMS are now discussing options to efficiently and systemically levy all CMS Medicare payments either through FMS' TOP or by other means. From an operational perspective, one of the things that we are working through is how CMS reimburses providers. Most payments made by CMS are paid to intermediaries, such as insurance companies, that then reimburse the provider. Whether these payments are processed through FMS in the future or FMS, as with other non-Treasury dispersing offices, serves as the agent of CMS for purposes of receipt of levies, the issues presented by this payment process are not unique and we believe they can be overcome if our three agencies continue to work together.

However, it is important to understand that even if the Medicare payments are made part of FPLP, we still face other operational issues in terms of successfully levying those payments to recover tax debts. For example, many of the providers are organized as professional corporations (PCs) and limited liability companies (LLCs) under state law. While this is a legitimate and respected business choice made by these providers for a variety of reasons, it can also serve to protect an individual from a possible levy if the payment is made by the intermediary to the PC or LLC and not directly to an individual doctor with a Federal tax debt.

It is also important to understand that even though CMS Medicare payments are not part of the FPLP, one should not assume that nothing is being done to collect this tax debt. These debts now fall into our regular collections process and are subject to a paper levy if payment is not received and all appropriate CDP notices have been sent. We have developed specific "tool kits" for our revenue officers targeted at specific groups of taxpayers. For example, the "tool kit" for doctors recommends that the revenue officer look at insurance payments received by the doctor as a possible source of a paper levy. In the past four years the number of levies issued through our paper levy program has nearly tripled going from 1.3 million in FY 2002 to 3.7 million in FY 2006.

We are unable to separate Medicare payments that have been levied from other payments made by insurance companies. When payments due a provider from an insurance company are levied, we are unsure whether the source of those payments is Medicare or another type of reimbursable payment.

Legislative Initiatives

In the President's FY 2008 Budget proposal there are 16 different legislative proposals that are designed to improve compliance, expand information reporting, strengthen tax administration and expand penalties. Collectively, these proposals will generate \$29.5 billion in revenue over the next 10 years. I strongly urge your support for all of these proposals.

Included in this package is a measure that will improve the effectiveness of both the FPLP and our overall levy program. It would allow us to amend the collection due process procedures applicable to employment tax liabilities by allowing us to collect employment taxes prior to affording the taxpayer an opportunity to dispute the collection action before the IRS Office of Appeals."

We would also like to see a change to section 6331(h) of the IRC to allow the IRS to implement the 100 percent levy on all vendor payments not just those for goods and services.

Summary

Mr. Chairman, working collectively with FMS, GSA, DoD, and DoJ, and spurred on by the oversight of this Subcommittee, we have made considerable process in expanding the amount of tax debt that is referred to the FPLP and the total collections that have resulted from those referrals. We continue to look at ways to expand even further the amount of tax debt that might be referred.

We welcome CMS to the FCTC task force and look forward to working with them to explore options that could make payments to Medicare providers subject to levy. Taxpayers have every right to expect that anyone receiving Federal payments is current on their tax payments. This applies to doctors receiving Medicare payments as much as it does to a contractor with a contract from the Department of Defense.

Again I thank the Members of the Subcommittee and your staff for your continued interest in the FPLP program and I am happy to respond to any questions that you may have.