CENTER FOR TAXPAYER RIGHTS – REIMAGINING TAX ADMINISTRATION WORKSHOP NUMBER 4

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ISSUES WITH DELIVERING BENEFITS THROUGH THE TAX CODE

- Tax filing is retrospective and occurs once per year.
- Low income people are not otherwise required to file.
- Internal Revenue Code definitions are generally designed for the purpose of defining income and collecting revenue. Can be hard to reconcile with definitions under other benefits schemes.
- IRS does not have real time data on income, marital status, employer coverage, etc.
- Tax refunds are offset for outstanding debts unless there is an explicit statutory exception.
- IRS lacks resources for outreach to encourage people to claim benefits.

US CONSTITUTION, ARTICLE I, SECTION 9, CL. 7

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

“DISAPPROPRIATION”*

- Risk corridors are enacted as part of Affordable Care Act. 42 U.S.C. §18062.
- HHS opines that risk corridor payments are an appropriated entitlement, paid out of the program management appropriation.
- HHS program management appropriation for 2015 included a rider prohibiting the use of the appropriation for risk corridor payments. Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, sec. 227.
- HHS does not pay $12.3 billion in payments required under statutory formula.
- Maine Community Health Options v. United States, 140 S.Ct. 1308 (2020)

*Disappropriation is a term coined by Matthew B. Lawrence in his article, “Disappropriation” that appeared in the January 2020 issue of the Columbia Law Review.

PERMANENT INDEFINITE APPROPRIATION – 31 USC §1324

(a) Necessary amounts are appropriated to the Secretary of the Treasury for refunding internal revenue collections as provided by law, including payment of—

(1) claims for prior fiscal years; and

(2) accounts arising under—

(A)"Allowance or drawback (Internal Revenue)";

(B)"Redemption of stamps (Internal Revenue)";

(C)"Refunding legacy taxes, Act of March 30, 1928";

(D)"Repayment of taxes on distilled spirits destroyed by casualty"; and

(E)"Refunds and payments of processing and related taxes".

(b) Disbursements may be made from the appropriation made by this section only for—

(1) refunds to the limit of liability of an individual tax account; and

(2) refunds due from credit provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) enacted before January 1, 1978, or enacted by the Taxpayer Relief Act of 1997, or from section 21, 24, 25A, 35, 36, 36A,[1] 36B, 168(k)(4)(F), 53(e),[1] 54B(h),[1] 3131, 3132, 3134, 6428, 6428A, 6428B, 6431,[1] or 7527A of such Code, or due under section 3081(b)(2) of the Housing Assistance Tax Act of 2008.

EXAMPLE OF RESULTING PROBLEMS – PREMIUM TAX CREDIT AND MARRIED TAXPAYERS

- Married couple must file joint return in order to claim premium tax credit. IRC § 36B(c)(1)(C).
- Regulation written to allow taxpayer who is victim of spousal abuse or spousal abandonment to claim credit for up to three years even if filing separately. Treas. Reg. § 1.36B-2(b)(2)(ii).

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