NATIONAL TAXPAYER ADVOCATE

Purple Book

Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration

December 31, 2017

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INTRODUCTION

We are pleased to present this inaugural edition of the National Taxpayer Advocate Purple Book. In it, we provide a concise summary of 50 legislative recommendations that we believe will strengthen taxpayer rights and improve tax administration. Most of these recommendations have been made in detail in our prior reports, but others are presented here for the first time.

During the last two years, Congress has shown renewed interest in improving the operations of the IRS. Most notably, the House Ways and Means Subcommittee on Oversight has held several hearings to consider "IRS reform," and Chairman Buchanan has said he plans to introduce and seek to move legislation on a bipartisan basis during 2018 in collaboration with Ranking Member Lewis.

The Purple Book is designed to assist them in their efforts, and we have aimed to make it as user friendly as possible. Each proposal is presented in a format similar to the one used for congressional committee reports, with "Present Law," "Reasons for Change," and "Recommendation(s)" sections. Most of our recommendations have been introduced at one time or another as freestanding bills, and some have been reported favorably by the House Committee on Ways and Means or the Senate Committee on Finance. A few have been approved by the full House or Senate.

At the end of each recommendation, we identify bills that have been introduced in the House or Senate that are consistent with our proposal. In a separate spreadsheet, we list additional reference material to assist those interested in learning more about a recommendation. The reference material includes prior bills and committee report descriptions and National Taxpayer Advocate recommendations presented in prior annual reports, congressional testimony, or other forums. Because of the large number of bills introduced in each Congress, we have almost surely have failed to list every bill that is consistent with a prior recommendation we have made. We apologize for any inadvertent oversights.

The Office of the Taxpayer Advocate is an independent organization within the IRS that advocates for the interests of taxpayers. The office is non-partisan, and we have dubbed this the "Purple Book" because the color purple, as a mix of red and blue, has come to symbolize a blending of the parties.

In that vein, it is worth emphasizing that congressional efforts to protect taxpayer rights and improve tax administration have almost always proceeded on a bipartisan basis. Between 1988 and 1998, Congress passed three significant pieces of legislation to improve tax administration and protect taxpayer rights.[1] Members of both parties contributed to each of these bills, and the landmark IRS Restructuring and Reform Act of

1 *See* Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100–647, § 6226, 102 Stat. 3342, 3730 (1988) (containing the "Omnibus Taxpayer Bill of Rights," also known as Taxpayer Bill of Rights 1 (TBOR 1)); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (also known as TBOR 2); Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 726 (1998) (Title III is known as "Taxpayer Bill of Rights 3" or TBOR 3).

1998 (RRA 98) was enacted only after a bipartisan commission known as the National Commission on Restructuring the Internal Revenue Service had conducted a broad assessment of IRS operations and made recommendations for reform.[2]

It has now been almost 20 years since the enactment of RRA 98, and over that period, we have had ample time to assess the impact of the changes made by these three taxpayer rights acts. Most changes have stood the test of time well, but some require tweaking. In addition, tax administration has changed in many ways, partly due to the increasing use of automation by the IRS and the increasing use of the internet and other digital services by taxpayers.

For these reasons, we are very much encouraged by the congressional interest in examining the current state of tax administration and developing legislation to improve it. This is an important undertaking.

Despite the lack of comprehensive tax administration legislation since RRA 98, Members of Congress have introduced hundreds of relevant bills, and the House and Senate tax-writing committees have favorably reported several significant pieces of legislation. These bills have generally proceeded on a bipartisan basis and have enjoyed broad support.

The recommendations included in this volume are drawn from many sources, including:

- The National Taxpayer Advocate's Annual Reports to Congress.
- The Taxpayer Bill of Rights Enhancement Act of 2017, sponsored by Senators Grassley and Thune.[3]
- The Strengthening Taxpayer Rights Act of 2017, sponsored by Congressman Doggett.[4]
- The Small Business Owners' Tax Simplification Act, sponsored by Congressman Chabot and Congresswoman Velazquez, the Chairman and Ranking Member, respectively, of the House Committee on Small Business.[5]
- The Taxpayer Protection Act of 2016, which the Senate Committee on Finance reported favorably under the leadership of Chairman Hatch.[6]
- The Taxpayer Protection Act of 2016, sponsored by Congressman Lewis.[7]
- The Taxpayer Rights Act of 2015, introduced simultaneously in the House by Congressman Becerra and in the Senate by Senator Cardin.[8]
- The Chairman's mark of a bill to prevent identity theft and tax refund fraud prepared by the staff of the Senate Committee on Finance under the leadership of Chairman Hatch.[9]
- The Tax Return Preparer Competency Act of 2015, sponsored by Congresswoman Black and Congressman Meehan.[10]

2 Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997).

3 Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. (2017).

4 Strengthening Taxpayer Rights Act of 2017, H.R. 3340, 115th Cong. (2017).

5 Small Business Owners' Tax Simplification Act of 2017, H.R. 3717, 115th Cong. (2017).

6 Taxpayer Protection Act of 2016, S. 3156, 114th Cong. (2016). *See also* S. Rep. No. 114-298 (2016) (accompanying committee report).

7 Taxpayer Protection Act of 2016, H.R. 4912, 114th Cong. (2016).

8 Taxpayer Rights Act of 2015, H.R. 4128 and S. 2333, 114th Cong. (2015).

9 See J. Comm. on Tax'n, *Description of the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud*, JCX-108-15 (Sept. 11, 2015).

10 Tax Return Preparer Competency Act of 2015, H.R. 4141, 114th Cong. (2015).

- A discussion draft of tax administration reform proposals prepared by the staff of the Senate Committee on Finance and released by Chairman Baucus in November 2013.[11]
- The Small Business Election Simplification Act, sponsored by Senators Franken, Snowe, and Enzi.[12]
- The Small Business Taxpayer Bill of Rights Act of 2012, sponsored by Congressman Johnson.[13]
- The Taxpayer Receipt Act, sponsored by Senators Nelson and Brown.[14]
- The Taxpayer Assistance Act of 2010, sponsored by Congressman Lewis and co-sponsored by 20 House colleagues.[15]
- The Taxpayer Assistance and Simplification Act of 2008, which the House of Representatives passed under the leadership of Chairman Rangel.[16]
- The Taxpayer Protection and Assistance Act of 2005, reported favorably by the Senate Committee on Finance under the leadership of Chairman Grassley.[17] In 2004, the full Senate passed a prior version of this legislation.
- The Taxpayer Protection and IRS Accountability Act of 2003, which the House of Representatives passed under the leadership of Chairman Thomas.[18] The original sponsor of this legislation was then-Congressman Rob Portman, who previously had served as co-chair of the National Commission on Restructuring the Internal Revenue Service.[19]

We believe most of the recommendations presented in this volume are non-controversial, common sense reforms that will strengthen taxpayer rights and improve tax administration. We hope the tax-writing committees and other Members of Congress find this compilation useful.

11 Staff of Senate Committee on Finance, *Tax Administration Discussion Draft* (Nov. 20, 2013).

12 Small Business Election Simplification Act, S. 2271, 112th Cong. (2012).

13 Small Business Taxpayer Bill of Rights Act of 2012, H.R. 4375, 112th Cong. (2012).

14 Taxpayer Receipt Act, S. 437, 112th Cong. (2011).

15 Taxpayer Assistance Act of 2010, H.R. 4994, 111th Cong. (2010).

16 Taxpayer Assistance and Simplification Act of 2008, H.R. 5719, 110th Cong. (2008). *See also* H.R. Rep. No. 110584 (2008) (accompanying committee report).

17 Taxpayer Protection and Assistance Act of 2005, S. 832, 109th Cong. (2005) (incorporated into S. 1321 and reported favorably by the committee). *See also* S. Rep. No. 109-336 (2006) (accompanying committee report); J. Comm. on Tax'n, *Description of the Chairman's Modification to the Provisions of S. 1321, the "Telephone Excise Tax Repeal Act of 2005"* and S. 832, the "Taxpayer Protection and Assistance Act of 2005," JCX-28-06 (June 28, 2006). In 2004, the Senate Committee on Finance approved a similar version of the bill, and that version was ultimately approved by the full Senate. *See* Tax Administration Good Government Act, S. 882, 108th Cong. (2004) (incorporated into H.R. 1528, reported favorably by the committee and passed by the Senate). *See also* S. Rep. No 108-257 (2004) (accompanying committee report).

18 Taxpayer Protection and IRS Accountability Act of 2003, H.R. 1528, 108th Cong. (2003). *See also* H.R. Rep. No. 108-61 (2003) (accompanying committee report). The Tax Administration Good Government Act (referenced above) was the Senate-passed version of this bill.

19 *See* Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997).

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Strengthen Taxpayer Rights

#1 ENACT THE TAXPAYER BILL OF RIGHTS AS A FREESTANDING PROVISION IN THE INTERNAL REVENUE CODE

Present Law

IRC § 7803(a)(3) requires the Commissioner to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title [the Internal Revenue Code], including –

(A) *the right to be informed*,

(B) *the right to quality service*,

(C) *the right to pay no more than the correct amount of tax*,

(D) *the right to challenge the position of the Internal Revenue Service and be heard*,

(E) *the right to appeal a decision of the Internal Revenue Service in an independent forum*,

(F) *the right to finality*,

(G) *the right to privacy*,

(H) *the right to confidentiality*,

(I) *the right to retain representation*, and

(J) *the right to a fair and just tax system*."

This provision was enacted as part of the Protecting Americans from Tax Hikes (PATH) Act in 2015.[20] Previously, the National Taxpayer Advocate had recommended that Congress enact a Taxpayer Bill of Rights (TBOR) containing these ten provisions,[21] and the IRS itself adopted these rights as the "Taxpayer Bill of Rights" in June 2014.[22]

Reasons for Change

Notwithstanding widespread use of the phrase "Taxpayer Bill of Rights," it is not clear whether the 2015 legislation provided these rights to taxpayers. Some observers believe the statutory requirement that the Commissioner must ensure IRS employees "act in accord with" the TBOR necessarily implies that a failure of an IRS employee to act in accord with taxpayer rights constitutes a violation of a taxpayer's legal protections.

20 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, § 401(a) (2015) (incorporating the Protecting Americans from Tax Hikes Act of 2015, known as the "PATH Act").

21 National Taxpayer Advocate 2014 Annual Report to Congress 275-310 (Legislative Recommendation: *Codify the Taxpayer Bill of Rights and Enact Legislation that Provides Specific Taxpayer Protections*); National Taxpayer Advocate 2011 Annual Report to Congress 493-518 (Legislative Recommendation: *Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights*); National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*).

22 IRS, IR-2014-72, IRS Adopts *"Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov, in Publication 1* (June 10, 2014).

Other observers believe the fact that the statutory language focuses on the Commissioner's responsibilities means taxpayers do not themselves possess these rights.[23]

Congress should clarify that U.S. taxpayers possess these ten rights, because taxpayer rights should serve as the foundation for the U.S. tax system. While the IRS possesses significant enforcement authority, our system relies on taxpayers to file tax returns on which they self-declare their income (much of which is not reported to the IRS and is therefore difficult for the IRS to discover in the absence of self-reporting) and to pay the required tax. Clarifying that taxpayers possess these rights is not only the right thing to do, but TAS research suggests that when taxpayers have confidence the tax system is fair, they are more likely to comply voluntarily, which should translate into enhanced revenue collection.[24]

For these reasons, we believe the TBOR should be the first provision in the IRC.

Recommendation

Codify the Taxpayer Bill of Rights as IRC § 1 (and renumber subsequent sections accordingly).

23 *See* Alice G. Abreu & Richard K. Greenstein, *Embracing the TBOR*, 2017 Tax Notes Today 1281–1307 (Nov. 27, 2017) (discussing the various interpretations of the TBOR).

24 National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

#2 REQUIRE THE IRS TO PROVIDE ANNUAL TAXPAYER RIGHTS TRAINING TO EMPLOYEES

Present Law

IRC § 7803(a)(3) requires the Commissioner of Internal Revenue to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights" that are provided by the IRC and that include the ten fundamental taxpayer rights adopted by the IRS as the Taxpayer Bill of Rights.

IRC § 7803(c)(2) describes the functions of the Office of the Taxpayer Advocate.

Reasons for Change

Notwithstanding the requirement imposed by IRC § 7803(a)(3), IRS training materials incorporate taxpayer rights information inconsistently and insufficiently. The Taxpayer Advocate Service reviewed IRS training courses and found that some courses covered topics related to taxpayer rights but made no reference to the fundamental rights adopted by the IRS, other courses sent mixed messages to employees about when taxpayer rights apply, and still other courses failed to include any taxpayer rights information at all.

The IRS currently requires all employees to take annual trainings, known as Mandatory Briefings, on topics such as ethics, unauthorized access of taxpayer accounts, and anti-discrimination laws. Although the Taxpayer Advocate Service prepared materials to be used in a Mandatory Briefing on the Taxpayer Bill of Rights, the IRS has declined to provide a Mandatory Briefing on the topic.

Requiring all IRS employees to take annual training on taxpayer rights will assist the IRS in complying with IRC § 7803(a)(3), which requires that the Commissioner of Internal Revenue ensure that IRS employees are familiar with and act in accord with taxpayer rights.

Recommendations

Amend IRC § 7803(c)(2)(C) to require the National Taxpayer Advocate to develop training for all IRS employees on taxpayer rights, including information about the Taxpayer Advocate Service. Amend IRC § 7803(c)(2)(C) to require the Commissioner of Internal Revenue to establish procedures to provide for this training to be delivered to all IRS employees annually.[25]

25 The Taxpayer Rights Act of 2015, S. 2333 and H.R. 4128, 114th Cong. § 308 (2015), contains language that is generally consistent with this recommendation.

#3 CODIFY THE IRS MISSION STATEMENT

Present Law

The IRS Restructuring and Reform Act of 1998 directed the IRS to revise its mission statement "to place a greater emphasis on serving the public and meeting taxpayers' needs."[26] In response, the IRS adopted the following mission statement: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *by applying the tax law* with integrity and fairness to all" (emphasis added). In 2009, with no public discussion, the IRS quietly made a profound change to its mission statement, which now reads: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all" (emphasis added).

Reasons for Change

There are three shortcomings inherent in the current IRS mission statement.

First, the shift in tone and emphasis, from "apply" to "enforce," has significant consequences. If a tax agency views its primary mission as "enforcing" the tax laws, it is likely to design its procedures and focus its resources on taking action against the relatively small number of taxpayers it views as noncompliant. By so doing, it may neglect to provide sufficient service and support to maintain and strengthen voluntary compliance among the overwhelming majority of taxpayers who are fully or substantially compliant, and thereby risk lower levels of compliance on their part. Even focusing solely on the small noncompliant taxpayer population, a mix of enforcement and education is likely to be most effective in improving compliance. The phrase "applying the tax law" is broad enough to encompass enforcement while also encompassing non-coercive compliance strategies.

Second, the current mission statement does not acknowledge that the IRS today has two lines of business — collector of revenue and administrator of benefits. In recent decades, the tax code has been increasingly used to promote various social and economic policies through the mechanism of tax credits and other tax expenditures. Taking an enforcement-oriented approach toward these inherently complex provisions, instead of one based on taxpayer service and education supplemented by problem identification and understanding of the root causes of noncompliance, can deter eligible taxpayers from claiming benefits to which they are legally entitled and prevent ineligible taxpayers from understanding what they did wrong. An agency's strategies and goals are established to further the agency's mission, so a more nuanced and accurate mission statement is likely to lead to better outcomes.

Third, the IRS adopted the Taxpayer Bill of Rights in 2014,[27] and Congress enacted its provisions into law in 2015.[28] Accordingly, the mission statement should similarly be updated to make clear that taxpayer rights serve as the foundation for effective tax administration.

Recommendation

Codify the IRS mission statement to make clear that (1) the mission of the IRS is to provide U.S. taxpayers with top quality service to help them understand and meet their tax responsibilities and to apply the tax law with integrity and fairness to all; (2) the IRS is both the tax collector and a benefits administrator; and (3) the

26 Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685, 690 (1998).

27 IR-2014-72, *IRS Adopts "Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov, in Publication 1* (June 10, 2014).

28 IRC § 7803(a)(3).

Taxpayer Bill of Rights (or taxpayer rights more generally) serve as the guiding principles for effective tax administration.

If Congress adopts our recommendation to enact the Taxpayer Bill of Rights as IRC § 1, it may be codified as section 1(a) and the IRS mission statement may be codified as section 1(b).[29]

29 *See* Legislative Recommendation: *Enact the Taxpayer Bill of Rights As a Freestanding Provision in the Internal Revenue Code, supra*.

#4 REQUIRE THE IRS TO PROVIDE TAXPAYERS WITH A RECEIPT SHOWING HOW THEIR TAX DOLLARS ARE BEING SPENT

Present Law

IRC § 7523 requires the IRS to include pie-shaped graphs showing the relative sizes of major outlay categories and major income categories in its instructions for Forms 1040, 1040A, and 1040EZ. In the 2016 Form 1040 instruction booklet, for example, the IRS published graphs on page 102 for fiscal year 2015.

Reasons for Change

Taxpayers will have greater faith in government if they understand how they are taxed and how their tax dollars are spent. Because taxpayers have a right to be informed, the IRS should educate each taxpayer about how the government raises money, how the government spends money, and how that particular taxpayer contributed to both. Current rules do not do an adequate job of achieving these objectives.

Congress enacted the requirement to include pie charts in the Form 1040 instructions booklet more than 25 years ago.[30] At that time, taxpayers filed their tax returns on paper, so the instructions booklet was widely available and used. Today, more than 85 percent of individual income tax returns are filed electronically,[31] and the instructions booklet is much less visible. In addition, the categories of outlays are presented at a very high level, and the public would benefit from additional detail. Further, a published pie chart cannot provide personalized information regarding the taxpayer's own contributions, such as the taxpayer's marginal tax rate, effective tax rate, and tax benefits claimed.

Once taxpayers are given a clear picture regarding federal receipts, federal spending, and their own contributions to that financial picture, and to further public education about taxation and federal spending, taxpayers should be given an opportunity to voice their opinions about how tax dollars should be spent in the future. This could be achieved by inviting taxpayers to "vote" on their tax returns regarding how much and on what the government should spend its money and by requiring the IRS to report the results of that "voting."

The "voting" would, of course, be non-binding. But this exercise in public engagement would help Americans gain a better understanding of the connection between the federal taxes they pay and the federal benefits they receive. As a consequence, it also has the potential to improve civic morale, increase tax compliance, and make the national dialogue over looming fiscal policy choices more productive as well.

Recommendations

1. Amend IRC § 7523 to require the IRS to provide each taxpayer with a "taxpayer receipt" that shows, on a single page, how federal dollars are spent and the taxpayer's own contributions in the form of taxes paid and tax benefits claimed. The IRS should develop these receipts in collaboration with TAS. For taxpayers who use tax software to self-prepare their returns, this requirement may be satisfied if the IRS requires e-file providers to include a page displaying the one-page breakdown at the end of the return preparation process as part of the *Authorized IRS* e-file *Providers* rules.[32] For taxpayers who use paid preparers, the requirement may be satisfied by requiring the preparer to

30 IRC § 7523 applies to instruction booklets prepared for taxable years beginning after 1990.

31 *See* https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-september-1-2017.

32 *See* Rev. Proc. 2007-40, 2007-1 C.B. 1488, and IRS Pub. 3112, *IRS e-file Application and Participation* (Rev. 4-2017).

include the one-page breakdown when furnishing the taxpayer with a completed copy of the tax return, as required by IRC § 6107(a).

2. Amend IRC § 7523 to require the taxpayer receipt to contain an online link or a paper "ballot" where the taxpayer can "vote" on what he or she believes federal funds should be spent on and in what amounts.
3. Amend IRC § 7523 to require the IRS to publish the aggregate results of taxpayer "voting" no later than 30 days after the end of the calendar year.

Improve the Filing Process

#5 AUTHORIZE THE VOLUNTEER INCOME TAX ASSISTANCE (VITA) GRANT PROGRAM

Present Law

The IRS currently administers two major programs that provide free or low-cost assistance to lower income U.S. taxpayers. The Volunteer Income Tax Assistance (VITA) program assists low-to-moderate income, elderly, disabled, and limited English speaking taxpayers in preparing and filing their federal income tax returns. The Low Income Taxpayer Clinic (LITC) program provides *pro bono* representation to assist low income taxpayers in their controversies with the IRS, such as in audit and collection actions. (A third program, Tax Counseling for the Elderly (TCE), is similar to the VITA program in that it assists elderly taxpayers in preparing and filing their federal income tax returns. The IRS administers VITA and TCE jointly in most respects.)

As part of the IRS Restructuring and Reform Act of 1998, Congress created a federal grants program for LITCs. IRC § 7526 authorizes the Secretary, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of LITCs.

In contrast to the LITC grant program, Congress has not authorized the VITA program to receive grants through the tax-writing process. Since fiscal year 2008, however, Congress has used the appropriations process to provide funding for the IRS to administer a Community VITA matching grants program for tax return preparation assistance.[33]

Reasons for Change

The VITA grant program would stand on more solid, permanent, and predictable footing if it were authorized and not solely created and funded through the annual appropriations process. As with the LITC authorizing statute, the tax-writing committees could establish eligibility criteria for VITA programs to expand their provision of services. Absent such criteria, the IRS has administered the VITA grant program narrowly, restricting grantees' ability to use grant funds to hire experts to train volunteers and perform quality reviews as well as to serve as Certified Acceptance Agents. As a result, few VITA grantees assist low income self-employed taxpayers who file a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, or a Schedule F, *Profit or Loss From Farming*, or low income taxpayers with disaster losses. Moreover, few VITA grantees are open year-round or assist taxpayers in preparing amended returns.

Through an authorizing statute, Congress could provide direction to the IRS about the eligibility criteria for grantees, including their ability to operate year-round, and authorize the use of funds to develop expertise to assist taxpayers in preparing a broader range of forms and schedules than most VITA programs are currently able to handle.

33 *See, e.g.*, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1976 (2007); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2428 (2015). Not all VITA programs receive a grant from the IRS. For more details about the VITA grant program, see IRS Pub. 4671, *VITA Grant Program Overview and Application Instructions*.

Recommendation

Enact a new IRC § 7526A to authorize the Secretary, subject to the availability of appropriated funds, to provide grants for the development, expansion, or continuation of VITA programs, particularly VITA programs that will use the funds to prepare tax forms and schedules that are common but currently designated as "out-of-scope."[34]

34 H.R. 2901, 115th Cong. § 2 (2017); S. 3156, 114th Cong. § 111 (2016); S. 2333 and H.R. 4128, 114th Cong. § 201 (2015); and H.R. 5719, 110th Cong. § 7 (2008) are generally consistent with this recommendation.

#6 AUTHORIZE THE IRS TO ESTABLISH MINIMUM COMPETENCY STANDARDS FOR FEDERAL TAX RETURN PREPARERS

Present Law

The IRS currently receives more than 150 million federal income tax returns every year, and the majority are prepared by paid tax return preparers. For that reason, both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate tax returns. Current law imposes no competency or licensing requirements on tax return preparers. Attorneys, certified public accountants (CPAs), and enrolled agents are required to take courses and pass competency tests. Volunteers are required to pass competency tests in order to prepare returns as part of the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs. But the majority of preparers are non-credentialed.

Reasons for Change

Numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which has the effect of harming taxpayers, the public fisc, or both. To protect the public, federal and state laws generally require attorneys, doctors, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications, and in most cases, they are required to pass a competency test first. Taxpayers and the tax system would benefit from requiring minimum standards of tax return preparers as well.

The following studies illustrate the extent of inaccurate return preparation:

Government Accountability Office (GAO). In 2006, GAO auditors posing as taxpayers made 19 visits to several national tax return preparation chains in a large metropolitan area. Using two carefully designed fact patterns, they sought assistance in preparing tax returns. On 17 of 19 returns, the preparers computed the wrong refund amounts, with variations of several thousand dollars. In five cases, the prepared returns reflected unwarranted excess refunds of nearly $2,000. In two cases, the prepared returns would have caused the taxpayer to overpay by more than $1,500. In five out of 10 cases in which the Earned Income Tax Credit (EITC) was claimed, preparers failed to ask where the auditor's child lived or ignored the auditor's answer to the question, and consequently prepared returns claiming ineligible children.[35]

The GAO conducted a similar study in 2014. It again found that preparers computed the wrong tax liability on 17 of the 19 returns they prepared.[36]

Treasurer Inspector General for Tax Administration (TIGTA).[37] In 2008, TIGTA auditors posing as taxpayers visited 12 commercial chains and 16 small, independently owned tax return preparation offices in a large metropolitan area. All the preparers visited by TIGTA were non-credentialed. Of 28 returns prepared, 61 percent were prepared incorrectly. The average net understatement was $755 per return. Of seven returns involving EITC claims, *none* of the preparers exercised appropriate due diligence as required under IRC § 6695(g).

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35 Government Accountability Office (GAO), GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (Apr. 4, 2006) (statement of Michael Brostek, Director - Strategic Issues, Before the Committee on Finance, U.S. Senate).

36 GAO, GAO-14-467T, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors* (Apr. 8, 2014) (statement of James R. McTigue, Jr., Director - Strategic Issues, Before the Committee on Finance, U.S. Senate).

37 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (Sept. 3, 2008).

New York State Department of Taxation and Finance. During 2008 and 2009, agents conducted nearly 200 targeted covert visits in which they posed as taxpayers and sought assistance in preparing income or sales tax returns. In testimony at an IRS Public Forum, the Acting Commissioner of the New York Department of Taxation and Finance testified that investigators found "an epidemic of unethical and criminal behavior."[38] At one point, the Department reported that it had found fraud on about 40 percent of its visits, and it had made more than 20 arrests and secured 13 convictions.[39]

IRS Study on EITC Noncompliance. The IRS conducted a study to estimate compliance with EITC requirements during the 2006-2008 period. Among the findings of the study, unaffiliated unenrolled preparers (*i.e.*, non-credentialed preparers who are not affiliated with a national tax return preparation firm) were responsible for "the highest frequency and percentage of EITC overclaims." The study found that half of the EITC returns prepared by unaffiliated unenrolled preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent of the amount claimed on the return.[40]

In 2002, before these studies were published, the National Taxpayer Advocate began recommending that Congress authorize the IRS to conduct preparer oversight based on her experience in private practice. Her proposal received widespread support from stakeholders and members of Congress. The Senate Committee on Finance twice approved legislation authorizing preparer oversight on a bipartisan basis under the leadership of Chairman Grassley and Ranking Member Baucus,[41] and on one occasion, the full Senate approved it by unanimous consent.[42] In 2005, the House Ways and Means Subcommittee on Oversight held a hearing at which representatives of five outside organizations expressed general support for preparer oversight.[43]

In 2009, the Commissioner of Internal Revenue concluded that the IRS had the authority under section 330 of Title 31 of the U.S. Code to impose minimum standards without statutory authorization. The IRS initiated an extensive series of hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate.[44] The IRS began to implement the program in 2011, but it was terminated after a U.S. district court rejected the IRS's legal position, concluding it does not have the authority to impose preparer standards without statutory legislation.[45]

Since that time, Members of the House and Senate have introduced legislation that would provide the IRS with the statutory authorization to establish and enforce minimum standards. In the House, Congresswoman Black and former Congressman Becerra, both members of the Ways and Means Committee, have sponsored authorizing legislation.[46] In the Senate, Senators Wyden and Cardin sponsored legislation, and Chairman

38 Statement of Jamie Woodward, Acting Commissioner, New York Dept. of Taxation and Finance, before IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009), http://ftp.irs.gov/pub/irs-utl/ny_department_of_tax_statement.pdf (lasted visited Oct. 18, 2009).

39 *Id.*; *see* Tom Herman, *New York Sting Nabs Tax Preparers*, WSJ (Nov. 26, 2008).

40 IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 24-26 (Aug. 2014).

41 H.R. 1528 (incorporating S. 882), 108th Cong. § 141 (2004); S. 1321 (incorporating S. 832), 109th Cong. § 203 (2006).

42 H.R. 1528 (incorporating S. 882), 108th Cong. § 141 (2004).

43 The organizations were the American Bar Association, the American Institute of Certified Public Accountants (AICPA), the National Association of Enrolled Agents, the National Society of Accountants, and the National Association of Tax Professionals. *See Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 109th Cong. (2005).

44 *See* IRS Pub. 4832, *Return Preparer Review* (Dec. 2009).

45 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

46 *See* Tax Return Preparer Competency Act, H.R. 4141, 114th Cong. § 2 (2015) (Cong. Black) and Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 202 (2015) (Cong. Becerra). Cong. Becerra has since retired from Congress.

Hatch included language to authorize minimum standards as part of a larger bill designed to combat identity theft and refund fraud.[47]

Despite broad, bipartisan support for preparer standards, the American Institute of CPAs (AICPA) has opposed the bill[48] and, to date, the legislation has not advanced. The National Taxpayer Advocate believes the AICPA's concerns are partly misplaced and partly easy to address. Its main concern is about "marketplace confusion" — a sense that uninformed taxpayers will not be able to distinguish between a preparer who passes a simple competency test and a CPA with extensive training and knowledge, potentially leading some taxpayers who otherwise would engage the services of a CPA to go to a non-credentialed preparer instead.

First, we are not convinced taxpayers will generally be confused. Members of other organizations, notably the National Association of Enrolled Agents (NAEA), also hold credentials that could be "devalued" by marketplace confusion, yet the NAEA has made the calculation that enhanced preparer oversight would be beneficial. Second, to the extent some taxpayers may be confused, we agree that the IRS can and should take additional steps to clarify the differences among categories of preparers to assist the public in making informed decisions. Third, we note that the most significant requirements of the oversight rules the IRS adopted – passing a competency test and taking annual continuing education courses – do not apply to CPAs, attorneys, or enrolled agents. The burden of passing the competency test and satisfying new continuing education requirements would fall exclusively on non-credentialed preparers.

The IRS's evolving "Future State" plan provides an important additional basis for establishing preparer standards. The IRS envisions giving preparers access to taxpayer information through online accounts. The security risks of this plan are significant, and if the IRS proceeds with this plan, steps must be taken to mitigate the risks. Minimum standards for preparers are one important step. Some have argued that requiring preparers to pass a competency test and take annual continuing education courses would address only the issue of competence and would not ensure preparers conduct themselves ethically. The National Taxpayer Advocate agrees that competency and ethical conduct are distinct issues. However, we think preparer standards would serve to raise ethical conduct as well as competency levels. A preparer who learns enough about tax return preparation to pass a competency test and takes annual continuing education courses would be demonstrating a commitment to return preparation as a profession. As such, the preparer would be more likely to understand and feel like a part of the tax system and would have more to lose if found to have engaged in misconduct.

In sum, the GAO, TIGTA, and other compliance studies described above suggest that tax returns prepared by non-credentialed preparers are often inaccurate. Minimum standards would directly improve preparer competency levels and would help to raise ethical norms as well.

Recommendation

Amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

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47 *See* J. Comm. on Tax'n, *Description of the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud*, JCX-108-15, at 16-21 (2015).

48 Letter from Chair, AICPA Tax Executive Committee to the Chairman and Ranking Member of the Senate Committee on Finance (Sept. 15, 2015) (opposing the provision in Chairman Hatch's mark that would authorize preparer oversight); Letter from Chair, AICPA Tax Executive Committee to the Chairman and Ranking Member of the House Committee on Ways and Means (Dec. 4, 2015) (opposing Congresswoman Black's bill).

#7 REQUIRE THE IRS TO UTILIZE SCANNABLE CODE OR SIMILAR TECHNOLOGY TO PROCESS INDIVIDUAL INCOME TAX RETURNS PREPARED ELECTRONICALLY BUT FILED ON PAPER

Present Law

Present Law does not address the treatment of tax returns that are prepared electronically but filed on paper.

Reasons for Change

In recent years, more than 85 percent of individual income tax returns have been submitted electronically. Of those submitted on paper, millions are prepared electronically using tax software. When the IRS cannot capture the tax return information electronically, IRS employees must enter the data from paper filed returns manually. The manual transcription of millions of lines of return data is expensive, produces transcription errors, and delays return processing.

Scanning technology is available that would allow the IRS to scan paper returns and capture the data in an efficient manner. Many states use scanning technology for paper-based returns. To allow the IRS to utilize scanning technology, a taxpayer or preparer would use tax return preparation software to complete the return. When the return is printed, a horizontal or vertical bar code containing the return information is imprinted on the paper. The IRS scans the return, captures the data, decodes it, and processes the return as if it had been transmitted electronically.

While scanning technology does not convert taxpayers to e-file, it produces significant advantages over paper filing, including: (1) faster processing of tax returns; (2) more accurate recording of tax return information; and (3) cost savings due to the reduction in manual data transcription. Despite these benefits, the IRS has not availed itself of this or similar technology for individual income tax returns. The IRS can achieve savings by working with tax software companies to incorporate scannable bar codes into their individual tax return preparation software. The IRS already provides scanning technology as an option for filers of Schedules K-1 (Form 1065).[49] The IRS is also using character recognition software to capture data on some paper returns. It is unclear whether character recognition software is more accurate than scannable technology in the context of tax return data.

Recommendation

Require the IRS to report to Congress, within 180 days of enactment, on its plans to reduce the monetary costs and transcription errors associated with the processing of individual income tax returns prepared electronically but filed on paper.[50]

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49 *See* IRS, *2-D Bar Coding for Schedules K-1 is the Preferred Method*, https://www.irs.gov/e-file-providers/two-dimensional-bar-coding-for-schedules-k-1-is-the-preferred-method (last visited Dec. 22, 2017).

50 For similar recommendations, see Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals* 227 (Mar. 2014); S. 2736, 113th Cong. § 4 (2014), which require taxpayers who paper file electronically prepared tax returns to print their returns with a scannable 2-D bar code.

#8 CLARIFY THAT IRS EMPLOYEES MAY HELP TAXPAYERS LOCATE A SPECIFIC LOW INCOME TAXPAYER CLINIC

Present Law

Pursuant to IRC § 7526, the IRS may award matching grants for the development, expansion, or continuation of Low Income Taxpayer Clinics (LITCs), subject to the availability of appropriated funds. LITCs are programs that provide representation to low income taxpayers for free or a nominal fee to assist them in resolving disputes with the IRS.

The Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury prohibit IRS employees from recommending or referring taxpayers to specific attorneys or accountants.[51] The Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch further limit IRS employees' ability to refer taxpayers to representatives.[52]

The IRS publishes a list of LITCs, and employees often refer taxpayers to that publication or to the list available on www.irs.gov;[53] however, there is no provision in the law that permits IRS employees to provide information about the nearest LITC without violating the applicable standards of conduct.

Reasons for Change

Congress created the LITC grant program so low income taxpayers, who otherwise could not afford representation, could obtain assistance resolving disputes with the IRS. IRS employees receive training about LITCs and the valuable resources they provide for low income taxpayers. Taxpayers with tax problems often call the IRS for help. In some cases, they are asked by a taxpayer if they can identify organizations that can provide assistance. In other cases, an IRS employee recognizes on his or her own that a taxpayer would benefit from LITC assistance. The inability of IRS employees to refer taxpayers to a specific LITC undermines the usefulness of the LITC program by impeding — rather than advancing — taxpayer awareness of the program.

Recommendation

Amend IRC § 7526(c), *Special rules and limitations,* to clarify that, notwithstanding any other provision of law, IRS employees may refer taxpayers to LITCs receiving funding under this section.[54]

51 "Employees of the IRS or TIGTA [Treasury Inspector General for Tax Administration] shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS." 5 C.F.R. § 3101.106(a). A Low Income Taxpayer Clinic (LITC) is similar enough to a firm of attorneys or accountants to fall within the scope of the regulation.

52 *See* 5 C.F.R. § 2635.702(c)(1) and 5 C.F.R. § 2635.101(b)(8).

53 *See* IRS Pub. 4134, *Low Income Taxpayer Clinic List* (Rev. 7-2017), and https://www.irs.gov/advocate/low-income-taxpayer-clinics.

54 There have been numerous similar proposals introduced in Congress over the last 15 years. *See, e.g.*, Taxpayer Protection Act of 2016, H.R. 4912 114th Cong. § 303 (2016) (introduced in the House); Taxpayer Protection and Assistance Act of 2007, S. 1219, 110th Cong. § 2(b)(3) (2007) (introduced in the Senate); Taxpayer Protection and Assistance Act of 2005, S. 832, 109th Cong. § 2(b)(3) (2005) (introduced in the Senate).

#9 EXTEND THE TIME FOR SMALL BUSINESSES TO MAKE SUBCHAPTER S ELECTIONS

Present Law

IRC § 1362(b)(1) provides that small business corporations ("S corporations") may elect to be treated as flow-through entities by submitting Form 2553, *Election by a Small Business Corporation*, at any time during the preceding taxable year or at any time on or before the 15th day of the third month of the current taxable year.

The due date for an S corporation to file Form 1120S, *U.S. Income Tax Return for an S Corporation*, is the 15th day of the third month after the end of its taxable year.

Reasons for Change

Many small business owners are not familiar with the rules governing S corporations, and they learn about the effects of S corporation status for the first time when they hire a tax professional to prepare the corporation's tax return for its first year of operation. By that time, the deadline for electing S corporation status has passed. The failure to make a timely S corporation election can cause significant adverse tax consequences for businesses, such as taxation at the corporate level and the inability to deduct operating losses on shareholders' individual income tax returns.[55] For context, more than 4.8 million S corporation returns were filed in FY 2016, which accounted for about 69 percent of all corporate returns.

Taxpayers may seek permission from the IRS to make a late S corporation election under the provisions of Revenue Procedure 2013-30 or through a private letter ruling (PLR) request. Under the revenue procedure, a corporation that failed to timely file Form 2553 may request relief by filing Form 2553 within three years and 75 days of the date the election is intended to be effective. In addition, the corporation must attach a statement explaining its reasonable cause for failing to timely file the election and its diligent actions to correct the mistake upon its discovery. Finally, each shareholder during the period between the date the S corporation election was to have become effective and the date the completed election form is filed must sign a statement that they have reported their income on all affected returns consistent with the S corporation election for the year the election should have been filed and for all subsequent years. If an entity is unable to comply with the requirements of the revenue procedure, it may request relief through a PLR, for which the IRS charges a user fee ranging from $5,800 to $28,300 per request.

The current S corporation election deadline burdens small businesses by requiring them to pay tax professionals and often IRS user fees to request permission to make a late election. It also burdens shareholders, because when the IRS rejects the S corporation return for the lack of election, the status of the corporation is affected, and that, in turn, may result in changes on the shareholders' personal tax returns. In addition, the current deadline and relief procedures require a commitment of significant resources on the part of the IRS to process late-election requests.

Because small business owners often consider the S corporation election for the first time at the end of the taxable year in connection with the preparation of their company's first tax return, the burdens described

55 Having a valid S corporation election became even more important with the passage of Pub. L. No. 115-97 (2017), which generally allows an individual taxpayer to deduct 20 percent of domestic "qualified business income" (QBI) from a pass-through business, including S corporations, effectively reducing the individual income tax rate on such income by 20 percent. The deduction is subject to certain income thresholds (first $315,000 of QBI for joint filers and $157,500 for single returns), phase-outs for professional services, and limitations based on W-2 wages paid or capital invested by business owner for larger pass-through entities. *See* Pub. L. No. 115-97, § 11011 (2017); H.R. Rep. No. 115-466, at 205-224 (2017) (Conf. Rep.). Taxpayers may not understand that they have to make an S corporation election by March 15, 2018 in order for this provision to apply for taxable year 2018.

above would be substantially eliminated if corporations could make an S election on their first timely filed tax return.

Recommendation

Amend IRC § 1362(b)(1) to allow a small business corporation to elect to be treated as an S corporation by checking a box on its first timely filed (including extensions) Form 1120S, *U.S. Income Tax Return for an S Corporation*.[56]

56 For language that is generally consistent with this recommendation, *see* S Corporation Modernization Act of 2017, S. 711 and H.R. 1696, 115th. Cong. § 7 (2017).

#10 REQUIRE EMPLOYERS FILING MORE THAN FIVE FORMS W-2, 1099-MISC, AND 941 TO FILE ELECTRONICALLY AND PROVIDE A BREAKDOWN BY EMPLOYEE OF THE AMOUNTS REPORTED ON FORM 941

Present Law

IRC § 6011(e)(1) authorizes the IRS to issue regulations that provide standards for determining which returns must be filed on magnetic media or in other machine-readable form. IRC § 6011(e)(2) provides that when issuing regulations, the IRS cannot require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year, except that partnerships having more than 100 partners must file returns on magnetic media. The term "person" is broadly defined to include "an individual, a trust, estate, partnership, association, company or corporation."[57] Under Treasury regulations, taxpayers must file IRS Forms W-2, *Wage and Tax Statement*, and 1099-MISC, *Miscellaneous Income*, electronically when they file 250 or more information returns.[58] "[T]he 250-threshold applies separately to each type of form required to be filed."[59] Taxpayers may request waivers of the electronic filing requirement if they cannot comply due to technological constraints or if compliance with the requirement would result in undue financial burden.[60]

Every employer is generally required to make a return on Form 941, *Employer's Quarterly Federal Tax Return*, for the first calendar quarter in which the employer pays wages subject to the tax imposed by the Federal Insurance Contributions Act and for each subsequent quarter (whether or not wages are paid therein) until the employer has filed a final return.[61] Employers report the number of employees, total wages paid, and federal income tax withheld from employees' wages in the aggregate. Employers are not required to provide an employee-specific breakout of this information.[62] Employers currently are not required to file Forms 941 electronically but can do so voluntarily.[63] In contrast, a corporation required to file a corporate income tax return must file Form 1120, *U.S. Corporation Income Tax Return*, electronically if it files at least 250 required returns of any type during the calendar year in the aggregate (including Forms W-2, 1099-MISC, and 941).[64]

Reasons for Change

Increasing the electronic filing of information returns and requiring the electronic filing of Forms 941 with a breakdown of the amounts reported by employee would significantly benefit taxpayers and the IRS in several ways.

First: Effective data matching is an indispensable tool in the IRS's battle to combat identity theft (IDT) and refund fraud. Requiring employers to provide each employee's name, address, Social Security number (SSN),

57 IRC § 7701(a)(1). *See also* Treas. Reg. § 301.6011-2(a)(3).

58 Treas. Reg. § 301.6011-2(c)(1)(i).

59 Treas. Reg. § 301.6011-2(c)(1)(iii).

60 *See* IRS Pub. 8508, *Request for Waiver From Filing Information Returns Electronically* (Rev. 9-2017).

61 Treas. Reg. § 31.6011(a)-1(a)(1). *See* Treas. Reg. § 31.6011(a)-1(a)(2) through (5) for details about when an employer must use something other than Form 941.

62 Although the final version of Pub. L. No. 115-97 (2017) did not include a provision modifying the reporting requirements of Form 941, a proposal to include the name, address, and wages of each employee was included in the version of the tax reform bill approved by the House. *See* H.R. Rep. No. 115-409, at 142-144 (2017). *See also* H.R. Rep. No. 115-466, at 235 (2017) (Conf. Rep.).

63 See https://www.irs.gov/businesses/small-businesses-self-employed/e-file-form-940-941-or-944-for-small-businesses (last visited Dec. 28, 2017).

64 Treas. Reg. § 301.6011-5(a)(1) and (d)(5).

and wages on a quarterly basis on an electronically filed Form 941 would allow the IRS an opportunity to gather information for purposes of data matching in advance of the filing season.

The earlier availability of Forms W-2 and 1099-MISC via electronic filing would provide the IRS with real-time data on wages and withholding, without the delays and errors associated with transcribing data from paper-filed forms. When information about a taxpayer's wages and withholding is processed before the IRS processes a taxpayer's tax return, the IRS can match the data on the tax return with the data reported on the information returns. If there are significant disparities, the IRS can review the tax return more carefully before paying a refund. Similarly, the IRS could more quickly match wages and withholding reported on information returns against the employer's Forms 941. From the government's perspective, data matching reduces the revenue loss associated with unpaid employment taxes, improper payments, and stolen refunds. From the taxpayer's perspective, the IRS helps the legitimate taxpayer either avoid a refund delay or resolve a delay more quickly by spotting an IDT return before a refund is paid.

The potential benefits of earlier access to taxpayers' wages and withholding information are significant because of the magnitude of the IDT problem. The IRS estimates that at least $14.59 billion in IDT tax refund fraud was attempted in calendar year 2015. It estimates that it prevented at least $12.35 billion (85 percent) but paid at least $2.24 billion (15 percent). Business IDT is a growing subset of the IDT problem. The IRS handled nearly three times as many business IDT cases in 2017 as it did in 2016, an increase of more than 10,000 cases. Yet in 2017, less than half of Forms 941 were filed electronically. Greater electronic filing of Forms 941 would allow the IRS to match Form 941 data against Form W-2 and Form 1099-MISC data to identify instances of potential business IDT fraud.

Second: Data submitted on paper returns must be manually entered into Social Security Administration (SSA) or IRS computer systems, and manual data entry necessarily produces transcription errors. When a transcription error on an information return or on an employer's Form 941 occurs, the IRS's document matching process will identify a disparity that may delay a refund or initiate an erroneous adjustment notice, causing needless hassle for the taxpayer and unnecessary work for the IRS.

Third: Manual data entry of information returns is much more expensive than electronic data processing. For example, the SSA reports a cost of $0.53 to process each paper Form W-2, as compared with a cost of $0.002 for each electronically filed Form W-2.[65]

The current threshold of 250 returns that triggers the requirement for electronic filing was established in 1989.[66] The electronic filing requirement applies to Form 1120, *U.S. Corporation Income Tax Return*, if a corporation files at least 250 required returns of any type during the calendar year in the aggregate (including Forms W-2, 1099-MISC, and 941). In light of the significant advances in technology and digital capability that have taken place since that time, the National Taxpayer Advocate believes the threshold should be reduced substantially.

There are still some employers for whom an electronic filing requirement would impose disproportionate burden. An elderly individual who pays one or several health aides and is required to file Form W-2s may not have the technological skills to file electronically without help. But a threshold of five should provide most of the benefits of electronic submission of these forms without imposing undue burden on very small employers.

65 *See* GAO, GAO-14-633, *Identity Theft: Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud* (Oct. 20, 2014).

66 Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 7713, 103 Stat. 2106, 2394 (1989) (codified as amended at 26 U.S.C. § 6011).

We note that the SSA has a fillable Form W-2 available on its website that employers can use to submit Forms W-2 electronically at no cost.[67] The IRS should develop a similar fillable Form 941, *Employer's Quarterly Federal Tax Return*, and a fillable Form 1099-MISC for those small businesses that may not have access to tax software to electronically file. By doing so and making it easier for businesses to file electronically, the IRS will then be in a better position to protect revenue by identifying and resolving inaccurate reporting at the time of return filing and preventing the release of improper refunds.

Recommendations

Amend IRC § 6011(e)(2), *Requirements of Regulations*, to require employers with more than five employees to electronically file Forms W-2 and Forms 941, and require payors who issue more than five Forms 1099-MISC with nonemployee compensation to electronically file Forms 1099-MISC.[68]

Amend IRC § 6011 to require that Form 941 contain information about each employee's name, address, SSN, and wages.

To promote electronic filing, direct the IRS to create fillable Forms 941 and Forms 1099-MISC that can be electronically filed at no cost directly from the irs.gov website.

67 *See* www.ssa.gov/employer/what.htm (last visited Dec. 1, 2017).

68 In 2016, Senator Hatch introduced a bill proposing a staggered reduction over five years of the 250 return threshold triggering the requirement for electronic filing. Stolen Identity Refund Fraud Prevention Act, S. 3157, 114th Cong. § 203 (2016). Under the terms of the bill, for calendar years after 2022, electronic filing would be required if the person was required to file at least 20 returns during the calendar year.

#11 AUTHORIZE THE IRS TO WORK WITH FINANCIAL INSTITUTIONS TO REVERSE MISDIRECTED DEPOSITS

Present Law

Title 12, United States Code, § 3402 generally bars government authorities from accessing financial information of any customer from a financial institution unless the records are reasonably described and are disclosed as enumerated in 12 U.S.C. §§ 3404 through 3408, which include customer authorizations, administrative subpoena or summons, search warrants, judicial subpoenas, or formal written requests. Section 3402 also provides for limited exceptions, one of which includes 12 U.S.C. § 3413. Section 3413(c) provides that "[n]othing in this chapter prohibits disclosure of financial records in accordance with procedures authorized by [the IRC]." The IRC does not currently include procedures through which the IRS can obtain information about an account holder who receives a misdirected direct deposit refund.

The IRS has erroneous refund procedures to recover a direct deposit that has been applied to the wrong taxpayer's bank account due to IRS error.[69] An erroneous refund is defined as "the receipt of any money from the Service to which the recipient is not entitled."[70] However, the IRS may not use its erroneous refund procedures to recover the refund (assess and collect it) if it does not know the identity of the account owner.

Reasons for Change

Every year, some taxpayers who request that their tax refunds be paid through direct deposit place the wrong bank account or routing number on their tax returns. As a result, the refund is sometimes deposited into the account of an unrelated third party. In a small number of cases, dishonest tax return preparers change the routing information on a return and the taxpayer's refund is deposited into the preparer's account.

There currently are no procedures that allow the IRS to recover a misdirected direct deposit. Existing regulations provide the general rule that when federal payments (other than vendor payments) are deposited, the account at the financial institution shall be in the name of the recipient.[71] However, financial institutions are not required to verify whether the name on the designated account matches the name of the depositor/taxpayer,[72] and the IRS has no authority to take money out of the incorrect account or receive confidential information from the financial institution regarding the owner of the incorrect account.

The IRS can do little more than contact the financial institution and ask that it attempt to persuade the incorrect account owner to return the misdirected funds. While the financial institution is required to take corrective action when the mistake is its own, it is generally not required to take action if the mistake is made by the taxpayer.[73] As a result, a taxpayer who enters a wrong digit may lose his tax refund in entirety.

For this reason, a taxpayer has greater recourse if he requests that his refund be paid by paper check. If a taxpayer elects to receive his refund by check and the check does not arrive, the taxpayer may notify the

69 *See* IRM 21.4.5.5.5, *Overview of Category D Erroneous Refunds* (Oct. 1, 2016).

70 *See* IRM 21.4.5.2, *Erroneous Refunds Overview* (Oct. 9, 2015).

71 31 C.F.R. § 210.5(a).

72 "It is important to note that [a financial institution] is not required to manually verify that the name on the [Automated Clearing House] entry matches the name on the account at the time the payment is posted." Bureau of the Fiscal Service (BFS) Green Book: *A Guide to Federal Government ACH Payments* 2-6 (Rev. May 2013), https://www.fiscal.treasury.gov/fsreports/ref/greenBook/pdf/greenbookchapter2.pdf.

73 *See* 31 CFR § 210.8(d) (providing that if a financial institution becomes aware that an agency has originated an Automated Clearing House credit entry to an account that is not owned by the payee whose name appears in the ACH payment information, the financial institution shall promptly notify the agency).

IRS, and the Treasury Department's Bureau of the Fiscal Service (BFS, formerly Financial Management Service) will determine whether the check has been negotiated. If it has not been negotiated, BFS will issue a replacement check to the taxpayer. If BFS finds the paper check has been negotiated, it will conduct additional research, and if it determines the taxpayer was not involved in negotiation of the check, it will issue a replacement to the taxpayer and charge the Check Forgery Insurance Fund.[74]

By contrast, taxpayers who elect to receive their refunds by direct deposit have no such support. BFS guidelines state, in part: "If the taxpayer or the taxpayer's agent gave incorrect account information, neither Fiscal Service nor IRS will assist the taxpayer with recovering the funds, and the taxpayer is free to pursue civil action."[75]

Despite its efforts to persuade taxpayers to elect to receive their refunds via direct deposit, the IRS has insufficient procedures for replacing misdirected direct deposit refunds. As a result, taxpayers who elect to receive their refunds electronically have no backstop if they make a mistake (or if their preparer redirects the refund). As compared with the ability to obtain a replacement check, the current procedures undermine the IRS's goals by providing a strong incentive for taxpayers to elect to receive their refunds by check.

Recommendation

Amend the IRC to require the IRS to create a process through which the IRS can work with financial institutions to identify the account holder of a misdirected tax refund deposit. In addition, amend Title 31 of the United States Code to require the return of misdirected funds by the account holder of the account that incorrectly received the funds.

74 *See* 31 U.S.C. § 3343. Once it is determined a refund check has been cashed and the BFS determines whether or not the payee endorsed the check, BFS may issue a replacement check, or when appropriate, issues denial letters. IRM 21.4.2.4.13 (Jan. 13, 2016).

75 BFS Green Book, *A Guide to Federal Government ACH Payments* 1-9 (Rev. May 2013), https://fiscal.treasury.gov/fsreports/ref/greenBook/pdf/greenbookchapter1.pdf.

#12 REVISE THE "MAILBOX RULE" TO APPLY TO ELECTRONICALLY SUBMITTED DOCUMENTS AND PAYMENTS IN THE SAME MANNER AS IT APPLIES TO MAILED SUBMISSIONS

Present Law

IRC § 7502(a)(1) provides that if the requirements set forth in the section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope. If the postmark date is on or before the last day of the period prescribed for filing the document or making the payment, the document or payment is considered timely filed or paid even if it is received after the due date. IRC § 7502(b) and (c) provide that this timely mailed/timely filed rule (commonly referred to as the "mailbox rule") applies to documents sent by U.S. postal mail, private delivery services, and electronic filing through an electronic return transmitter. The Secretary is authorized to promulgate regulations describing the extent to which the mailbox rule shall apply to certified mail and electronic filing.[76] To date, the only regulations the Secretary has promulgated dealing with electronically filed documents cover documents filed with an electronic return transmitter.[77]

Reasons for Change

The statutory "mailbox rule" in IRC § 7502 does not apply to the electronic transmission of payments to the IRS. In addition, the "mailbox rule" does not apply to electronic filing of time-sensitive documents (except documents filed electronically with an electronic return transmitter).[78] If the IRS does not receive an electronically submitted document (including a facsimile transmission) or payment until after the due date, it is considered late even if the taxpayer can produce a confirmation that she transmitted the payment or document before the due date. The comparatively unfavorable treatment of electronically submitted documents and payments undermines the IRS's efforts to encourage greater use of digital services and creates additional cost and burden for taxpayers and the IRS alike.

Along similar lines, the IRS encourages U.S. taxpayers to make payments electronically using the Treasury Department's Electronic Federal Tax Payment System (EFTPS). However, the EFTPS website displays the following warning: "Payments using this Web site or our voice response system must be scheduled by **8 p.m. ET the day before the due date** to be received timely by the IRS. The funds will move out of your banking account on the date you select for settlement."[79] (Emphasis in original.) This limitation applies to all payments. Assume a taxpayer owes a balance that is due on April 15. If she mails the payment to the IRS before midnight on April 15, the payment will be considered timely, even though it will probably take about a week until the IRS receives, opens and processes the check. If she submits the payment on EFTPS, the payment will be considered late if she submits the transaction after 8:00 p.m. on April 14 (28 hours earlier), even though the payment would be debited from her account on April 16 — about one week earlier than if she submits it by mail.

This disparity in the treatment of mailed and electronically submitted payments makes little sense. As compared with a mailed check, an electronic payment is received more quickly, is cheaper to process, and

76 IRC § 7502(c)(2).

77 Treas. Reg. § 301.7502-1(d).

78 See Treas. Reg. § 301.7502-1(d)(3)(i) for a definition of an electronic return transmitter. *See also* Rev. Proc. 2007-40, 2007-1 C.B. 1488, for a list of documents that can be filed electronically with an electronic return transmitter.

79 *See* www.eftps.gov (last visited Dec. 17, 2017).

eliminates the risk a mailed check will be lost or misplaced. Yet rather than encouraging taxpayers to use EFTPS, the relative deadlines serve as a deterrence.

Recommendation

Amend IRC § 7502 to direct the Secretary to issue regulations that apply the mailbox rule comparably to documents and payments submitted by a taxpayer regardless of whether they are submitted electronically or by mail.

#13 AMEND IRC § 6654(c)(2) TO ADJUST ESTIMATED TAX PAYMENT DEADLINES TO OCCUR QUARTERLY

Present Law

Under IRC § 6654(c)(2), taxpayers are required to make estimated tax payments in four required installments on the following dates: April 15, June 15, September 15, and January 15.

Reasons for Change

Although estimated tax installment payments are sometimes referred to as "quarterly payments," they do not coincide with calendar-year quarters. Nor are the payment dates evenly spaced — the April 15 and June 15 installments are due two months apart; the June 15 and September 15 installments are due three months apart; the September 15 and January 15 installments are due four months apart; and the January 15 and April 15 installments are due three months apart.

These dates are not intuitive and create compliance burdens. Small business owners and self-employed taxpayers are disproportionately affected by the estimated tax rules because their incomes generally are not subject to wage withholding. Yet small businesses are far more likely to keep their books on the basis of regular three-month quarters than on the basis of the seemly random intervals prescribed by IRC § 6654. These uneven intervals make it more difficult for many taxpayers to calculate net income and save appropriately to make payments. They also cause confusion, as taxpayers struggle to remember the due dates.

Setting due dates to fall 15 days after the end of each calendar quarter would be substantially easier for taxpayers to remember and comply with.

Recommendation

Amend IRC § 6654(c)(2) to set the estimated tax installment deadlines on April 15, July 15, October 15, and January 15.[80]

80 H.R. 3717, 115th Cong. § 2 (2017) contains language that is generally consistent with this recommendation.

#14 HARMONIZE REPORTING REQUIREMENTS FOR TAXPAYERS SUBJECT TO BOTH FBAR AND FATCA BY ELIMINATING DUPLICATION AND EXCLUDING ACCOUNTS A U.S. PERSON MAINTAINS IN THE COUNTRY WHERE HE OR SHE IS A BONA FIDE RESIDENT

Present Law

The Currency and Foreign Transaction Reporting Act of 1970 (commonly known as The Bank Secrecy Act) requires U.S. citizens and residents to report foreign accounts with an aggregate value of $10,000 or more at any time during the calendar year on FinCEN Report 114, *Report of Foreign Bank and Financial Accounts* (FBAR).[81]

The Foreign Account Tax Compliance Act (FATCA)[82] added IRC § 6038D, which requires U.S. citizens, resident aliens, and certain non-resident aliens to file Form 8938, *Statement of Specified Foreign Financial Assets*, with their federal income tax returns to report foreign assets exceeding specified thresholds. Under FATCA, IRC §§ 1471-1474, foreign financial institutions (FFIs) that do not register with the IRS and agree to report certain information about their U.S. accounts,[83] including the accounts of certain foreign entities with substantial U.S. owners, are subject to a 30 percent withholding tax on certain U.S. source payments they receive.

IRC § 1471(d)(1) authorizes the IRS to issue regulations to eliminate duplicative reporting requirements. IRC § 6038D similarly authorizes the IRS to issue regulations or other guidance to provide appropriate exceptions from FATCA reporting when such reporting would be duplicative of other disclosures.

Reasons for Change

Many U.S. taxpayers, particularly those living abroad, face increased compliance burdens and costs as a result of FATCA reporting obligations that significantly overlap with the FBAR filing requirements.[84] The IRS has exercised its regulatory authority to eliminate duplicative reporting of assets on Form 8938 if an asset is reported or reflected on certain other timely filed international information returns (*e.g.*, Forms 3520, 3520A, 5471, 8621, 8865, or 8891).[85] It has also provided an exception from the reporting rules for financial accounts held in U.S. territories for *bona fide* residents of such territories.[86]

However, the IRS has repeatedly declined to adopt the recommendations of the National Taxpayer Advocate, supported by other stakeholders, including the Government Accountability Office, to eliminate duplicative FATCA reporting where assets have already been reported on an FBAR,[87] and to provide a same-country exception for reporting financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident. The recommendations, if adopted, would reduce the compliance burdens on U.S. taxpayers, who now must file complex, additional forms themselves or pay higher tax return preparation fees, and on FFIs, some of whom are declining to do business with U.S. expatriates because of the significant costs and regulatory risks

81 *See* 31 U.S.C. § 5314(b)(3) and 31 C.F.R. § 1010.306(c).

82 Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010).

83 *See* IRC § 1471(d)(1) for a definition of "United States account."

84 IRS, *Comparison of Form 8938 and FBAR Requirements*, http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements.

85 Treas. Reg. § 1.6038D-7(a)(1).

86 Treas. Reg. § 1.6038D-7(c).

87 *See, e.g.*, GAO, GAO-12-403, *Reporting Foreign Accounts to the IRS: Extent of Duplication Not Currently Known, but Requirements Can Be Clarified* (Feb. 2012).

associated with ongoing FATCA compliance. In addition, the unwillingness of certain FFIs to do business with U.S. expatriates makes it difficult for U.S. citizens to open bank accounts in some countries.

Recommendations

Amend IRC § 6038D to eliminate duplicative reporting of assets on Form 8938, *Statement of Specified Foreign Financial Assets,* if an asset is or has been reported or reflected on an FBAR and to exclude financial accounts maintained by a financial institution organized under the laws of the country of which the subject U.S. person is a *bona fide* resident from the specified foreign financial assets required to be reported on Form 8938.

Amend IRC § 1471 to exclude financial accounts maintained by a financial institution organized under the laws of the country of which the subject U.S. person is a *bona fide* resident from the definition of "financial account" subject to reporting by FFIs.[88]

88 For additional information on the National Taxpayer Advocate's recommendations, see National Taxpayer Advocate 2015 Annual Report to Congress 353-363 (Legislative Recommendation: *Foreign Account Reporting: Eliminate Duplicative Reporting of Certain Foreign Financial Assets and Adopt a Same-Country Exception for Reporting Financial Assets Held in the Country in Which a U.S. Taxpayer Is a Bona Fide Resident*).

Improve Assessment and Collection Procedures

#15 STRENGTHEN TAXPAYER PROTECTIONS IN THE FILING OF NOTICES OF FEDERAL TAX LIENS

Present Law

Under IRC § 6323, the IRS is authorized to file a Notice of Federal Tax Lien (NFTL) in the public record when a taxpayer owes past-due taxes. The NFTL protects the government's interest in property against subsequent purchasers, secured creditors, and judgment lien creditors. Unlike other creditors, the IRS does not need to obtain a judgment to file an NFTL.

IRC § 6320 provides taxpayers with a right to a collection due process (CDP) hearing related to the filing of an NFTL. However, the right to a CDP hearing is triggered only after an NFTL has been filed.

Section 3421 of the IRS Restructuring and Reform Act of 1998 (RRA 98) requires the IRS to adopt procedures under which an employee's determination to file an NFTL would, "where appropriate," be approved by a supervisor and to set out disciplinary actions when such approval is not obtained.

Reasons for Change

An NFTL filing is a significant IRS enforcement tool, but because it can have a devastating financial impact on the taxpayer, due process safeguards are critical. More specifically, the filing of a NFTL can significantly damage the creditworthiness of a taxpayer, which can negatively impact the taxpayer's ability to obtain financing for a home or other major purchases, find or maintain a job, secure affordable rental housing or insurance, and even pay the tax debt. If not properly used, NFTL filings may undermine the government's interest, because when the taxpayer's financial position worsens, he becomes less able to afford to make payments. Several TAS studies show that NFTLs can unnecessarily harm taxpayers and reduce their ability to become or remain compliant with their federal tax filing obligations.

Despite the directive in RRA 98 regarding managerial approval before the filing of NFTLs, the IRS has interpreted the "where appropriate" qualification in the statute narrowly and does not require managerial approval in the majority of cases. Rather, it files most NFTLs automatically based on an arbitrary dollar threshold of the unpaid liability. In addition, there is no requirement in IRS procedures for employees to make, or to attempt to make, interpersonal contact with the taxpayer prior to filing an NFTL. Without any meaningful contact with the taxpayer, determinations to file NFTLs may be made without a full financial evaluation of the taxpayer's financial condition and without consideration of collection alternatives.

The government also has a secondary interest at stake. An NFTL filing may have an immediate impact on a taxpayer's ability to obtain a loan or to keep or obtain employment. If a taxpayer's financial viability is harmed, it may significantly impair the IRS's ability to collect the tax and may hinder future tax compliance. For example, if the NFTL increases the living expenses of the taxpayer and the taxpayer's family, or renders him or her unemployed or underemployed, the government may be forced to provide a social safety net in the form of unemployment benefits, food stamps, and the like, thus increasing the overall societal cost and raising everyone's share of taxes. Yet by automatically filing NFTLs in most the cases, IRS practices focus exclusively on attempting to collect the tax liability and ignore the impact of the NFTL filing on the taxpayer or on other government programs.

Inadequate taxpayer protections in the area of NFTL filings cause an imbalance between the IRS's significant lien power and *a taxpayer's right to a fair and just tax system*, an imbalance Congress sought to correct when it enacted RRA98 and noted its intent to preclude the IRS from "abusively us[ing] its liens-and-seizure authority." In light of current IRS collection practices, additional taxpayer protections are warranted to restore the appropriate balance.

Recommendations

1. Amend IRC § 6323 to provide clear and specific guidance about the factors the IRS must consider in making NFTL filing determinations; require that prior to making a determination to file an NFTL, the IRS must make a "live contact," or at least a good faith effort to make "live contact," with the taxpayer telephonically or in person to obtain financial information and discuss collection alternatives; and allow for pre-filing administrative review of IRS lien determinations by the IRS Office of Appeals.
2. Amend IRC § 7433 to allow civil actions for damages that result from NFTL filings made in violation of the required NFTL filing determination procedures.
3. Codify and expand § 3421 of RRA 98 to require IRS employees to obtain managerial approval prior to filing an NFTL where it is likely that the NFTL will cause a hardship, will be unlikely to protect the government's interest in the taxpayer's property or rights to property, or will impair the taxpayer's ability to pay the tax; require the IRS supervisor, as part of the approval process, to consider whether the NFTL would attach to property, whether the benefit of filing an NFTL for the government would outweigh the harm to the taxpayer, and whether the NFTL filing will jeopardize the taxpayer's ability to comply with the tax laws in the future; and require the IRS to discipline employees who fail to secure managerial approval prior to filing an NFTL in situations required by law.[89]

89 For additional information on these recommendations, see National Taxpayer Advocate 2016 Annual Report to Congress 386-392 (Legislative Recommendation: *Notices of Federal Tax Lien (NFTL): Amend the Internal Revenue Code to Require a Good Faith Effort to Make Live Contact With Taxpayers Prior to the Filing of the NFTL*); National Taxpayer Advocate 2014 Annual Report to Congress 396-403 (Legislative Recommendation: *Managerial Approval for Liens: Require Managerial Approval Prior to Filing a Notice of Federal Tax Lien in Certain Situations*). We have also made recommendations to provide additional taxpayer protections relating to the treatment of NFTLs by the credit rating agencies. *See* National Taxpayer Advocate 2009 Annual Report to Congress 357-364 (Legislative Recommendation: *Strengthen Taxpayer Protections in the Filing and Reporting of Federal Tax Lien*). Senators Cardin and Becerra proposed similar protections in 2015. *See* the Taxpayer Rights Act of 2015 (S. 2333, 114th Cong. § 303 (2015)/H.R. 4128, 114th Cong. § 303 (2015)).

#16 CODIFY THE RULE THAT TAXPAYERS CAN REQUEST EQUITABLE RELIEF UNDER IRC § 6015(f) ANY TIME BEFORE EXPIRATION OF THE PERIOD OF LIMITATIONS ON COLLECTION

Present Law

Under IRC § 6015, taxpayers may obtain relief from the joint and several liability that results from filing a joint return. IRC § 6015 (b) and (c) both provide for relief from an understatement of tax if certain conditions are met. Both subsections impose a two-year period for requesting relief, which commences when the IRS first takes collection activity against the spouse seeking relief.

If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides for "equitable" relief from both understatements and underpayments. Subsection (f) does not contain a time limit for requesting relief, but Treasury Regulation § 1.6015-5(b)(1) imposes the same two-year time limit for requesting relief under subsection (f) as the statute imposes with respect to requests for relief under subsections (b) and (c).

In 2009, the Tax Court, in *Lantz v. Commissioner*, held the regulation imposing the two-year limit for requesting equitable relief under IRC § 6015(f) is invalid. The IRS appealed *Lantz* and similar decisions, and three U.S. Courts of Appeals overturned the Tax Court and upheld the validity of the two-year limit. The National Taxpayer Advocate has consistently advocated for removing the two-year rule for obtaining equitable relief.

In July 2011, the IRS changed its position and issued Notice 2011-70, which provides that taxpayers may request equitable relief within the IRC § 6502 period of limitation on collection or, for any credit or refund of tax, within the IRC § 6511 period of limitation. Proposed Treasury regulations to remove the two-year deadline consistent with Notice 2011-70 were published on August 13, 2013 (RIN 1545-BK51, 78 Fed. Reg. 49242-01), and public comment on the proposed regulations was invited. None of the four persons who submitted comments opposed removing the two-year rule, yet to date the regulations have not been finalized.

Reasons for Change

Although the IRS no longer imposes the two-year rule in section 6015(f) cases and has published guidance to that effect, the statute should be amended to make this rule permanent under the law.

Recommendation

Amend IRC § 6015(f) to provide that taxpayers may request equitable relief within the period of limitation on collection in IRC § 6502 or, for any credit or refund of tax, within the period of limitation in IRC § 6511.[90]

90 *See* Taxpayer Rights Act of 2015, H.R. 4128 and S. 2333, 114th Cong. § 303 (2015); Taxpayer Protection Act of 2016, S. 3156, 114th Cong. § 113 (2016); and Strengthening Taxpayer Rights Act of 2017, H.R. 3340, 115th Cong. § 202 (2017). All three of these bills contain language that is generally consistent with this recommendation.

#17 AUTHORIZE THE IRS TO RELEASE LEVIES THAT CAUSE ECONOMIC HARDSHIP FOR BUSINESS TAXPAYERS

Present Law

IRC § 6343(a)(1)(D) requires the IRS to release a levy if "the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer." Treasury Regulation § 301.6343-1(b)(4) defines economic hardship as arising when "[t]he levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses." The regulatory definition of economic hardship as the inability to pay reasonable basic living expenses means only individuals (including sole proprietorship entities) can experience economic hardship.

Reasons for Change

The effect of the Treasury regulations and IRS procedures is to impede businesses from settling their tax debts with collection alternatives. Allowing the IRS to release levies issued to collect the tax debts of businesses that are experiencing an economic hardship would permit the IRS and the taxpayers to work toward resolution of the case through collection alternatives (rather than enforced collection) and give businesses a second chance when facing economic hardship. This is important because forcing viable businesses to declare bankruptcy to protect themselves against a past tax liability often means that the business will terminate, employees will be let go, and the delinquent tax may never be collected. Moreover, lessening the harshness of IRS enforcement actions may avert noncompliance to the extent harsh enforcement actions sometimes force taxpayers into the cash economy.

Recommendation

Amend IRC § 6343 to authorize the IRS to release a levy if it determines that the levy is creating an economic hardship due to the financial condition of the taxpayer's viable trade or business. The legislation should require the IRS, in making the determination to release a levy against a business on economic hardship grounds, to consider the economic viability of the business, the nature and extent of the hardship (including whether the taxpayer exercised ordinary business care and prudence), and the potential harm to individuals if the business is liquidated.[91]

In addition, we recommend Congress clarify that in determining whether to release a levy against a business on economic hardship grounds, the IRS should also consider whether the taxes could be collected from a responsible person through an IRC § 6672 trust fund recovery penalty assessment.

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91 *See* H.R. 4368, 112th Cong. § 1 (2012); Taxpayer Rights Act of 2015, H.R. 4128 114th Cong. § 304 (2015) and S. 2333, 114th Cong. § 304 (2015) containing language that is generally consistent with this recommendation. In the antitrust context, courts strictly interpret the "failing firm" defense, which may permit an anticompetitive merger or acquisition, and the burden of proof falls on the parties invoking the defense. *See, e.g.*, *Citizen Pub. Co. v. U.S.*, 394 U.S. 131 (1969).

#18 EXTEND THE TIME LIMIT FOR TAXPAYERS TO SUE FOR DAMAGES FOR IMPROPER COLLECTION ACTIONS

Present Law

IRC § 7433(a) provides that in connection with any collection of Federal tax, if an IRS employee recklessly or intentionally, or by reason of negligence, disregards any provision of the IRC or any regulation, then that taxpayer may sue the United States for damages. Under IRC § 7433(d)(3) and the regulations thereunder, suit must be brought within two years after the date on which the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action. Under IRC § 7433(d)(1), before bringing suit, the taxpayer must first file an administrative claim with the IRS. Treasury Regulation § 301.7433-1(d) further provides that taxpayers may not file suit in court until the earlier of: six months after filing their administrative claim or the date the IRS renders a decision on their claim. However, if the claim is filed within the last six months of the two-year period for filing suit, then the taxpayer can file suit at any time before expiration of the two-year period.

Reasons for Change

A taxpayer who has been subjected to improper collection action must first file an administrative claim for damages. While the claim is pending, the two-year period for filing suit in a U.S. district court continues to run. Thus, a taxpayer who files an administrative claim within the final six months of the two-year window may be forced to incur the expense of filing suit in a district court rather than allowing the IRS to first make a decision on a pending administrative claim.

Recommendation

Amend IRC § 7433(d)(3) to allow taxpayers who have filed an administrative claim to file a civil action in U.S. district court any time after the earlier of: the date that is six months from the date of filing the administrative claim; the date on which the IRS renders a decision on the administrative claim; or the date that is within two years after the date on which the taxpayer reasonably could have discovered that the actions of the officer or employee were taken in disregard of a provision of this title or any regulation promulgated under this title.[92]

92 The Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. § 201 (2017) contains language that is generally consistent with this recommendation.

#19 PROTECT RETIREMENT FUNDS FROM IRS LEVIES IN THE ABSENCE OF "FLAGRANT CONDUCT" BY A TAXPAYER

Present Law

The IRS has wide discretion to exercise its levy authority. IRC § 6331(a) provides that the IRS generally may "levy upon all property and rights to property," which includes retirement savings. Some sources of income are exempt from levy pursuant to IRC § 6334. As a policy matter, the IRS has decided it will not levy on a taxpayer's retirement savings unless it has made a determination of "flagrant conduct."[93] Neither the Code, regulations, nor internal IRS guidance defines "flagrant conduct" for purposes of this analysis. Under IRC § 6331(h), the IRS may place a continuing levy on a series of specified payments to or received by a taxpayer, which will run from the date the levy is first made until the date the levy is released.

Reasons for Change

Under IRC § 6334, the IRS is prohibited from levying on certain sources of payment, such as unemployment benefits and child support. These exceptions reflect policy determinations. For example, Congress has determined that the IRS should not levy on child support payments because doing so would likely harm the children who rely on those benefits for support. Similarly, there is a strong public policy reason to protect retirement savings. Almost all workers eventually retire, and generally they will rely on their retirement savings for support.

The IRS has taken some steps to protect retirement savings by requiring a specialized analysis prior to levy, which includes a determination of whether the taxpayer engaged in "flagrant conduct." However, recent changes in IRS procedures have eroded these protections. Specifically, the IRS recently adopted new procedures that allow taxpayers to request or agree to "voluntary" levies on retirement accounts.[94] If a taxpayer agrees to a "voluntary" levy, the IRS bypasses the determination of "flagrant conduct."

Without protection from levy, taxpayers who have not engaged in "flagrant conduct" in their tax matters and who therefore would have been shielded from levies on their retirement accounts in the past may agree to "voluntary" levies out of fear or anxiety and thus find themselves in economic hardship during retirement.

Recommendations

Amend IRC § 6334(a) to include qualified retirement savings as a category of property exempt from levy if it is determined that (i) the levy would create in retirement an economic hardship within the meaning of Treas. Reg. § 301.6343-1(b)(4)(i) based on a review of the taxpayer's financial condition and (ii) the taxpayer has not engaged in "flagrant conduct."

Amend IRC § 6331 to stop the accrual of penalties and interest when a levy has attached to a retirement account and the period of limitation in IRC § 6502 has passed (generally ten years from the date of assessment of the liability). Consider a levy on retirement funds to be unenforceable after the period of limitations provided in IRC § 6502 has passed.

93 IRM 5.11.6.3(5) (Aug. 16, 2017).

94 IRM 5.11.6.3(3) (Aug. 16, 2017).

Amend IRC § 6334 to define "flagrant conduct" as willful action (or failure to act) that is voluntarily, consciously, and knowingly committed in violation of any provision of chapters 1, 61, 62, 65, 68, 70, or 75, and which appears to a reasonable person to be a gross violation of any such provision.[95]

95 H.R. 4912, 114th Cong. § 203 (2016) and S. 2333 and H.R. 4128, 114th Cong. §§ 306, 307 (2015) contain language that is generally consistent with these recommendations.

#20 TOLL THE TIME PERIODS FOR REQUESTING THE RETURN OF LEVY PROCEEDS WHILE THE TAXPAYER OR A PERTINENT THIRD PARTY IS FINANCIALLY DISABLED

Present Law

Under IRC § 6331, the IRS is authorized to collect outstanding tax by levying against a taxpayer's nonexempt property and rights to property. In certain circumstances, under IRC § 6343 and the related regulations, levies must be released and levied property may, or in some situations must, be returned to its owner.

An administrative wrongful levy claim under IRC § 6343(b) is a request, made by a person other than the taxpayer who owes the taxes, for the return of property believed to be wrongfully levied upon or seized. Generally, the person making the request (the third party) believes the levy is wrongful because the property levied belongs to him, or he believes he has a superior claim to the property that is not being recognized by the IRS.

IRC § 6343(b) provides that if the IRS wrongfully levies on specific property, it may return the property at any time. With regard to the return of money wrongfully levied upon, however, there are strict time constraints. Under IRC § 7426, the third party may file an administrative claim for the return of the levied property or bring a civil action against the United States in a U.S. district court. If the third party files an administrative claim for the return of levied property, IRC § 6532(c) requires that the claim be made in writing to the appropriate IRS office within two years from the date of the levy. If the third party brings a civil action against the United States without having first filed an administrative claim, the third party has two years from the date of the levy to file the suit. If the third party files an administrative claim and the IRS rejects it, the third party can still file suit. In this circumstance, the time period for filing suit will be extended for the shorter of the following two periods:

(1) A period of 12 months from the date of filing the request, or

(2) A period of 6 months from the date a notice of disallowance is mailed to the third party by registered or certified mail.

If a taxpayer (as opposed to a third party) seeks the return of money levied upon, the taxpayer may request return of the levy proceeds under IRC § 6343(d). Generally, the taxpayer making the request believes the IRS should return the levied property because one of the conditions in IRC § 6343(d)(2) has been met. IRC § 6343(d) provides that the provisions of IRC § 6343(b) shall apply in the same manner as if the property had been wrongfully levied, except that no interest shall be allowed. Thus, a taxpayer seeking return of levied property faces the same time constraints as a third party (two years from the date of the levy) to file a written administrative claim. Unlike a third party, however, a taxpayer has no right to seek judicial review if a request for the return of levy proceeds is denied by the IRS under IRC § 6343(d).

Reasons for Change

The law, as currently written, prevents the IRS from returning levied funds in situations where a taxpayer who is an individual, due to a physical or mental impairment, does not file a request for the return of levied money until after the two-year period. Likewise, a district court lacks jurisdiction over a wrongful levy suit filed by a third party if the deadline for filing the suit is missed due to a health problem of the third party.

To ensure that an impaired taxpayer or third party (who is an individual) can have his or her request for return of levy proceeds considered by either the IRS or the courts, the two-year period should be tolled if the taxpayer or third party can show that he or she was financially disabled during the period. Without this change, an impaired taxpayer or other third party who is prevented due to the impairment from requesting the return of levied funds in a timely manner will not be able to get back levy proceeds that otherwise would be eligible for return under IRC §§ 6343(b) and 6343(d), even in cases where the IRS violated the law.

Recommendation

Amend IRC §§ 6343(b) and 6532(c) to toll the time periods for filing a claim for the return of levy proceeds, a wrongful levy claim, and a wrongful levy suit during any period in which an individual is financially disabled.

#21 REQUIRE THE IRS TO WAIVE USER FEES FOR TAXPAYERS WHO ENTER INTO LOW-COST INSTALLMENT AGREEMENTS AND EVALUATE THE POTENTIAL REVENUE AND COMPLIANCE COSTS OF FUTURE USER FEE INCREASES

Present Law

In cases where a taxpayer is unable to pay the full amount of his or her liability in a single lump sum, IRC § 6159(a) authorizes the IRS to enter into an installment agreement (IA) under which a taxpayer will pay the full amount of tax due in monthly installments. A taxpayer can apply for an IA on paper or by using an online payment agreement (OPA).

The Independent Offices Appropriations Act (IOAA) of 1952 (31 U.S.C. § 9701) and OMB Circular A-25 authorize the IRS to set user fees by regulation. In 2016, the IRS used this authority to increase the IA fee.[96] Pursuant to Treas. Reg. § 300.1, the IRS now charges $225 for entering into paper IAs and $149 for entering into OPAs. If the taxpayer authorizes the IRS to "direct debit" a bank account each month, the fee is reduced to $107, unless the taxpayer also applies online using an OPA, in which case it is reduced to $31. These fees recover the IRS's full costs of providing IAs. In addition, the fee is set at $43 for low income taxpayers, unless they qualify for the lower $31 rate applicable to direct-debit OPAs.

Reasons for Change

Even a modest IA user fee could discourage some taxpayers from applying for an IA and paying their taxes voluntarily. Some taxpayers cannot afford to pay a fee, even if they do not qualify as low income. Almost by definition, taxpayers who require IAs are experiencing some level of financial hardship. Even those who qualify as low income sometimes pay the full fee.[97] The cost to the IRS of OPAs and direct debits is so low that if it discourages even a small percentage of taxpayers from paying voluntarily, this reduced compliance is likely to cost the government more — in lost tax revenue and increased enforcement costs — than the user fee brings in. For the same reasons, the IRS should evaluate the potential for lost revenue and increased enforcement costs before imposing or increasing any fees under the IOAA.

Recommendations

Amend IRC § 6159 to require the IRS to waive the user fee for direct debit OPAs. Also amend IRC § 7805 to prohibit the IRS from increasing user fees unless it first determines, after considering public comments, that the increase will not exacerbate financial hardship for taxpayers who are voluntarily trying to pay their tax liabilities, reduce government revenue by eroding voluntary tax compliance, or increase government expenses by requiring the IRS to take more costly collection actions against taxpayers who are discouraged by the user fees from complying voluntarily.[98]

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96 *See User Fees for IAs*, T.D. 9798, 81 Fed. Reg. 86,955 (Dec. 2, 2016).

97 *See* American Bar Association Section of Taxation, *Comments Concerning User Fees for Processing Installment Agreements and Offers in Compromise* 2 (Oct. 1, 2013) ("many low-income taxpayers are charged the full user fee, despite qualifying for the reduced amount").

98 For related recommendations, *see, e.g.*, Legislative Recommendation: *User Fees: Prohibit User Fees That Reduce Revenue, Increase Costs, or Erode Taxpayer Rights*, vol. 1, *supra*. S. 1793, 115th Cong. § 301 (2017) and S. 1321, 109th Cong. § 301 (2006) would waive the fee for direct-debit installment agreements (IAs). For low income taxpayers, S. 3156, 114th Cong. § 114 (2016) would waive the fee for direct-debit IAs and refund it to others upon completion of the IA.

#22 HOLD TAXPAYERS HARMLESS WHEN THE IRS RETURNS FUNDS LEVIED FROM A RETIREMENT PLAN OR ACCOUNT

Present Law

Several types of retirement plans are described in IRC § 402(c)(8)(B), including individual retirement arrangements (IRAs) and employer-sponsored retirement plans. The applicable tax rules vary depending on whether the retirement vehicle is a particular type of IRA or retirement plan. With certain exceptions depending on the type of plan, any distribution from an IRA or an employer-sponsored retirement plan, including a distribution that results from a Federal tax levy, is considered taxable income to the taxpayer in the year in of the distribution, unless the money is rolled over into a qualifying retirement plan or account within 60 days.[99]

IRC §§ 6343(b) and (d) allow the IRS to return levy proceeds to taxpayers or third parties in certain situations. However, the Code does not authorize the taxpayer to return the money into a retirement plan or account and have it treated as a rollover contribution, which means the taxpayer may be taxed on the amount of funds the IRS levied, even where the levy is improper.

In 2016, the IRS issued Revenue Procedure 2016-47, 2016-37 I.R.B. 346, to try to address this problem. Rev. Proc. 2016-47 allows a taxpayer, if certain conditions are met, to self-certify to his or her retirement plan or account trustee or administrator that the returned retirement funds are eligible for the 60-day rollover rule where "the distribution was made on account of a levy under IRC § 6331 and the proceeds of the levy have been returned to the taxpayer."

Reasons for Change

Retirement plans provide financial security for many Americans. When the IRS, sometimes wrongfully or prematurely, levies on a taxpayer's retirement plan or account, the taxpayer suffers several repercussions. Each must be addressed in order for the taxpayer to be made completely whole. Rev. Proc. 2016-47 offers some relief for taxpayers, as it allows returned money to be contributed by the taxpayer to a qualifying retirement plan or account as a valid rollover. However, this relief is not available by statute, and the revenue procedure does not address all the ways in which a taxpayer must be made whole.

Specifically, some taxpayers will be harmed by the loss of growth in retirement earnings that otherwise would have accrued in his or her account or plan. To alleviate this concern, the IRS should be required to allow the returned money to be treated as a rollover contribution. In the case of a wrongful, premature, or improper levy, any accrued interest paid with the refund should be treated as non-taxable if it is rolled over into the taxpayer's retirement account along with the returned levy proceeds. If the levy was served in a previous year, the returned money should not impact the contribution limit for the current year, but rather, be treated in the same manner as a rollover.

In addition, because the rules in this area are complex, at the time of returning the levy proceeds the IRS should be required to notify the taxpayer that he or she has the option to contribute the returned funds as a rollover to a qualifying retirement plan or account before the due date of the tax return for the taxable year in which the money was returned.

99 IRC §§ 402(c)(3) and 408(d)(3).

Recommendation

Amend IRC § 6343 to stipulate that when the Secretary returns levy proceeds under IRC § 6343(b) or (d) to a taxpayer and the proceeds were originally obtained by levying against the taxpayer's benefits in a qualifying retirement plan or account described in IRC § 402(c)(8)(B), the taxpayer may contribute the amount of money plus interest (if applicable) back into the a plan or account as a tax-free rollover contribution if allowable under the terms of the plan or account, provided that the contribution is made no later than the due date (not including extensions) for filing the tax return for the taxable year in which the money was returned.

This provision should further provide that the Secretary shall inform the taxpayer at the time the money is returned that a rollover contribution may be made, that the contribution will not affect the current year's contribution limit, that interest paid (when a wrongful levy occurs under IRC § 6343(b) or (d)(2)(A)) shall be treated as earnings within the plan after the contribution (and thus will not be considered gross income), and that any tax previously imposed as a result of the levy shall be abated.[100]

100 S. 1793, 115th Cong. § 302 (2017); S. 3156, 114th Cong. § 104 (2016); H.R. 5719, 110th Cong. § 12 (2008); H.R. 1528, 108th Cong. § 109 (2004) contain language that is generally consistent with this recommendation except that this treatment should apply in any case where the IRS returns under IRC § 6343(b) or (d) funds levied from a retirement plan or account.

#23 MODIFY THE REQUIREMENT THAT THE OFFICE OF CHIEF COUNSEL REVIEW CERTAIN OFFERS IN COMPROMISE

Present Law

IRC § 7122 authorizes the Secretary to enter into an agreement with a taxpayer that settles the taxpayer's tax liabilities for less than the full amount owed, as long as the liabilities have not been referred to the Department of Justice. Such an agreement is known as an "offer in compromise" (OIC). Treas. Reg. § 301.7122-1(b) provides that the IRS may compromise liabilities to the extent there is doubt as to liability, doubt as to collectability, or to promote effective tax administration. The regulations further define these terms and provide instances when compromise is appropriate.

IRC § 7122(b) requires the Treasury Department's General Counsel review and provide an opinion in support of accepted OICs in all criminal cases and in civil cases where the unpaid amount of tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is $50,000 or more. This authority is exercised by the IRS Office of Chief Counsel.

Reasons for Change

The IRS receives tens of thousands of OICs every year and has established a specialized unit for each type of OIC. Each unit is responsible for processing only that particular type of OIC, and the unit verifies that the legal, as well as IRS policy, requirements for compromise are met prior to proposing acceptance of the OIC.

The requirement that the Office of Chief Counsel review and provide an opinion for every criminal OIC and civil OIC where the unpaid amount of tax assessed is $50,000 or more burdens taxpayers by significantly delaying OIC processing decisions. Delays in OIC processing may impede a taxpayer's ability to make other financial decisions while waiting for a response and may even jeopardize the taxpayer's ability to pay the amount offered if his financial circumstances change. The counsel review requirement is also burdensome for the IRS, requiring that Office of Chief Counsel employees learn the facts of each case and write supporting opinions. This work is oftentimes duplicative of the work the IRS has already performed in processing the OIC.

The National Taxpayer Advocate believes the OIC process would be improved if the blanket requirement for counsel review of all OICs in civil cases where the unpaid tax assessed is $50,000 or more is repealed and replaced with language authorizing the Secretary to require counsel review in cases that present significant legal issues.

Recommendation

Amend IRC § 7122(b) to repeal the requirement that counsel review all OICs in civil cases where the unpaid amount of tax assessed (including any interest, additional amount, addition to tax, or assessable penalty) is $50,000 or more and replace it with language authorizing the Secretary to require counsel review of OICs in cases that he determines present significant legal issues.[101]

101 For language that is generally consistent with this recommendation, *see* S. 1578, 114th Cong., § 403 (2015), S. 882, 108th Cong., § 104 (2003) and H.R. 1528, 108th Cong., § 304 (2004).

#24 CONTINUE TO LIMIT THE IRS'S USE OF "MATH ERROR AUTHORITY" TO CLEAR-CUT CATEGORIES SPECIFIED BY STATUTE

Present Law

Before assessing a deficiency, the IRS is ordinarily required by IRC § 6213(a) to send the taxpayer a statutory notice of deficiency that gives the taxpayer 90 days (150 days if addressed to a taxpayer outside the U.S.) to contest it by filing a petition with the U.S. Tax Court (known as "deficiency procedures"). The taxpayer's ability to appeal a deficiency determination to the Tax Court before paying is central to the taxpayer's right to appeal an IRS decision in an independent forum. As an exception to that requirement, IRC § 6213(b)(1) authorizes the IRS to summarily assess and collect tax after 60 days, without first providing the taxpayer with a statutory notice of deficiency or access to the Tax Court, to correct "mathematical and clerical" errors (known as "math error authority"). Taxpayers who do not contest a proposed deficiency within this shorter period lose the opportunity to do so in court before paying. Under current law, the IRS may summarily assess 17 types of "mathematical or clerical error," which are codified at IRC § 6213(g)(2) (in subparagraphs A-Q).

Reasons for Change

Congress established and required the IRS to follow deficiency procedures to provide taxpayers with notice and a reasonable opportunity to challenge an adverse IRS tax adjustment. Math error authority, which provides fewer taxpayer protections, was authorized as a limited exception to regular deficiency procedures. It allows the IRS to make adjustments in cases of clear taxpayer error, such as where a taxpayer incorrectly adds numbers or incorrectly transcribes a number from one form to another. Because taxpayers have fewer protections under math error procedures, the procedures are not intended to be used where a substantive disagreement may exist. When Congress has expanded the IRS's math error authority, it has done so only where it has been convinced that taxpayer error is relatively clear-cut and no substantive disagreement is likely to exist.

Because math error procedures are cheaper and simpler for the IRS than standard deficiency procedures, the Department of the Treasury on several recent occasions has requested that Congress grant it the authority to add certain categories of "correctable errors" by regulation.[102]

The National Taxpayer Advocate understands the administrative simplicity of math error procedures, but is concerned about the impact of a broad grant of regulatory authority on taxpayer rights. In her reports to Congress, she has documented circumstances in which the IRS has used math error authority to address discrepancies and mismatches that go beyond simple arithmetic mistakes and have undermined taxpayer rights.[103]

If the IRS uses math error authority to address complex issues that require additional fact finding, the assessments are more likely to be wrong, and the IRS's computer-generated notices, which confuse many taxpayers in the simplest of circumstances, are likely to become even more difficult to understand. Shorter

102 *See* Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, 245-246 (Feb. 2015), https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf (last visited Dec. 20, 2017).

103 *See, e.g.*, National Taxpayer Advocate 2015 Annual Report to Congress 329-339; National Taxpayer Advocate 2014 Annual Report to Congress 163-171; National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 5, 91-92; National Taxpayer Advocate 2011 Annual Report to Congress 74-92; National Taxpayer Advocate 2006 Annual Report to Congress 311; National Taxpayer Advocate 2003 Annual Report to Congress 113; National Taxpayer Advocate 2002 Annual Report to Congress 25, 186; National Taxpayer Advocate 2001 Annual Report to Congress 33.

deadlines and confusing notices will prevent some taxpayers from responding timely. As a result, these taxpayers will lose the opportunity to challenge the adjustments in court before paying. The IRS may also waste resources responding to calls and letters, reviewing additional documentation, and processing abatement requests from taxpayers whose returns were correct as filed. It may even seek to collect inaccurate assessments from them. Thus, expanding math error authority into more complicated areas will burden taxpayers unnecessarily, erode taxpayer rights, and sometimes waste IRS resources.

Math error authority may be appropriate to use in instances where required schedules are omitted, or annual or lifetime dollar caps have been exceeded. It also may be appropriate to use where there is a discrepancy between a return entry and data available to the IRS from a reliable government database, such as records maintained by the Social Security Administration. But the IRS alone should not be the arbiter of that reliability. Rather, Congress should retain full authority to determine whether the administrative “efficiency” of using math error authority in these instances outweighs the loss of the significant taxpayer protections that deficiency procedures provide.

Recommendation

Continue to limit the IRS’s use of “math error authority” to clear-cut categories specified by statute. Because the standard deficiency procedures created by Congress provide important taxpayer protections, the IRS should not be authorized to add new categories by regulation.

Instead, amend IRC § 6213(g) to authorize the IRS to summarily assess a deficiency due to “clerical errors” only pursuant to Congressional authorization and where: (1) there is a discrepancy between a return entry and reliable government data; (2) the IRS’s notice clearly describes the discrepancy and how to contest it; (3) the IRS has researched all information in its possession that could help reconcile the discrepancy; (4) the IRS does not have to evaluate documentation to make a determination; and (5) there is a low abatement rate for taxpayers who respond. In addition, amend IRC § 6213(g) to provide that the IRS is not authorized to use any new criteria or data to make summary assessments unless the Department of the Treasury, in conjunction with the National Taxpayer Advocate, has evaluated and publicly reported on the reliability of the criteria or data for that intended use.[104]

104 For a more limited recommendation, *see* National Taxpayer Advocate 2015 Annual Report to Congress 329-339 (Legislative Recommendation: *Authorize the IRS to Summarily Assess Math and “Correctable” Errors Only in Appropriate Circumstances*).

#25 AMEND IRC § 7524 TO REQUIRE THE IRS TO MAIL NOTICES AT LEAST QUARTERLY TO TAXPAYERS WITH DELINQUENT TAX LIABILITIES

Present Law

IRC § 7524 requires the IRS, "[n]ot less often than annually," to send to taxpayers with delinquent accounts a reminder notice that sets forth the amount of the tax delinquency as of the date of the notice.

Reasons for Change

The IRS satisfies the IRC § 7524 requirement by sending taxpayers with delinquent accounts Notice CP-71, *Reminder Notice*, once a year. The infrequency of IRS billing notices leaves collectible revenue uncollected and subjects taxpayers who would make payments if they received more frequent reminders to additional penalties and interest charges.

We acknowledge that sending more frequent notices after the IRS's initial notice stream would entail additional postage and processing costs. Therefore, the projected revenue that would be collected from sending more frequent notices must be weighed against the projected costs to determine whether more frequent notices would be cost effective. Significantly, private sector businesses face this same trade-off, and private businesses, including credit card issuers and retailers, almost uniformly send billing notices more frequently than once a year. Most send delinquency notices on at least a monthly basis. Thus, there is clearly a consensus in the private sector that the collection costs of mailing more frequent notices more than pay for themselves.

We believe the IRS, too, would collect more revenue, net of any costs, if it sends more frequent notices. A recent IRS lien study showed that monthly collection notices generated more revenue than notices that were sent just once. In addition, taxpayers receiving more frequent notices would be more likely to notice that penalties and interest charges continue to accrue, causing their balances to increase. This would provide an additional incentive for them to resolve their liabilities.

Recommendation

Amend IRC § 7524 to require the IRS to mail notices at least quarterly to taxpayers with delinquent tax liabilities.

#26 PROVIDE ADDITIONAL TIME FOR TAXPAYERS OUTSIDE THE UNITED STATES TO REQUEST ABATEMENT OF A MATH ERROR ASSESSMENT EQUAL TO THE TIME EXTENSION ALLOWED IN RESPONDING TO A NOTICE OF DEFICIENCY

Present Law

IRC § 6213(b) authorizes the IRS to make a summary assessment of tax arising from mathematical or clerical errors as defined in IRC § 6213(g), bypassing the deficiency procedures. Thus, a taxpayer has no right to file a petition with the U.S. Tax Court based on a math error notice. Under IRC § 6213(b)(2)(A), a taxpayer has 60 days, after a math error notice is sent, to file a request with the IRS for an abatement of the assessment for mathematical or clerical errors. However, if the taxpayer makes a timely abatement request, the IRS must abate the assessment and follow deficiency procedures under IRC § 6212 to reassess the increase in the tax shown on the return. If the taxpayer does not submit an abatement request within 60 days, the taxpayer forfeits his right to file a petition in the Tax Court. No additional time to request abatement is allotted when the math error notice is addressed to a taxpayer outside the United States.

By contrast, certain taxpayers who receive notices of deficiency from the IRS are given additional time to file petitions in the Tax Court. Taxpayers may generally file a petition with the Tax Court for a redetermination of the deficiency within 90 days from the date the notice is mailed. When the notice of deficiency is addressed to a taxpayer outside the United States, IRC § 6213(a) provides that the taxpayer has 150 days from the date the notice is mailed to file a Tax Court petition. The 150-day period for filing a petition applies to a taxpayer who is located outside the United States even if the notice of deficiency is sent to an address within the United States, as well as to a taxpayer when the notice of deficiency bears an address outside the United States.[105] Thus, the law allows an additional 60 days for taxpayers to file a petition for redetermination of a deficiency when the notice of deficiency is addressed to a taxpayer outside the United States.

Reasons for Change

Approximately nine million U.S. citizens live abroad,[106] along with more than 190,000 U.S. military service personnel and their families, and hundreds of thousands of students and foreign taxpayers with U.S. tax obligations. Taxpayers living (temporarily or permanently) abroad typically require more time to respond to IRS notices than taxpayers living in the United States for several reasons. First, mail takes longer to be delivered in both directions — in some cases, depending on where the taxpayer is located, substantially longer. Second, persons temporarily abroad often do not have access to their tax or financial records, making it impossible for them to respond immediately.

By giving taxpayers living abroad 60 additional days to file a petition with the Tax Court in response to a notice of deficiency, Congress recognized that holding overseas taxpayers to the same deadlines as taxpayers living in the United States would not be fair or realistic. The same considerations apply with respect to the deadline for responding to math error notices. In fact, the need for additional time to respond may be greater

105 The phrase "addressed to a person outside the United States" is ambiguous, and the Tax Court construes it broadly. *See, e.g.*, *Levy v. Comm'r*, 76 T.C. 228 (1981) (holding that the 150-day rule is applicable to a U.S. resident who is temporarily outside of the country when the notice is mailed and delivered); *Looper v. Comm'r*, 73 T.C. 690 (1980) (holding that the 150-day rule is applicable where a notice is mailed to an address outside the United States); *Lewy v. Comm'r*, 68 T.C. 779 (1977) (holding that the 150-day rule is applicable to a foreign resident who is in the United States when the notice is mailed, but outside the United States when the notice is delivered); *Hamilton v. Comm'r*, 13 T.C. 747 (1949) (holding that the 150-day rule is applicable to a foreign resident who is outside the United States when the notice is mailed and delivered).

106 The Department of State estimates that 9,000,000 U.S. citizens live abroad. U.S. Department of State, Bureau of Consular Affairs, *CA by the Numbers, Fiscal Year 2015 data*, updated June 2016. *See* https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf.

in the case of math error notices because the standard response deadline is 60 days (as opposed to 90 days for filing a Tax Court petition in response to a notice of deficiency).

The right of a taxpayer to respond to an adverse tax adjustment and have his response fairly considered is central to a fair tax system.[107] Giving taxpayers the same additional 60-day period to respond to math error notices when the notices are addressed to them outside the United States as the law currently provides for these taxpayers to file petitions in response to deficiency notices would help ensure that their rights to challenge adverse IRS tax adjustments are comparable to the rights of U.S. taxpayers who are not absent from the United States.

Recommendation

Amend IRC § 6213(b)(2)(A) to allow 120 days to request abatement when the math error notice is addressed to taxpayers outside the United States.

107 The following specific taxpayer rights apply in this situation: *the right to pay no more than the correct amount of tax*, *the right to challenge the IRS's position and be heard*, and *the right to appeal an IRS decision in an independent forum.*

#27 IMPROVE OFFER IN COMPROMISE PROGRAM ACCESSIBILITY BY REPEALING THE PARTIAL PAYMENT REQUIREMENT

Present Law

IRC § 7122(a) authorizes the IRS to settle a tax debt by accepting an offer in compromise (OIC). According to IRS Policy Statement 5-100, the IRS will "accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential." Taxpayers must also file and pay their taxes for five years after an offer is accepted, as provided by IRS Form 656, *Offer in Compromise* (2017) (item j).

IRC § 7122(c)(1)(A) requires a taxpayer who would like the IRS to consider a "lump-sum" offer — payable in five or fewer installments — to include a nonrefundable partial payment of 20 percent of the amount of the offer with the application. IRC § 7122(c)(1)(B) requires a taxpayer who would like the IRS to consider a "periodic payment" offer — an offer payable in six or more installments — to include the first proposed installment with the application and continue to make installment payments while the IRS is considering it. In addition to these partial payments, Treas. Reg. § 300.3 requires offer applications to include a user fee. Taxpayers with low incomes — less than 250 percent of the Federal poverty level — can apply for a waiver of the fee and the partial payment requirement.

Reasons for Change

By accepting an offer, the IRS collects money it would not otherwise collect and turns a noncompliant taxpayer into a compliant one by requiring the taxpayer, as a condition of the agreement, to timely file returns and pay taxes for the following five years. The Treasury Department's *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals* acknowledged the benefit of offers by proposing to repeal the partial payment requirement, explaining that it "may substantially reduce access to the offer-in-compromise program. … Reducing access to the offer-in-compromise program makes it more difficult and costly to obtain the collectable portion of existing tax liabilities." The Treasury Department estimated that repealing the requirement would have a positive revenue impact.

A 2007 TAS study found that taxpayers above the low income threshold were no better able to afford to make partial payments than those below it, and that those below it frequently did not obtain a waiver. Similarly, a 2005 Treasury Inspector General for Tax Administration report found that when the IRS first imposed a $150 OIC fee in 2003, offer submissions declined by more than 20 percent among taxpayers at every income level. Thus, the partial payment requirement likely decreases collections and increases enforcement costs.

Recommendation

Amend IRC § 7122(c) to remove the requirement that taxpayers include a partial payment with "lump-sum" and "periodic payment" offer applications.[108]

108 For more detail, *see*, *e.g.*, National Taxpayer Advocate 2006 Annual Report to Congress 507-519 (Legislative Recommendation: *Improve Offer in Compromise Program Accessibility*). H.R. 4994, 111th Cong. § 202 (2010) (as passed by the House), H.R. 4912, 114th Cong. § 206 (2015), and H.R. 2171, 115th Cong. § 206 (2017) contain language that is generally consistent with this recommendation.

#28 AMEND IRC § 7403 TO PROVIDE TAXPAYER PROTECTIONS BEFORE THE IRS RECOMMENDS THE FILING OF A LIEN FORECLOSURE SUIT ON A PRINCIPAL RESIDENCE

Present Law

IRC § 7403 authorizes the Department of Justice (DOJ) to file a civil action in a district court of the United States against a taxpayer to enforce a tax lien and foreclose on a taxpayer's property, including on a taxpayer's principal residence. IRC § 7403(c) directs the court to "[f]inally determine the merits of all claims to and liens upon the property." The court can order the sale of the residence and the distribution of the sale proceeds in accordance with the court's findings regarding the claimants' interests.

Reasons for Change

The IRS has two options, which cannot be used concurrently, to collect against the principal residence of a taxpayer or a residence that is owned by the taxpayer but occupied by the taxpayer's spouse, former spouse, or minor child. One option is to obtain a court order allowing administrative seizure of a principal residence under IRC § 6334(e)(1). Administrative seizures are subject to specified statutory taxpayer protections. The other option is a suit to foreclose the federal tax lien against a principal residence under IRC § 7403. Under the lien foreclosure route, the IRS requests that the DOJ file suit under IRC § 7403 to enforce the tax lien and sell the taxpayer's principal residence at a judicial sale to satisfy the tax debt in whole or in part. In this circumstance, the statutory protections applicable to administrative seizures do not apply.[109]

To protect taxpayers from inappropriate referrals to the DOJ requesting foreclosure of a tax lien on a principal residence, the IRS has written procedures into its Internal Revenue Manual (IRM) that apply to lien foreclosure suit referrals. The IRM prescribes certain initial steps IRS employees must take, such as attempting to identify the occupants of a residence and advising the taxpayer about Taxpayer Advocate Service assistance options, and sets forth an internal approval process prior to referring a lien enforcement case to the DOJ. However, the IRM is simply a set of instructions to IRS staff. Taxpayers generally may not rely on IRM violations as a basis for challenging IRS actions in court, and the IRS may modify or rescind IRM provisions at any time.

The seizure of a taxpayer's principal residence may have a devastating impact on the taxpayer and his or her family. Taxpayer protections before foreclosure referrals are made should be clear, and taxpayers should be entitled to cite violations of the protections as a basis for challenging IRS actions. For these reasons, the National Taxpayer Advocate believes the protections should be codified for lien foreclosure suit referrals to the same extent as administrative seizures and should not be left for the IRS to determine through IRM procedures.

109 Depending on the facts of a case, one route may be preferable for the government than the other. For example, the IRS will generally request that the Department of Justice file a lien foreclosure suit when issues arise relating to title, nominees, or the collection statute.

Recommendation

Amend IRC § 7403 to codify current IRM administrative protections and specifically preclude IRS employees from requesting that the DOJ file a civil action in district court seeking to foreclose the tax lien against a taxpayer's principal residence, except where the employee has received executive-level written approval after determining whether (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence will not create an economic hardship due to the financial condition of the taxpayer.[110]

110 H.R. 1828, 114th Cong. § 16 (2015); S. 949, 114th Cong. § 16 (2015); and S. 2215, 113th Cong. § 8 (2014) contain language that is generally consistent with these recommendations.

#29 AMEND IRC §§ 6320 AND 6330 TO PROVIDE COLLECTION DUE PROCESS RIGHTS TO THIRD PARTIES HOLDING LEGAL TITLE TO PROPERTY SUBJECT TO IRS COLLECTION ACTIONS

Present Law

Current law authorizes the IRS to file Notices of Federal Tax Lien (NFTLs) and issue levies against a taxpayer's property or rights to property, including property owned jointly, by certain third parties, or secured by certain creditors.[111] However, these third parties are not considered "taxpayers" for purposes of the Collection Due Process (CDP) notice and hearing procedures described in IRC §§ 6320 and 6330, and they are therefore not entitled to CDP rights. For that reason, the IRS does not issue CDP lien notices pursuant to IRC § 6320 or provide notice of proposed levies pursuant to IRC § 6330 to these third parties.

Reasons for Change

The purpose of CDP rights is to give taxpayers a meaningful hearing before the IRS levies their property or immediately after the IRS files a NFTL against their property. During the CDP hearing, a taxpayer has the right to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives. Third parties such as joint owners or alleged nominees, alter egos, and transferees, do not have these rights, and therefore, are not able to prove their ownership interest in the property until after a lien is filed or the property levied. Without the benefit of the protections afforded by IRC §§ 6320 and 6330, a third party against whom the IRS takes a collection action has limited remedies, and the remedies are provided only after the collection action has occurred. As a result, the collection process gives taxpayers who may owe significant liabilities the right to raise concerns and propose collection alternatives before a collection action is taken while denying joint owners and alleged nominees, alter egos, and transferees – who may be innocent third parties — those same rights. Amending the law to provide CDP rights to third parties who have legal title to the property would give an "affected third party" due process protections comparable to the person who is responsible for the tax.[112]

Recommendation

Amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to "affected third parties," who hold legal title to property subject to IRS collection actions.[113]

111 *See generally* IRC §§ 6321, 6322, 6323(a), (f) and (h)(6), and 6331(a).

112 In the context of explaining the CDP provisions, Senate report accompanying its version of the RRA 98 legislation referred to "[t]he taxpayer (or *affected third party*)." S. Rep. No. 105-174, at 67 (1998) (emphasis added).

113 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544-552 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*).

#30 CLARIFY THAT TAXPAYERS MAY RAISE INNOCENT SPOUSE RELIEF AS A DEFENSE IN COLLECTION PROCEEDINGS AND IN BANKRUPTCY CASES

Present Law

Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. Spouses who live in community property states and file separate returns are generally required to report half of the community income on their separate returns. IRC §§ 6015 and 66, sometimes referred to as the "innocent spouse" rules, provide relief from joint and several liability and from the operation of community property rules. Taxpayers seeking innocent spouse relief generally file Form 8857, *Request for Innocent Spouse Relief.* After reviewing the request, the IRS issues a final notice of determination granting or denying relief in whole or in part.

IRC § 6015(e)(1)(a) provides that an individual who seeks relief from joint liability may, "in addition to any other remedy provided by law," petition the United States Tax Court to determine the appropriate relief available. The Tax Court generally has jurisdiction to decide the innocent spouse claim if the petition is filed within 90 days from the date the IRS issues its final notice of determination.

Statutory provisions and judicial precedent make clear that taxpayers may raise innocent spouse relief in deficiency proceedings arising under IRC § 6213, in collection due process hearings arising under IRC §§ 6320 and 6330, in refund suits arising under IRC § 7422, and in bankruptcy proceedings arising under title 11 of the United States Code.

Reasons for Change

While one district court was willing to consider a taxpayer's innocent spouse claim as a defense in an action under IRC § 7402 to reduce federal tax assessments to judgment and under IRC § 7403 to foreclose tax liens on real property, some district courts have refused to allow the defense in these collection suits. These inconsistent decisions have created confusion as to whether the defense is allowed and have resulted in different treatment of similarly situated taxpayers. Moreover, the refusal to allow the innocent spouse defense in collection suits may create hardships because a taxpayer may be left without any forum in which to seek innocent spouse relief prior to having a financially damaging court judgment entered against him or her, or to losing his or her home to foreclosure.

Legislation is needed to clarify that the statutory language of IRC § 6015 conferring Tax Court jurisdiction "in addition to any other remedy provided by law" does not give the Tax Court exclusive jurisdiction to determine innocent spouse claims and that district courts are also authorized to consider, in collection suits, whether innocent spouse relief should be granted.

Recommendation

Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to raise innocent spouse relief as a defense in proceeding brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or in cases arising under Title 11 of the United States Code.

Reform Penalty and Interest Provisions

#31 CONVERT THE ESTIMATED TAX PENALTY INTO AN INTEREST PROVISION FOR INDIVIDUALS, TRUSTS, AND ESTATES

Present Law

Through the combination of wage withholding and the requirement that taxpayers make estimated tax payments, the IRC aims to ensure that Federal income and payroll taxes are paid ratably throughout the year. IRC § 3402 generally requires employers to withhold tax on wages paid to employees. IRC § 6654 generally requires that taxpayers pay at least the lesser of (i) 90 percent of the tax shown on a tax return for the current tax year or (ii) 100 percent of the tax shown on a tax return for the preceding tax year (reduced by the amount of wage withholding) in four installment payments that are due on April 15, June 15, September 15, and January 15 of the following tax year.[114]

IRC § 6654(a) provides that a taxpayer who fails to pay sufficient estimated tax will be liable for a penalty that is computed by applying (i) the underpayment rate established under IRC § 6621 (ii) to the amount of the underpayment (iii) for the period of the underpayment. IRC § 6621 is an interest provision. Therefore, the additional amount a taxpayer owes for failing to pay sufficient estimated tax is denominated as a "penalty," but the computation is strictly an interest charge.

Reasons for Change

For a variety of reasons, taxpayers often have difficulty predicting how much tax they will owe. Self-employed taxpayers or taxpayers who own small businesses experience significant fluctuations in their incomes and expenses from year to year. Taxpayers with significant investment income also may experience significant fluctuations. In addition, significant changes in tax laws, such as those taking effect in 2018, affect tax liabilities in ways that taxpayers may not fully anticipate. As a result, millions of taxpayers do not satisfy the requirements of IRC § 6654 and are liable for penalties, even though many have attempted to comply.

The term "penalty" carries negative connotations, and the National Taxpayer Advocate believes it should be reserved for circumstances in which a taxpayer has failed to make reasonable efforts to comply with the law. Thus, she agrees with the assessment of the Ways and Means Committee when it wrote during a previous Congress: "Because the penalties for failure to pay estimated tax are calculated as interest charges, the Committee believes that conforming their title to the substance of the provision will improve taxpayers' perceptions of the fairness of the estimated tax payment system."[115] Along those lines, the Office of the Taxpayer Advocate has conducted research studies that have found "tax morale" has an impact on tax compliance.[116] For that reason, the failure to pay sufficient estimated tax is better characterized as an interest charge than a penalty for deficient taxpayer behavior.

114 If the adjusted gross income of a taxpayer for the preceding tax year exceeds $150,000, "110 percent" is substituted for "100 percent" in applying clause (ii). IRC § 6654(d)(1)(C).

115 H.R. Rep. No. 108-61, at 23-24 (2003).

116 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 1-13 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

Recommendation

Convert the penalty for failure to pay sufficient estimated tax to an interest charge. Toward that end, relocate IRC § 6654 from part I of subchapter A of chapter 68 to the end of subchapter C of chapter 67 and make conforming modifications to the headings and text.[117]

117 For language that is generally consistent with this recommendation, see H.R. 1528, 108th Cong. § 101 (2003). If the additional charge for failure to pay estimated tax remains a penalty, then the National Taxpayer Advocate reiterates her prior recommendation that Congress enact a reasonable cause exception. *See* National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, 34-36 (Study: *A Framework for Reforming the Penalty Regime*).

#32 APPLY ONE INTEREST RATE PER ESTIMATED TAX UNDERPAYMENT PERIOD FOR INDIVIDUALS, ESTATES, AND TRUSTS

Present Law

Under IRC § 6654, taxpayers who make estimated tax payments must submit those payments on April 15, June 15, September 15, and January 15 of the following tax year. Failure to do so results in a penalty that is determined by the underpayment rate, the amount of the underpayment, and the period of the underpayment. The underpayment rate is established by IRC § 6621(a)(2) to be the Federal short-term interest rate, plus three percentage points. Under IRC § 6621(b)(1), the Federal short-term interest rate is determined quarterly by the Secretary of the Treasury. If the Secretary determines a change in the Federal short-term interest rate, the change is effective January 1, April 1, July 1, and October 1.

Reasons for Change

Under existing law, more than one interest rate may apply for a single estimated tax underpayment period. For example, if a taxpayer fails to make an estimated tax payment due June 15 and the Secretary determines a change in the Federal short-term interest rate effective July 1, one interest rate would apply for the period from June 16 through June 30, while another interest rate would apply for any continued delinquency from July 1 through September 15. The application of more than one interest rate for a single underpayment period causes unnecessary complexity and burden for taxpayers and the IRS alike. This complexity and burden would be reduced if a single interest rate was applied for each period.

Recommendation

Amend IRC § 6654 to provide that the underpayment rate for any day during an estimated tax underpayment period shall be the underpayment rate established by IRC § 6621 for the first day of the calendar quarter in which the underpayment period begins.[118]

118 H.R. 1528, 108th Cong. § 101 (2003), passed in the House, and § 201 of the Senate amendment, and S. 1793, 115th Cong. § 305 (2017), contain language that is consistent with this recommendation. *See also* H.R. Rep. No. 108-61, at 25 (2003).

#33 REDUCE THE FEDERAL TAX DEPOSIT PENALTY IMPOSED ON CERTAIN TAXPAYERS WHO MAKE TIMELY TAX DEPOSITS

Present Law

IRC § 6656(a) imposes a penalty, as a percentage of the underpayment, for the failure to deposit (FTD) taxes in a manner prescribed by regulation, unless such failure is due to reasonable cause and not due to willful neglect. Treasury Regulation § 31.6302-1(h) requires federal tax deposits to be made electronically via electronic funds transfer. Most taxpayers use the Electronic Federal Tax Payment System (EFTPS), a free service offered by the Department of Treasury. The penalty rate for FTD varies, depending on the length of the taxpayer's delay in making the deposit. IRC § 6656(b)(1) provides that the penalty is two percent for a FTD of not more than five days, five percent for a FTD of more than five days but not more than 15 days, and ten percent for a FTD of more than 15 days. Thus, taxpayers must make deposits on time, in full, and in the correct manner to avoid a penalty for FTD.[119]

Reasons for Change

The IRS has taken the position that the maximum ten percent penalty rate automatically applies if a deposit is not made in the manner prescribed by the regulation.[120] As a result, taxpayers who timely remit full payment to the IRS but who do not do so in the manner prescribed are subject to a higher penalty rate than taxpayers who do not make a timely payment at all. The National Taxpayer Advocate believes it is inappropriate to penalize taxpayers who make timely payments more harshly than taxpayers who do not, and the Ways and Means Committee has observed that this approach "does not reflect the intent of the Congress."[121]

Recommendation

Amend IRC § 6656 to establish a penalty rate of two percent for FTD in the manner prescribed by the Secretary of Treasury.[122]

119 *See F.E. Schumacher Co. v. U.S.*, 308 F. Supp.2d 819, 830 (N.D. Ohio 2004) ("penalties assessed pursuant to Section 6656 are appropriate even where taxes are timely paid, albeit by means other than [Electronic Funds Transfer]").

120 Rev. Rul. 95-68, 1995-2 C.B. 272; IRM 20.1.4.2, *Authorized Deposit Methods* (Jan. 6, 2012).

121 H.R. Rep. No. 108-61, at 36 (2003).

122 H.R. 1528, 108th Cong. § 108 (2003), passed in the House, contains language that is consistent with this recommendation. S. 1793, 115th Cong. § 309 (2017) also contains language that is substantially similar to this recommendation.

#34 AUTHORIZE A PENALTY FOR TAX RETURN PREPARERS WHO ENGAGE IN FRAUD OR MISCONDUCT BY ALTERING A TAXPAYER'S TAX RETURN

Present Law

TAS has handled hundreds of cases involving return preparer fraud or misconduct. In the most common scenario, a taxpayer visits a preparer to get his tax return prepared, the preparer completes the return while the taxpayer is present, and then the preparer alters the return after the taxpayer leaves before submitting it to the IRS. In some cases, the items of income, deduction, and credit are accurate, but the preparer alters the direct deposit routing information so the entire refund is directed to his account instead of the taxpayer's account. In other cases, the preparer increases the refund amount and elects a "split refund,"[123] so the taxpayer receives the refund amount he expects and the additional amount goes to the preparer.

IRC § 6694 authorizes the IRS to impose a penalty where a preparer has understated a tax liability on a "return or claim for refund" when the understatement is due to willful or reckless conduct.[124] However, when a preparer has altered items of income, deduction, or credit in an attempt to increase a taxpayer's refund after the taxpayer has reviewed and approved the return for filing, the IRS Office of Chief Counsel has concluded that the resulting document is not a valid "return or claim for refund."[125] As a consequence, the section 6694 penalty does not apply.

By contrast, when the preparer has altered only the direct deposit information on the return, the resulting document is treated as a valid "return or claim for refund." However, the penalty still does not apply because there is no understatement, as the return is otherwise accurate.

IRC § 6695(f) imposes a $500 penalty on a preparer who negotiates a taxpayer's refund check.[126] The IRS and Treasury have interpreted this penalty to apply to a preparer who negotiates "a check (including an electronic version of a check)."[127] It is unclear, however, whether an "electronic version of a check" is legally identical to a direct deposit. Thus, when a preparer diverts a taxpayer's refund via direct deposit but the return is otherwise accurate, it is not clear whether the preparer's misconduct is subject to the section 6695(f) penalty. Moreover, even if the penalty is applicable, the penalty amount is typically small in relation to the size of refunds that some preparers have misappropriated.

Reasons for Change

While the Department of Justice (DOJ) may bring criminal charges against preparers who alter tax returns, resource constraints generally preclude criminal charges except in the case of widespread schemes. In addition, the dollar amount of a refund obtained by a preparer in these cases often will determine whether the DOJ pursues an erroneous refund suit under IRC § 7405, as resources again constrain the number of suits

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123 Taxpayers can split their refunds among up to three accounts at a bank or other financial institution. *See* IRS Form 8888, *Allocation of Refund (Including Savings Bond Purchases)*. The instructions to Form 8888 specifically advise taxpayers not to deposit their refunds into their tax return preparer's account.

124 The amount of the penalty is per return or claim for refund and is equal to the greater of $5,000 or 75 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

125 PMTA 2011-20, *Tax Return Preparer's Alteration of a Return* (June 27, 2011); PMTA 2011-13, *Horse's Tax Service* (May 12, 2003).

126 Similarly, section 10.31 of Circular 230 (31 C.F.R. Part 10) prohibits a tax practitioner who prepares tax returns from endorsing or negotiating a client's federal tax refund check.

127 Treas. Reg. § 1.6695-1(f)(1).

that can be brought each year. It is therefore important that the IRS have the authority to impose sizeable civil tax penalties against preparers who alter tax returns without the knowledge or consent of taxpayers.

If the penalty amount is equal to the amount by which a preparer has benefited (*i.e.,* a 100 percent penalty), the public fisc would be made whole.

Recommendations

Amend IRC § 6694 so the penalty the IRS may assess against a tax return preparer for understating a taxpayer's liability is broadened beyond tax returns and claims for refund by adding "and other submissions."

Amend IRC § 6695 to explicitly cover a preparer who misappropriates a taxpayer's refund by changing the direct deposit information and increase the dollar amount of the penalty to deter preparers from engaging in this type of fraud or misconduct. To make the public fisc whole, the penalty should be equal to 100 percent of the amount a preparer improperly converted to his own use through fraud or misconduct by altering a taxpayer's tax return.

#35 REQUIRE WRITTEN MANAGERIAL APPROVAL BEFORE ASSESSING THE ACCURACY-RELATED PENALTY FOR "NEGLIGENCE"

Present Law

A taxpayer who submits a return that is not accurate (*i.e.*, reflects an "underpayment") may be subject to an accuracy-related penalty under IRC § 6662. In particular, a penalty for "negligence or disregard of rules or regulations" may be imposed under IRC § 6662(b)(1). IRC § 6662(c) defines "negligence" as "any failure to make a reasonable attempt to comply with the provisions of this title" and defines "disregard" to include "any careless, reckless, or intentional disregard."

As a taxpayer protection, IRC § 6751(b)(1) requires that the immediate supervisor of an employee making the initial determination of a penalty assessment must personally approve the determination, in writing.[128] However, penalties "automatically calculated through electronic means" are not required to receive managerial approval.[129]

Reasons for Change

The purpose of penalties is to encourage voluntary compliance and deter noncompliance. Unlike penalties that can be assessed by answering a simple yes/no question (for example, the penalty for failing to file a return under IRC § 6651), the determination to assess a negligence penalty requires knowledge of what actions the taxpayer took to comply with the tax laws, as well as his or her motivations for taking those actions. Negligence cannot reasonably be determined by a computer, because a computer cannot assess whether a taxpayer made a "reasonable attempt" to comply with the law.

Nevertheless, the IRS has programmed its computers to apply negligence penalties automatically as part of its Automated Underreporter (AUR) program. AUR is an automated program that identifies discrepancies between the amounts that taxpayers report on their returns and what payors report via Forms W-2, Forms 1099, and other information returns. In general, penalties assessed under the AUR program are automatically computed pursuant to a computer program when a discrepancy is detected in the document matching program. If the negligence penalty is assessed through the AUR program, without an employee independently determining its appropriateness, there is no requirement for managerial approval.

An IRS employee will review a penalty assessment to make a determination of "negligence" only if a taxpayer responds to initial notices issued by AUR. There are many reasons why a taxpayer may not respond to a notice. The taxpayer may not receive it if he or she has moved. The taxpayer may put it aside and not get back to it. Or a taxpayer may accept the proposed adjustment but not realize he or she must respond to avoid the penalty assessment. In these and other circumstances, taxpayers may be assessed a penalty for negligence

128 This area of law has been the focus of recent litigation. In 2016, a majority of the U.S. Tax Court ruled that the written approval for an accuracy-related penalty could be given at any time prior to assessment, including while a case was in litigation before the Tax Court. As a result, the Tax Court held it was premature for it to consider an argument under IRC § 6751(b). *Graev v. Comm'r*, 147 T.C. No. 16 (2016), *vacated*, No. 30638-08 (T.C. Mar. 30, 2017). However, the decision in *Graev v. Comm'r* has since been vacated, because shortly after the decision was issued, the U.S. Court of Appeals for the Second Circuit (to which *Graev* would have been appealed) came to a different conclusion. In *Chai v. Commissioner*, the Second Circuit ruled that managerial approval for penalty assessments must be obtained before the IRS issues a notice of deficiency. *Chai v. Comm'r*, 851 F.3d 190 (2d Cir. 2017). These two rulings initially suggested a split between the majority of the Tax Court and the Second Circuit. Following the ruling in *Chai*, however, the Tax Court reversed course in a subsequent ruling in *Graev*. Taking *Chai* into account, the Tax Court ruled that it is not premature to consider an argument under IRC § 6751(b) in a deficiency proceeding, and the IRS bears the burden of production under IRC § 7491(c) to show the penalty received managerial approval. *Graev v. Comm'r*, 149 T.C. No. 23 (2017).

129 IRC § 6751(b)(2)(B).

without any analysis into their reasonable attempts to comply with tax laws (or lack thereof). This result runs contrary to the protections afforded in IRC § 6751(b).

Recommendation

Amend IRC § 6751(b)(2)(B) to require written managerial approval prior to assessment of the accuracy-related penalty imposed on the portion of an underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1) and specify which penalties and facts or circumstances result in penalties "automatically calculated through electronic means."

#36 COMPENSATE TAXPAYERS FOR "NO CHANGE" NATIONAL RESEARCH PROGRAM (NRP) AUDITS AND WAIVE ASSESSMENT OF TAX, INTEREST, AND PENALTIES RESULTING FROM NRP AUDITS

Present Law

There is no provision under Present Law that allows compensation of taxpayers who are audited under the IRS's National Research Program (NRP) or provides relief from the assessment of tax, interest, and penalties that may result from an NRP audit.

Reasons for Change

Through the NRP, the IRS conducts audits of randomly selected taxpayers. The NRP benefits tax administration by gathering strategic information about taxpayer compliance behavior, assisting the IRS in developing and updating its workload selection formulas, collecting data about the causes of reporting errors, and providing estimates of the tax gap, which measures the magnitude of taxpayer noncompliance with the tax laws. In addition, NRP studies benefit Congress by providing taxpayer compliance information that is useful in formulating tax policy, and they help the IRS focus its audits on returns with a relatively high likelihood of errors, thereby building trust in the fairness of the tax system.

For the tens of thousands of individual taxpayers (or businesses) that are subject to NRP audits, however, they impose significant burden. In essence, these taxpayers, even if fully compliant, serve as "guinea pigs" to help the IRS improve the way it does its job. They must contend with random and intensive audits that consume their time, drain resources (including representation costs), and may impose an emotional and reputational toll.

In 1995, the House of Representatives Committee on Ways and Means, Subcommittee on Oversight, held a hearing on the NRP's predecessor, the Taxpayer Compliance Measurement Program (TCMP).[130] Testimony provided during the hearing and subsequent witness responses to questions-for-the-record highlighted the burden TCMP audits imposed on taxpayers, as well as a strong sentiment that audited taxpayers were bearing the burden of a research project intended to benefit the tax system as a whole. Proposals raised at the hearing included compensating taxpayers selected for TCMP audits as well as possibly waiving tax, interest, and penalties assessed during the audits.

Subsequent to the hearing, the House Budget Committee included a proposal in its 1995 budget reconciliation bill to compensate individual taxpayers by providing a tax credit of up to $3,000 for TCMP-related expenses.[131] Ultimately, this proposal was not adopted, as the IRS was pressured to stop conducting TCMP audits. The inability to perform regular TCMP audits was bad for tax administration because it prevented the IRS from updating its audit formulas. It was also bad for compliant taxpayers, because when the IRS is not able to accurately identify returns with a high likelihood of noncompliance, taxpayers who filed compliant returns are more likely to face audits.

For the same reasons that led to the taxpayer-compensation proposal for TCMP audits, the National Taxpayer Advocate believes it is appropriate to recognize that taxpayers audited under the NRP are bearing a heavy burden to help the IRS improve the effectiveness of its compliance activities. A tax credit or authorized payment would alleviate the monetary component of the burden. Further relief could be provided by waiving

130 *Taxpayer Compliance Measurement Program: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 104th Cong. (1995).

131 *See* H.R. Rep. No. 104-280, vol. 2, at 28 (1995).

any assessment of tax, interest, and penalties resulting from an NRP audit. Such a waiver might also improve the accuracy of the NRP audits, since taxpayers would be more likely to be forthcoming with an auditor if they were assured they would not face additional assessments. However, this waiver should not apply where tax fraud or an intent to evade is uncovered in an NRP audit.

Recommendation

Amend the IRC to compensate taxpayers for "no change" NRP audits through a tax credit or other means (such as IRS user fees), and waive assessment of tax, interest, and penalties resulting from an NRP audit absent fraud or an intent to evade federal taxes.

Strengthen Taxpayer Rights Before the Office of Appeals

#37 REQUIRE THAT AT LEAST ONE APPEALS OFFICER AND ONE SETTLEMENT OFFICER BE LOCATED AND PERMANENTLY AVAILABLE IN EACH STATE, THE DISTRICT OF COLUMBIA, AND PUERTO RICO

Present Law

Section 3465(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) provides: "The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State."

Reasons for Change

Twelve states and Puerto Rico currently have no Appeals or Settlement Officers with a post of duty within their borders.[132] These states are Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont, and Wyoming. The IRS takes the position that its current staffing satisfies the statutory requirement by providing for "circuit riding" on at least a quarterly basis to states lacking a permanent Appeals field office.

As a legal matter, the National Taxpayer Advocate believes "circuit riding" does not satisfy the statutory requirement because Appeals Officers engaged in "circuit riding" among multiple states are not "regularly available" in any one state. As a practical matter, "circuit riding" does not provide taxpayers who request in-person hearings with timely service and does not ensure that Appeals Officers are familiar with local conditions. Taxpayers and their representatives regularly complain about the difficulty of obtaining convenient and timely in-person access to Appeals and Settlement Officers. During Fiscal Year 2017, for example, non-docketed cases involving in-person conferences remained in Appeals' inventory for more than twice as long (372 days) as Appeals cases overall (180 days).

In addition, Appeals' ability to effectively pursue administrative case resolutions often depends on the Appeals Officer's familiarity with prevailing economic circumstances and other local factors impacting taxpayers in a given geographic region. Appeals Officers who live elsewhere and visit a state for an occasional hearing often do not have this familiarity.

Recommendation

Amend the IRC to require that at least one Appeals Officer and one Settlement Officer be located and permanently available in each state, the District of Columbia, and Puerto Rico. Alternatively, amend section § 3465(b) of RRA 98 by striking "an appeals officer is regularly available within each State" and inserting "there is at least one appeals officer and one settlement officer located and permanently available in each State, the District of Columbia, and Puerto Rico."[133]

132 Generally, Appeals Officers are assigned to cases associated with the IRS Examination function, whereas Settlement Officers are assigned to Collection cases.

133 S. 1793, 115th Cong. § 502 (2017) contains the same language recommended here. Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 309(c) (2015), and S. 2333, 114th Cong. § 309(c) (2015) contains language generally consistent with this recommendation.

#38 REQUIRE TAXPAYERS' CONSENT BEFORE ALLOWING IRS COUNSEL OR COMPLIANCE PERSONNEL TO PARTICIPATE IN APPEALS CONFERENCES

Present Law

Present law does not directly address the inclusion of personnel from the IRS Office of Chief Counsel or IRS compliance functions in conferences held by the Office of Appeals.

Reasons for Change

Until recently, the Office of Appeals only occasionally invited personnel from the Office of Chief Counsel or the IRS compliance functions to participate in taxpayer conferences. In October 2016, the Office of Appeals revised provisions of the Internal Revenue Manual (IRM) to allow Appeals Officers to include personnel from the Office of Chief Counsel and/or the IRS compliance functions in Appeals conferences as a matter of routine. Under the new procedures, an Appeals Officer may invite these additional participants regardless of whether taxpayers agree or object to their presence.

Including non-Appeals IRS personnel in an Appeals conference may be sensible in certain cases, and tax practitioners sometimes find this approach to be helpful in achieving case resolution. Including Counsel and Compliance personnel over taxpayer objections, however, contravenes the purpose of an Appeals conference, which is neither to give Compliance personnel another bite at the apple nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rests on its ability to undertake direct and independent settlement negotiations with taxpayers and their representatives.

This change in conference procedures could have far-reaching negative consequences for Appeals' effectiveness in resolving cases with taxpayers. Among other things, the expansion of Appeals conferences to routinely involve Counsel and Compliance alters the relationship between the taxpayer and the Appeals Officer. It makes interactions less negotiation-based and transforms the conference into a more contentious proceeding.

Moreover, the initiative jeopardizes the real and perceived independence of Appeals, both of which are essential to effective administrative dispute resolution. As a result, taxpayers will be less likely to feel that their case has been fully heard, that they have been treated fairly, and that the outcome of the proceeding should be respected. To the contrary, taxpayers are more likely to come away disillusioned with the Appeals process, more likely to pursue their case in court, and potentially less likely to comply voluntarily with the tax laws in the future.

Recommendation

Amend the Internal Revenue Code or amend section 1001(a) of RRA 98 to add a subsection (5) that provides: "A taxpayer shall have the right to a conference with the Office of Appeals that does not include personnel from the Office of Chief Counsel or the compliance functions of the Internal Revenue Service unless the taxpayer specifically consents to the participation of those parties in the conference."[134]

134 This language is consistent with but broader than the prohibition against *ex parte* communications contemplated by H.R. 4375, 112th Cong. § 7 (2012). Additionally, this recommendation would provide taxpayers appearing before the Office of Appeals with protections against unwanted participation of Counsel and Compliance beyond those available under current IRS interpretations of what constitutes an *ex parte* communication.

Enhance Confidentiality and Disclosure Protections

#39 LIMIT REDISCLOSURES AND UNAUTHORIZED USES OF TAX RETURNS AND TAX RETURN INFORMATION OBTAINED THROUGH SECTION 6103-BASED "CONSENT" DISCLOSURES

Present Law

Under IRC § 6103, tax returns and tax return information generally must be kept confidential and may not be disclosed. This general rule is subject to certain exceptions, including an exception for disclosures requested or consented to by the taxpayer.[135] For example, a taxpayer may request that the IRS disclose his or her tax return or tax return information, or sign a form providing consent to the disclosure, when the taxpayer is applying for a mortgage and the lending bank requires the documents for income-verification purposes.[136] A taxpayer may request or provide a consent to disclosure in other circumstances as well.

Under present law, recipients of a taxpayer's tax return or tax return information are not prohibited from using it for other purposes or from re-disclosing it. In theory, recipients may share the information with an affiliate, sell it, or even publish it. Recipients are also free to use the information for purposes other than the purpose for which the taxpayer granted consent. Thus, a bank might use the information to market ancillary products to the taxpayer.

Reasons for Change

It is widely agreed that tax returns and tax reform information should be kept confidential except in limited circumstances where a compelling need exists for the disclosure. Maintaining general confidentiality and defining exceptions as narrowly as possible to accomplish their intended purposes protects taxpayers and promotes tax compliance.

If a taxpayer applies for a mortgage or must provide his tax return or tax return information to a third party for another purpose, the third party should be limited to using it only for the intended purpose, and should not be permitted to disclosure it further without the express, written permission of the taxpayer.

Recommendation

Amend IRC § 6103 to provide that persons designated by a taxpayer to receive tax returns or tax return information may not use the information for any purpose other than the limited purpose for which the authorization was granted and may not disclose the information to any other party without the express, written permission of the taxpayer.[137]

135 *See* IRC § 6103(c). *See also* Treas. Reg. § 301.6103(c)-1.

136 The taxpayer often signs a copy of Form 4506-T, *Request for Transcript of Tax Return*, which gives the lender access to the taxpayer's return information pertaining to the tax periods or years specified on the form.

137 For legislative language that is generally consistent with this recommendation, see Taxpayer Protection Act of 2016, S. 3156, 114th Cong. § 112 (2016) and accompanying committee report, S. Rep. No. 114-298, at 14-15 (2016).

#40 AUTHORIZE THE TREASURY DEPARTMENT TO ISSUE GUIDANCE SPECIFIC TO IRC § 6713 REGARDING THE DISCLOSURE OR USE OF TAX RETURN INFORMATION BY PREPARERS

Present Law

IRC §§ 7216 and 6713 impose criminal and civil sanctions, respectively, on preparers who, with the requisite level of intent,[138] disclose or use tax return information, except where they are expressly permitted to do so by an exception provided in the statute or regulations. Exceptions to the broad prohibition in IRC § 6713 are provided in IRC § 6713(b), which states that the rules of IRC § 7216(b) apply. IRC § 7216(b) authorizes the Secretary to create regulatory exceptions to the criminal penalty statute. Thus, the current statutory framework seemingly requires that exceptions be made either to both the criminal and civil statutes or to neither.

Reasons for Change

IRC § 6713 has historically been identified as the civil counterpart to the criminal penalty imposed on tax return preparers under IRC § 7216. The penalty regime under IRC § 7216 is significantly harsher than under IRC § 6713.[139] The Treasury Department is understandably reluctant to subject preparers to criminal sanctions except for egregious conduct, so it has used its regulatory authority to carve out broad exceptions from the general prohibition on the disclosure or use of tax return information set forth in IRC § 7216.[140] Because the exceptions under IRC § 7216 (criminal statute) are deemed to apply to IRC § 6713 (civil statute), there is no room for the Treasury Department and the IRS to designate the disclosure or use of tax return information for certain questionable business practices or the sale of certain products with high-abuse potential as civil violations without also making them criminal violations. Therefore, such disclosures and uses are generally permitted. The Treasury Department and the IRS would be more likely to strengthen taxpayer protections against the improper disclosure or use of taxpayer return information by return preparers if they are given the flexibility to promulgate regulations applicable only to the civil penalty, without concern that the criminal penalty would also apply.[141]

Recommendation

The National Taxpayer Advocate recommends that Congress amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713.

138 Unlike IRC § 7216, IRC § 6713 does not require that the disclosure or use be knowing or reckless.

139 IRC § 6713 imposes a $250 penalty for each improper disclosure or use. In contrast, IRC § 7216 makes the preparer guilty of a misdemeanor, and upon conviction, the preparer will be fined not more than $1000 or imprisoned not more than one year, or both, together with the costs of prosecution.

140 *See* Treas. Reg. § 301.7216-2.

141 IRC § 7805(a) provides the Secretary general authority to promulgate regulations under Code provisions. However, because IRC § 7216(b)(3) provide the Secretary express authority to carve out exceptions, IRC § 6713 should provide similar authority.

Strengthen the Office of the Taxpayer Advocate

#41 CODIFY THE NATIONAL TAXPAYER ADVOCATE'S AUTHORITY TO ISSUE TAXPAYER ADVOCATE DIRECTIVES

Present Law

Under IRC § 7803(c)(2)(A), TAS is charged with advocating for taxpayers both in specific cases and systemically. With regard to "case advocacy," TAS is directed to "assist taxpayers in resolving problems" with the IRS. With regard to "systemic advocacy," TAS is instructed to "identify areas in which taxpayers have problems" in dealings with the IRS and to make administrative and legislative recommendations to mitigate those problems.

To assist TAS with case advocacy, IRC § 7811 authorizes the National Taxpayer Advocate to issue Taxpayer Assistance Orders (TAOs) when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the internal revenue laws. TAOs may order the IRS to, within a specified time, cease certain actions, take certain actions permitted by law, or refrain from taking certain actions. Only the National Taxpayer Advocate (or her delegate), the Commissioner or Deputy Commissioner may modify or rescind a TAO. If the Commissioner or Deputy Commissioner rescinds a TAO, a written explanation of the reasons for the modification or rescission must be provided to the National Taxpayer Advocate. Thus, the TAO is a powerful tool to help ensure that important issues are appropriately elevated before final decisions are made. In addition, IRC § 7803(c)(2)(B)(ii)(VII) directs the National Taxpayer Advocate to "identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner" in her Annual Report to Congress.

The National Taxpayer Advocate has no comparable statutory authority to assist her in advocating for systemic change. In an attempt to fill this gap, the Commissioner issued Delegation Order 13-3, which provides the National Taxpayer Advocate with the non-delegable authority to issue a Taxpayer Advocate Directive (TAD). A TAD may require an IRS unit to change procedures "to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers." As with a TAO, the Commissioner and the Deputy Commissioner both retain the authority to modify or rescind a TAD.

Reasons for Change

IRS business units periodically fail to address emerging problems or implement new programs or procedures that may have a significant adverse impact on taxpayers. When the National Taxpayer Advocate has responded by issuing TADs, IRS officials have not always complied with, or even timely responded to them. The fact that a TAD is not a statutory authority contributes to this problem. Moreover, it is not clear that the National Taxpayer Advocate has the authority to elevate TADs to the Commissioner or to require the IRS to provide a written explanation of the reasons for their modification or rescission.

Recommendations

Enact a new IRC § 7812 to grant the National Taxpayer Advocate non-delegable authority to issue a TAD to mandate changes, within a specified period, to improve or preserve the operation of a functional process, grant relief to groups of taxpayers or all taxpayers, protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide or retain an essential service for taxpayers.[142]

In addition, amend IRC § 7803(c)(2)(B)(ii) to require the National Taxpayer Advocate in her Annual Report to Congress to "identify any Taxpayer Advocate Directive which was not honored by the Internal Revenue Service in a timely manner."

Under this proposal, a TAD would be issued initially to the head of a business unit or division. The recipient would be authorized to appeal a TAD by delivering a detailed written explanation that facilitates a full and fair consideration of the issues to the National Taxpayer Advocate and the Deputy Commissioner, either of whom would be authorized to modify or rescind the TAD. The Deputy Commissioner's authority to modify or rescind a TAD would be conditioned on providing the National Taxpayer Advocate a detailed written explanation of the reasons for his or her determination. The National Taxpayer Advocate could elevate a TAD to the Commissioner for a final determination. In such cases, the Commissioner would be required to provide the National Taxpayer Advocate with a detailed written explanation of his or her determination within 90 days, unless the National Taxpayer Advocate determined that time was of the essence and great harm would occur absent a more expedited decision by the Commissioner.

142 For a similar recommendation, see National Taxpayer Advocate 2016 Annual Report to Congress 39-40 (Special Focus: *Codify the Authority to Issue a Taxpayer Advocate Directive (TAD) and Clarify the Appeal Process Applicable to Taxpayer Assistance Orders (TAOs) and TADs*). For legislative language that is consistent with this recommendation, see Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 402 (2015) and S. 2333, 114th Cong. § 402 (2015).

#42 CLARIFY THE TAXPAYER ADVOCATE SERVICE'S ACCESS TO FILES, MEETINGS, AND OTHER INFORMATION

Present Law

IRC § 7803(c)(2) requires TAS to assist taxpayers in resolving problems with the IRS, identify areas in which taxpayers are experiencing problems, make administrative and legislative recommendations to mitigate those problems, and annually report to Congress. IRC § 6103 generally prohibits the disclosure of tax returns or return information, but IRC § 6103(h) provides that "returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes."

Because the National Taxpayer Advocate and her staff are required to review tax return information to fulfill their statutory duties, they are authorized by IRC § 6103(h) to do so. In furtherance of their duties, they may also need to attend meetings between taxpayers or their representatives and other IRS employees, and obtain other information from the IRS. Similarly, the National Taxpayer Advocate requires information from the IRS to analyze systemic problems and provide Congress with a "full and substantive analysis" of such problems in the National Taxpayer Advocate's annual reports to Congress, as required by IRC § 7803(c)(2)(B). However, the law does not expressly state that the National Taxpayer Advocate is authorized to access return information, attend meetings with other IRS employees, or obtain other information from the IRS.

Reasons for Change

By and large, the National Taxpayer Advocate has significant access to IRS systems and data. Yet over the years, both in the context of specific cases and systemic advocacy, the IRS has occasionally declined to provide TAS with access to: (1) audit files of taxpayers with cases open in TAS; (2) meetings between the IRS and taxpayers with cases open in TAS, even when the taxpayer has requested TAS's attendance; and (3) information required for the National Taxpayer Advocate to analyze a systemic problem for the Annual Report to Congress.

Recommendation

Amend IRC § 7803(c) to clarify that the National Taxpayer Advocate (and her delegates) shall have access to tax returns and return information with respect to cases open and pending in TAS, and shall have the right to participate in meetings between taxpayers and the IRS when asked to do so by the taxpayer.[143] In addition, clarify that, in furtherance of her tax administrative duties, the National Taxpayer Advocate (and her delegates) shall have access to all data, statistical information, and documents necessary to perform a "full and substantive analysis" of the issues, as required by IRC § 7803(c)(2)(B).[144]

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143 Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 403 (2015) and S. 2333, 114th Cong. § 403 (2015) would grant TAS access to case-related files and meetings, but does not address TAS's access to information needed to report on systemic issues.

144 For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 34-36 (Special Focus: *Reinforce the National Taxpayer Advocate's Right of Access to Taxpayer and IRS Information and to Meetings Between the IRS and Taxpayers*).

#43 CLARIFY THAT THE NATIONAL TAXPAYER ADVOCATE MAY HIRE LEGAL COUNSEL

Present Law

IRC § 7803(c)(2)(A) directs TAS to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have problems or that are the subject of frequent litigation, and to make administrative and legislative recommendations to reduce controversy and mitigate such problems. IRC § 7803(c)(4)(A) requires TAS to notify taxpayers that its offices "operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate." Similarly, IRC § 7803(c)(2)(B)(iii) bolsters the National Taxpayer Advocate's independence by requiring that her Reports to Congress be submitted directly to Congress "without any prior review or comment from …. the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget."

When Congress reorganized the IRS in 1998, it recognized that the National Taxpayer Advocate needed independent legal advice. The Senate passed legislation providing for counsel to the National Taxpayer Advocate to be appointed by and report directly to the National Taxpayer Advocate and to operate within the Office of the Taxpayer Advocate.[145] This provision was eliminated in the conference agreement without any explanation. Nevertheless, the conference report stated that the "conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate."[146]

Reasons for Change

Even though the IRS Office of Chief Counsel (OCC) has established the position of "Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program)" to manage and coordinate OCC's support for the National Taxpayer Advocate, that individual reports to, and her performance is evaluated by, the IRS Chief Counsel. IRC § 7803(b) provides that the IRS Chief Counsel reports to both the General Counsel for the Department of Treasury and the Commissioner of Internal Revenue. All personnel in the OCC report to the IRS Chief Counsel. When the National Taxpayer Advocate wishes to articulate a position that is contrary to the OCC's position, the Division Counsel/Associate Chief Counsel is obligated to follow the position of the IRS Chief Counsel.

Since 2004, with the approval of the Commissioner of Internal Revenue, TAS has employed attorneys to provide independent legal advice and analysis to the National Taxpayer Advocate. TAS attorneys do not purport to offer formal legal advice or represent the agency. However, they enable the National Taxpayer Advocate to develop an independent perspective (*i.e.*, a perspective that emphasizes taxpayer rights), including by providing support in legally complex taxpayer cases and by writing large sections of the National Taxpayer Advocate's Annual Reports to Congress.

In 2015, the IRS prevented TAS from hiring attorney-advisors to backfill existing positions due to attrition. It cited Treasury Department General Counsel Directive No. 2, which states: "Except for positions in the Inspectors General offices or within the Office of the Comptroller of the Currency, attorney positions shall not be established outside of the Legal Division" unless the General Counsel or Deputy General Counsel(s) provides a waiver. On November 29, 2016, the National Taxpayer Advocate requested a waiver, but TAS has

145 H. Rep. No. 105-599, at 215 (1998) (Conf. Rep.). *See also* 144 Cong. Rec. S. 4460 (May 7, 1998) (statement of Sen. Grassley).

146 H. Rep. No. 105-599, at 216 (1998) (Conf. Rep.).

not received one, notwithstanding the fact that the IRS employs hundreds of attorneys outside of the Legal Division (*i.e.*, the IRS Office of Chief Counsel).

The National Taxpayer Advocate's inability to hire attorneys jeopardizes TAS's effectiveness and independence.

Recommendation

Amend IRC § 7803(c)(2)(D) to expressly authorize the National Taxpayer Advocate to hire legal counsel that reports directly to her, rather than to the IRS Office of Chief Counsel.[147]

147 For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37-39 (Special Focus: *Provide the National Taxpayer Advocate the Authority to Hire Independent Counsel, Comment on Regulations, and File Amicus Briefs in Litigation Raising Taxpayer Rights Issues*) (recommending that Congress "[a]uthorize the National Taxpayer Advocate to appoint independent counsel who report directly to the National Taxpayer Advocate, provide independent legal advice, help prepare *amicus curiae* briefs and comments on proposed or temporary regulations, and assist the National Taxpayer Advocate in preparing the Annual Report to Congress and in advocating for taxpayers individually and systemically"); National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (same); National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (same). H.R. 1661, 108th Cong. § 335 (2003) would have authorized the National Taxpayer Advocate to "appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate."

#44 AUTHORIZE THE NATIONAL TAXPAYER ADVOCATE TO FILE AMICUS BRIEFS

Present Law

TAS, an organization lead by the National Taxpayer Advocate, is required by IRC § 7803(c)(2)(A) to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers experience problems or that are the frequent subject of litigation, and to make administrative and legislative recommendations to reduce controversy and mitigate such problems. In fulfilling these statutory functions, TAS protects taxpayer rights.

Under 28 U.S.C. § 516, only officers of the Department of Justice may represent the United States in litigation, except as otherwise authorized by law. Under 5 U.S.C. § 3106, the head of an executive department may not employ an attorney or counsel for the conduct of litigation in which the United States is a party, except as otherwise authorized by law. IRC § 7452 provides that the Secretary of the Treasury "shall be represented by the Chief Counsel" or his delegate in litigation before the U.S. Tax Court.

Under 5 U.S.C. § 612(b), the Small Business Administration (SBA) Chief Counsel for Advocacy has statutory authority to represent the interests of small businesses by appearing as *amicus curiae*. By contrast, the National Taxpayer Advocate, who is often referred to as the voice of the taxpayer both within the IRS and before Congress, is not authorized to represent the interests of taxpayers by appearing in litigation as an *amicus curiae*.

Reasons for Change

While the conduct of trials is best left to trial lawyers equipped to advocate zealously on behalf of clients to win individual cases, precedential issues that could potentially affect many taxpayers sometimes come before the judiciary with no one representing the rights of taxpayers in general.

Just as the SBA Chief Counsel for Advocacy may file briefs to help ensure the federal courts are informed about the impact of regulations on small businesses, TAS could be more effective in protecting taxpayer rights if the National Taxpayer Advocate were granted comparable authority to file *amicus curiae* briefs in cases implicating taxpayer rights. It is anticipated that this authority would be used sparingly, as is the case with the SBA Chief Counsel for Advocacy.

Recommendation

Amend IRC §§ 7803 and 7452 to authorize the National Taxpayer Advocate to submit briefs as an *amicus curiae* in federal litigation on matters relating to the protection of taxpayer rights.[148]

148 For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37-39 (Special Focus: *Provide the National Taxpayer Advocate the Authority to Hire Independent Counsel, Comment on Regulations, and File Amicus Briefs in Litigation Raising Taxpayer Rights Issues*); National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*); and National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*). *See also* Program Manager Technical Advice 00566 (Oct. 2, 2002), https://www.irs.gov/pub/lanoa/pmta00566_7189.pdf.

#45 REQUIRE THE IRS TO ADDRESS THE NATIONAL TAXPAYER ADVOCATE'S COMMENTS IN FINAL RULES

Present Law

IRC § 7805(f) requires the Secretary of Treasury to submit certain proposed or temporary regulations to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment regarding the impact the regulation may have on small businesses and to discuss any response to such comments in the preamble to the final regulations. Yet despite the fact that the National Taxpayer Advocate is required by IRC § 7803(c)(2)(A) to assist taxpayers in resolving problems with the IRS and to identify administrative and legislative solutions, there is no comparable provision that requires the Secretary to seek comments from the National Taxpayer Advocate on proposed or temporary regulations or to discuss any response to such comments in the preamble to the final regulations.

Reasons for Change

By requiring the IRS to solicit comments from the SBA and to respond to the comments, tax administration benefits because the agency is required to consider and respond to the SBA's concerns about the impact of regulations on small businesses. Similarly, tax administration would benefit if the IRS were required to consider and respond to the National Taxpayer Advocate's concerns about the impact of regulations on taxpayer rights and taxpayer burden. While the National Taxpayer Advocate currently provides comments to the IRS on an informal basis, a requirement that the IRS provide a written, public response would ensure the agency considers the National Taxpayer Advocate's comments carefully, and would be informative for the public and interested stakeholders.

Recommendation

Amend IRC § 7805 to require the IRS to submit proposed or temporary regulations to the National Taxpayer Advocate for comment within a reasonable time and to address any such comments in the preamble to the final rule.[149]

149 For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37-39 (Special Focus: *Provide the National Taxpayer Advocate the Authority to Hire Independent Counsel, Comment on Regulations, and File Amicus Briefs in Litigation Raising Taxpayer Rights Issues*); National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*); and National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*). S. 1598, 114th Cong. § 404 (2017) would generally adopt this recommendation, except that it requires the IRS to solicit comments from the National Taxpayer Advocate before publication.

#46 AUTHORIZE THE OFFICE OF THE TAXPAYER ADVOCATE TO ASSIST CERTAIN TAXPAYERS DURING A LAPSE IN APPROPRIATIONS

Present Law

Article I of the Constitution provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[150] The Anti-Deficiency Act implements this provision.[151] Specifically, 31 U.S.C. § 1341(a)(1)(B) forbids any officer or employee of the United States government or of the District of Columbia government to involve his or her respective government employer in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. A significant exception to this rule is provided in 31 U.S.C. § 1342, which permits such government activity "for emergencies involving the safety of human life or the protection of property."

Reasons for Change

Past IRS shutdown contingency plans have interpreted the exception under 31 U.S.C. § 1342 as applicable to activities necessary to safeguard human life or protect *federal government* property, but not the property of U.S. taxpayers. Thus, lien and levy activities carried out by automation could continue. During the 2013 shutdown, the IRS issued thousands of notices of levy on financial accounts of individuals and businesses, on wages, and on Social Security and other government benefits because these notices were pre-programmed into the IRS computer system.

Yet despite the requirement under IRC § 6343(a)(1)(D) that the IRS release any levy that creates an economic hardship for a taxpayer, no TAS employee, including the National Taxpayer Advocate, was authorized to work. As a result, taxpayers facing economic hardship were unable to obtain assistance from TAS to request or obtain release of these levies. Additionally, because cases that were in TAS's inventory at the time of the shutdown could not be worked, taxpayers who had requested the assistance of the National Taxpayer Advocate and TAS immediately prior to the shutdown experienced significant hardship and irreparable injury.[152]

Recommendation

Clarify that the emergency exception to the Anti-Deficiency Act for the protection of property includes taxpayer property as well as government property. Alternatively, clarify that the National Taxpayer Advocate may incur obligations in advance of appropriations for purposes of assisting taxpayers experiencing an economic hardship within the meaning of IRC § 6343(a)(1)(D) due to an IRS action or inaction, and that the IRS may incur obligations in advance of appropriations for purposes of complying with any Taxpayer Assistance Order issued pursuant to IRC § 7811.

150 U.S. CONST. Art. I, § 9, cl. 7.

151 Pub. L. No. 97-258, 96 Stat. 923 (1982).

152 The IRS has since revised its contingency plan to allow the National Taxpayer Advocate and some TAS employees to work during a shutdown but only if their work is necessary to protect government property; no consideration is given to allowing the National Taxpayer Advocate or TAS employees to work during a shutdown to safeguard human life or protect taxpayer property. *See* IRS, *Fiscal Year 2018 Lapsed Appropriations Contingency Plan (During the Non-Filing Season)*, https://www.treasury.gov/SitePolicies/Documents/FY2018-IRS-Lapse-in-Appropriations-Contingency-Plan_Non-Filing-12-6-17-Single-File.pdf (last visited Dec. 11, 2017).

#47 CLARIFY THE AUTHORITY OF THE NATIONAL TAXPAYER ADVOCATE TO MAKE PERSONNEL DECISIONS TO PROTECT THE INDEPENDENCE OF THE OFFICE OF THE TAXPAYER ADVOCATE

Present Law

The IRS Restructuring and Reform Act of 1998 (RRA 98) included several provisions to protect TAS's independence from the IRS, such as those that provide the National Taxpayer Advocate with authority to make independent personnel decisions. IRC § 7803(c)(4)(A)(iii) requires local TAS offices to notify taxpayers that they "operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate." To bolster this independence, IRC § 7803(c)(2)(D) provides the National Taxpayer Advocate with the authority to "appoint" Local Taxpayer Advocates (LTAs) in each state and to "evaluate and take personnel actions (including dismissal) with respect to any employee of any local office." IRC § 7803(c)(2)(C)(iv) also provides that the Commissioner and the National Taxpayer Advocate will "develop career paths for local taxpayer advocates."

The RRA 98 conference report states that the National Taxpayer Advocate "has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or *any employee in the Office of the Taxpayer Advocate*."[153] However, the statutory language does not include the final italicized clause.

Reasons for Change

IRC § 7803(c) directs the National Taxpayer Advocate to operate independently in advocating for systemic change, as well as in advocating on behalf of specific taxpayers. For example, the National Taxpayer Advocate is required by IRC § 7803(c)(2) to propose administrative and legislative changes to mitigate problems that taxpayers have with the IRS and to provide "full and substantive" analyses of a wide range of issues in reports to Congress. Moreover, IRC § 7803(c)(2)(B)(iii) requires these reports to be submitted "without any prior review or comment from . . . the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget." Thus, the National Taxpayer Advocate is required to hire and retain qualified and independent employees in both her case advocacy and systemic advocacy operations to fulfill TAS's statutory mission.

As noted above, the RRA 98 conference report expressed congressional intent to give the National Taxpayer Advocate personnel authority over "any employee" in the Office of the Taxpayer Advocate. However, IRC § 7803(c)(2)(D) grants the National Taxpayer Advocate personnel authority only over employees of "any local office." It does not grant the National Taxpayer Advocate the authority to make independent personnel decisions with respect to TAS's senior leadership, TAS attorney-advisors, employees of TAS's systemic advocacy and research functions, and other national office employees, even though those employees are also charged with engaging in independent advocacy on behalf of taxpayers and are subject to the same potential conflicts and potential retaliatory personnel actions by the IRS leadership that Congress sought to address in 1998.

153 H.R. Rep. No. 105-599, at 214 (1998) (Conf. Rep.) (emphasis added). The report states that the conference committee adopted the Senate amendment with respect to the National Taxpayer Advocate provisions, except as modified. *Id*. at 216. This provision was not modified, so the language quoted above reflects the conference agreement.

Recommendation

Amend IRC § 7803(c)(2)(D) to clarify that the National Taxpayer Advocate has the responsibility to evaluate and take personnel actions with respect to all employees of the Office of the Taxpayer Advocate.

#48 REPEAL STATUTE SUSPENSION UNDER IRC § 7811(d) FOR TAXPAYERS SEEKING ASSISTANCE FROM THE TAXPAYER ADVOCATE SERVICE

Present Law

IRC § 7811(d) suspends the statutory period of limitations for any action with respect to which a taxpayer is seeking assistance from TAS, but only if the taxpayer submits a written application for assistance.[154]

Reasons for Change

Suspension of the assessment or collection period disadvantages the taxpayer because it gives the IRS more time to take enforcement actions. If the IRS has caused a problem that the taxpayer is working with TAS to resolve, statute suspension makes little sense because it punishes the taxpayer and rewards the IRS. Further, there is no compelling reason for the suspension, as evidenced by the fact that the IRS itself has never implemented it. It is unnecessary to protect the government's interests because an application for TAS assistance does not prevent the IRS from taking enforcement action while the taxpayer is working with TAS. It is also impossible to administer using the IRS's existing computer systems.

Moreover, if IRC § 7811(d) were ever to be implemented, it would create an elective trap for the unwary. As noted above, it applies only when a taxpayer submits a written request for TAS assistance. The provision does not apply when taxpayers request TAS assistance by phone, which is the method by which most taxpayers seek TAS's assistance. Thus, this provision — apart from being unnecessary and unutilized — would produce disparate outcomes for taxpayers who, despite lacking any knowledge of this issue, contact TAS by different means.

Recommendation

Repeal IRC § 7811(d).[155]

154 Treas. Reg. § 301.7811-1(e)(4).

155 For more detail, see National Taxpayer Advocate 2015 Annual Report to Congress 316-328 (Legislative Recommendation: *Repeal or Fix Statute Suspension Under IRC § 7811(d)*). H.R. 4912, 114th Cong. § 202 (2016) and H.R. 2171, 115th Cong. § 202 (2017) would repeal IRC § 7811(d). In response to an earlier proposal, H.R. 586, 107th Cong. § 224 (2001), H.R. 3991, 107th Cong., Title II § 204 (2002), H.R. 5548, 107th Cong. § 5 (2002), H.R. 5763, 107th Cong. § 104 (2002), H.R. 5728, 107th Cong. § 104 (2002), H.R. 1661, 108th Cong. § 314 (2003), S.882, 108th Cong. § 106 (2004), and H.R. 1528, 108th Cong. § 106 (2004) would have limited statute suspension to situations where the period would be extended by more than seven days.

#49 ESTABLISH THE COMPENSATION OF THE NATIONAL TAXPAYER ADVOCATE BY STATUTE AND ELIMINATE ELIGIBILITY FOR CASH BONUSES

Present Law

IRC § 7803 describes four positions in tax administration. Subsection (a) establishes the position of Commissioner of Internal Revenue. Subsection (b) establishes the position of Chief Counsel for the IRS. Subsection (c) establishes the position of National Taxpayer Advocate. Subsection (d) describes duties of the Treasury Inspector General for Tax Administration.[156]

The Commissioner of Internal Revenue and the Chief Counsel of the IRS hold positions that generally require them to act in accordance with the policy of the Executive Branch.

The National Taxpayer Advocate and the Treasury Inspector General for Tax Administration hold positions that, by statute, require them to present an independent perspective. IRC § 7803(c)(4)(A)(iii) requires the Office of the Taxpayer Advocate to notify taxpayers that its offices "operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate." Similarly, IRC § 7803(c)(2)(B)(iii) bolsters the National Taxpayer Advocate's independence by requiring that her Reports to Congress be submitted directly to Congress "without any prior review or comment from … the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget."

Under the Inspector General Act of 1978, Inspector General offices must be "independent and objective units" and agency directors may not "prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."[157]

Pursuant to the Inspector General Act of 1978, as amended, the compensation for Inspector General positions established under the Act is "the rate payable for level III of the Executive Schedule under section 5314 of Title 5, United States Code, plus 3 percent." An Inspector General "may not receive any cash award or cash bonus." For 2018, the compensation provided under this provision is $179,735.[158]

Pursuant to IRC § 7803(c)(1)(B)(i), the compensation of the National Taxpayer Advocate is "the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title." For 2018, the highest rate of basic pay established for the Senior Executive Service is $189,600.[159] The rate fixed under 5 U.S.C. § 9503 (so-called "critical pay authority") is variable and is capped at the salary paid to the Vice President of the United States. For 2018, the Vice President's salary is $243,500.[160] The National Taxpayer Advocate is eligible to receive cash bonuses.

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156 The position of Treasury Inspector General for Tax Administration is established in the Inspector General Act of 1978, as amended. 5 U.S.C. App., Inspector General Act of 1978, § 2(3)(B)(ii).

157 5 U.S.C. App., Inspector General Act of 1978, §§ 2 & 3.

158 Exec. Order No. 13,819, 82 Fed. Reg. 61, 431 (Dec. 22, 2017), https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/pay-executive-order-2018-adjustments-of-certain-rates-of-pay.pdf. Schedule 5 shows the salary at Level III of the Executive Schedule is $174,500. The IG salary reflects the three percent addition provided by statute.

159 *Id.*, Schedule 4.

160 *Id.*

Reasons for Change

In advocating for the interests of taxpayers both in individual cases and systemically, the National Taxpayer Advocate often must take positions that run contrary to policy decisions made by IRS management, including by the Commissioner of Internal Revenue, to whom she reports by statute.[161] Under the current compensation rules, pursuant to his evaluation of the National Taxpayer Advocate's performance for the preceding fiscal year, the Commissioner annually sets the compensation of the National Taxpayer Advocate and determines whether the National Taxpayer Advocate will receive a bonus and, if so, the amount of the bonus. The Commissioner's determination may affect the compensation of the National Taxpayer Advocate by tens of thousands of dollars.

Giving the Commissioner such significant control over the National Taxpayer Advocate's compensation places the National Taxpayer Advocate in a position where her statutory mission to advocate independently on behalf of taxpayers conflicts with her personal financial interests.

In enacting the Inspector General Act of 1978, Congress recognized that giving agency heads control over the compensation of inspectors general could undermine their independence, and it provided that inspectors general would be paid at a fixed rate that the head of the agency over which they have audit responsibility cannot change.

The same considerations apply to the position of National Taxpayer Advocate. To enable the National Taxpayer Advocate to focus on advocating for taxpayers without concern about financial retaliation for taking positions that may run counter to the IRS's corporate position, the compensation of the National Taxpayer should be fixed by statute and eligibility for cash bonuses should be eliminated; accordingly, the Commissioner would not be in a position to evaluate the National Taxpayer Advocate's performance of her statutory duties, which at times requires critical analysis of the IRS's activities.

Recommendation

Amend IRC § 7803(c)(1)(B)(i) to set the compensation of the National Taxpayer Advocate at a fixed amount and to stipulate that the National Taxpayer Advocate may not receive any cash award or cash bonus.[162]

161 See IRC § 7803(c)(1)(B)(i).

162 As a transition rule, we recommend that the prohibition against bonuses take effect immediately and the rate of pay of the incumbent National Taxpayer Advocate be frozen at its current level.

Miscellaneous Provisions

#50 AUTHORIZE INDEPENDENT CONTRACTORS AND SERVICE RECIPIENTS TO ENTER INTO VOLUNTARY WITHHOLDING AGREEMENTS WITHOUT RISK THEY WILL BE USED TO CHALLENGE WORKER CLASSIFICATION DETERMINATIONS

Present Law

Under IRC § 3402(p), the IRS is authorized to accept withholding agreements. Specifically, IRC § 3402(p)(3) authorizes the Secretary to promulgate regulations to provide for withholding from any type of payment that does not constitute wages[163] if the Secretary finds withholding would be appropriate and the payor and recipient of the payment agree to such withholding. However, the provision specifically states that the Secretary must find the withholding would be appropriate "under the provisions of [IRC chapter 24, Collection of Income Tax at Source on Wages]."

IRC chapter 24 addresses collection of taxes at the source with respect to employees (*e.g.*, wage withholding). Although current regulations provide that the Secretary may issue guidance by publication in the Internal Revenue Bulletin describing other payments for which withholding under a voluntary withholding agreement would be appropriate,[164] to date the only such guidance that has been issued is Notice 2013-77, dealing with dividends and other distributions by an Alaska Native Corporation.[165]

Reasons for Change

Unlike employees, whose wage payments are subject to federal income tax withholding, independent contractors are generally responsible for paying their own income taxes. Independent contractors are required to make four estimated tax payments during the year. However, some contractors fail to make estimated tax payments and face penalties under IRC § 6654. Other contractors have difficulty saving money and finish the year with substantial tax liabilities that they cannot afford to pay. As a result, they face additional penalties and interest charges, and they may face IRS collection action, including liens and levies.

The absence of withholding on payments to independent contractors also has a negative impact on revenue collection. IRS National Research Program studies show that tax compliance is substantially lower among workers whose income taxes are not withheld.[166]

This problem is increasing as more workers are choosing to work in the "sharing economy." To reduce the risk that they will not save enough money to pay their taxes, some independent contractors would prefer that taxes be withheld throughout the year, as they are for employees. There is a legitimate debate about the circumstances under which withholding should be required. However, the National Taxpayer Advocate believes there should be no disagreement that workers and businesses should have the option to enter into *voluntary* withholding agreements when both parties agree to do so.

163 Payments made when a voluntary withholding agreement is in effect are treated as if they are wages paid by an employer to an employee for purposes of the income tax withholding provisions and related procedural provisions of subtitle F of the IRC.

164 *See* Treas. Reg. § 31.3402(p)-1(c).

165 Notice 2013-77, 2013-50 I.R.B. 632.

166 Government Accountability Office, *Timely Use of National Research Program Results Would Help IRS Improve Compliance and Tax Gap Estimates*, GAO-17-371 (Apr. 18, 2017), https://www.gao.gov/products/GAO-17-371.

For many businesses, withholding on payments to independent contractors will not impose additional burden. In addition to paying independent contractors, most large companies have full-time employees, such as administrative staff, so they already have procedures in place to withhold. Significantly, however, some businesses are reluctant to withhold due to concern that the IRS may use the existence of a withholding arrangement to challenge the worker classification arrangement. This concern would be addressed if the IRS is restricted from citing the existence of a voluntary withholding agreement as a factor in worker classification disputes. Indeed, the IRS could, on a case-by-case basis, provide a safe-harbor worker classification in which it affirmatively agrees not to challenge the classification of workers who are a party to such agreements at all, since these agreements will ensure the IRS collects the full amount of income taxes due.

Recommendations

Amend IRC § 3402(p) to clarify that when voluntary withholding agreements are entered into by parties who are not in an employer-employee relationship, the IRS may not consider the existence of a voluntary withholding agreement as a factor in worker classification disputes. In addition, direct the Secretary to evaluate the benefits of agreeing not to challenge worker classification arrangements when a voluntary withholding agreement is in place.[167]

167 For language that is generally consistent with this recommendation, see Small Business Owners' Tax Simplification Act, H.R. 3717, 115th Cong. § 9 (2017).

Additional Reference Materials

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Strengthen Taxpayer Rights			
1	Enact the Taxpayer Bill of Rights As a Freestanding Provision in the Internal Revenue Code	NTA 2013 Annual Report 5-19; NTA 2011 Annual Report 493-518; NTA 2007 Annual Report 478-489	N/A
2	Require the IRS to Provide Annual Taxpayer Rights Training to Employees	NTA 2016 Annual Report 98-108; NTA 2013 Annual Report 51-60	**S. 2333**, 114th Cong. § 308 (2015); **H.R. 4128**, 114th Cong. § 308 (2015)
3	Codify the IRS Mission Statement	NTA 2016 Annual Report 15-16	N/A
4	Require the IRS to Provide Taxpayers with a Receipt Showing How Their Tax Dollars Are Being Spent	NTA 2011 Annual Report 469; NTA 2010 Annual Report 368	**H.R. 3855**, 114th Cong. § 2 (2015); **H.R. 3039**, 113th Cong. § 2 (2013); **S. 437**, 112th Cong. § 2 (2012); **H.R. 1527**, 112th Cong. § 2 (2012)
Improve the Filing Process			
5	Authorize the Volunteer Income Tax Assistance (VITA) Grant Program	NTA 2014 Annual Report 55-66; NTA 2002 Annual Report vii-viii	**S. 1**, 115th Cong. §11076 (2017); **S. 797**, 115th Cong. § 2 (2017); **H.R. 2901**, 115th Cong. § 2 (2017); **S. 193**, 115th Cong. § 4 (2017); **H.R. 605**, 115th Cong. § 4 (2017); **S. 3156**, 114th Cong. § 111 (2016) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 114-298**, at 11-13 (2016); **H.R. 4835**, 114th Cong. § 4 (2016); **S. 2333**, 114th Cong. § 201 (2015); **H.R. 4128**, 114th Cong. § 201 (2015); **S. 996**, 114th Cong. § 4 (2015); **S. 1368**, 113th Cong. § 4 (2013); **H.R. 341**, 113th Cong. § 4 (2013); **H.R. 5719**, 110th Cong. § 7 (2008) (passed by House), *see also* **H.R. Rep. No. 110-584**, at 21-22 (2008)
6	Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers	NTA 2009 Annual Report 41-69; NTA 2008 Annual Report 423-426	**H.R. 4912**, 114th Cong. § 401 (2016); **S. 676**, 114th Cong. § 406 (2015); **S. 2333**, 114th Cong. § 202 (2015); **H.R. 4128**, 114th Cong. § 202 (2015); **S. 137**, 114th Cong. § 2 (2015); **H.R. 4141**, 114th Cong. § 2 (2015); **H.R. 1528**, 108th Cong. § 141 (2004) (passed by Senate); **S. 882**, 108th Cong. § 141 (2003) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 108-257**, at 30-31 (2003)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
7	Require the IRS to Utilize Scannable Code or Similar Technology to Process Individual Income Tax Returns Prepared Electronically But Filed on Paper	NTA 2013 Annual Report vol. 2, 70, 91, & 96	**S. 606**, 115th Cong. § 205 (2017); **S. 3157**, 114th Cong. § 205 (2016) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 114-299**, at 20-21 (2016); **S. 2736**, 113th Cong. § 4 (2014)
8	Clarify that IRS Employees May Help Taxpayers Locate a Specific Low Income Taxpayer Clinic	NTA 2007 Annual Report 551-553	**H.R. 2171**, 115th Cong. § 303 (2017); **H.R. 4912**, 114th Cong. § 303 (2016); **S. 2333**, 114th Cong. § 201(d)(4) (2015); **H.R. 4128**, 114th Cong. § 201(d)(4) (2015); **H.R. 5719**, 110th Cong. § 6 (2008) (passed by House), *see also* **H.R. Rep. No. 110-584**, at 20-21 (2008)
9	Extend the Time for Small Businesses to Make Subchapter S Elections	NTA 2010 Annual Report 410-411; NTA 2004 Annual Report 390-393; NTA 2002 Annual Report 246	**S. 711**, 115th Cong. § 7 (2017); **H.R. 1696**, 115th Cong. § 7 (2017); **H.R. 1**, 113th Cong. § 3606 (2014); **S. 2271**, 112th Cong. § 2 (2012); **H.R. 3629**, 109th Cong. § 2 (2005); **H.R. 3841**, 109th Cong. § 302 (2005)
10	Require Employers Filing More than Five Forms W-2, 1099-MISC, and 941 to File Electronically and Provide a Breakdown by Employee of the Amounts Reported on Form 941	N/A	N/A
11	Authorize the IRS to Work With Financial Institutions to Reverse Misdirected Deposits	NTA 2006 Annual Report 503-505	N/A
12	Revise the "Mailbox Rule" to Apply to Electronically Submitted Documents and Payments in the Same Manner As It Applies to Mailed Submissions	N/A	N/A
13	Amend IRC § 6654(c)(2) to Adjust Estimated Tax Payment Deadlines to Occur Quarterly	N/A	**H.R. 3717**, 115th Cong. § 2 (2017)
14	Harmonize Reporting Requirements for Taxpayers Subject to Both FBAR and FATCA By Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a *Bona Fide* Resident	NTA 2015 Annual Report 353-362	Bills Pertaining to FATCA Reporting Requirements Repeal: **S. 869**, 115th Cong. § 1 (2017); **H.R. 2054**, 115th Cong. § 1 (2017); **H.R. 2136**, 115th Cong. § 1 (2017); **H.R. 5935**, 114th Cong. § 1 (2016); **S. 663**, 114th Cong. § 1 (2015); **S. 887**, 113th Cong. § 1 (2013)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Improve Assessment and Collection Procedures			
15	Strengthen Taxpayer Protections in the Filing of Notices of Federal Tax Liens	NTA 2016 Annual Report 386-392; NTA 2014 Annual Report 396-403; NTA 2009 Annual Report 357-364	**S. 2333**, 114th Cong. § 301 (2015); **H.R. 4128**, 114th Cong. § 301 (2015); **S. 3355**, 112th Cong. § 301 (2012); **H.R. 6050**, 112th Cong. § 301 (2012); **H.R. 6439**, 111th Cong. § 2 (2010); **S. 3215**, 111th Cong. § 301 (2010); **H.R. 5047**, 111th Cong. § 301 (2010)
16	Codify the Rule That Taxpayers Can Request Equitable Relief Under IRC § 6015(f) Any Time Before Expiration of the Period of Limitations on Collection	N/A	**H.R. 3340**, 115th Cong. § 202 (2017); **S. 3156**, 114th Cong. § 113(a)(2) (2016) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 114-298**, at 15-17 (2016); **S. 2333**, 114th Cong. § 303(a)(2) (2015); **H.R. 4128**, 114th Cong. § 303(a)(2) (2015)
17	Authorize the IRS to Release Levies That Cause Economic Hardship for Business Taxpayers	NTA 2011 Annual Report 537-543	**S. 2333**, 114th Cong. § 304(a) (2015); **H.R. 4128**, 114th Cong. § 304(a) (2015); **H.R. 4368**, 112th Cong. § 1 (2012)
18	Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions	N/A	**S. 1793**, 115th Cong. § 201(c) (2017); **S. 1578**, 114th Cong. § 301 (2015)
19	Protect Retirement Funds From IRS Levies in the Absence of "Flagrant Conduct" By a Taxpayer	NTA 2015 Annual Report 340-345; NTA 2006 Annual Report 527-530	**H.R. 2171**, 115th Cong. § 203 (2017); **H.R. 3340**, 115th Cong. § 204 (2017); **H.R. 4912**, 114th Cong. § 203 (2016); **S. 2333**, 114th Cong. §§ 306 & 307 (2015); **H.R. 4128**, 114th Cong. §§ 306 & 307 (2015)
20	Toll the Time Periods for Requesting the Return of Levy Proceeds While the Taxpayer or a Pertinent Third Party Is Financially Disabled	NTA 2015 Annual Report 368-375	**H.R. 2171**, 115th Cong. § 204 (2017); **H.R. 4912**, 114th Cong. § 204 (2016)
21	Require the IRS to Waive User Fees for Taxpayers Who Enter Into Low-Cost Installment Agreements and Evaluate the Potential Revenue and Compliance Costs of Future User Fee Increases	NTA 2017 Annual Report 307-313; NTA 2015 Annual Report 14-35; NTA 2007 Annual Report 66-82	**S. 1793**, 115th Cong. § 301 (2017); **S. 3471**, 114th Cong. § 504 (2016) (reported by Sen. Fin. Comm.) (low-income fee waiver provisions and limitation on future increase), *see also* **S. Rep. No. 114-375**, at 84 (2016); **S. 3156**, 114th Cong. § 114 (2016) (low-income fee waiver provisions and limitation on future increase), *see also* **S. Rep. No. 114-298**, at 17-19 (2016); **S. 1321**, 109th Cong. § 301 (2006); **H.R. 1528**, 108th Cong. § 101 (2004) (passed by Senate); **S. 882**, 108th Cong. § 101 (2003), *see also* **S. Rep. No. 108-257**, at 5-6 (2003)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
22	Hold Taxpayers Harmless When the IRS Returns Funds Levied from a Retirement Plan or Account	N/A	**S. 1793**, 115th Cong. § 302 (2017); **S. 3156**, 114th Cong. § 104 (2016) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 114-298**, at 8-11 (2016); **S. 1578**, 114th Cong. § 402 (2015); **H.R. 5719**, 110th Cong. § 12 (2008) (passed by House), *see also* **H.R. Rep. No. 110-584**, at 27-29 (2008); **H.R. 1677**, 110th Cong. § 5 (2007); **H.R. 1528**, 108th Cong. § 109 (2004) (passed by Senate); **S. 882**, 108th Cong. § 109 (2003), *see also* **S. Rep. No. 108-257**, at 11-12 (2003); **H.R. 1528**, 108th Cong. § 203 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 38-39 (2003)
23	Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise	N/A	**S. 1793**, 115th Cong. § 303 (2017); **S. 1578**, 114th Cong. § 403 (2015); **S. 1321**, 109 Cong. § 304 (2005) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 109-336**, at 20-21 (2005); **H.R. 1528**, 108th Cong. § 304 (2004) (passed by Senate); **S. 882**, 108th Cong. § 104 (2003), *see also* **S. Rep. No. 108-257**, at 8-9 (2003); **H.R. 1528**, 108th Cong. § 304 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 43-44 (2003); **H.R. 5549**, 107th Cong. § 104 (2002)
24	Continue to Limit the IRS's Use of "Math Error Authority" to Clear-Cut Categories Specified by Statute	NTA 2015 Annual Report 329-339; NTA 2014 Annual Report 163-171; NTA 2011 Annual Report 74-92	N/A
25	Amend IRC § 7524 to Require the IRS to Mail Notices at Least Quarterly to Taxpayers with Delinquent Tax Liabilities	N/A	N/A
26	Provide Additional Time for Taxpayers Outside the United States to Request Abatement of a Math Error Assessment Equal to the Time Extension Allowed in Responding to a Notice of Deficiency	NTA 2016 Annual Report 393-397	N/A
27	Improve Offer in Compromise Program Accessibility by Repealing the Partial Payment Requirement	NTA 2006 Annual Report 507-519	**H.R. 2171**, 115th Cong. § 206 (2017); **H.R. 4912**, 114th Cong. § 206 (2015)
28	Amend IRC § 7403 to Provide Taxpayer Protections Before the IRS Recommends the Filing of a Lien Foreclosure Suit on a Principal Residence	NTA 2012 Annual Report 537-543	**S. 949**, 114th Cong. § 16 (2015); **H.R. 1828**, 114th Cong. § 16 (2015); **S. 2215**, 113th Cong. § 8 (2014)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
29	Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions	NTA 2012 Annual Report 544-552	**S. Rep. No. 105-174**, at 68 (1998) (Senate report accompanying its version of the RRA 98 legislation referred to "[t]he taxpayer (or affected third party).")
30	Clarify that Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection Proceedings and in Bankruptcy Cases	N/A	N/A
Reform Penalty and Interest Provisions			
31	Convert the Estimated Tax Penalty into an Interest Provision for Individuals, Trusts, and Estates	N/A	**H.R. 1528**, 108th Cong. § 101 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 23-24 (2003)
32	Apply One Interest Rate Per Estimated Tax Underpayment Period for Individuals, Estates, and Trusts	N/A	**S. 1793**, 115th Cong. § 305 (2017); **S. 1578**, 114th Cong. § 405 (2015); **H.R. 1528**, 108th Cong. § 101 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 25 (2003)
33	Reduce the Federal Tax Deposit Penalty Imposed on Certain Taxpayers Who Make Timely Tax Deposits	NTA 2001 Annual Report 222	**S. 1793**, 115th Cong. § 309 (2017); **S. 1578**, 114th Cong. § 409 (2015); **S. 1321**, 109th Cong. § 405 (2005), *see also* **S. Rep. No. 109-336**, at 48-49 (2005); **H.R. 1528**, 108th Cong. § 207 (2004) (passed by Senate); **S. 882**, 108th Cong. § 208 (2003), *see also* **S. Rep. No. 108-257**, at 45 (2004); **H.R. 1528**, 108th Cong. § 108 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 35-36 (2003)
34	Authorize A Penalty for Tax Return Preparers Who Engage in Fraud or Misconduct By Altering a Taxpayer's Tax Return	NTA 2011 Annual Report 558-561	**S. 2333**, 114th Cong. § 203 (2015); **H.R. 4128**, 114th Cong. § 203 (2015)
35	Require Written Managerial Approval Before Assessing the Accuracy-Related Penalty for "Negligence"	NTA 2014 Annual Report 404-410	N/A
36	Compensate Taxpayers for "No Change" National Research Program (NRP) Audits and Waive Assessment of Tax, Interest, and Penalties Resulting from NRP Audits	N/A	**H.R. Rep. No. 104-280**, vol. 2, at 28 (1995)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
Strengthen Taxpayer Rights Before the Office of Appeals			
37	Require That At Least One Appeals Officer and One Settlement Officer Be Located and Permanently Available in Each State, the District of Columbia, and Puerto Rico	NTA 2016 Annual Report 203-210; NTA 2014 Annual Report 46-54, 311-314; NTA 2009 Annual Report 346-350	**S. 1793**, 115th Cong. § 502 (2017); **S. 2333**, 114th Cong. § 309 (2015); **H.R. 4128**, 114th Cong. § 309 (2015); **S. 1578**, 114th Cong. § 602 (2015)
38	Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences	NTA 2017 Annual Report 203-210	**S. 949**, 114th Cong. § 7 (2015); **H.R. 1828**, 114th Cong. § 7 (2015); **S. 725**, 113th Cong. § 7 (2013); **H.R. 3479**, 113th Cong. § 7 (2013); **S. 2991**, 112th Cong. § 7 (2012); **H.R. 4375**, 112th Cong. § 7 (2012)
Enhance Confidentiality and Disclosure Protections			
39	Limit Redisclosures and Unauthorized Uses of Tax Returns and Tax Return Information Obtained Through Section 6103-Based "Consent" Disclosures	NTA 2007 Annual Report 554-555	**H.R. 3340**, 115th Cong. § 102 (2017); **S. 3156**, 114th Cong. § 112 (2016) (reported by Sen. Fin. Comm.), *see also* **S. Rep. No. 114-298**, at 14-15 (2016); **S. 2333**, 114th Cong. § 205 (2015); **H.R. 4128**, 114th Cong. § 205 (2015)
40	Authorize the Treasury Department to Issue Guidance Specific to IRC § 6713 Regarding the Disclosure or Use of Tax Return Information by Preparers	NTA 2007 Annual Report 547-548	N/A
Strengthen the Office of the Taxpayer Advocate			
41	Codify the National Taxpayer Advocate's Authority to Issue Taxpayer Advocate Directives	NTA 2016 Annual Report 39-40; NTA 2011 Annual Report 573-581; NTA 2002 Annual Report 198-215	**S. 2333**, 114th Cong. § 402(a) (2015); **H.R. 4128**, 114th Cong. § 402(a) (2015); **S. 3355**, 112th Cong. § 306(a) (2012); **H.R. 6050**, 112th Cong. § 306(a) (2012)
42	Clarify the Taxpayer Advocate Service's Access to Files, Meetings, and Other Information	NTA 2016 Annual Report 34-36	**S. 2333**, 114th Cong. § 403 (2015) (addressing case-related file and meeting access); **H.R. 4128**, 114th Cong. § 403 (2015) (addressing case-related file and meeting access)
43	Clarify That the National Taxpayer Advocate May Hire Legal Counsel	NTA 2016 Annual Report 37-39; NTA 2011 Annual Report 573-581; NTA 2002 Annual Report 198-215	**H.R. 1528**, 108th Cong. § 306 (2003) (passed by House), *see also* **H.R. Rep. No. 108-61**, at 44-45 (2003); **H.R. 1661**, 108th Cong. § 335 (2003)
44	Authorize the National Taxpayer Advocate to File Amicus Briefs	NTA 2016 Annual Report 37-39; NTA 2011 Annual Report 573-581; NTA 2002 Annual Report 198-215	N/A
45	Require the IRS to Address the National Taxpayer Advocate's Comments in Final Rules	NTA 2016 Annual Report 37-39; NTA 2011 Annual Report 573-581	**S. 1578**, 114th Cong. § 404 (2015)
46	Authorize the Office of the Taxpayer Advocate to Assist Certain Taxpayers During a Lapse in Appropriations	NTA 2011 Annual Report 552-557	**S. 2333**, 114th Cong. § 404 (2015); **H.R. 4128**, 114th Cong. § 404 (2015)

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
47	Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate	N/A	N/A
48	Repeal Statute Suspension Under IRC § 7811(d) for Taxpayers Seeking Assistance From the Taxpayer Advocate Service	NTA 2015 Annual Report 316-328	**H.R. 2171**, 115th Cong. § 202 (2017); **H.R. 4912**, 114th Cong. § 202 (2016)
49	Establish the Compensation of the National Taxpayer Advocate by Statute and Eliminate Eligibility for Cash Bonuses	N/A	N/A
Miscellaneous Provisions			
50	Authorize Independent Contractors and Service Recipients to Enter Into Voluntary Withholding Agreements Without Risk They Will Be Used to Challenge Worker Classification Determinations	NTA 2016 Annual Report 322-323; NTA 2012 Annual Report 19-20; NTA 2010 Annual Report 371; NTA 2008 Annual Report 375-390	**H.R. 3717**, 115th Cong. § 9 (2017)

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