TECHNICAL EXPLANATION OF THE "TAXPAYER FIRST ACT OF 2018"

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of the
JOINT COMMITTEE ON TAXATION

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CONTENTS

INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of the "Taxpayer First Act of 2018."

[1] This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of the "Taxpayer First Act of 2018,"* (JCX-65-18), July 19, 2018. This document can also be found on our website at www.jct.gov.

TITLE I – TAXPAYER PROTECTION

A. Protection of Taxpayer Rights

1. Return preparation programs for applicable taxpayers (sec. 1001 of the bill and new sec. 7526A of the Code)

Present Law

The Code[2] provides that the Secretary may allocate up to $6 million per year for matching grants to certain qualified low-income taxpayer clinics.[3] Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than $100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) which either represents low-income taxpayers or provides referral to qualified representatives. A clinic is treated as representing low-income taxpayers if (i) at least 90 percent of the taxpayers represented by the clinic have income which does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget,[4] and (ii) the amount in controversy for any taxable year is $50,000 or less.[5]

While the Code does not provide funding for matching grants, funding for such grants was provided by the Consolidated Appropriations Act, 2018.[6] Congress appropriated approximately $2.506 billion to the IRS for taxpayer services, of which not less than $15 million is to be made available for a Community Volunteer Income Tax Assistance ("VITA") matching grants program for tax return preparation assistance. VITA is a program created by the IRS in 1969 which utilizes volunteers to provide tax return preparation and filing service assistance to certain low-income taxpayers and members of underserved populations.

Explanation of Provision

The provision codifies the VITA program and provides that the Secretary, unless otherwise provided by specific appropriation, may allocate from otherwise appropriated funds up

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[2] All section references herein are to the Internal Revenue Code of 1986, as amended (the "Code"), unless otherwise stated.

[3] Sec. 7526.

[4] For a family of four, the 2018 income limit in the 48 contiguous states, Puerto Rico, and the District of Columbia is $62,750, available at https://www.irs.gov/advocate/low-income-taxpayer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines.

[5] Sec. 7463.

[6] Pub. L. No. 115-141, Div. E, Title I (March 23, 2018).

to $30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting applicable taxpayers and members of underserved populations. The Secretary is authorized to award a multi-year grant not to exceed three years.

The grant funds may be used for ordinary and necessary operation costs (including for wages or salaries of persons coordinating the activities of the program, to develop training materials, conduct training, and perform quality reviews of the returns for which assistance has been provided under the program, and for equipment purchases and vehicle-related expenses associated with remote or rural tax preparation services), outreach and educational activities relating to the eligibility and availability of income supports available through the Code, and services related to financial education and capability, asset development, and the establishment of savings accounts in connection with tax return preparation.

Matching funds are required to be provided on a dollar-for-dollar basis for all grants provided. Matching funds may include: (1) the salary (including fringe benefits) of individuals performing services for the program; (2) the cost of equipment used in the program; and (3) other ordinary and necessary costs that may be associated with the program. Indirect expenses, including general overhead of any entity administering the program are not counted as matching funds.

In awarding grants, priority is given to applications that (1) demonstrate assistance to certain applicable taxpayers with an emphasis on outreach, (2) demonstrate taxpayer outreach and education around available income supports available through the Code, and (3) demonstrate specific outreach and focus on one or more underserved populations.

The provision requires the Secretary to establish procedures for periodic site visits not less than once every five calendar years (i) to ensure the program is carrying out the stated purpose and (ii) to determine whether the VITA grant program meets certain program adherence standards as the Secretary will require. If any qualified return preparation program is awarded a grant and is subsequently determined not to meet the adherence standards or not to be carrying out the stated purposes, such program will not be eligible for additional grants unless the program provides sufficient documentation of corrective measures established to address any deficiencies determined.

Qualified return preparation program means any program (1) which provides assistance to individuals, at least 90 percent of whom are applicable taxpayers, in preparing and filing Federal income tax returns, (2) which is administered by a qualified entity, (3) in which all volunteers who assist in the preparation of Federal income tax returns meet the training requirements prescribed by the Secretary, and (4) which uses a quality review process which reviews 100 percent of all returns. Qualified entity means any entity which (1) is an eligible organization (as defined), (2) is in compliance with Federal tax filing and payment requirements, (3) is not debarred or suspended from Federal contracts, grants, or cooperative agreements, and (4) agrees to provide documentation to substantiate any matching funds provided under the VITA grant program. Eligible organization means (1) an institution of higher education described in section 102 (other than subsection (a)(1)(C) thereof) of the Higher Education Act of 1965, as in effect on the date of enactment, and which has not been disqualified from

participating in a program under Title IV of such Act, (2) an exempt organization described in Code section 501(c), (3) a local government agency, including a county or municipal government agency, and (4) an Indian tribe, as defined in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 ("Act"), including any tribally designated housing entity (as defined in such Act), tribal subsidiary, subdivision, or other wholly owned tribal entity, or a local, State, regional, or national coalition (with one lead organization which meets the eligibility requirements described above acting as the applicant organization). If no eligible organization is available to assist the targeted population or community, the eligible organization includes a State government agency and a Cooperative Extension Service office.

Applicable taxpayer means a taxpayer who has income for the taxable year which does not exceed an amount equal to the completed phaseout amount under section 32(b) for a married couple filing a joint return with three or more qualifying children, as determined in a revenue procedure or other published guidance.[7] Underserved population includes populations of persons with disabilities, persons with limited English proficiency, Native Americans, individuals living in rural areas, members of the Armed Forces and their spouses, and the elderly.

The provision allows the IRS to use mass communications and other means to promote the benefits and encourage the use of the program. The Secretary can provide taxpayers information regarding qualified return preparation programs receiving grants and those programs are encouraged to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from local or regional low income taxpayer clinics. The programs are also encouraged to provide taxpayers information regarding the location and contact information for the low-income taxpayer clinics.

Effective Date

The provision is effective on the date of enactment.

2. Limit redisclosures and uses of consent-based disclosures of tax return information (sec. 1002 of the bill and sec. 6103 of the Code)

Present Law

In general

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26.[8] Under section 6103(c), a taxpayer may designate in a request or consent to the disclosure by the IRS of his or her return or return information to a third party. Treasury regulations set forth the requirements for such consent.[9] The request or consent may be in written or non-written form. The Treasury regulations require that the taxpayer sign and date

[7] For 2018, the amount is $54,884. Rev. Proc. 2018-18, 2018-10 I.R.B. 392, 395, March 5, 2018.

[8] Sec. 6103(a).

[9] Treas. Reg. sec. 301.6103(c)-1.

a written consent. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's identity information; (2) the identity of the person to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received. Under present law, the recipient is also free to use the information for purposes other than for which the information was solicited from the taxpayer.

Criminal penalties

Under section 7206, it is a felony to willfully make and subscribe any document that contains or is verified by a written declaration that it is made under penalties of perjury and which such person does not believe to be true and correct as to every material matter.[10] Upon conviction, such person may be fined up to $100,000 ($500,000 in the case of a corporation) or imprisoned up to three years, or both, together with the costs of prosecution.

Under section 7213, criminal penalties apply to: (1) willful unauthorized disclosures of returns and return information by Federal and State employees and other persons; (2) the offering of any item of material value in exchange for a return or return information and the receipt of such information pursuant to such an offer; and (3) the unauthorized disclosure of return information received by certain shareholders under the material interest provision of section 6103. Under section 7213, a court can impose a fine up to $5,000, up to five years imprisonment, or both, together with the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

The willful and unauthorized inspection of returns and return information can subject Federal and State employees and others to a maximum fine of $1,000, up to a year in prison, or both, in addition to the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Civil damage remedies for unauthorized disclosure or inspection

If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The

[10] Sec. 7206(1).

taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

Explanation of Provision

Under the provision, persons designated by the taxpayer to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

Effective Date

The provision is effective for disclosures made after the date that is six months after the date of enactment.

3. Clarification of equitable relief from joint liability (sec. 1003 of the bill and sec. 6015 of the Code)

Present Law

If a married couple elects to file a tax return on which they report their income jointly, they are generally jointly and severally liable for the entire tax liability that should have been reported on the joint return.[11] A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief provisions of the Code.

Grounds for relief from joint liability

There are three types of relief: general innocent spouse relief; relief for spouses no longer married or legally separated (separation of liabilities); and equitable relief. The grounds for relief and its scope differ among these three types of relief. In addition, the first two types of relief must be sought no later than two years after the date the IRS began collection activities against the electing spouse. For equitable relief, there is no limitations period in the statute.

General relief from joint liability with respect to an understatement of tax is available to all joint filers who make a timely election for such relief and are able to establish the following.[12] First, the electing spouse must establish that the underpayment is attributable to the erroneous items of the other spouse. Second, the electing spouse must show that at the time of signing the return, he or she did not know or have reason to know there was an understatement of tax.

[11] Sec. 6103(d).

[12] Sec. 6015(b).

Finally, relief is granted only if it is inequitable to hold the electing spouse liable for the deficiency in tax, based on all facts and circumstances.

Separation of liabilities relief from joint liability with respect to a deficiency is available to persons who are no longer married, are legally separated, or were no longer living together in the 12 months ending with the date innocent spouse relief is elected.[13] The individual electing relief on this basis must establish the portion of any deficiency that is appropriately allocable to him or her. Special rules are provided in the Code for determining allocation of items that benefit one spouse more than the other, property transfers, and children's liability. Relief otherwise available is not permitted with respect to items of which a spouse was aware at the time the return was signed and which contributed to a deficiency.

Equitable relief from joint liability may be available to those spouses who are ineligible under the provisions for general relief or separation of liabilities relief.[14] Such relief is granted only if, taking into account all facts and circumstances, it is inequitable to hold the individual liable for the unpaid portion of tax or for a deficiency with respect to the joint return.

Availability and scope of judicial review

If an individual elects to have the general relief provisions or the separation of liabilities relief provisions apply with respect to a deficiency, the individual may petition the United States Tax Court (the "Tax Court") to review unfavorable determinations by the IRS with respect to the claimed relief. The Tax Court has held that its authority to review such IRS determinations is under a *de novo* standard.[15]

The claim for relief from joint liability must be filed no later than 90 days after the notice of final determination on relief from joint liability and no earlier than the earlier of the mailing of such notice of final determination or the date which is six months after electing such relief. During the pendency of the Tax Court proceeding, or during the period in which a petition may be filed, collection action is restricted.

In contrast to the above, the extent to which a denial of a claim for equitable relief from joint liability is also subject to judicial review by the Tax Court, the scope of that review, and the standard for any review have been the subject of conflicting appellate decisions. An abuse of discretion standard based on court review of the administrative record was held to be the correct standard in some instances,[16] but other courts have permitted review of information beyond the

[13] Sec. 6015(c).

[14] Sec. 6015(f).

[15] Sec. 6015(e)(1).

[16] *Jonson v. Commissioner*, 118 T.C. 106, 125 (2002), aff'd on other grounds, 353 F.3d 1181 (10th Cir. 2003); *Mitchell v. Commissioner*, 292 F.3d 800, 807 (D.C. Cir. 2002); *Cheshire v. Commissioner*, 282 F.3d 326, 337-38 (5th Cir. 2002).

administrative record while applying an abuse of discretion standard.[17] Still others have applied a *de novo* standard to both the scope of the review and the standard of review.[18]

Explanation of Provision

Under the provision, Tax Court review of innocent spouse equitable relief cases is not limited to the administrative record, but it may consider evidence that is newly discovered or was previously unavailable. The provision also clarifies that the Tax Court has jurisdiction to review a denial of equitable claims for relief from joint liability, and is not limited to a review for abuse of discretion by the IRS.

The provision allows taxpayers to request equitable relief with respect to any unpaid liability before the expiration of the collection period or, if paid, before the expiration of the time for claiming a refund or credit.

Effective Date

The provision applies to petitions or requests filed or pending on or after the date of enactment.

4. Notice from IRS regarding closure of Taxpayer Assistance Centers (sec. 1004 of the bill)

Present Law

The IRS runs Taxpayer Assistance Centers ("TAC") around the country to provide face-to-face assistance with preparing tax returns and understanding tax laws.

The IRS is not currently required to publish information or give notice to Congress before closing a TAC.

Explanation of Provision

The provision requires the IRS to publish (including by non-electronic means such as local press and other media), 90 days in advance, a notice containing information identifying the TAC proposed for closure, the date of the proposed closure, and the relevant alternative sources of assistance which may be utilized by affected taxpayers. The provision also requires the IRS to provide, 90 days in advance, a report to Congress containing the information in the notice, the reasons for a proposed closure of the TAC, and other information as the Secretary may find appropriate.

Effective Date

The provision is effective on the date of enactment.

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[17] *Commissioner v. Neal*, 557 F.3d 1262 (11th Cir. 2009).

[18] *Wilson v. Commissioner*, 705 F.3d 980 (9th Cir. 2013); *Porter v. Commissioner*, 132 T.C. 203, 132 T.C. No. 11 (2009).

5. Whistleblower reforms (sec. 1011 of the bill and secs. 6103, 7213, and 7623 of the Code)

Present Law

In general

Under section 7623, individuals who submit information leading to detection of underpayment of tax or to detection, trial, and punishment of persons guilty of violating internal revenue laws, may file a claim for an award of 15 to 30 percent of recovered funds resulting from such action.

Disclosure rules for whistleblowers

Section 6103 provides a general rule of confidentiality for returns and return information: "Returns and return information shall be confidential and except as authorized by this title . . . [none of the specified recipients] shall disclose any return or return information obtained by him . . ."[19] One of the exceptions to the general rule of confidentiality permits the IRS to make investigative disclosures of return information to third parties. The disclosures, made in accordance with regulations, are to be made to the extent necessary to obtain information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, the amount to be collected, or with respect to the enforcement of any provision of Title 26. The third party recipient of the return information furnished during an investigative disclosure is not subject to the general rule of confidentiality provided by section 6103.

There is no provision of section 6103 to provide whistleblowers with status updates regarding what the IRS has done with the information provided by the whistleblower. Such status information would be the return information of the taxpayer being audited/investigated for additional tax liability.

A taxpayer can file or sue for civil damages for the unauthorized disclosure and/or inspection of returns and return information.[20] In addition, criminal penalties apply for the willful unauthorized disclosure or inspection of returns and return information.

Protection against retaliation

Though other statutes such as the False Claims Act[21] currently protect some individuals from employer retaliation, those who file claims under the Code are not explicitly afforded these same protections.

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[19] Sec. 6103(a).

[20] Sec. 7431.

[21] 31 U.S.C. §3730(h)(2).

Explanation of Provision

This provision amends section 6103 to: (1) allow the IRS to exchange information with whistleblowers to the extent disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability or the amount to be collected with respect to the enforcement of any other provision of the Code; and (2) require the Secretary to notify the whistleblower as to the status of their case not later than 60 days after: (i) the case has been referred for an audit or examination; and (ii) the taxpayer makes a payment to settle the tax liability to which the information relates. Subject to such requirements and conditions prescribed by the Secretary, upon written request by the whistleblower and so long as the disclosure would not seriously impair Federal tax administration, the Secretary has the authority to provide information on the status and stage of any investigation, and in the case of a determination of the amount of any award, the reasons for such determination. To ensure taxpayer information is protected, whistleblowers receiving information under either (1) or (2) are subject to criminal penalties for unauthorized disclosure of taxpayer information.

The provision adds to section 7623, anti-retaliation whistleblower protections for employees. A person who alleges discharge or other reprisal by any person in violation of these protections may file a complaint with the Secretary of Labor (within 180 days after the date on which the violation occurs), and if the Secretary of Labor has not issued a final decision on such complaint within 180 days (and the delay is not due to the bad faith of the claimant), an action may be brought in the appropriate district court. The remedies provided are consistent with those currently available under the False Claims Act, including compensatory damages of reinstatement, back pay plus interest, and compensation for other special damages including litigation costs and reasonable attorneys' fees.

Effective Date

The modifications made to the disclosure rules apply to disclosures made after the date of enactment. The protections from retaliation are effective on the date of enactment.

6. Electronic record retention (sec. 1021 of the bill)

Present Law

Federal executive agencies are required to maintain and preserve Federal records,[22] whether in paper or electronic form, and protect against unauthorized removal of such records. Policies for the retention and disposal of records must conform to the requirements of the record-

[22] The Federal Records Act requirements for federal agencies are found in 44 U.S.C. chapter 31 (Records Management by Federal Agencies). See 44 U.S.C. sec. 3301 for a definition of Federal records that generally includes all documentary materials that agencies receive or create in the conduct of official business and that may have evidentiary value with respect to official business, regardless of the physical form of the materials.

management procedures, as implemented by the Archivist of the United States.[23] Email accounts are specifically included within the scope of records subject to the record-retention policies.[24] Each agency is required to provide instruction and guidance to persons conducting business on behalf of the agency, including employees, officers and contractors.[25]

The government-wide record-management requirements are in addition to the obligations to protect the sensitive information for which the IRS is responsible. Tax information is sensitive and confidential.[26] The Code imposes civil and criminal penalties to protect it from unauthorized use, inspection or disclosure.[27] As a condition of receiving tax data, outside agencies must establish to the satisfaction of the IRS that they have adequate programs and security protocols in place to protect the data received.[28]

There are no Code provisions governing IRS record retention, management, or transfer of paper or electronic records. The Internal Revenue Manual ("IRM") provides IRS employees processes, procedures, and guidelines regarding records and information management, including the creation, maintenance, retrieval, preservation, and disposition of all records.[29]

Explanation of Provision

The provision codifies the joint directive regarding the management of government records previously issued by the Office of Management and Budget and the National Archives and Records Administration.[30] Accordingly, the provision requires that permanent and

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[23] See generally Title 44, at chapter 21 (national archives and records administration), chapter 29 (records management by the Archivist of the United States and the General Services Administration), chapter 31 (records management by Federal agencies) and chapter 33 (disposal of records).

[24] The regulations implementing the Federal Records Act are found in 36 CFR chapter XII, subchapter B—Records Management; 36 CFR 1236.22(a). These regulations implement the provisions of 44 U.S.C. chapters 21, 29, 31 and 33 and specify policies for federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, and records disposition.

[25] A quarterly bulletin published by the National Archives and Records Administration ("NARA") provides guidance to executive agencies. See generally NARA Bulletin 2013-03, available at http://www.archives.gov/records-mgmt/bulletins/2013/2013-03.html.

[26] Sec. 6103(a).

[27] See secs. 7213 (criminal unauthorized disclosure), 7213A (criminal unauthorized inspection) and 7431 (civil remedy for unauthorized inspection or disclosure).

[28] Sec. 6103(p)(4).

[29] IRM sections 1.15.1-1.15.36, *Records and Information Management*, available at https://www.irs.gov/irm/part1/irm_01-015-001.html. According to NARA, the IRM's coverage of records and information management policies, routines, procedures, and requirements indicates compliance with 36 CFR 1220.34(c) and 36 CFR 1222 through 1238. National Archives and Records Administration, *Department of Treasury, Internal Revenue Service, Records Management Inspection Report*, June 2015, available at http://www.archives.gov/records-mgmt/pdf/irs-inspection.pdf.

[30] Office of Management and Budget and National Archives and Records Administration, *Memorandum for the Heads of Executive Departments and Agencies and Independent Agencies: Managing Government Records*

temporary e-mail records of the IRS be retained in an appropriate electronic system that supports records management and litigation requirements by December 31, 2019. In addition, the provision requires that by December 31, 2019, the IRS Commissioner of Internal Revenue ("Commissioner") and the Chief Counsel for the IRS ("Chief Counsel") maintain e-mail records of all principal officers and specified employees for no less than 15 years beginning on the date the record was generated. At the end of the applicable period, the IRS is required to transfer all the email records for principal officers and specified employees to the National Archives for permanent storage.

Principal officer means any employee whose position is listed under the IRS in the most recent version of the United States Government Manual published by the Office of the Federal Register, any employee who is a senior staff member reporting directly to the Commissioner or the Chief Counsel, and any associate counsel, deputy counsel or division head in the Office of Chief Counsel, and any employee who is a senior staff member who reports directly to Chief Counsel. Specified employee means any employee who holds a Senior Executive Service position (as defined in Title 5 of the United States Code) in the IRS or the Office of Chief Counsel.

Until TIGTA certifies to the Senate Committee on Finance and the House Committee on Ways and Means that the IRS is in compliance with the requirements to maintain and transfer e-mail records, the Commissioner and the Chief Counsel must retain the email records of all personnel. The provision requires TIGTA to prepare an interim report on the steps being taken to comply with the provision by December 31, 2019, and a final report on whether the IRS is in compliance with the provision by April 1, 2020, for the Senate Committee on Finance and the House Committee on Ways and Means.

Effective Date

The provision is effective on the date of enactment.

7. Prohibition on rehiring former IRS employees who were involuntarily separated for misconduct (sec. 1022 of the bill and sec. 7804 of the Code)

Present Law

Employees of the IRS are subject to rules governing Federal employment generally,[31] as well as rules of conduct specific to Department of the Treasury and the IRS. Standards of

Directive (M-12-18), August 24, 2012, available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf.

[31] Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.[32]

The Code[33] provides that the Commissioner of the IRS has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons,[34] including determination and designation of posts of duty.

The Restructuring Act[35] requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to take an official action, such as an audit, or delay or fail to take official action with respect to a taxpayer for political purposes or for the purpose of extracting personal gain or benefit.

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[32] Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 735. 5 CFR 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; 31 CFR Part 0, Department of the Treasury Employee Rules of Conduct.

[33] Sec. 7803(a).

[34] Sec. 7804.

[35] Pub. L. No. 105-206, sec. 1203(b), July 22, 1998.

The Restructuring Act provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. TIGTA is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in TIGTA's annual report to Congress.

Explanation of Provision

A former employee of the IRS cannot be rehired by the IRS if: (1) he was involuntarily separated due to misconduct or unacceptable performance under subchapter B of Chapter 80 of the Code, under chapters 43 or 75 of Title 5 of the United States Code, or a similar provision of law, (2) he has voluntarily separated after receiving a notice of proposed action of removal for misconduct or unacceptable performance, or (3) his employment was terminated under section 1203 of the IRS Restructuring Act of 1998.

Effective Date

The provision is effective with respect to the hiring of employees after the date of enactment.

8. Authority to remove or transfer senior executives who fail in their performance or engage in serious misconduct (sec. 1023 of the bill and sec. 7804 of the Code)

Present Law

Employees of the IRS are subject to rules governing Federal employment generally,[36] as well as rules of conduct specific to Department of the Treasury and IRS. Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.[37]

The Code[38] provides that the Commissioner of the IRS has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). Unless otherwise specified by the Secretary, the

[36] Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

[37] Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 735. 5 CFR 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; 31 CFR Part 0, Department of the Treasury Employee Rules of Conduct.

[38] Sec. 7803(a).

Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons,[39] including determination and designation of posts of duty.

The Restructuring Act[40] requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to take an official action, such as an audit, or delay or fail to take official action with respect to a taxpayer for political purposes or for the purpose of extracting personal gain or benefit.

The Restructuring Act provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. The IG is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the IG's annual report to Congress.

Adverse personnel actions may be reviewed by the Merit Systems Protection Board, ("the MSPB Board") under its appellate jurisdiction.[41] Members of the Senior Executive Service

[39] Sec. 7804.

[40] Pub. L. No. 105-206, sec. 1203(b), July 22, 1998.

[41] Title 5 CFR, Part 1201-Practices and Procedures.

("SES") have additional rights to seek informal hearings of the MSPB Board after notice of proposed adverse action by the IRS.[42]

Explanation of Provision

Under the provision, the Commissioner may use expedited procedures to remove or demote any individual employed in a senior executive position at the IRS if the Commissioner determines the performance or misconduct of the individual warrants such removal. Employees subject to this provision are those senior executives who are career appointees (as defined in section 3132(a)(4) of Title 5) in SES positions as defined in Title 5 of the United States Code.[43]

The authority granted by this provision is in addition to the procedures for removal and transfer under present law in Title 5.[44]

Misconduct includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. The provision specifies that such misconduct does not include the ten acts or omissions listed in the Restructuring Act and punishable by termination.

The senior executive is allowed an opportunity for an expedited review by the MSPB Board. The expedited review is to be conducted by an administrative law judge at the MSPB Board. If the judge does not conclude their review within 21 days, then the removal or demotion is final. Within 14 days after the removal or transfer is final, the MSPB Board must notify Congress of the removal or transfer and explain why a decision was not issued. The provision does not permit appeal from the administrative law judge. Notice to the Congress includes written notice to the following Committees: in the Senate, the Committee on Finance and the Committee on Homeland Security and Governmental Affairs; in the House of Representatives, the Committee on Ways and Means and the Committee on Oversight and Government Reform.

If the senior executive who is removed appeals the IRS's decision, the senior executive is not entitled to any type of pay, bonus, or benefit while appealing the decision of removal. If a senior executive is demoted, and then appeals the IRS's decision, the senior executive may only receive any type of pay, bonus, or benefit at the rate appropriate for the position they were demoted to, and only if the individual reports for duty, while appealing the decision of demotion. The transferred senior executive may not utilize any manner of paid leave (sick leave, annual leave, etc.) while an appeal is pending.

The provision requires that the MSPB Board submit to the Committees a plan within 30 days of enactment of how the expedited review would be implemented and to implement such

[42] 5 U.S.C. sec. 3592 and related regulations.

[43] See 5 U.S.C. secs. 3132(a)(4) (definition of career appointee) and 3132(a)(2) (definition of SES position).

[44] 5 U.S.C. secs. 3592 (removal of SES appointees) and Chapter 75 (Adverse Actions).

plan within 60 days of enactment. In designing the plan for implementation, the provision cannot be construed to apply to an appeal that was filed or pending before the date of enactment.

Effective Date

The provision is effective on the date of enactment.

9. Limitation on access of non-Internal Revenue Service employees to returns and return information (sec. 1024 of the bill and sec. 7602 of the Code)

Present Law

Returns and return information

General rule of confidentiality

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.[45] The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term "return information" includes, among other items:

> a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . . [46]

Disclosure exception for tax administration contracts (section 6103(n))

There are several exceptions to the general rule of confidentiality. One exception permits the disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes ("tax administration contractor").[47]

[45] Sec. 6103(a).

[46] Sec. 6103(b)(2)(A).

[47] Sec. 6103(n).

Summons authority

In general

For the purposes of ascertaining the correctness of any return, making a return when none has been made, determining the liability of any person for any internal revenue tax, and certain other purposes, the Secretary is authorized to examine any books, records, or other data which may be relevant or material to such inquiry, and to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The Secretary also is authorized to issue summonses to appear before the Secretary at the time and place named in the summons to produce books, records and other data and to give testimony, under oath, as may be relevant or material to such inquiry.

Summons interview regulations

Under the Treasury regulations, a person authorized to receive returns and return information as a tax administration contractor may receive and examine books, papers, records, or other data produced to comply with the summons, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath.[48]

Proposed Treasury regulations would narrow this authority by excluding non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath.[49] An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise in an area other than Federal tax law. The proposed regulations would allow the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, or in non-tax substantive law, such as patent law, property law, or environmental law. It would not permit the IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. These changes are proposed to be effective for examinations begun and summonses served by the IRS on or after the date the proposed regulations were published in the Federal Register (March 28, 2018).

Explanation of Provision

The Secretary shall not, under the authority of section 6103(n) (relating to tax administration contracts), provide to a tax administration contractor any books, papers, records or other data obtained by summons, except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS. Further, no person other than an officer or employee of the IRS or Office of Chief Counsel may on behalf of the Secretary question a witness under oath whose testimony was obtained by summons.

[48] Treas. Reg. sec. 301.7602-1(b)(3).

[49] Prop. Treas. Reg. sec. 3017602-1(b)(3), 83 Fed. Reg. 13208 (March 28, 2018).

Effective Date

The provision is generally effective on the date of enactment and applies to any tax administration contracts under section 6103(n) in effect on the date of enactment.

10. Notification of unauthorized inspection or disclosure of returns and return information (sec. 1025 of the bill and sec. 7431 of the Code)

Present Law

If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of $1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

Explanation of Provision

The provision requires the Secretary to notify a taxpayer if the IRS or, a Federal or State agency (upon notice to the Secretary by such Federal or State agency), if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The provision requires the notice to include the date of the unauthorized inspection or disclosure and the rights of the taxpayer as a result of such administrative determination.

Effective Date

The provision is effective for determinations proposed after 180 days after the date of enactment.

11. Mandatory electronic filing for annual returns of exempt organizations (sec. 1031 of the bill and secs. 6033 and 6104 of the Code)

Present Law

In general

The Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998")[50] states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.[51] Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.[52] The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,[53] and that all partnerships with more than 100 partners file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at reasonable cost.

The regulations require corporations that have assets of $10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006. In determining whether the 250 return threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

Tax-exempt organizations

Most tax-exempt organizations are required to file an annual information return or notice in the Form 990 series. Since 2007, the smallest organizations − generally, those with gross receipts of less than $50,000 − may provide an abbreviated notice on Form 990-N, sometimes referred to as an "e-postcard." Which form to file depends on the annual receipts, value of

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[50] Pub. L. No. 105-206.

[51] The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal reported that e-filing by individuals exceeded 80 percent in the 2013 filing season, but projected an overall rate of 72.8 percent based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2013, IRS Pub. 3415, page 6.

[52] Sec. 6011(e).

[53] Section 6011(e)(3)(B) defines a "specified tax return preparer" as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

assets, and types of activities of the exempt entity. Forms 990, 990-EZ, and 990-PF are released to the public on DVDs.

In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. First, as indicated above, tax-exempt corporations that have assets of $10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990-PF information returns.[54] Finally, organizations that file Form 990-N (the e-postcard) also must electronically file.[55]

Explanation of Provision

The provision extends the requirement to e-file to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872 ("Political Organization Report of Contributions and Expenditures"). The provision also requires that the IRS make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104 of the Code) in a machine-readable format as soon as practicable.

Effective Date

The provision generally is effective for taxable years beginning after date of enactment. Transition relief is provided for certain organizations. First, for certain small organizations or other organizations for which the Secretary determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time, the requirement to file electronically must be implemented not later than taxable years beginning two years following the date of enactment. For this purpose, small organization means any organization: (1) the gross receipts of which for the taxable year are less than $200,000; and (2) the aggregate gross assets of which at the end of the taxable year are less than $500,000. In addition, the provision grants IRS the discretion to delay the effective date not later than taxable years beginning two years after the date of enactment for the filing of Form 990-T (reports of unrelated business taxable income or the payment of proxy tax under section 6033(e)).

[54] Taxpayers can request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer.

[55] See Form 990-N, "Electronic Notice for Tax-exempt Organizations Not Required to File a Form 990 or 990-EZ."

12. Prohibit the use of IRS funds for political targeting (sec. 1032 of the bill)

Present Law

No provision.

Explanation of Provision

The provision would prohibit the use of any funds by the IRS to target citizens of the United States for exercising any right guaranteed under the First Amendment to the U.S. Constitution.

Effective Date

The provision is effective on the date of enactment.

13. Require IRS to notify exempt organizations before revoking exempt status for failing to file annual returns or notices (sec. 1033 of the bill and sec. 6033(j) of the Code)

Present Law

Applications for tax exemption

Section 501(c)(3) organizations

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023 (Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code) or Form 1023-EZ (Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code)).[56] In response to the application, the IRS issues a determination letter or ruling either recognizing the applicant as tax-exempt or not. Certain organizations are not required to apply for recognition of tax-exempt status in order to qualify as tax-exempt under section 501(c)(3) but may do so. These organizations include churches, certain church-related organizations, organizations (other than private foundations) the gross receipts of which in each taxable year are normally not more than $5,000, and organizations (other than private foundations) subordinate to another tax-exempt organization that are covered by a group exemption letter.

A favorable determination by the IRS on an application for recognition of tax-exempt status generally will be retroactive to the date that the section 501(c)(3) organization was created if it files a completed Form 1023 within 15 months of the end of the month in which it was formed.[57] If the organization does not file Form 1023 or files a late application, it will not be

[56] See sec. 508(a).

[57] Pursuant to Treas. Reg. sec. 301.9100-2(a)(2)(iv), organizations are allowed an automatic 12-month extension as long as the application for recognition of tax exemption is filed within the extended, *i.e.*, 27-month, period. The IRS also may grant an extension beyond the 27-month period if the organization is able to establish that

treated as tax-exempt under section 501(c)(3) for any period prior to the filing of an application for recognition of tax exemption.[58] Contributions to section 501(c)(3) organizations that are subject to the requirement that the organization apply for recognition of tax-exempt status generally are not deductible from income, gift, or estate tax until the organization receives a determination letter from the IRS.[59]

Other section 501(c) organizations

Most other types of section 501(c) organizations – including organizations described within sections 501(c)(4) (social welfare organizations, etc.), 501(c)(5) (labor organizations, etc.), or 501(c)(6) (business leagues, etc.) – are not required to apply recognition of exempt status. Rather, organizations are exempt under these provisions if they satisfy the requirements applicable to such organizations. However, an organization that intends to operate as a section 501(c)(4) organization must notify the Secretary no later than 60 days after its formation that it is operating as such by filing form 8976 (Notice of Intent to Operate Under Section 501(c)(4)). In addition, in order to obtain certain benefits such as public recognition of tax-exempt status, exemption from certain State taxes, and nonprofit mailing privileges, such organizations voluntarily may request a formal recognition of exempt status by filing a Form 1024 (Application for Recognition of Exemption under Section 501(a)) or Form 1024-A (Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code).

Annual information returns

Exempt organizations are required to file an annual information return, Form 990 (Return of Organization Exempt From Income Tax), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.[60] Exempt from the requirement are churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high

it acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Treas. Reg. secs. 301.9100-1 and 301.9100-3.

[58] Treas. Reg. sec. 1.508-1(a)(1).

[59] Sec. 508(d)(2)(B). Contributions made prior to receipt of a favorable determination letter may be deductible prior to the organization's receipt of such favorable determination letter if the organization has timely filed its application to be recognized as tax-exempt. Treas. Reg. secs. 1.508-1(a) and 1.508-2(b)(1)(i)(b).

[60] Sec. 6033(a). An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.[61]

An organization that is required to file an information return, but that has gross receipts of less than $200,000 during its taxable year, and total assets of less than $500,000 at the end of its taxable year, may file Form 990-EZ. If an organization normally has gross receipts of $50,000 or less, it must file Form 990-N ("e-postcard"), if it chooses not to file Form 990 or Form 990-EZ. Private foundations are required to file Form 990-PF rather than Form 990.

Revocation of exempt status

In general

An organization that has received a favorable tax-exemption determination from the IRS generally may continue to rely on the determination as long as "there are no substantial changes in the organization's character, purposes, or methods of operation."[62] A ruling or determination letter concluding that an organization is exempt from tax may, however, be revoked or modified: (1) by notice from the IRS to the organization to which the ruling or determination letter was originally issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the United States Supreme Court; (4) by issuance of temporary or final Regulations by the Treasury Department; (5) by issuance of a revenue ruling, a revenue procedure, or other statement in the Internal Revenue Bulletin; or (6) automatically, in the event the organization fails to file a required annual return or notice for three consecutive years (discussed in greater detail below).[63] A revocation or modification of a determination letter or ruling may be retroactive if, for example, there has been a change in the applicable law, the organization omitted or misstated a material fact, or the organization has operated in a manner materially different from that originally represented.[64] Upon revocation of tax-exemption or change in the classification of an organization (*e.g.*, from public charity to private foundation status), the IRS publishes an announcement of such revocation or change in the Internal Revenue Bulletin.

Automatic revocation for failure to file information returns

If an organization fails to file a required Form 990-series return or notice for three consecutive years, the organization's tax-exempt status is automatically revoked.[65] A revocation for failure to file is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition of tax-

[61] Sec. 6033(a)(3); Treas. Reg. secs. 1.6033-2(a)(2)(i) and (g)(1).

[62] Treas. Reg. sec. 1.501(a)-1(a)(2).

[63] Rev. Proc. 2018-5, sec. 12.

[64] *Ibid*.

[65] Sec. 6033(j)(1).

exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.[66]

If, upon application for tax-exempt status after an automatic revocation for failure to file information returns, the organization shows to the satisfaction of the Secretary reasonable cause for failing to file the required annual notices or returns, the organization's tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation.[67] An organization may not challenge under the Code's declaratory judgment procedures (section 7428) a revocation of tax-exemption made for failure to file annual information returns.

The Secretary is authorized to publish a list of organizations whose exempt status is automatically revoked.

Explanation of Provision

The provision requires that the IRS provide notice to an organization that fails to file a Form 990-series return or notice for two consecutive years. The notice must state that the IRS has no record of having received such a return or notice from the organization for two consecutive years and inform the organization about the revocation of the organization's tax-exempt status that will occur if the organization fails to file such a return or notice by the due date for the next such return or notice. The notice must also contain information about how to comply with the annual information return and notice requirements under sections 6033(a)(1) and 6033(i).

Effective Date

The provision applies to failures to file returns or notices for two consecutive years if the return or notice for the second year is required to be filed after December 31, 2018.

14. Report on IRS audit criteria (sec. 1041 of the bill)

Present Law

The Treasury Inspector General for Tax Administration ("TIGTA") is not currently required to consult with the IRS on the criteria it uses to select tax returns for audits, assessments, criminal investigations, or report any instances where the IRS's criteria discriminate on the basis of race, religion, or political ideology.

Explanation of Provision

In an effort to ascertain whether taxpayers may be targeted for audits, assessments, criminal investigations, or any heightened scrutiny or review by the IRS because of their political ideology, race, religion, or any other impermissible factor, TIGTA is required to perform an

[66] Sec. 6033(j)(2).

[67] Sec. 6033(j)(3); Rev. Proc. 2014-11, 2014-3 I.R.B. 411 (January 13, 2014).

audit of the criteria the IRS uses to select tax returns for audit, assessments, criminal investigation, or heightened scrutiny or review.

TIGTA shall provide a report of its findings within two years of the date of enactment.

Effective Date

The provision is effective on the date of enactment.

B. Protection of Taxpayers From Identity Theft and Tax Fraud

1. Single point of contact for tax-related identity theft victims (sec. 1101 of the bill)

Present Law

Tax-related identity theft generally takes one of two forms: refund fraud or employment fraud. In refund fraud, a perpetrator may obtain a taxpayer's identifying information, submit an individual income tax return using a falsified Form W-2, Wage and Tax Statement, and fraudulently claim a refund. In employment fraud, the stolen identifying information is used in order to obtain employment. The returns then filed using the stolen identity may be based on the actual wages and withholding of the identity thief. Victims of the employment fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in the Internal Revenue Manual. The IRS initially established the Identity Protection Specialized Unit ("IPSU") to assist victims of identity theft, but taxpayers were also referred to other operating units of the IRS to deal with various aspects of their cases.[68] Subsequently reorganized and renamed the Identity Theft Victim Assistance ("IDTVA") organization, the unit is staffed with specially trained employees who are able to assess each case, identify issues, and assist the taxpayer in getting the correct return filed, refunds issued, etc.[69] The IDTVA organization's work is coordinated by the IRS's Identity Protection Program through the auspices of an oversight office within the Wage and Investment Operating Division.[70]

If a victim thinks he or she is not being properly served by the IRS or the IDTVA organization, the victim may be eligible for assistance from the Taxpayer Advocate Service ("TAS"). In such instances, the TAS will assign a case advocate to the taxpayer's account.

Explanation of Provision

The provision requires the Secretary to establish procedures to implement a single point of contact for taxpayers adversely affected by identity theft. The single point of contact consists of a team of specially trained employees who can work across functions to resolve problems for the victim and who are accountable for handling the case to completion. The makeup of the team may change as required to meet IRS needs, but the procedures must ensure continuity of records and case history and may require notice to the taxpayer in appropriate instances.

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[68] Inspector General for Tax Administration, Department of the Treasury, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (TIGTA 2012-40-050), May 2012.

[69] A description of the services provided by the IDTVA organization is available at https://www.irs.gov/uac/Newsroom/IRS-Identity-Theft-Victim-Assistance-How-It-Works.

[70] Internal Revenue Service, *Identity Protection and Victim Assistance*, Internal Revenue Manual Chapter 23, paragraph 25.23.1 et seq. (September 22, 2016).

Effective Date

The provision is effective on the date of enactment.

2. Information on identity theft and tax scams (sec. 1102 of the bill)

Present Law

No provision.

Explanation of Provision

The provision requires the IRS to provide the following information over the telephone, while taxpayers are on hold with the IRS call center: information about common tax scams, direction to the taxpayer on where and how to report such activity, and tips on how to protect against identity theft and tax scams.

Effective Date

The provision is effective on the date of enactment.

3. Notification of suspected identity theft (sec. 1103 of the bill and new sec. 7529 of the Code)

Present Law

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code.[71] The definition of "return information" is very broad and includes any information gathered by the IRS with respect to a person's liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.[72] Thus, information gathered by the IRS in connection with an investigation of a person for a Title 26 offense, such as fraud, is the return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

As an exception to section 6103's general rule of confidentiality, the Code permits a taxpayer to receive his or her own tax return, and also can receive his or her return information if the Secretary determines that such disclosure would not seriously impair Federal tax administration.[73] With respect to fraudulent tax returns, if the victim's name and Social Security

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[71] Sec. 6103(a).

[72] Sec. 6103(b)(2).

[73] Sec. 6103(e)(1) and (7). The Code also permits the disclosure of returns and return information to such persons or persons the taxpayer may designate, if the request meets the requirements of the Treasury regulations and if it is determined that such disclosure would not seriously impair Federal tax administration. Sec. 6103(c).

number ("SSN") are listed as either the primary or secondary taxpayer on a fraudulent return, a victim of identity theft, or a person authorized to obtain the identity theft victim's tax information, may request a redacted copy (one with some information blacked-out) of a fraudulent return that was filed and accepted by the IRS using the identity theft victim's name and SSN.[74]

Under a Privacy Act notice, with respect to investigations other than those involving violations of Title 26, TIGTA may disclose the following information to complainants:

In cases not involving violations of Title 26, under a Privacy Act Notice, TIGTA is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.[75]

Explanation of Provision

If the Secretary determines that there has been or may have been an unauthorized use of a taxpayer's identity or that of the taxpayer's dependents, the provision requires the Secretary to, without jeopardizing an investigation relating to tax administration, as soon as practicable, notify the taxpayer of such determination, and provide: (1) instructions to the taxpayer about filing a report with law enforcement; (2) the forms the taxpayer must submit to allow investigating law enforcement officials to access the taxpayer's personal information; (3) steps that victims can take to protect themselves from harm caused by the unauthorized use; and (4) an offer of IRS victim protection measures such as an IP PIN that allows returns to be filed securely.

At the time this information is provided (or, if not available at such time, as soon as practicable thereafter), the Secretary shall issue additional notifications to such individual (or such individual's designee) regarding: (1) whether an investigation has been initiated in regards to such unauthorized use; (2) whether the investigation substantiated an unauthorized use of the taxpayer's identity; and (3) whether any action has been taken with respect to the individual who committed the substantiated violation, including whether any referral has been made for criminal prosecution of such individual, and, to the extent such information is available, whether such person has been criminally charged by indictment or information.

[74] See, Internal Revenue Service, Instructions for Requesting Copy of Fraudulent Returns (June 5, 2018), available at https://www.irs.gov/Individuals/Instructions-for-Requesting-Copy-of-Fraudulent-Returns.

[75] See 75 Fed. Reg. 20715 (April 20, 2010) (relating to TIGTA Office of Investigation files).

For purposes of this provision, the unauthorized use of the identity of an individual includes the unauthorized use of the identity of the individual to obtain employment (herein "employment-related identity theft"). In making a determination as to whether there has been or may have been an unauthorized use of the identity of an individual to obtain employment, the Secretary shall review any information obtained from a statement described in section 6051 or an information return relating to compensation for services rendered other than as an employee, or provided to the IRS by the SSA regarding any statement described in section 6051 which indicates that the Social Security account number provided on such statement or information return does not correspond with the name provided on such statement or information return or the name on the tax return reporting the income which is included on such statement or information return. This provision requires the Secretary to examine the statements, information returns, and tax returns described in the provision for any evidence of employment-related identity theft, regardless of whether such statements or returns are submitted electronically or on paper. The provision amends the Social Security Act to require the Commissioner of SSA to request information described in the provision not less than annually. The provision also requires that the IRS establish procedures to ensure that identity theft victims are not penalized for underreporting of income as a result of the unauthorized use of their identity.

Effective Date

The provision applies to determinations made after the date that is six months after the date of enactment.

TITLE II – STOLEN IDENTITY FRAUD PREVENTION

A. Identity Theft and Tax Refund Fraud Prevention

1. Guidelines for stolen identity theft refund fraud cases (sec. 2001 of the bill)

Present Law

Disparate elements in the tax laws and administration are implicated in identity theft. The tax aspects of identity theft can generally occur in one of two ways. In refund fraud, a perpetrator obtains someone else's identifying information and submits an individual income tax return using the name and Social Security number of the victim, with a falsified Form W-2, Wage and Tax Statement, and fraudulently claims a refund. In other cases, the stolen identifying information is used in order to obtain employment; the returns then filed by the persons employed using the stolen identity may be based on the actual wages and withholding. Victims of the fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The Internal Revenue Service ("IRS") describes its procedures for addressing both types of fraud in its manual. Its work is coordinated by the IRS's Identity Protection Program through the auspices of an oversight office.[76]

In her 2014 Annual Report to Congress, the National Taxpayer Advocate included a review of fraudulent refund claims that included the theft of a taxpayer's identity.[77] The review found that such cases involved multiple issues requiring coordination among several business units of the IRS, and took approximately six months to resolve. Identity theft victims were required to deal with multiple persons within the IRS to resolve the issues, either because a case involved multiple business units or was transferred among multiple employees within a business unit.

Explanation of Provision

The provision requires that the IRS, in consultation with the National Taxpayer Advocate, develop and implement publicly available casework guidelines for the handling of refund fraud cases that would have the effect of reducing the administrative burdens on victims of identity theft. The guidelines may address both procedures and metrics for determining whether the procedures are successfully implemented. Among the issues to be considered are the standards for opening, assigning, reassigning or closing a case; the average length of time in which a case with an identity theft issue should be resolved; the average length of time a victim

[76] Internal Revenue Service, *Identity Protection Program*, Internal Revenue Manual paragraph 10.5.3, *et seq*. (December 2014).

[77] National Taxpayer Advocate, "*Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*," 2014 Annual Report to Congress, available at http://www.taxpayeradvocate.irs.gov/reports-to-congress/2014-annual-report-to-congress/research-studies.

entitled to a tax refund may have to wait to receive such refund; and the number of IRS offices and employees with whom a victim should interact to resolve a case.

Effective Date

The provision is effective on the date of enactment, with guidelines to be implemented within six months of the date of enactment.

2. Increased penalty for improper disclosure or use of information by preparers of returns (sec. 2002 of the bill and sec. 6713 of the Code)

Present Law

The Code provides both civil and criminal penalties for a tax return preparer who discloses any information furnished to the preparer for, or in connection with, the preparation of such return or uses such information for any purpose other than to prepare or assist in preparing, any such return. The civil penalty is $250 for each unauthorized disclosure or use up to $10,000 per calendar year.[78] The corresponding criminal penalty under section 7216 provides that knowing or reckless conduct is a misdemeanor, subject to a fine up to $1,000, one year of imprisonment, or both, together with the costs of prosecution.

Section 6103(b)(6) defines "taxpayer identity" as the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number or a combination thereof.

Explanation of Provision

The provision increases the civil penalty on the unauthorized disclosure or use of information by tax return preparers from $250 to $1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person's taxpayer identity ("taxpayer identity theft"). The provision also increases the calendar year limitation from $10,000 to $50,000. The calendar year limitation is applied separately with respect to disclosures or uses made in connection with taxpayer identity theft.

The provision also increases the criminal penalty for knowing or reckless conduct to $100,000 in the case of disclosures or uses in connection with taxpayer identity theft.

Effective Date

The provision applies to disclosures or uses on or after the date of enactment.

[78] Sec. 6713.

3. Authority to transfer IRS appropriations to combat tax fraud (sec. 2011 of the bill)

Present Law

Article I, section nine of the Constitution provides that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Under section 1301 of Title 31, public funds may be used only for the purposes(s) for which Congress appropriated the funds, except as otherwise provided by law. An officer or employee of the United States government cannot make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.[79] Such officer or employee violating this rule will be subject to appropriate disciplinary measures, including when circumstances warrant, suspension from duty without pay or removal from office.[80] In addition, a Federal officer or employee who knowingly and willfully violates the rule is subject to a fine of up to $5,000, imprisonment of up to two years, or both.[81]

Section 101 of the Consolidated and Continuing Appropriations Act of 2015[82] allows the IRS, with advance approval of the Appropriations Committees, to transfer up to five percent of any appropriation:

> SEC. 101. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

Explanation of Provision

Under the provision, for any fiscal year, the Commissioner of Internal Revenue ("Commissioner") may transfer not more than $10 million to any account of the IRS from amounts appropriated to other IRS accounts. Any amounts so transferred shall be used solely for the purposes of preventing, detecting, and resolving potential cases of tax fraud. The prevention of tax fraud includes educating taxpayers about scams that target them and providing information about how they can protect themselves.

In addition, such transfer of funds can only be made if the Commissioner has determined that customer service to the general public (including telephone operations, forms and publications, and similar taxpayer assistance provided by the IRS) will not be impaired by such transfer. This authority to transfer $10 million among IRS accounts is in addition to any other permitted transfers of appropriations (such as the five percent referenced above).

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[79] 31 U.S.C. sec. 1341.

[80] 31 U.S.C. sec. 1349.

[81] 31 U.S.C. sec. 1350.

[82] Pub. L. No. 113-235.

Effective Date

The provision is effective on the date of enactment.

4. Streamlined critical pay authority for information technology positions (sec. 2012 of the bill)

Present Law

The IRS is currently subject to the personnel rules and procedures set forth in Title 5 of the United States Code. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

The IRS Restructuring and Reform Act of 1998 ("Restructuring Act") provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay authority.[83] This authority was originally provided for 10 years; it was extended on two occasions and ultimately expired on September 30, 2013.[84]

Under the Restructuring Act, the Secretary of the Treasury, or his delegate, was authorized to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President.

These appointments would not be subject to the otherwise applicable requirements under Title 5. All such appointments would be excluded from the collective bargaining unit and the appointments would not be subject to approval of the Office of Management and Budget ("OMB") or the Office of Personnel Management ("OPM").

Also, OMB was authorized to approve increases in the pay level for certain critical pay positions requested by the Secretary. These critical pay positions would be critical, technical and professional positions other than those designated under the streamlined authority described above. OMB was authorized to approve requests for critical position pay up to the highest total compensation that does not exceed the rate of pay of the Vice President of the United States.

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[83] Pub. L. No. 105-206, 112 Stat. 712 (1998).

[84] In December 2007, the Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, 121 Stat. 1844, (2008), extended the original deadline to July 23, 2013. Subsequently, the Consolidated and Further Continuing Appropriations Act 2013, Pub. L. No. 113-6, 127 Stat. 198 (2013), extended the deadline to September 30, 2013.

According to TIGTA, during the years in which it had streamlined critical pay authority, the IRS exercised that authority to fill 168 positions, the majority of which were in the Information Technology function of the IRS.[85]

Explanation of Provision

The provision reinstates streamlined critical pay authority at IRS for positions in its information technology operations that are necessary to ensure the functionality of such operations. Such authority is reinstated for a period starting on October 1, 2018 and ending on September 30, 2023.

The provision reinstates the ability to provide payment for recruitment, retention, relocation incentives, and relocation expenses for positions in information technology operations at the IRS. It also reinstates the ability to pay performance bonuses for senior executives who have program management responsibility over the information technology operations at the IRS. Such authority is reinstated for a period starting on October 1, 2018 and ending on September 30, 2023.

Effective Date

The provision is effective for payments made on or after the date of enactment.

5. Access to the National Directory of New Hires to identify and prevent fraudulent tax return filings and claims for refund (sec. 2013 of the bill)

Present Law

The Office of Child Support Enforcement of the Department of Health and Human Services ("HHS") maintains the National Directory of New Hires (the "Directory"), which is a database that contains data on newly-hired employees from Forms W-4, quarterly wage data from State and Federal employment security agencies, and unemployment benefit data from State unemployment insurance agencies. The Directory was created to help State child support enforcement agencies enforce obligations of parents across State lines.

Under the Social Security Act, the IRS may obtain data from the Directory for the sole purpose of administering the earned income credit ("EIC")[86] and verifying a taxpayer's employment that is reported on a tax return.[87] The IRS also may negotiate for access to employment data directly from State agencies responsible for such data, to the extent permitted by the laws of the various States. Generally, the IRS obtains such employment data less

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[85] TIGTA, *The Internal Revenue Service's Use of its Streamlined Critical Pay Authority,"* Ref. No. 2015-IE-R001, (December 5, 2014), available at https://www.treasury.gov/tigta/iereports/2015reports/2015ier001fr.pdf.

[86] Sec. 32(a)(1).

[87] 42 U.S.C. secs. 653 and 653a.

frequently than quarterly, due to the significant internal costs it incurs in preparing these data for use.[88]

Explanation of Provision

The provision amends the Social Security Act to expand IRS access to the Directory data for the sole purpose of identifying and preventing fraudulent tax return filings and claims for refund. Data obtained by the IRS from the Directory are protected by existing taxpayer privacy law.[89]

Effective Date

The provision is effective on the date of enactment.

6. Repeal of provision regarding certain tax compliance procedures and reports (sec. 2014 of the bill)

Present Law

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations. The IRS Restructuring and Reform Act of 1998 ("Restructuring Act") requires the Secretary of the Treasury or his delegate ("Secretary") to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.[90] The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary was required to make the first report on the development of the return-free filing system to the tax-writing committees by June 30, 2000.

Explanation of Provision

The provision repeals section 2004 of the Restructuring Act.

Effective Date

The provision is effective on the date of enactment.

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[88] See Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, February 2015, p.238.

[89] See section 6103(b)(2)(A), providing that information received by or recorded by or furnished to the Secretary with respect to the existence or possible existence of a liability under Title 26 is return information. Section 6103(A) provides that return information is confidential and cannot be disclosed except as authorized. See section 7431, 7213 and 7213A for civil and criminal penalties for the unauthorized disclosure or inspection of return information.

[90] Pub. L. No. 105-206, sec. 2004.

B. Improvements to Electronic Filing of Tax Returns

1. Identity protection personal identification numbers (sec. 2101 of the bill)

Present Law

In 2011, the IRS launched a pilot program to test the identity protection personal identification number ("IP PIN"). The IP PIN is a unique six-digit identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. The IP PIN allows taxpayers affected by identity theft to avoid delays in filing returns and receiving refunds. The IRS verifies the presence of the IP PIN at the time of filing, and rejects returns associated with a taxpayer's account where an IP PIN has been assigned but is missing. For the 2016 filing season, the IRS issued IP PINs to more than 2.7 million taxpayers who had identity theft markers on their tax accounts.[91]

In January 2014, the IRS also started a limited pilot program under which taxpayers who obtained an electronic filing PIN through an IRS authentication website and live in the District of Columbia, Florida, or Georgia were provided an opportunity to obtain an IP PIN.[92] These locations were selected because they had the highest per capita rate of tax-related identity theft when the initiative was piloted. Residents in these places do not need to be identity theft victims to participate.

Explanation of Provision

Within five years of the date of enactment, the Secretary is required to establish a program to issue an IP PIN to any individual requesting one to assist the Secretary in verifying the individual's true identity.

Effective Date

The provision is effective on the date of enactment.

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[91] Inspector General for Tax Administration, Department of the Treasury, *Inconsistent Processes and Procedures Result in Many Victims of Identity Theft Not Receiving Identity Protection Personal Identification Numbers* (TIGTA 2017-40-026), March 23, 2017, available at https://www.treasury.gov/tigta/auditreports/2017reports/201740026fr.pdf.

[92] Internal Revenue Service, *IP PIN pilot continues in Georgia, Florida and the District of Columbia*, available at https://www.irs.gov/identity-theft-fraud-scams/identity-protection-pin-pilot-program.

2. Electronic filing of returns (sec. 2102 of the bill and sec. 6011 of the Code)

Present Law

In general

The IRS Reform and Restructuring Act of 1998 ("RRA98") states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.[93] Section 2001(b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.[94] The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,[95] and further requires that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of $10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006. In determining whether the 250 returns threshold is met, income tax, excise tax, employment tax and information returns filed within one calendar year are counted.

Explanation of Provision

The provision relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory mandate. That threshold is reduced from 250 to 100 for calendar year

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[93] The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

[94] Sec. 6011(e).

[95] Section 6011(e)(3)(B) defines a "specified tax return preparer" as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

2020, from 100 to 10 for calendar year 2021 and for calendar years thereafter. Notwithstanding these thresholds, in the case of a partnership the applicable number is 200 in the case of calendar year 2018 and 150 in the case of calendar year 2019.[96]

The provision authorizes the Secretary to waive the requirement that a Federal income tax return prepared by a specified tax return preparer be filed electronically if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

Effective Date

The provision is effective on the date of enactment.

3. Internet platform for Form 1099 filings (sec. 2103 of the bill)

Present Law

The Code does not presently require the IRS to make available an internet platform for the preparation or filing of information returns, such as the series, Form 1099.

Explanation of Provision

The provision requires the Secretary of the Treasury (or his or her delegate) to make available, by January 1, 2023, an internet website or other electronic medium (the "website"), with a user interface and functionality similar to the Business Services Online Suite of Services provided by the Social Security Administration.[97] The website will allow persons, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and maintain a record of completed and submitted Forms 1099. The Secretary is required to ensure that the services provided on the website are not a replacement for services currently provided by the IRS, and that the website comply with applicable security standards.

Effective Date

The provision is effective on the date of enactment.

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[96] There is no change to the requirement that partnerships having more than 100 partners must file electronic returns notwithstanding these thresholds.

[97] Available at http://www.ssa.gov/bso/bsowelcome.htm.

4. Requirement that electronically prepared paper returns include scannable code (sec. 2104 of the bill)

Present Law

Every citizen, whether residing in or outside the United States, and every resident of the United States within the meaning of section 7701(b) must file an income tax return if the individual has income that equals or exceeds the exemption amount.[98] Treasury regulations require individual taxpayers to make this return using a Form 1040, U.S. Individual Income Tax Return.[99] Similarly, every corporation subject to Federal income tax, regardless of the amount of its gross or taxable income for the taxable year, is required to file a return.[100]

In 1998, Congress declared a policy that (1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns, (2) the IRS's goal should be to receive at least 80 percent of all returns electronically by 2007, and (3) the IRS should encourage private-sector competition to increase electronic filing.[101] Section 6011(f), also enacted in 1998, authorizes the Department of the Treasury to advertise the benefits of electronic tax administration programs and to make payment of appropriate incentives for electronically-filed returns.

The Department of the Treasury generally is authorized to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in another machine-readable form. However, except under certain circumstances, the Department of the Treasury "may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts, to be other than on paper forms supplied by the Secretary."[102]

Explanation of Provision

The provision requires that taxpayers who prepare their returns electronically, but print and file the returns on paper must print their returns with a scannable code. A scannable code enables the IRS to convert paper-filed tax returns into an electronic format using scanning technology.

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[98] Sec. 6012(a)(1); Treas. Reg. sec. 1.6012-1(a)(1).

[99] Treas. Reg. sec. 1.6012-1(a)(6).

[100] Sec. 6012(a)(2).

[101] The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, sec. 2001.

[102] Sec. 6011(e)(1).

Effective Date

The provision is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2019.

5. Authentication of users of electronic services accounts (sec. 2105 of the bill)

Present Law

The IRS has developed a suite of web-based products, called e-Services Online Tools for Tax Professionals, which provides multiple electronic products and services to tax professionals.

Explanation of Provision

The provision requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

Effective Date

The provision is effective not later than 180 days after the date of enactment.

APPENDIX:
ESTIMATED REVENUE EFFECTS OF THE "TAXPAYER FIRST ACT OF 2018"

ESTIMATED REVENUE EFFECTS OF
THE "TAXPAYER FIRST ACT OF 2018"

Fiscal Years 2019 - 2028

[Millions of Dollars]

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28
I. Taxpayer Protection													
A. Protection of Taxpayer Rights													
1. Return preparation programs for applicable taxpayers	DOE	*No Revenue Effect*											
2. Limit redisclosures and uses of consent-based disclosures of tax return information	[1]	*No Revenue Effect*											
3. Clarification of equitable relief from joint liability	porfopo/a DOE	*Negligible Revenue Effect*											
4. Notice from IRS regarding closure of Taxpayer Assistance Centers	DOE	*No Revenue Effect*											
5. Whistleblower Reforms	[2]	*Negligible Revenue Effect*											
6. Electronic record retention	DOE	*No Revenue Effect*											
7. Prohibition on rehiring former IRS employees who were involuntarily separated for misconduct	[3]	*Negligible Revenue Effect*											
8. Authority to remove or transfer senior IRS executives who fail in their performance or engage in serious misconduct	DOE	*Negligible Revenue Effect*											
9. Limitation on access of non-Internal Revenue Service employees to returns and return information	[4]	*Negligible Revenue Effect*											
10. Notification of unauthorized inspection or disclosure of returns and return information	[5]	*No Revenue Effect*											
11. Mandatory e-filing by exempt organizations	generally tyba DOE	*No Revenue Effect*											
12. Prohibit the use of IRS funds for political targeting	DOE	*No Revenue Effect*											
13. Notice required before revocation of tax exempt status for failure to file return	[6]	*Negligible Revenue Effect*											
14. Report on IRS Audit Criteria	DOE	*No Revenue Effect*											
B. Protection of Taxpayers From Identity Theft and Tax Fraud													
1. Single point of contact for identity theft victims	DOE	*No Revenue Effect*											
2. Information on identity theft and tax scams	DOE	*No Revenue Effect*											
3. Notification of suspected identity theft	[7]	*No Revenue Effect*											
Total of Taxpayer Protection		***Negligible Revenue Effect***											
II. Stolen Identity Fraud Prevention													
A. Identity Theft and Tax Refund Fraud Protection													
1. Guidelines for stolen identity refund fraud cases	[8]	*No Revenue Effect*											

Provision	Effective	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28
2. Increased penalty for improper disclosure or use of information by preparers of returns	douo/a DOE	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]	[9]
3. Authority to transfer Internal Revenue Service appropriations to combat tax fraud	DOE	*No Revenue Effect*											
4. Streamlined critical pay authority for information technology positions	pmo/a DOE	*No Revenue Effect*											
5. Access to the National Directory of New Hires to identify and prevent fraudulent tax return filings and claims for refund	DOE	*No Revenue Effect*											
6. Repeal of provision regarding certain tax compliance procedures and reports	DOE	*No Revenue Effect*											
B. Improvements to Electronic Filing of Tax Returns													
1. Identity protection personal identification numbers	DOE	*Negligible Revenue Effect*											
2. Electronic filing of returns	DOE	*No Revenue Effect*											
3. Internet platform for Form 1099 filings	DOE	*No Revenue Effect*											
4. Requirement that electronically prepared paper returns include scannable code	[10]	*No Revenue Effect*											
5. Authentication of users of electronic services accounts	nlt 180da DOE	*Negligible Revenue Effect*											
Total of Stolen Identity Fraud Prevention		**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**
NET TOTAL		**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**	**[9]**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be October 1, 2018.

Legend for "Effective" column:

DOE = date of enactment
douo/a = disclosures or uses on or after
nlt = not later than
pmo/a = payments made on or after
porfopo/a = petitions or requests filed or pending on or after
180da = 180 days after

[1] Effective for disclosures made after the date that is six months after the date of enactment.
[2] The modifications made to the disclosure rules apply to disclosures made after the date of enactment. The protections from retaliation are effective on the date of enactment.
[3] The prohibition applies with respect to the hiring of employees after the date of enactment.
[4] The provision is generally effective on the date of enactment and applies to any tax administration contracts in effect on the date of enactment.
[5] Effective for determinations proposed after the date which is 180 days after the date of the enactment of this Act.
[6] Effective for failures to file returns or notices for 2 consecutive years if the return or notice for the second year is required to be filed after December 31, 2018.
[7] Effective for determinations made after the date that is six months after the date of enactment.
[8] Effective on the date of enactment, with guidelines to be implemented within six months of the date of enactment.
[9] Gain of less than $500,000.
[10] Effective for tax returns with a due date, determined without regard to extensions, after December 31, 2019.