Summary of the Chairman's Mark[1]
of the "Taxpayer Protection Act of 2016"
April 18, 2016

Sec. 1. GAO to study IRS exercise of its authority to compromise tax matters

Taxpayers who are unable to pay a federal tax debt due to financial hardship may be eligible to settle their tax debt for less through an offer-in-compromise. Under present law, offers to compromise unpaid liabilities of $50,000 or more can be accepted only if a public report is filed detailing the terms of the offer (tax in dispute and amount of offer) and the reasons for acceptance, and accompanied by a written opinion from the IRS Chief Counsel.

The provision requires the Government Accountability Office ("GAO") to conduct a study on how the IRS presently exercises its authority to compromise tax matters. In particular, the study will consider the role of the Office of Chief Counsel in consideration of offers, including whether the current requirement of a written opinion for accepted offers that compromise tax in excess of $50,000 remains appropriate, in whole or in part, and what changes, if any, may be desirable.

The provision is effective on the date of enactment. The study is to be provided to the Senate Finance Committee and House Ways and Means Committee within one year of the date of enactment.

Sec. 2. GAO study concerning opportunity for hearing by the IRS Office of Appeals

The IRS Office of Appeals ("Appeals") is the settlement arm of the IRS. A taxpayer generally has an opportunity to seek Appeals jurisdiction after failing to reach agreement with the Examination function and before filing a petition in Tax Court, after filing a petition in Tax Court (but before litigation), after assessment of certain penalties, after a claim for refund has been rejected by an IRS operating division, and after a proposed rejection of an offer-in-compromise in a collection case. There is no Code section that specifically provides rules requiring Appeals consideration of cases. The rules for Appeals consideration of cases are contained primarily in the Statement of Procedural Rules, which informs the public of the procedures to be followed by the IRS and the public. In certain cases affecting large numbers of taxpayers, the IRS may designate a case or an issue for litigation, which means it will not be referred to Appeals.

The provision requires the GAO to identify and report on all of the IRS's reasons for not allowing taxpayers an opportunity for administrative review in Appeals. The provision further requires the GAO to study the IRS's process for designating a case for litigation

[1] The provisions described herein either have no revenue effect or negligible revenue effect over the 10-year budget window.

and review the outcomes with respect to cases designated for litigation in the past ten years, including whether some of the cases were ultimately settled with the taxpayer and the IRS Office of Chief Counsel.

The provision is effective on the date of enactment. The report and recommendations with regard to any issues identified is to be submitted to the Senate Finance Committee and House Ways and Means Committee within one year of the date of enactment.

Sec. 3. GAO study/TIGTA investigation concerning whistleblower awards

The tax code (i.e., Title 26 of the U.S. Code) authorizes the IRS to pay such sums as deemed necessary for detecting underpayments of tax or detecting and bringing to trial and punishment persons guilty of violating the tax laws. Generally, amounts (i.e., whistleblower awards) are paid based on a percentage of proceeds collected based on the information provided. In certain cases, an enhanced reward program applies, and such reward is calculated to be at least 15 percent but not more than 30 percent of collected proceeds. The IRS has found that amounts recovered for violations of non-tax laws, including the provisions of the Bank Secrecy Act under Title 31 of the U.S. Code (and its underlying regulations which, in part, provide for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (the "FBAR")) for which the IRS has delegated authority, may not be considered for purposes of computing an award under the tax code. In addition, under Title 31 the Secretary may pay a reward to an individual who provides information which leads to a recovery of a criminal fine, civil penalty, or forfeiture which exceeds $50,000. Such reward may not be more than 25 percent of the net amount of the fine, penalty, or forfeiture collected or $150,000, whichever is less.

The provision requires the GAO to report on whether and to what extent the Treasury Department has paid whistleblower awards for information relating to violations of internal revenue laws under the tax code and for FBAR violations under the Bank Secrecy Act. The provision further requires the Treasury Inspector General for Tax Administration ("TIGTA") to investigate whether and to what extent the IRS is asserting FBAR penalties in lieu of Title 26 penalties.

The provision is effective on the date of enactment. The GAO study and the TIGTA report are to be submitted to the Senate Finance Committee and House Ways and Means Committee within one year of the date of enactment.

Sec. 4. Extend time limit for contesting IRS levy

The IRS is authorized to levy property to satisfy a tax debt in certain instances. While the IRS is authorized to return property that has been wrongfully levied upon at any time, it is only authorized to return the monetary proceeds from the sale of levied property within 9 months of the date of the levy. Similarly, if a third party believes the levied property belongs to him/her and not the person against whom the tax is assessed, the third party generally has 9 months from the time of the levy to bring a civil action for wrongful levy in a U.S. district court.

In some cases the 9-month period may be insufficient for individuals and third parties to discover a wrongful levy and seek remedy. Therefore, the provision extends from 9 months to 2 years the period for returning the monetary proceeds from the sale of property that has been wrongfully levied upon as well as the period for bringing a civil action for wrongful levy.

The provision is effective with respect to levies made after the date of enactment and levies made on or before the date of enactment provided that the 9-month periods have not expired as of the date of enactment.

Sec. 5. Individuals held harmless on improper levy on retirement plans

Under present law, if the IRS improperly levies on an individual retirement arrangement ("IRA") or certain employer-sponsored retirement plans ("employer-sponsored plans"), an individual may not be made whole even if the IRS returns the amount levied with interest because the individual may lose the opportunity to have those funds accumulate on a tax-favored basis until retirement.

The provision allows amounts, including interest, returned to an individual from the IRS pursuant to a levy to be contributed to the IRA or employer-sponsored plan without regard to normal contribution limits. In general, any tax attributable to the amount distributed from the IRA or employer-sponsored plan by reason of a levy is not to be assessed, if assessed is to be abated, and if collected is to be credited or refunded as an overpayment. In addition, the IRS is required to pay interest on an amount returned to the individual in the case of a levy that is determined to be premature or otherwise not in accordance with administrative procedures, as well as in the case of a wrongful levy under present law.

The provision is effective for levied amounts, and interest thereon, returned to individuals after December 31, 2016.

Sec. 6. Electronic record retention

In August 2012, the Office of Management and Budget and National Archives and Records Administration issued a joint directive to heads of executive departments and agencies to manage both permanent and temporary email records in an accessible electronic format by December 31, 2016. There are no tax code provisions governing IRS record retention, management, or transfer of paper or electronic records. The Internal Revenue Manual provides IRS employees processes, procedures, and guidelines regarding records and information management.

The provision codifies the joint directive issued in August 2012. In addition, the provision requires that the IRS maintain email records of all principal officers and specified employees for no less than 15 years. At the end of the 15-year period, the IRS is required to transfer all the email records for principal officers and specified

employees to the National Archives for storage. Until TIGTA certifies that the IRS is in compliance with the requirements to maintain and transfer email records, the IRS must maintain the email records of all personnel.

The provision is effective on the date of enactment. TIGTA is required to provide to the Senate Finance Committee and House Ways and Means Committee an interim report by September 30, 2016, on the steps being taken by the IRS to comply with the provision and a final report by April 1, 2017, on whether the IRS is in compliance with the provision.

Sec. 7. Return preparation programs for low-income taxpayers

Section 7526 of the tax code provides that the Secretary may allocate up to $6 million per year for matching grants to certain qualified low-income taxpayer clinics. These clinics either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. There is no provision in the tax code allowing for the allocation of funds for matching grants for return preparation for certain low-income taxpayers (i.e., the community volunteer income tax assistance, or "VITA," matching grants program). Congress has appropriated $15 million in fiscal year 2016 for the VITA matching grants program.

The provision codifies the VITA matching grants program and provides that the Secretary may allocate up to $15 million per year in matching grants to qualified entities for the development, expansion, or continuation of certain return preparation programs. The provision includes rules regarding how the matching grants may be used, to whom the matching grants may be awarded, and the length of such matching grants.

The provision is effective on the date of enactment.

Sec. 8. Limit redisclosures and uses of consent-based disclosures of tax return information

As a general rule, tax returns and tax return information are confidential and cannot be disclosed unless authorized by the tax code. Under Section 6103(c) of the tax code, 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. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received. In addition, the recipient is free to use the information for purposes other than for which the information was solicited from the taxpayer.

Due to the privacy concerns that this raises, the provision provides that the third party receiving the return or return information cannot use the information for any purpose other than the express purpose for which consent was granted and cannot disclose return information to any other person without the express permission of, or request by, the taxpayer.

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

Sec. 9. Equitable relief from joint liability clarified

If a married couple elects to file a tax return on which they report their income jointly, they are generally liable jointly and severally for the entire tax liability that should have been reported on the joint return. A spouse may be entitled to relief from joint liability under the innocent spouse relief provisions of the tax code. There are three types of relief – general innocent spouse relief, separation of liabilities relief, and equitable relief. 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. The extent to which a denial of a claim for equitable relief from joint liability is 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.

Under the provision, Tax Court review is not limited to the administrative record but it may consider evidence that is newly discovered or was previously unavailable. In addition, the provision clarifies that the Tax Court has jurisdiction to re-determine equitable claims for relief from joint liability and is not limited to a review for abuse of discretion by the IRS. Finally, 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.

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

Sec. 10. Mandatory e-filing by exempt organizations

In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. 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. Organizations that file Form 990-N (i.e., the e-postcard) also must electronically file.

Information returns filed electronically can be processed more rapidly and at much lower cost than paper return filings. Therefore, the provision extends the requirement to electronically 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 in a machine-readable format as soon as practicable.

The provision is effective for taxable years beginning after the date of enactment. Transition relief is provided for certain organizations.

Sec. 11. Sense of the Senate to revise the Hatch Act to designate all IRS, Treasury, and Chief Counsel employees who handle exempt organization matters as "further restricted"

Employees covered by the Hatch Act may not use their official authority to influence or affect an election and may not knowingly help in political fundraising, run for partisan elective office, knowingly solicit or discourage political activity by persons with certain business before the agency, or engage in political activity on government time or using government resources. Employees at certain listed agencies are "further restricted" from taking any active part in political management or political campaigns, even while off-duty.

Pursuant to the bipartisan recommendation in the Senate Finance Committee's investigative report released in August 2015 regarding the IRS's processing of certain applications for tax-exempt status, the provision provides that it is the sense of the Senate that the Hatch Act be revised to designate all IRS, Treasury, and Chief Counsel employees who handle exempt organization matters as "further restricted." By designating these employees as "further restricted," the public can be assured that any impermissible political activity by an IRS employee that is detected will result in serious penalties, including removal from Federal employment.