Summary of the Chairman's Modification[1] to the Chairman's Mark of the "Taxpayer Protection Act of 2016"
April 20, 2016

Modifications to the Chairman's Mark

Sec. 1. Modification to GAO study concerning opportunity for hearing by the IRS Office of Appeals

The provision modifies the Chairman's mark to require the Government Accountability Office ("GAO") study to also include an examination of taxpayers' access to the IRS Office of Appeals, in particular the effect on taxpayers in those states without a permanent IRS Appeals officer and/or a permanent IRS Settlement officer. The study should include a comparison of taxpayer access to Appeals in these states compared to states with a permanent Appeals or Settlement officer and should evaluate wait times, geographic and technological constraints, the time necessary to resolve Appeals cases, taxpayer satisfaction with the IRS, and other factors that GAO may deem relevant.

Additions to the Chairman's Mark

Sec. 1. Whistleblower reforms

To improve Internal Revenue Service ("IRS") communications with whistleblowers, this provision allows the IRS to exchange information with whistleblowers where doing so would be helpful to an investigation and requires the IRS to notify whistleblowers of the status of their claims. In addition, the provision amends the tax code to extend anti-retaliation provisions to IRS whistleblowers similar to those that are provided to whistleblowers under the False Claims Act and the Sarbanes-Oxley Act.

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

Sec. 2. Repeal of substantiation exception for certain charitable contributions reported by the donee organization

The Internal Revenue Code requires individuals making charitable contributions of $250 or more to obtain substantiation of the contribution in writing from the donee organization. There is an exception to the substantiation requirement if the donee organization files a return in the form, and containing the information, prescribed by Treasury Regulations. The provision repeals this exception.

This provision is effective on the date of enactment.

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

Sec. 3. Waiver of user fee for installment agreements using automated withdrawals

An installment agreement with the IRS allows taxpayers who cannot afford to fully pay their tax liability the option to pay through monthly installments. The current fee for new direct debit installment agreements, where payments are deducted directly from a taxpayer's bank account, is $52 and may be reduced to $43 for individuals whose income falls below 250 percent of the poverty line.

The provision prohibits increases in the amount of user fees charged by the IRS for installment agreements. In addition, the IRS is required to waive the fees imposed for installment agreements for taxpayers whose income falls below 250 percent of the poverty line and has agreed to make the payments by electronic means through a debit account. Further, for those taxpayers whose income falls below 250 percent of the poverty line, are unbanked, and successfully complete an installment agreement, the fee would be reimbursed at the end of the installment agreement period.

The provision applies to agreements entered into on or after the date that is 60 days after the date of enactment.

Sec. 4. TIGTA review of IRS audit criteria

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 other factors, the Treasury Inspector General for Tax Administration ("TIGTA") is required to perform an audit of the criteria the IRS uses to select tax returns for audit, assessments, criminal investigation, or heightened scrutiny or review.

The provision is effective on the date of enactment. The audit is to be provided to the Senate Finance Committee and House Ways and Means Committee within two years of the date of enactment.

Sec. 5. Prohibition on rehiring former employees who were involuntarily separated for misconduct

In 2014, TIGTA found that the IRS had rehired hundreds of employees who had been involuntarily separated for serious, severable offenses under Section 1203 of IRS Restructuring and Reform Act of 1998, such as fraud, failure to file a return, falsification of documents, and unauthorized access to taxpayer information. The provision prohibits the IRS Commissioner from rehiring any employee of the IRS who has been involuntarily separated for misconduct or poor performance.

The provision is effective with respect to any employee removed from employment before, on, or after the date of enactment.

Sec. 6. Authority to fire senior executives who fail in their performance or engage in serious misconduct

The provision clarifies that the IRS Commissioner has the power to fire senior executives who have failed in their performance or committed serious misconduct. It is based on a law Congress passed in 2014 with broad bipartisan support that gave the Secretary of Veterans Affairs the authority to fire senior executives for misconduct. The provision applies to the highest ranking IRS employees in the Senior Executive Service (SES), and allows the Commissioner to terminate employees for misconduct already deemed severable offenses under the IRS Restructuring and Reform Act of 1998, such as threatening to audit someone for personal gain, conducting a seizure without approval, assaulting, harassing or violating the civil rights of a taxpayer or a coworker, lying under oath, falsifying or destroying records, concealing information from Congress, underreporting income and failing to file a tax return on time.

The provision is effective on the date of enactment.

Sec. 7. Prohibit the use of IRS funds for political targeting

The provision prohibits the use of any funds by the Internal Revenue Service to target citizens of the United States for exercising any right guaranteed under the First Amendment of the Constitution of the United States.

The provision is effective on the date of enactment.

Sec. 8. Limit participation of third-party contractors when IRS takes sworn testimony pursuant to a summons

The provision prevents the IRS from delegating to third-party contractors certain authority to examine books and records, summons persons, or take sworn testimony related to a tax matter.

The provision is effective on the date of enactment for contracts in effect on or after that date, and is estimated to decrease federal revenues by $115 million over the 10-year budget window.

Sec. 9. Require Internal Revenue Service to notify exempt organizations before revoking exempt status for failing to file information returns

Charities and other nonprofits automatically lose their tax-exempt status if they do not file annual information returns for three consecutive years. Once revoked, the organization must refile for exempt status. The IRS does not timely notify nonprofits of an impending revocation. The Chairman's modification requires the IRS to notify an organization not later than 270 days after the organization's second consecutive failure

to file an information return in order to give the organization approximately 90 days to file an information return and prevent their tax-exempt status from being revoked.

The provision is effective for notices and returns required to be filed after December 31, 2015.

Sec. 10. IRS Future State Accountability and Transparency Act

During the past two years, the IRS has developed a “Future State” plan that details how the agency will operate in five years and beyond. The provision requires the IRS to submit annual progress reports on the status of the IRS transitioning to a “Future State.” In particular, the report would provide a thorough assessment of which services the IRS can shift to self-service options.

This provision also requires the GAO to identify and report on the extent of phone and in-person service currently provided to rural taxpayers. There is no definition of rural in the tax code. However, the definition of rural taxpayer, for purposes of this provision, is a taxpayer that resides in a city, town, or unincorporated area that has a population of 50,000 inhabitants or less. In addition, the GAO would be required to provide recommendations on steps the IRS could take to protect rural taxpayers as the agency transitions to a "Future State."

The GAO is required to submit the report to the Senate Finance Committee and House Ways and Means Committee within one year of the date of enactment. The IRS is required to submit its report to the Senate Finance Committee and House Ways and Means Committee within one year of the date of enactment, with subsequent reports to follow at annual intervals.

Sec. 11. Require the IRS to give sufficient notice to Congress before closing a walk-in center or Taxpayer Assistance Centers (TACs)

Some taxpayers that do not have access to the internet may require and want in-person access to IRS facilities. The provision disallows the IRS from closing a walk-in IRS facility without first reporting to Congress 90 days in advance the reasons for the proposed closure and how taxpayers located in rural areas will be served in the event of the closing. Congressional lawmakers are authorized to deny a closure.

The provision is effective on the date of enactment.

Sec. 12. Sole point of contact for identity theft victims

The provision directs the IRS to create a process whereby a sole point of contact (which may include a team or subset 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) at the IRS would help victims of tax-related identity theft recover

their stolen or unfairly suspended tax refund, coordinating with various IRS functions on their case.

The provision is effective on the date of enactment.

Sec. 13. Help taxpayers guard against the IRS phone scam

The provision requires TIGTA to issue a report, in consultation with the Federal Communications Commission and the Federal Trade Commission, identifying potential technological solutions to help protect consumers from IRS phone scams. The report should identify phone companies that offer services designed to help taxpayers protect themselves from such scams.

The provision is effective on the date of enactment. The report is required within one year of the date of enactment.

Sec. 14. Providing taxpayers ID theft and tax scam information

The provision directs the IRS to provide basic information about common tax scams, including a list of activities the IRS will never do (such as call and demand immediate payment, or call about taxes owed without first having mailed taxpayers a bill), direction to the taxpayer on where to report such activity, and tips about how taxpayers can protect themselves from ID theft and tax scams, while taxpayers are on hold with the Agency's call center.

The provision is effective on the date of enactment.

Sec. 15. Recovery of certain improperly withheld severance payments

Since the early 1990s, the Department of Defense (DOD) has improperly withheld taxes from disability severance payments to combat-wounded veterans. According to some estimates, this improper withholding of taxes could affect as many as 14,000 veterans from all 50 states. In many cases, impacted veterans are unaware that their benefits were improperly reduced and in other instances, veterans who become aware of the improper withholding are unable to recoup their losses because of the three-year statute of limitation for amending a tax return.

The provision directs the DOD to identify veterans who have been separated from service for combat-related injuries and had taxes withheld from their severance payments. It instructs DOD, in consultation with Treasury, to provide each identified veteran with a notice of the amount of improperly withheld severance payments and instructions for filing amended tax returns to recover such amount. The provision extends the statute of limitations for filing a related claim for a credit or refund beyond the three-year limitation to one year after DOD provides the veteran with the information required by this amendment, and instructs DOD to ensure that taxes are not erroneously withheld from severance pay going forward.

The provision is effective on the date of enactment, and is estimated to decrease federal revenues by less than $500,000 over the 10-year budget window.

Sec. 16. GAO study of Federal employee wage and tax withholding reporting to State tax agencies

To prevent identity-theft related tax refund fraud, state tax administrators increasingly use the taxpayer's actual wage and tax withholding information to ensure accurate filing of a state individual income tax return. Currently, the timing difference between when state tax agencies receive individual income tax returns (and as a result, claims for tax refunds) and when they receive income and withholding information produced by federal agencies may result in state tax agencies issuing invalid refunds to fraudsters or delaying refunds while requiring taxpayers to produce additional documentation to support the information claimed on their returns.

The federal government has designated Human Resources Federal Shared Services Centers (Shared Services Centers) as responsible for producing wage and tax withholding information for the majority of Federal employees.

The provision requires the GAO to evaluate the process and timeline by which the Shared Services Centers provide state tax agencies with Federal employee wage and tax withholding information, and offer recommendations for improvements where appropriate.

The provision is effective on the date of enactment.