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REPORT
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TAXPAYER PROTECTION ACT OF 2016

JULY 12, 2016.—Ordered to be printed

Mr. HATCH, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 3156]

The Committee on Finance, having considered an original bill, S. 3156, to provide enhanced protections for taxpayers from fraud and other illegal activities, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 3156, the "Taxpayer Protection Act of 2016," to provide enhanced protections for taxpayers from fraud and other illegal activities, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

BACKGROUND AND NEED FOR LEGISLATIVE ACTION

Background.—Based on a proposal recommended by Chairman Hatch, the Committee on Finance marked up original legislation (the "Taxpayer Protection Act of 2016") on April 20, 2016, and, with a majority present, ordered the bill favorably reported.

Need for legislative action.—The Chairman, Ranking Member, and members of the Committee believe legislation is necessary to provide additional protections for taxpayers in their interactions with the Internal Revenue Service. Previously, Senators Grassley and Thune introduced taxpayer protection legislation (S. 1578, the *Taxpayer Bill of Rights Enhancement Act of 2015*, 114th Congress, 1st Session), as did Senator Cardin (S. 2333, the *Taxpayer Rights Act of 2015*, 114th Congress, 1st Session) and Senator Cornyn (S. 949, the *Small Business Taxpayer Bill of Rights Act of 2015*, 114th Congress, 1st Session). In addition, during this Congress the Committee has held hearings on "Cybersecurity and Protecting Taxpayer Information" (April 12, 2016) and "Protecting Taxpayers from Schemes and Scams During the 2015 Tax Filing Season" (March 12, 2015). These legislative proposals and hearings informed the content of this bill.

II. EXPLANATION OF THE BILL

The bill comprises two titles. Title I is "Protection of Taxpayer Rights," which includes five subtitles: Reform of Assessment and Collection Procedures (sections 101 through 105); Assistance to Individual Taxpayers in Filing Returns (sections 111 through 117); Whistleblower Protections (sections 121 through 122); Reform of Laws Governing Internal Revenue Service Employees (sections 131 through 136); and Exempt Organizations (sections 141 through 144). Title II is "Protection of Taxpayers from Identity Theft and Tax Fraud" and includes sections 201 through 205. The specific provisions of the bill are explained below.

TITLE I—PROTECTION OF TAXPAYER RIGHTS

A. REFORM OF ASSESSMENT AND COLLECTION PROCEDURES

1. Report on IRS authority to compromise tax matters (sec. 101 of the bill and sec. 7122 of the Code)

PRESENT LAW

Unless a tax matter has been referred to the Department of Justice for prosecution or defense, the Internal Revenue Service ("IRS") has the authority to compromise tax debts.[1] Treasury regulations provide that such offers to compromise tax matters can be accepted: (1) if there is doubt as to the validity of the actual tax liability, (2) if it is doubtful that the tax, interest, and penalties can be collected, or (3) to promote effective tax administration in a case where collection in full would cause the taxpayer economic hardship.[2]

A taxpayer making an offer to compromise a tax case must make certain nonrefundable payments at the time he or she submits the initial offer-in-compromise of a tax case. Taxpayers making a lump sum offer-in-compromise must include a nonrefundable payment of

[1] Sec. 7122.

[2] Treas. Reg. sec. 1.7122–1(b). For this purpose, economic hardship is defined under Treas. Reg. sec. 301.6343–1.

20 percent of the lump-sum with the initial offer.[3] In the case of an offer-in-compromise involving periodic payments, the initial offer must be accompanied by a nonrefundable payment of the first installment that would be due if the offer were accepted.[4] Taxpayers may instruct the IRS in application of the payment to tax, interest or penalties that are the subject of the offer. In certain cases, the IRS may waive the requirement.

The Internal Revenue Code of 1986, as amended (the "Code")[5] requires that the IRS prescribe guidelines for employees to follow in evaluating the adequacy of offers, including guidelines for determining whether an offer is complete and can be processed, estimating basic living expenses, as well as special rules for handling offers from low-income taxpayers or those that are based solely on doubt as to liability. With the exception of cases in which the proposed offer is based on a frivolous submission,[6] taxpayers whose offers are rejected may appeal the rejection to the IRS Office of Appeals. Non-frivolous offers are deemed accepted if not rejected or returned to the taxpayer within 24 months of submission of the offer.

Compromises with respect to unpaid tax 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.[7] The $50,000 threshold was raised from $500 in 1996.[8]

REASONS FOR CHANGE

Many offers-in-compromise cases do not present any significant legal issues, and the required legal review for cases meeting the statutory threshold can delay the acceptance process under current administrative procedures. The Committee believes that eliminating this threshold may permit the IRS to focus its review resources on the most important cases, regardless of dollar value.

Before eliminating this threshold, the Committee believes a study is needed to evaluate how the IRS currently exercises its authority to compromise tax matters, including the role of the IRS Office of the Chief Counsel.

EXPLANATION OF PROVISION

The Government Accountability Office ("GAO") is required to evaluate how the IRS presently exercises its authority to compromise tax matters under section 7122, including any recommendations for appropriate legislative and administrative actions. The GAO is also required to evaluate the role of the IRS Office of the 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 desir-

[3] Sec. 7122(c)(1)(A).
[4] Sec. 7122(c)(1)(B).
[5] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.
[6] Frivolous submissions may be treated as if never submitted, and are not subject to further administrative or judicial review. Secs. 6702(b)(2) and 7122(g).
[7] Treas. Reg. sec. 1.7122–1(e)(6).
[8] Sec. 503 of the Taxpayer Bill of Rights 2, Pub. L. No. 104–168.

able. The GAO is required to submit a report with its findings to the Senate Committee on Finance and House Committee on Ways and Means within 12 months of the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Report on opportunity for hearing by the IRS Office of Appeals (sec. 102 of the bill)

PRESENT LAW

The IRS Office of Appeals ("Appeals"') is the settlement arm of the IRS. It operates through regional Appeals offices organized by the IRS but operating independently of the local offices of the operating divisions of the IRS responsible for examining returns and collecting taxes. Its operating rules generally are not codified, but rather are found in procedural regulations promulgated by Treasury and in revenue procedures.[9] In general, Appeals has jurisdiction over both pre-assessment and post-assessment cases. The 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 operating division, and after a proposed rejection of an offer-in-compromise in a collection case.

In 1998, the Internal Revenue Service Restructuring and Reform Act of 1998 (the "Restructuring Act") directed that the IRS reorganize in a manner to address the needs of taxpayers and to ensure that the reorganization included an independent Appeals function,[10] and mandated that administrative appeals is an independent appeals function.[11] It also codified certain requirements for Appeals, including procedures by which any taxpayer may request early referral to Appeals of unresolved issues from the examination or collection division[12] and use of alternative dispute resolution procedures of mediation or binding arbitration.[13] In addition, the IRS is required to make Appeals officers available on a regular basis in each State and to consider videoconferencing of Appeals conferences for taxpayers seeking appeals in rural or remote areas.[14]

The Restructuring Act further required that the Secretary or the Secretary's delegate include with any first letter of proposed deficiency, which allows the taxpayer an opportunity for administrative review in Appeals, an explanation of the entire process from examination through collection with respect to such proposed deficiency,

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[9] Treas. Reg. sec. 601.106; Rev. Proc. 2016–22, 2016–15 IRB 1, March 23, 2016.

[10] Pub. L. No. 105–206, sec. 1001, July 22, 1998. A report by the Treasury Inspector General for Tax Administration ("TIGTA") found that Appeals' level of independence is consistent with what was intended in the Act. *The Overall Independence of the Office of Appeals Appears to Be Sufficient* (TIGTA 2005–10–141), September 9, 2005, available at https://www.treasury.gov/tigta/auditreports/2005reports/200510141fr.pdf.

[11] The operating divisions that resulted from the restructuring are Large Business & International (LB&I), Small Business and Self-Employed (SB/SE), Wage and Investment (W&I) and Tax-Exempt and Governmental Entities (TE/GE).

[12] Sec. 7123(a); Pub. L. No. 105–206, sec. 3465(a)(1), July 22, 1998.

[13] Sec. 7123(b); Pub. L. No. 105–206, sec. 3465(a)(1), July 22, 1998.

[14] Pub. L. No. 105–206, sec. 3465(b), (c), July 22, 1998.

including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.[15]

There is no section of the Code 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.[16] The regulations provide in part, "[a] taxpayer may request an appeal in any case in which a District Director . . . has issued a letter proposing adjustments (commonly referred to as the 30-day letter) concerning an item described in paragraph (a)(3) of this section. The taxpayer will be informed of the right to an administrative appeal in this letter."[17] Case law holds that these regulations are "directory and not mandatory in legal effect."[18]

However, the IRS is required to follow certain due process procedures, including the right to allow the taxpayer to request an Appeals hearing, when the IRS seeks to levy against the property of a taxpayer in collection of a Federal tax liability or when the IRS files a notice of lien.[19] The taxpayer also has the right to obtain judicial review of the Appeals officer's determination.[20]

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.[21] If a case or an issue in a case is designated, the taxpayer generally will not receive a 30-day letter and will be issued a statutory notice of deficiency.

REASONS FOR CHANGE

The Committee is aware that the right to appeal an IRS decision in an independent forum is one of the fundamental rights the taxpayer has when dealing with the IRS. Under this right, taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding Appeals' decision. In addition, taxpayers generally have the right to take their cases to court.

Accordingly, the Committee seeks to understand the circumstances under which taxpayers are not provided an opportunity to exercise this appeal right administratively in Appeals and confirm that the IRS is treating all taxpayers fairly in deciding whether to allow access to Appeals.

EXPLANATION OF PROVISION

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 an examination of taxpayers' access to Appeals, in particular the effect

[15] Pub. L. No. 105–206, sec. 3504, July 22, 1998.
[16] Treas. Reg. sec. 601.106.
[17] Treas. Reg. sec. 601.106(b).
[18] *Luhring v. Glotzbach,* 304 F.2d 560, 565 (4th Cir. 1962); see also *Rosenberg v. Comm'r,* 450 F.2d 529, 533 (10th Cir. 1971).
[19] Sec. 6320(b)(1) (right to appeals hearing included in due process notice to a taxpayer whenever the IRS files a notice of lien); sec. 6330(b)(1) (right to appeals hearing before levy).
[20] Sec. 6330(d).
[21] Rev. Proc. 2016–22, 2016–15 IRB 1, March 23, 2016 (provides administrative appeals process for cases filed with the Tax Court); Internal Revenue Manual sec. 33.3.6.2, available at https://www.irs.gov/irm/part33/irm≤33-003-006.html (procedures for designating a case for litigation).

on taxpayers in those States without a permanent Appeals Officer or a permanent Settlement Officer. GAO is to provide a comparison between taxpayer access to Appeals in these States and States with a permanent Appeals or Settlement Officer. GAO is also to 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.

The provision also requires the GAO to study the IRS's process for designating a case for litigation, including understanding how the IRS makes its determination concerning what constitutes sound tax administration and whether there is a critical need for enforcement activity with respect to certain issues presented. The GAO is to 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 report and recommendations with regard to any issues identified is to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means within 12 months of the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Extending time limit for contesting IRS levy (sec. 103 of the bill and secs. 6343 and 6532 of the Code)

PRESENT LAW

The IRS is authorized to return property that has been wrongfully levied upon.[22] In general, monetary proceeds from the sale of levied property may be returned within nine months of the date of the levy.

Generally, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in levied property and that such property was wrongfully levied upon may bring a civil action for wrongful levy in a district court of the United States.[23] Generally, an action for wrongful levy must be brought within nine months from the date of levy.[24]

REASONS FOR CHANGE

The Committee understands that in many cases the time period for bringing an action may be insufficient for taxpayers or third parties to discover a wrongful or mistaken levy and seek to remedy it. Accordingly, the Committee believes it is appropriate to provide for a longer period of time within which a person may contest a wrongful IRS levy.

EXPLANATION OF PROVISION

The provision extends from nine months to two years the period for returning the monetary proceeds from the sale of property that has been wrongfully levied upon.

[22] Sec. 6343.
[23] Sec. 7426.
[24] Sec. 6532.

The provision also extends from nine months to two years the period for bringing a civil action for wrongful levy.

EFFECTIVE DATE

The provision is effective with respect to: (1) levies made after the date of enactment; and (2) levies made on or before the date of enactment provided that the nine-month periods have not expired as of the date of enactment.

4. Individuals held harmless on improper levy on retirement plans (sec. 104 of the bill and sec. 6343 of the Code)

PRESENT LAW

Tax-favored retirement savings

Under the Code, tax-favored treatment applies to traditional and Roth individual retirement arrangements ("IRAs"') and certain employer-sponsored retirement plans ("employer-sponsored plans").[25] The rules for tax-favored treatment include annual limits on the amount that may be contributed to an IRA or employer-sponsored plan.

In general, a distribution from a traditional IRA or employer-sponsored plan (other than from a designated Roth account under an employer-sponsored plan) is includible in income, except to the extent attributable to any contributions that were made to the IRA or plan on an after-tax basis.[26] Contributions made to a Roth IRA or a designated Roth account are made on an after-tax basis.[27] Certain distributions from a Roth IRA or a designated Roth account are excluded from income; otherwise, a distribution is includible in income, except to the extent attributable to contributions.[28] Amounts that are withdrawn from an IRA or employer-sponsored plan before age 59½ and are includible in income are subject to a 10-percent early withdrawal tax unless an exception applies.[29]

A distribution from a traditional IRA or employer-sponsored plan (other than from a designated Roth account) generally may be rolled over to another traditional IRA or employer-sponsored plan (other than to a designated Roth account).[30] The rollover generally can be achieved by a direct payment from the distributing IRA or plan to the recipient IRA or plan ("direct rollover") or by contributing the distribution to the recipient IRA or plan within 60 days of receiving the distribution ("60-day rollover"). Amounts that are rolled over generally are not includible in gross income. A distribution from a Roth IRA generally may be rolled over to another Roth IRA by direct rollover or a 60-day rollover, and a distribution from a designated Roth account generally may be rolled over to a Roth

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[25] Secs. 219, 408, and 408A provide rules for IRAs. Tax-favored employer-sponsored retirement plans consist of qualified retirement plans and annuities under sections 401(a) and 403(a), tax-deferred annuity plans under section 403(b), and State and local government eligible deferred compensation plans under section 457(b). Under section 7701(j), the Thrift Savings Fund is treated as a qualified retirement plan.

[26] Secs. 408(d) and 402.

[27] Secs. 408A(c) and 402A(a)(2).

[28] Secs. 408A(d) and 402A(d).

[29] Sec. 72(t).

[30] A rollover is not permitted with respect to an IRA that an individual has inherited from another individual ("inherited IRA"). In addition, the beneficiary of a deceased employee under an employer-sponsored plan, other than a surviving spouse, may roll a distribution from the plan only to an IRA that is designated as an inherited IRA.

IRA or another designated Roth account by direct rollover or a 60-day rollover. In general, an individual is permitted to make only one 60-day rollover from an IRA to another IRA within a one-year period.

In addition to these rollovers, an individual generally may convert an amount in a traditional IRA or a non-Roth account under an employer-sponsored defined contribution plan into a Roth IRA or a designated Roth account, referred to as a "Roth conversion." The amount converted is generally includible in the individual's income to the same extent as if a distribution had been made. The conversion may be accomplished by a direct transfer of the amount from the traditional IRA or non-Roth account to the Roth IRA or designated Roth account or by a distribution from the traditional IRA or non-Roth account and contribution to the Roth IRA or designated Roth account within 60 days.

An amount withdrawn from an IRA or employer-sponsored plan made on account of an IRS levy is includible in income in the same manner as other distributions. However, the 10-percent early withdrawal tax does not apply.[31]

Incorrect levies on IRAs and employer-sponsored plans

Present law provides rules under which the IRS returns amounts subject to an incorrect levy.[32] For example, amounts withdrawn from an IRA pursuant to a levy are returned to the individual owning the IRA in the case of a wrongful levy or if the levy was not in accordance with IRS administrative procedures.[33] In the case of a wrongful levy, the IRS is required to pay interest on the amount returned to the individual at the overpayment rate.[34] The IRS is not required to pay interest if the levy was not in accordance with IRS administrative procedures.[35]

Present law does not provide special rules to allow an individual to recontribute to an IRA or employer-sponsored plan an amount withdrawn pursuant to a levy and later returned to the individual by the IRS, or interest thereon. Thus, if an individual wishes to contribute such returned amounts to an IRA or employer-sponsored plan, the contribution is subject to the normally applicable rules, including limits on contributions and the time for making a rollover.

REASONS FOR CHANGE

IRAs and employer-sponsored retirement plans provide an important source of retirement income for many Americans. Under present law, if the IRS improperly levies on an individual's IRA or benefits under an employer-sponsored plan, the 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 Committee believes that improper levies should not reduce retirement income security. Thus, the Committee bill provides that retirement funds that are withdrawn from an IRA or employer-

[31] Sec. 72(t)(2)(vii).
[32] Sec. 6343(b)–(d).
[33] Secs. 6343(b)(2), 6343(d)(2)(A).
[34] Sec. 6343(c)(1).
[35] Sec. 6343(d)(2).

sponsored retirement plan pursuant to an improper IRS levy and returned by the IRS may be recontributed to the IRA or plan or to a different IRA.

EXPLANATION OF PROVISION

Under the provision, if an amount withdrawn from an IRA ("original IRA") or employer-sponsored plan pursuant to a levy is returned to an individual by the IRS, the individual may contribute the amount returned, and any interest thereon, either to the original IRA or to the employer-sponsored plan, if permissible,[36] or to a different IRA to which a rollover from the original IRA or employer-sponsored plan would be permitted.[37] The contribution is allowed without regard to the normally applicable limits on IRA contributions and rollovers. The provision applies to a levied amount that is returned to the individual because the levy on the original IRA or employer-sponsored plan (1) was wrongful, or (2) is determined to be premature or otherwise not in accordance with administrative procedures.

A contribution under the provision must be made by the due date (not including extensions) for the individual's income tax return for the year in which the IRS returns the amount previously levied on. A contribution under the provision is treated as a rollover ("rollover contribution") made for the taxable year in which the distribution on account of the levy occurred, but is not taken into account for purposes of the limit on one IRA rollover within a one-year period. In addition, except in the case of a rollover contribution that is treated as a Roth conversion, any tax attributable to the amount distributed from the original IRA or employer-sponsored plan by reason of a levy (1) is not to be assessed, (2) if assessed, is to be abated, and (3) if collected, is to be credited or refunded as an overpayment made on the due date for the return for the taxable year in which the amount was levied on.

Under the provision, the IRS is required to pay interest on an amount returned to the individual at the overpayment rate 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). Interest paid by the IRS on the amount returned to the individual and contributed to an IRA or employer-sponsored plan is treated as earnings within the IRA or employer-sponsored plan after the rollover contribution was made and is not includible in gross income when received from the IRS.

When the IRS returns to an individual an amount that was levied on, the IRS must notify the individual that a contribution to the original IRA, the employer-sponsored plan, or a new IRA may be made of the amount returned, and the interest paid, by the due date (not including extensions) for the individual's income tax return for the year in which the amount is returned.

[36] The terms of an employer-sponsored plan might not permit the amount returned by the IRS to be contributed to the plan. In addition, in the case of an amount withdrawn from a designated Roth account pursuant to the levy, the returned amount could be contributed only to the original designated Roth account (or to a Roth IRA).

[37] The provision allows a rollover with respect to an inherited IRA to an inherited IRA of the same type (traditional or Roth) as the original IRA.

EFFECTIVE DATE

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

5. Report on IRS audit criteria (sec. 105 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.

REASONS FOR CHANGE

The Committee wants to ensure that taxpayers are not targeted by the IRS or discriminated against because of their 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 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. Assistance to Individual Taxpayers in Filing Returns

1. Return preparation programs for low-income taxpayers (sec. 111 of the bill and new sec. 7526A of the Code)

PRESENT LAW

The Code provides that the Secretary may allocate up to $6 million per year for matching grants to certain qualified low-income taxpayer clinics.[38] 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 single 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 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

[38] Sec. 7526.

which does not exceed 250 percent of the Federal poverty level, and (ii) the amount in controversy for any taxable year is generally $50,000 or less.[39]

There is no provision in the Code allowing for the allocation of funds for matching grants for return preparation for low-income taxpayers.

In the Consolidated Appropriations Act, 2016,[40] Congress appropriated approximately $2.157 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.

REASONS FOR CHANGE

The Committee believes that it is important for the IRS to continue to provide matching grants for authorized programs that assist low-income taxpayers and members of underserved populations in preparing their Federal income tax return at no cost. The Committee also believes that these programs, which rely on the participation of trained volunteers, provide qualifying taxpayers with reliable and competent assistance which helps to ensure the accuracy and timeliness of the tax returns filed.

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 to $30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting low-income 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 associates 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, but not for overhead expenses that are not directly related to any qualified return preparation program. In awarding grants, priority is given to applications that (i) demonstrate assistance to certain low-income taxpayers with an emphasis on outreach; (ii) demonstrate taxpayer outreach and education around available income supports available through the Code; and (iii) demonstrate specific outreach and focus

[39] Sec. 7463.
[40] Pub. L. No. 114–113.

on one or more underserved populations. The provision allows the IRS to use mass communications, referrals, and other means to promote the benefits and encourage the use of the program. The Secretary can refer taxpayers to qualified return preparation programs receiving grants and those programs are encouraged to refer eligible individuals to local or regional low income taxpayer clinics.

Qualified return preparation program means any program which provides assistance to individuals, at least 90 percent of whom are low-income taxpayers, in preparing and filing Federal income tax returns, which is administered by a qualified entity, in which all volunteers who assist in the preparation of Federal income tax returns meet the training requirements prescribed by the Secretary, and which uses a quality review process which reviews 100 percent of all returns. Qualified entity means any entity which is an eligible organization (as defined), is in compliance with Federal tax filing and payment requirements, is not debarred or suspended from Federal contracts, grants, or cooperative agreements, and agrees to provide documentation to substantiate any matching funds provided under the VITA grant program. Eligible organization means 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, an exempt organization described in Code section 501(c), a local government agency, including a county or municipal government agency, and an Indian tribe, as defined in section 4(13) 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, an eligible organization includes a State government agency, and a Cooperative Extension Service office. Low-income 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. 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.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Limiting redisclosures and uses of consent-based disclosures of tax return information (sec. 112 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.[41] 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.[42] The request or consent may be in written or non-written form. The Treasury regulations require that the taxpayer sign and date 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.[43] 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 addi-

[41] Sec. 6103(a).
[42] Treas. Reg. sec. 301.6103(c)–1.
[43] Sec. 7206(1).

tion 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 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.

REASONS FOR CHANGE

The Committee is concerned that return information obtained by a recipient by consent is not subject to the same protection and limits on use as other taxpayer information.

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 of enactment.

3. Clarification of equitable relief from joint liability (sec. 113 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 liable jointly and severally for the entire tax liability that should have been reported on the joint return.[44] A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief provisions of the Code.

[44] Sec. 6103(d).

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.[45] 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. 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.[46] 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.[47] 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 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.[48]

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.

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[45] Sec. 6015(b).
[46] Sec. 6015(c).
[47] Sec. 6015(f).
[48] Sec. 6015(e)(1).

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,[49] but other courts have permitted review of information beyond the administrative record while applying an abuse of discretion standard.[50] Still others have applied a de novo standard to both the scope of the review and the standard of review.[51]

REASONS FOR CHANGE

The Committee is aware that the extent to which a denial of a claim for equitable relief from joint liability is subject to judicial review by the Tax Court, as well as the scope of any such review, have been the subject of conflicting appellate decisions. As a result, persons resident in different states but whose circumstances are otherwise similar may be accorded different rights to judicial review under the Code. The Committee believes that such disparity of treatment can be avoided if the statute is clarified to confer a right to judicial review in all cases, and to specify the scope of such review.

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 redetermine 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. Modification of user fee requirements for installment agreements (sec. 114 of the bill and sec. 6159 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer agrees to pay taxes owed, as well as interest and penalties, in installments over an agreed schedule, if the IRS determines that doing so will facilitate collection of the amounts owed. This agreement provides for a pe-

[49] *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).

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

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

riod during which payments may be made and while other IRS enforcement actions are held in abeyance.[52] An installment agreement generally does not reduce the amount of taxes, interest, or penalties owed. However, the IRS is authorized to enter into installment agreements with taxpayers which do not provide for full payment of the taxpayer's liability over the life of the agreement. The IRS is required to review such partial payment installment agreements at least every two years to determine whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.

Taxpayers can request an installment agreement by filing Form 9465, Installment Agreement Request.[53] If the request for an installment agreement is approved by the IRS, the IRS charges a user fee.[54] Under sections 300.1 and 300.2 of the Treasury Regulations, the IRS currently charges $120 for entering into an installment agreement. If the application is for a direct debit installment agreement, whereby the taxpayer authorizes the IRS to request the monthly electronic transfer of funds from the taxpayer's bank account to the IRS, the fee is reduced to $52. In addition, regardless of the method of payment, the fee is $43 for low-income taxpayers. For this purpose, low-income is defined as a person who falls below 250 percent of the Federal poverty guidelines published annually. Finally, there is no user fee if the agreement qualifies for a short-term agreement (120 days or less).

REASONS FOR CHANGE

The Committee believes user fees are a barrier to compliance in collection and discourage low-income taxpayers from voluntary tax compliance, as many of them do not have the means to pay the user fee, even at the reduced rate. Further, when negotiating installment agreements, many low-income taxpayers are charged the full user fee, despite qualifying for the reduced amount.[55]

EXPLANATION OF PROVISION

The provision generally prohibits increases in the amount of user fees charged by the IRS for installment agreements. For low-income taxpayers (those whose adjusted gross income, as determined for the most recent year for which such information is available, does not exceed 250 percent of the applicable poverty level as determined by the Secretary), it alleviates the user fee requirement in two ways. First, it waives the user fee if the low-income taxpayer enters into an installment agreement under which the taxpayer agrees to make automated installment payments through a debit account. Second, it provides that low-income taxpayers who are un-

[52] Sec. 6331(k).

[53] The IRS accepts applications for installment agreements online, from individuals and businesses, if the total tax, penalties and interest is below $50,000 for the former, and $25,000 for the latter.

[54] 31 U.S.C. sec. 9701; Treas. reg. sec. 300.1. The Independent Offices Appropriations Act of 1952 (IOAA), 65 Stat. B70, (June 27, 1951). A discussion of the IRS practice regarding user fees and a list of actions for which fees are charged is included in the Internal Revenue Manual. See "User Fees," paragraph 1.32.19 IRM, available at *https://www.irs.gov/irm/part1/irm—01–032–019.html.*

[55] See American Bar Association letter to Mr. Daniel Werfel, Acting Commissioner, IRS, "Comments Concerning User Fees for Processing Installment Agreements and Offers in Compromise," October 1, 2013, page 2, available at *http://www.americanbar.org/content/dam/aba/administrative/taxation/policy/100113comments.authcheckdam.pdf.*

able to make payments electronically remain subject to the required user fee, but the fee is reimbursed upon completion of the installment agreement.

EFFECTIVE DATE

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

5. Reports on Future State and similar online initiatives (sec. 115 of the bill)

PRESENT LAW

No provision.

REASONS FOR CHANGE

The Committee believes it is necessary to hold the IRS accountable for its decisions and protect taxpayers who do not have sufficient access to the Internet.

EXPLANATION OF PROVISION

The provision requires the IRS to submit annual progress reports on the status of the efforts by the IRS to expand online taxpayer services (its so-called "Future State Initiative"), including a thorough assessment of any service which is proposed to be shifted to a self-service option.

The provision also requires the GAO to identify and report on the extent of phone and in-person services currently being provided to taxpayers residing in rural cities, towns, or unincorporated areas which has a population of 50,000 or less. In addition, the GAO must provide recommendations on steps the IRS can include in the development of its expanded online taxpayer services to protect the interests of rural taxpayers.

EFFECTIVE DATE

The first IRS report is required to be submitted to the Senate Committee on Finance and House Committee on Ways and Means within 12 months of the date of enactment, with subsequent reports to follow at annual intervals. The GAO report is required to be submitted to the Senate Committee on Finance and House Committee on Ways and Means within 12 months of the date of enactment.

6. Notice from IRS regarding closure of Taxpayer Assistance Centers (sec. 116 of the bill)

PRESENT LAW

The IRS is not currently required to give notice to Congress before closing a Taxpayer Assistance Center ("TAC").

REASONS FOR CHANGE

The Committee is concerned about taxpayers who do not have access to the Internet, and seeks to ensure that taxpayers who require and desire in-person access to IRS facilities continue to have such access.

EXPLANATION OF PROVISION

The provision requires IRS to report to the Senate Committee on Finance and the House Committee on Ways and Means 90 days in advance, the reasons for a proposed closure of a TAC and an explanation of the taxpayer assistance services which will be provided to certain taxpayers by the IRS after the proposed closure takes effect. The taxpayers are those located in any rural city, town, or unincorporated area which has a population of not more than 50,000 who would be affected by the proposed closure. Any closure of a TAC is treated as a major rule for purposes of applying the Congressional Review Act.[56]

EFFECTIVE DATE

The provision is effective on the date of enactment.

7. Recovery of certain improperly withheld severance payments (sec. 117 of the bill and secs. 104(a)(4) and 6511 of the Code)

PRESENT LAW

Under present law, certain payments made as compensation for injuries or sickness are excluded from a taxpayer's gross income.[57] Such payments include amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country.[58]

REASONS FOR CHANGE

The Committee believes it is necessary to help impacted veterans who are either unaware that their disability severance benefits were reduced by tax withholding or veterans who became aware of such withholding who have been unable to recoup their losses because of the expiration of the three-year statute of limitations for amending a tax return.

EXPLANATION OF PROVISION

The provision requires that, not later than one year after the date of enactment, the Secretary of Defense identify certain disability severance payments made to veterans from which income taxes were withheld. Each individual so identified shall receive a notice of the amount of severance payments which were improperly withheld upon, and other information determined to be necessary by the Secretary of Treasury to carry out the purposes of the provision. Each individual will receive instructions for filing an amended return to recover the improperly withheld amounts.

The provision extends the statute of limitations on claims for refund, such that individuals who receive notice of improper withholding will have one year from the date of notice in which to file a refund claim.

The provision provides that the Secretary of Defense shall take such actions as may be necessary to ensure that amounts are not withheld for tax purposes from severance payments made by the Secretary of Defense to individuals when such payments are not

[56] 5 U.S.C. sec. 801 et seq.
[57] Sec. 104.
[58] Sec. 104(a)(4).

considered gross income pursuant to section 104(a)(4). The provision requires the Secretary of Defense to submit a report within 15 months of the date of enactment to the Senate Committee on Armed Services, the Senate Committee on Veterans' Affairs, the Senate Committee on Finance, the House Committee on Armed Services, the House Committee on Veterans' Affairs, and the House Committee on Ways and Means, specifying the number of individuals identified as having been withheld upon, the aggregate amount withheld, and a description of the actions to be taken by the Secretary of Defense to ensure that future payments are not withheld.

EFFECTIVE DATE

The provision is effective on the date of enactment.

C. WHISTLEBLOWER PROTECTIONS

1. Reports concerning whistleblower awards (sec. 121 of the bill)

PRESENT LAW

Awards to whistleblowers

The Code authorizes the IRS to pay such sums as deemed necessary for: "(1) detecting underpayments of tax; or (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same." [59] Generally, amounts are paid based on a percentage of proceeds collected based on the information provided.

The Tax Relief and Health Care Act of 2006 (the "Act") [60] established an enhanced reward program for actions in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2,000,000 and, if the taxpayer is an individual, the individual's gross income exceeds $200,000 for any taxable year in issue. In such cases, the award is calculated to be at least 15 percent but not more than 30 percent of collected proceeds (including penalties, interest, additions to tax, and additional amounts).

Under the Act, the Secretary is required to issue guidance within one year of the date of enactment of the Act for the establishment of the Whistleblower Office within the IRS to administer the reward program. The Whistleblower Office may seek assistance from the individual providing information or from his or her legal representative, and may reimburse the costs incurred by any legal representative out of the amount of the reward. To the extent the disclosure of returns or return information is required to render such assistance, the disclosure must be pursuant to an IRS tax administration contract.

The Act permits an individual to appeal the amount or a denial of an award determination to the United States Tax Court (the "Tax Court") within 30 days of such determination. Tax Court review of an award determination may be assigned to a special trial judge.

The Act also requires the Secretary to conduct a study and report to Congress on the effectiveness of the whistleblower reward pro-

[59] Sec. 7623.
[60] Pub. L. No. 109–432.

gram and any legislative or administrative recommendations regarding the administration of the program.

Rules relating to taxpayers with foreign assets

U.S. persons who transfer assets to, and hold interests in, foreign bank accounts or foreign entities may be subject to self-reporting requirements under both the Foreign Account Tax Compliance Act ("FATCA") provisions in the Code and the provisions in the Bank Secrecy Act and its underlying regulations (which provide for FinCEN Form 114, Report of Foreign Bank and Financial Accounts, the "FBAR"), as discussed below. Amounts recovered for violations of FATCA provisions in the Code may be considered for purposes of computing a whistleblower award under the Code. However, the IRS has found that amounts recovered for violations of non-tax laws, including the provisions of the Bank Secrecy Act (and FBAR) for which the IRS has delegated authority, may not be considered for purposes of computing an award under the Code.[61]

FATCA

The Code imposes a withholding and reporting regime for U.S. persons engaged in foreign activities, directly or indirectly, through a foreign business entity.[62] This regime for outbound payments,[63] commonly referred to as the Foreign Account Tax Compliance Act ("FATCA"),[64] imposes a withholding tax of 30 percent of the gross amount of certain payments to foreign financial institutions ("FFIs'") unless the FFI establishes that it is compliant with the information reporting requirements of FATCA which include identifying certain U.S. accounts held in the FFI. An FFI must report with respect to a U.S. account (1) the name, address, and taxpayer identification number of each U.S. person holding an account or a foreign entity with one or more substantial U.S. owners holding an account; (2) the account number; (3) the account balance or value; and (4) except as provided by the Secretary, the gross receipts, including from dividends and interest, and gross withdrawals or payments from the account.[65]

Individuals are required to disclose with their annual Federal income tax return any interest in foreign accounts and certain foreign securities if the aggregate value of such assets is in excess of the greater of $50,000 or an amount determined by the Secretary in regulations. Failure to do so is punishable by a penalty of $10,000, which may increase for each 30-day period during which the failure continues after notification by the IRS, up to a maximum penalty of $50,000.[66]

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[61] Chief Counsel Memorandum, "Scope of Awards Payable Under I.R.C. section 7623," April 23, 2012, available at *http://www.tax-whistleblower.com/resources/PMTA-92012-10.pdf*. Under Title 31, "[t]he Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of [chapter 53 of Title 31]. The Secretary shall determine the amount of a reward. . .[and]. . . may not award more than 25 per centum of the net amount of the fine, penalty, or forfeiture collected or $150,000, whichever is less." 31 U.S.C. § 5323.

[62] See, *e.g.*, secs. 6038, 6038B, and 6046.

[63] Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111–147.

[64] Foreign Account Tax Compliance Act of 2009 is the name of the House and Senate bills in which the provisions first appeared. See H.R. 3933 and S. 1934 (October 27, 2009).

[65] Sec. 1471(c).

[66] Sec. 6038D. Guidance on the scope of reporting required, the threshold values triggering reporting requirements for various fact patterns and how the value of assets is to be determined is found in Treas. Reg. secs. 1.6038D–1 to 1.6038D–8.

FBAR

In addition to the reporting requirements under the Code, U.S. persons who transfer assets to, and hold interests in, foreign bank accounts or foreign entities may be subject to self-reporting requirements under the Bank Secrecy Act.[67]

The Bank Secrecy Act imposes reporting obligations on both financial institutions and account holders. With respect to account holders, a U.S. citizen, resident, or person doing business in the United States is required to keep records and file reports, as specified by the Secretary, when that person enters into a transaction or maintains an account with a foreign financial agency.[68] Regulations promulgated pursuant to broad regulatory authority granted to the Secretary in the Bank Secrecy Act[69] provide additional guidance regarding the disclosure obligation with respect to foreign accounts.

The FBAR must be filed by June 30[70] of the year following the year in which the $10,000 filing threshold is met.[71] The FBAR is required to be filed electronically with the Treasury Department through the FinCEN BSA E-filing System.[72] Failure to file the FBAR is subject to both criminal[73] and civil penalties.[74] Willful failure to file an FBAR may be subject to penalties in amounts not to exceed the greater of $100,000 or 50 percent of the amount in the account at the time of the violation.[75] A non-willful, but negligent, failure to file is subject to a penalty of $10,000 for each negligent violation.[76] The penalty may be waived if (1) there is reasonable cause for the failure to report and (2) the amount of the transaction or balance in the account was properly reported. In addition, serious violations are subject to criminal prosecution, potentially resulting in both monetary penalties and imprisonment. Civil and criminal sanctions are not mutually exclusive.

FBAR enforcement responsibility

Until 2003, the Financial Crimes Enforcement Network ("FinCEN"), an agency of the Department of the Treasury, had exclusive responsibility for civil penalty enforcement of FBAR, al-

[67] Bank Secrecy Act, 31 U.S.C. secs. 5311–5332.

[68] 31 U.S.C. sec. 5314. The term "agency" in the Bank Secrecy Act includes financial institutions.

[69] 31 U.S.C. sec. 5314(a) provides: "Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency."

[70] The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Pub. L. No. 114–41, changed the filing date for FinCEN Form 114 from June 30 to April 15 (with a maximum extension for a 6-month period ending on October 15 and with provision for an extension under rules similar to the rules in Treas. Reg. section 1.6081—5) for tax returns for taxable years beginning after December 31, 2015.

[71] 31 C.F.R. sec. 103.27(c). The $10,000 threshold is the aggregate value of all foreign financial accounts in which a U.S. person has a financial interest or over which the U.S. person has signature or other authority.

[72] See *http://bsaefiling.fincen.treas.gov/main.html.* The predecessor form, Treasury Form TD F 90–22.1, was filed with the IRS Detroit Computing Center.

[73] 31 U.S.C. sec. 5322 (failure to file is punishable by a fine up to $250,000 and imprisonment for five years, which may double if the violation occurs in conjunction with certain other violations).

[74] 31 U.S.C. sec. 5321(a)(5).

[75] 31 U.S.C. sec. 5321(a)(5)(C).

[76] 31 U.S.C. sec. 5321(a)(5)(B)(i), (ii).

though administration of the FBAR reporting regime was delegated to the IRS.[77] As a result, persons who were more than 180 days delinquent in paying any FBAR penalties were referred for collection action to the Financial Management Service of the Treasury Department, which is responsible for such non-tax collections.[78] Continued nonpayment resulted in a referral to the Department of Justice for institution of court proceedings against the delinquent person. In 2003, the Secretary delegated FBAR civil enforcement authority to the IRS.[79] The authority delegated to the IRS in 2003 included the authority to determine and enforce civil penalties,[80] as well as to revise the form and instructions. However, the Bank Secrecy Act does not include collection powers similar to those available for enforcement of the tax laws under the Code. As a consequence, FBAR civil penalties remain collectible only in accord with the procedures for non-tax collection described above.

The FBAR is not filed as part of the income tax return nor filed in the same office as that return and, as a result, is not considered "return information" for purposes of the Code and its distribution to other law enforcement agencies is not limited by the nondisclosure rules of the Code.[81] In contrast, the nondisclosure constraints on IRS personnel who examine income tax liability (i.e., Form 1040 reporting) generally preclude the sharing of tax return information with any other IRS personnel or Treasury officials, absent a tax administration purpose.[82] Tax administration is defined as "the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes" and does not necessarily include administration of Title 31.[83] Because Title 31 includes enforcement of non-tax provisions of the Bank Secrecy Act, Title 31 is not, per se, a "related statute," for purposes of finding that a disclosure of such information would be for tax administration purposes. As a result, IRS personnel charged with investigating and enforcing the civil penalties under Title 31 are permitted access to Form 1040 information that would support or shed light on the existence of an FBAR violation only if there is a determination, in writing, that the FBAR violation was in furtherance of a Code violation and the statutes are "related statutes"' for purposes of authorizing the disclosure.[84]

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[77] Treas. Directive 15–14 (December 1, 1992), in which the Secretary delegated to the IRS authority to investigate violations of the Bank Secrecy Act. If the IRS Criminal Investigation Division declines to pursue a possible criminal case, it is to refer the matter to FinCEN for civil enforcement.

[78] 31 U.S.C. sec. 3711(g).

[79] 31 C.F.R. sec. 103.56(g). Memorandum of Agreement and Delegation of Authority for Enforcement of FBAR Requirements (April 2, 2003); News Release, Internal Revenue Service, IR–2003–48 (April 10, 2003). Secretary of the Treasury, "A Report to Congress in Accordance with sec. 361(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act)" (April 24, 2003).

[80] A penalty may be assessed before the end of the six-year period beginning on the date of the transaction with respect to which the penalty is assessed. 31 U.S.C. sec. 5321(b)(1). A civil action for collection may be commenced within two years of the later of the date of assessment and the date a judgment becomes final in any related criminal action. 31 U.S.C. sec. 5321(b)(2).

[81] Section 6103 bars disclosure of return information, unless permitted by an exception.

[82] Sec. 6103(h)(1). In essence, section 6103(h)(1) authorizes officers and employees of both the Treasury Department and IRS to have access to return information on the basis of a "need to know" in order to perform a tax administration function.

[83] Sec. 6103(b)(4).

[84] Internal Revenue Manual, secs. 4.26.14.2 and 4.26.14.2.1.

REASONS FOR CHANGE

The Committee understands that there may be an inconsistency with which amounts collected by the IRS on the basis of whistleblower information are included in a whistleblower award. Accordingly, the Committee believes that it is necessary to determine whether the current regime discourages whistleblowers from reporting foreign bank accounts to the IRS.

EXPLANATION OF PROVISION

The provision requires the GAO to report on whether and to what extent the Secretary of the Treasury has paid whistleblower awards for information relating to violations of internal revenue laws under the Code and for FBAR violations under the Bank Secrecy Act.

The provision further requires TIGTA to investigate whether and to what extent the IRS is asserting FBAR penalties in lieu of Title 26 penalties.

The GAO study and the TIGTA report are to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means within 12 months of the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Whistleblower reforms (sec. 122 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 . . ."[85] 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 in-

[85] Sec. 6103(a).

formation 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.[86] 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[87] currently protect some individuals from employer retaliation, those who file claims under the Code are not explicitly afforded these same protections.

REASONS FOR CHANGE

The Committee believes that modifications to the disclosure rules are necessary to improve communication with IRS whistleblowers. The Committee also believes it is important to ensure that any additional taxpayer information received by whistleblowers is fully protected.

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 30 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. 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 explicitly protects individuals who file claims under section 7623. 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, not later than 180 days after the date on which the violation occurs. These protections are consistent with those currently available under the False Claims Act and may expose employers to substantial damages for punishing individuals whose conduct is protected, for example through reinstatement, back pay plus interest, and compensation for other special damages including litigation costs and reasonable attorneys' fees.

[86] Sec. 7431.
[87] 31 U.S.C. § 3730(h)(2).

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.

D. Reform of Laws Governing Internal Revenue Service Employees

1. Electronic record retention (sec. 131 of the bill)

PRESENT LAW

Federal executive agencies are required to maintain and preserve Federal records,[88] 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-management procedures, as implemented by the Archivist of the United States.[89] Email accounts are specifically included within the scope of records subject to the record-retention policies.[90] Each agency is required to provide instruction and guidance to persons conducting business on behalf of the agency, including employees, officers and contractors.[91]

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.[92] The Code imposes civil and criminal penalties to protect it from unauthorized use, inspection or disclosure.[93] 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.[94]

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.[95]

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[88] 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.

[89] 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).

[90] The regulations implementing the Federal Records Act are found in 36 CFR chapter XII, subchapter B—Records Management; 36 CFR sec. 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.

[91] 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.*

[92] Sec. 6103(a).

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

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

[95] 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

Continued

REASONS FOR CHANGE

The Committee believes that retaining certain e-mail records is necessary to protect the interests of taxpayers and hold IRS officials accountable for their actions. Pursuant to these goals and to increase transparency, the Committee believes it necessary to (i) incentivize the IRS to meet its December 31, 2016, deadline (as provided by a joint agency directive) concerning record retention by requiring the indefinite retention of e-mail records of all IRS personnel until TIGTA certifies that the IRS is in compliance with certain requirements to maintain and transfer e-mail records; and (ii) expand the e-mail record retention requirements going forward to cover all principal officers and specified employees, as defined.

EXPLANATION OF PROVISION

The provision codifies the joint directive regarding the management of government records issued by the Office of Management and Budget and the National Archives and Records Administration.[96] Accordingly, the provision requires that permanent and temporary e-mail records of the IRS be retained in an appropriate electronic system that supports records management and litigation requirements by December 31, 2016. In addition, the provision requires that by December 31, 2016, 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 15-year 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. 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, and is not a principal officer of the IRS.

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 September 30, 2016, and a final report on whether the IRS is in compliance with the provision by April 1, 2017, for

Records Administration, *Department of the Treasury, Internal Revenue Service, Records Management Inspection Report*, June 2015, available at *http://www.archives.gov/records-mgmt/pdf/irs-inspection.pdf.*

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

the Senate Committee on Finance and the House Committee on Ways and Means.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Sense of the Senate on revision of the Hatch Act (sec. 132 of the bill)

The Hatch Act ("Act") prohibits civilian executive branch employees of the Federal government, District of Columbia government, and some State and local employees who work in connection with federally funded programs from running for partisan political office and from engaging in certain other partisan political activities.[97] The Act was significantly amended in 1993, to allow most Federal employees to engage in voluntary, partisan political activities as long as those activities take place during their own free time, away from their federal jobs, and off of federal premises.[98] 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. Exceptions apply for the President and Vice President and for certain other top officials.

It is the Sense of the Senate that the Act[99] be revised to designate any employee of the Department of the Treasury who is primarily responsible for matters relating to exempt organizations (pursuant to section 501(c) or 527) as "further restricted." By designating these employees as "further restricted," the public can be assured that any impermissible political activity by these IRS employees that is detected will result in serious penalties, including removal from Federal employment.

3. Prohibition on rehiring former IRS employees who were involuntarily separated for misconduct (sec. 133 of the bill and sec. 7804 of the Code)

PRESENT LAW

Employees of the IRS are subject to rules governing Federal employment generally,[100] as well as rules of conduct specific to Department of the Treasury and the IRS. Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by

[97] The Hatch Act is codified at 5 U.S.C. sections 1501–1508 (applicable to State and local employees) and 5 U.S.C. sections 7321–7326 (applicable to Federal employees).

[98] Hatch Act Reform Amendments of 1993, sec. 2, Pub. L. No. 103–94, October 6, 1993.

[99] 5 U.S.C. sec. 7323(b)(2)(B)(i).

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

additional rules applicable to employees of the Department of the Treasury.[101]

The Code[102] 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,[103] including determination and designation of posts of duty.

The Restructuring Act[104] 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

[101] 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.

[102] Sec. 7803(a).

[103] Sec. 7804.

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

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.

REASONS FOR CHANGE

TIGTA reported that the IRS had rehired 141 former employees who had previously been dismissed involuntarily for cause.[105] The types of misconduct that led to the involuntary dismissals included willful failure to file tax returns, unauthorized access to confidential tax information, falsification of official forms, abuse of leave, and other violations of IRS policies. The Committee believes that rehiring persons who were fired for such misconduct is improper and poses a serious risk to the confidentiality of the information entrusted to the IRS and erodes trust in the IRS. In order to restore trust in the integrity of IRS employees and hold IRS officials accountable for their hiring practices, it is necessary to ban rehiring persons who were dismissed for cause.

EXPLANATION OF PROVISION

A former employee of the IRS who was involuntarily separated due to misconduct under subchapter A of Chapter 80 of the Code, under chapters 43 or 75 of Title 5 of the United States Code, or whose employment was terminated under section 1203 of the IRS Restructuring Act of 1998, cannot be reemployed by the IRS.

EFFECTIVE DATE

The provision is effective with respect to any employee removed from employment before, on, or after the date of enactment. However, the provision does not apply to any employee who is employed by the IRS as of the date of enactment with respect to any removal for misconduct which occurred before such date.

4. Authority to remove or transfer senior executives who fail in their performance or engage in serious misconduct (sec. 134 of the bill and sec. 7804 of the Code)

PRESENT LAW

Employees of the IRS are subject to rules governing Federal employment generally,[106] 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 addi-

[105] Inspector General for Tax Administration, Department of the Treasury, *Additional Consideration of Prior Conduct and Performance Issues Is Needed When Hiring Former Employees* (TIGTA 2015–10–006), December 30, 2014, available at h*ttps://www.treasury.gov/tigta/auditreports/2015reports/201510006fr.pdf.*

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

tional rules applicable to employees of the Department of the Treasury.[107]

The Code[108] 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,[109] including determination and designation of posts of duty.

The Restructuring Act[110] 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

[107] 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.
[108] Sec. 7803(a).
[109] Sec. 7804.
[110] Pub. L. No. 105–206, sec. 1203(b), July 22, 1998.

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 Board") under its appellate jurisdiction.[111] Members of the Senior Executive Service ("SES") have additional rights to seek informal hearings of the Board after notice of proposed adverse action by the IRS.[112]

REASONS FOR CHANGE

The Committee believes that providing additional authority to remove or demote senior executive employees for poor performance or misconduct is necessary to help restore public confidence and trust in the IRS and to increase accountability.

EXPLANATION OF PROVISION

Under the provision, the Commissioner may 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. The Commissioner has this authority to immediately remove senior executives notwithstanding the 120-day moratorium provided under current law. Within 30 days of removing or demoting a senior executive, the Commissioner is required to notify the Senate Committee on Finance, the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Ways and Means, and the House Committee on Oversight and Government Reform (herein the "Committees"'). Individual means a career appointee (as defined in section 3132(a)(4) of Title 5). Misconduct includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. Senior executive position means an SES position (as defined in section 3132(a)(2) of Title 5).

Appeal rights of the employee are provided that are similar in scope to those applicable to removal of executives at the Department of Veterans Affairs.[113] The senior executive is allowed an opportunity for an expedited review by the Board. The expedited review by the Board is to be conducted by an administrative law judge at the Board, and if the judge does not conclude their review within 21 days then the removal or demotion is final. There is no further appeal permitted beyond the administrative law judge.

If the senior executive is removed, and then 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 employee 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 de-

[111] Title 5 C.F.R, Part 1201-Practices and Procedures.
[112] 5 U.S.C. sec. 3592 and related regulations.
[113] Section 707 of "Veterans Access, Choice and Accountability Act of 2014," Pub. L. No. 113–146, (August 7, 2014).

motion. The Board is required to submit to the Committees a plan within 30 days of enactment of how the expedited review would be implemented and to implement such plan within 60 days of enactment.

The provision does not apply to an appeal of a removal, transfer, or other personnel action that was pending before the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. Limit participation of third-party contractors for sworn testimony taken pursuant to a summons from the IRS (sec. 135 of the bill and secs. 6103 and 7602 of the Code)

PRESENT LAW

The Secretary has primary authority to administer and enforce the Code.[114] The Code also creates the appointment of the Commissioner and Chief Counsel of the IRS and enumerates the powers of the Secretary that the Secretary is expected to delegate to those officers.

The duties of the Commissioner are the application and execution of the tax laws, including tax treaties to which the United States is a party, to the extent delegated by the Secretary.[115] The Commissioner is authorized to employ other persons to carry out his work, unless prohibited by the Secretary.[116] The Chief Counsel is the chief law officer for the IRS, and serves as the legal adviser to the Commissioner and his officers and employees. The enumerated duties of the Chief Counsel and his or her employees includes the representation of the Commissioner in cases before the Tax Court and the determination of which civil actions should be litigated or recommended to the Department of Justice for action.[117] Persons employed by the Chief Counsel report to the Chief Counsel, who reports directly to the Commissioner except that for matters of tax policy, Chief Counsel reports directly to the General Counsel, and for matters involving tax law or litigation not solely related to tax policy, reports to both the Commissioner and the General Counsel for the Secretary.

Employees of either the Commissioner or the Chief Counsel are employees of an executive agency,[118] subject to the criminal and civil conflict of interest statutes, the Standards of Ethical Conduct for Employees of the Executive Branch. Such provisions are also applicable to "special government employees," persons who are hired for a limited period.[119] In contrast, outside contractors are generally not subject to the same ethics standards and regulations as government employees, and do not perform the same duties as an employee.

[114] Secs. 7801 and 7805.
[115] Sec. 7803(a).
[116] Sec. 7804.
[117] Sec. 7803(b).
[118] Title 5 of the U.S. Code provides general rules for government organizations and employees, including section 105 (defines "executive agency" as any Executive department, government corporation, or independent establishment agency); sec. 2105 (defines employee) and sections 9501 through 9510 (permitting flexibility in workforce staffing, compensation and staffing).
[119] 18 U.S.C. sec. 202.

In the IRS, such contractors have generally been limited to persons needed to perform technical support functions, or to provide expert advice on nontax aspects in factual development of tax controversies.[120] In order to provide such assistance, the persons under contract may be authorized to receive return information,[121] and, pursuant to a temporary regulation published in 2014, may participate fully in the conduct of an examination, including questioning of witnesses responding to an administrative summons. In the preamble to the temporary regulations, the Secretary stated that "The assistance of persons from outside the IRS or Chief Counsel promotes efficient administration and enforcement of laws administered by the IRS, by providing specialized knowledge, skills, or abilities that the IRS officers or employees assigned to the case may not possess[,]" but goes on to say that the contractors' role is "limited to functions that are not inherently governmental, such as taking testimony by asking questions, reviewing books or papers, or analyzing other data."[122]

REASONS FOR CHANGE

Temporary regulations allow non-IRS attorneys to receive, review, and use summoned books, papers, records, or other data of taxpayers, and to be present during taxpayer interviews. The Committee believes enacting a proposal that effectively rescinds these temporary regulations is necessary to help ensure that taxpayer information is not misused or unlawfully disclosed by outside counsel.

EXPLANATION OF PROVISION

The provision bars the IRS from delegating to third-party contractors the authority under section 7602 to examine books and records, summons persons, or take sworn testimony related to a tax matter.

EFFECTIVE DATE

The provision is effective on the date of enactment for contracts in effect on or after that date.

6. Notification of unauthorized inspection or disclosure of returns and return information (sec. 136 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.

[120] See Internal Revenue Manual paragraph 35.4.8.5 (08–11–2004) "Expert Witnesses."
[121] Sec. 6103(n); Treas. Reg. sec. 301.6103(n)–1(a).
[122] See Treasury Decision 9669, "Summons Interview Regulations under section 7602," Internal Revenue Bulletin, 2014–298 (July 7, 2014); Treas. Reg. Sec. 301.7602–1T "Examination of books and witnesses (temporary)."

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.

REASONS FOR CHANGE

The Committee believes that current law requiring the Secretary to notify a taxpayer about unauthorized inspection or disclosure only if the offending party is criminally charged is insufficient. The Committee believes that additional notification is necessary to enhance the ability of a taxpayer to exercise his or her rights under the Code to bring a civil action for unauthorized 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) 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.

E. EXEMPT ORGANIZATIONS

1. Mandatory e-filing by exempt organizations (sec. 141 of the bill and secs. 511, 527, 6033, and 6104 of the Code)

PRESENT LAW

In general

The Restructuring Act[123] states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of the Restructuring Act set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.[124] Section 2001(b) of Restructuring Act requires the IRS

[123] Pub. L. No. 105–206.

[124] 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.

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.[125] The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,[126] and 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 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 corporation/S corporation 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 annual information returns in the Form 990 series. Since 2007, the smallest organizations—generally, those with gross receipts of $50,000 or less—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 assets, and types of activities of the exempt entity. The Forms 990, 990–EZ (short form), and 990–PF (private foundation) 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.[127] Finally, organizations that file Form 990–N (the e-Postcard) also must electronically file.[128]

REASONS FOR CHANGE

The Committee believes it is important to increase the transparency of, and enhance public access to information about, public charities.

[125] Sec. 6011(e).

[126] 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.

[127] 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.

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

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) in a machine-readable format as soon as practicable. It is intended that the information be provided to the public in a format that permits one to extract and perform computations on the data but not alter or manipulate the statements or returns from which the data is to be extracted.

EFFECTIVE DATE

The provision generally is effective for taxable years beginning after the 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 either or both of the organization's first two taxable years beginning after 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. Second, the provision grants IRS the discretion to delay the effective date to either or both of the organization's first two taxable years beginning 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)).

2. Repeal of substantiation exception for certain charitable contributions reported by the donee organization (sec. 142 of the bill and sec. 170(f)(8) of the Code)

PRESENT LAW

Substantiation and other formal requirements, in general

A donor who claims a deduction for a charitable contribution must maintain reliable written records regarding the contribution, regardless of the value or amount of such contribution.[129] In the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied only if the donor maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. In such cases, the recordkeeping requirements may not be satisfied by maintaining other written records.

No charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the

[129] Sec. 170(f)(17).

charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[130]

In addition, any charity receiving a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[131]

If the total charitable deduction claimed for noncash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return or the deduction is not allowed.[132] In general, taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.

Exception for certain contributions reported by the donee organization

Subsection 170(f)(8)(D) provides an exception to the contemporaneous written acknowledgment requirement described above. Under the exception, a contemporaneous written acknowledgment is not required if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, that includes the same content. "[T]he section 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method by which donee reporting may be accomplished."[133] No such final regulations have been issued.

In October 2015, the IRS issued proposed regulations that, if finalized, would have implemented the section 170(f)(8)(D) exception to the contemporaneous written acknowledgment requirement.[134] The proposed regulations provided that a return filed by a donee organization under section 170(f)(8)(D) must include, in addition to the information generally required on a contemporaneous written acknowledgment: (1) the name and address of the donee organization; (2) the name and address of the donor; and (3) the taxpayer identification number of the donor. In addition, the return must be filed with the IRS (with a copy provided to the donor) on or before February 28 of the year following the calendar year in which the contribution was made. Under the proposed regulations, donee reporting would have been optional and would have been available solely at the discretion of the donee organization. The proposed regulations were withdrawn in January 2016.

[130] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services. Sec. 170(f)(8).

[131] Sec. 6115.

[132] Sec. 170(f)(11).

[133] See IRS, Notice of Proposed Rulemaking, Substantiation Requirement for Certain Contributions, REG–138344–13 (October 13, 2015), I.R.B. 2015–41 (preamble).

[134] 134 See Prop. Treas. Reg. sec 1.170A0913(f)(18).

REASONS FOR CHANGE

Protecting sensitive taxpayer information, including Social Security numbers, against identity theft or inadvertent disclosure is a priority of the Committee. As indicated above, recently issued proposed regulations would establish a process under which certain charities would collect and be responsible for maintaining the security of such information about its donors. This places the donors at an increased risk of identity theft and potentially would have a chilling effect on donations. Although the Secretary recently withdrew the proposed regulations, the Committee remains concerned about the existence of statutory authority that might allow the Secretary to establish such a process in the future. The Committee therefore believes that the authority provided to the Secretary under section 170(f)(8)(D) should be repealed.

EXPLANATION OF PROVISION

The provision repeals the section 170(f)(8)(D) exception to the contemporaneous written acknowledgment requirement.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Prohibit the use of IRS funds for political targeting (sec. 143 of the bill)

PRESENT LAW

No provision.

REASONS FOR CHANGE

The Committee seeks to ensure that no appropriated funds are used to punish taxpayers for exercising their First Amendment rights.

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.

4. Notification to exempt organizations prior to revoking exempt status for failing to file information returns (sec. 144 of the bill and sec. 6033 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 Code)) or Form 1023–

EZ (Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Code)).[135] 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.[136] If the organization does not file Form 1023 or files a late application, it will not be treated as tax-exempt under section 501(c)(3) for any period prior to the filing of an application for recognition of tax exemption.[137] 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.[138]

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 seek formal recognition of tax-exempt status from the IRS. Rather, organizations are exempt under these provisions if they satisfy the requirements applicable to such organizations. However, 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)).

If such an organization voluntarily requests a determination letter by filing Form 1024 within 27 months of the end of the month in which it was formed, its determination of exempt status, once provided, generally will be effective as of the organization's date of formation.[139] If, however, the organization files Form 1024 after the 27-month deadline has passed, its exempt status will be for-

[135] See sec. 508(a).

[136] 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 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.

[137] Treas. Reg. sec. 1.508–1(a)(1).

[138] 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).

[139] Rev. Proc. 2016–5, sec. 11, 2016–01 I.R.B. 188.

mally recognized only as of the date the organization filed Form 1024.

Notwithstanding the foregoing, a section 501(c)(4) organization must provide to the Secretary notice of its formation and intent to operate as such an organization. [140] The notice generally must be provided no later than 60 days following the organization's establishment. Within 60 days of receipt of a notice of an organization's formation and intent to operate as an organization described in section 501(c)(4), the Secretary must issue to the organization an acknowledgment of the notice. The notice requirement is generally effective for organizations organized after December 18, 2015.

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.[141] 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 schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.[142]

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." [143] 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

[140] See sec. 506.

[141] 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.

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

[143] Treas. Reg. sec. 1.501(a)–1(a)(2).

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).[144] 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.[145]

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. Contributions made to organizations by donors who are unaware of the revocation or change in status ordinarily will be deductible if made on or before the date of publication of the announcement.

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

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. 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.

REASONS FOR CHANGE

Under present law, the IRS does not have the discretion to reinstate an organization's exempt status without requiring a formal reapplication for exempt status (Form 1023 or Form 1024) if the organization has had its exempt status automatically revoked for failing to file information returns. This reapplication requirement has increased the IRS's backlog of unprocessed applications. Furthermore, present law does not require the IRS to notify an organization that has already failed to file a return for two consecutive years that it is at risk of revocation if it fails to file for a third consecutive year. Many of the affected organizations are small and poorly funded, yet face increased demand for their services from the communities in which they operate. As a result, requiring re-

[144] Rev. Proc. 2016–5, sec. 12, 2016–01 I.R.B. 188.
[145] *Ibid.*
[146] Sec. 6033(j).

application can pose a significant financial burden on these organizations and their communities. The Committee therefore believes it is appropriate to require the IRS to notify organizations that are at risk of losing exempt status for failure to file and to permit the IRS to reinstate an organization's exempt status without requiring reapplication in certain situations.

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 not later than 270 days after the date of the second failure. 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 consequences of failing to file such a return or notice by the date of the next filing deadline. 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).

The provision also provides that the Secretary may reinstate the exempt status of an organization that had its exempt status automatically revoked for failing to file an information return or notice for three consecutive years if (1) the organization demonstrates to the satisfaction of the Secretary that it did not receive the above-described notice from the IRS, and (2) files an annual return or notice for the current year. Under such circumstances, the exempt status is reinstated as of the date of revocation.

EFFECTIVE DATE

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

TITLE II—PROTECTION OF TAXPAYERS FROM IDENTIFY THEFT AND TAX FRAUD

1. Single point of contact for identity theft victims (sec. 201 of the bill)

PRESENT LAW

Disparate elements in the tax laws and administration are implicated in identity theft. Tax-related identity theft can generally occur in one of two ways. 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 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 withholdings. 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 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 case.[147] Subsequently reorganized and renamed the Identity Theft Victim Assistance ("IDTVA") organization, it 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, refund(s) issued, etc.[148] The IDTVA organization's work is coordinated by the IRS' Identity Protection Program through the auspices of an oversight office within the Wage and Investment Operating Division.[149]

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

REASONS FOR CHANGE

The Committee is concerned that taxpayers who are victimized by identity thieves experience delays in obtaining their tax refunds, and find it difficult to work with multiple offices within the IRS. Requiring a centralized point of contact at the IRS to provide the necessary level of personal assistance to these victims is a commonsense measure that will simplify the resolution of cases for taxpayers. According to testimony provided by GAO recently, the IRS has improved its customer service to victims of identity theft, despite declines in customer service elsewhere.[150] Although the IRS has shown flexibility in adapting new procedures for handling of identity theft cases, the Committee believes providing a centralized point of contact for a victim should not be left to the discretion of the IRS.

EXPLANATION OF PROVISION

The provision requires the Secretary of the Treasury (or his or her delegate) to establish and implement procedures to provide a single point of contact at the IRS throughout the processing of the taxpayer's case for taxpayers adversely affected by identity theft. The single point of contact is required to track the taxpayer's case to completion and coordinate with other specialized units to resolve case issues as quickly as possible.

The single point of contact may be a team or subset of specially trained employees who can work across functions to resolve problems for the victim and who is 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.

EFFECTIVE DATE

The provision is effective on the date of enactment.

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[147] TIGTA, Ref. No. 2012–40–050, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (May 2012).

[148] 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.*

[149] Internal Revenue Service, *Identity Protection and Victim Assistance,* Internal Revenue Manual Chapter 23, paragraph 25.23.1 et seq. (September 2, 2015).

[150] Government Accountability Office, Tax Filing: *IRS Needs a Comprehensive Customer Service Strategy and Needs to Better Combat Identity Theft Refund Fraud and Protect Taxpayer Data* (GAO–16–578T), April 19, 2016, available at *http://www.gao.gov/products/GAO-16-578T.*

2. Protecting taxpayers from telephone scams (sec. 202 of the bill)

PRESENT LAW

TIGTA is not currently required to report on potential technological solutions to help protect consumers from so-called IRS phone scams.

REASONS FOR CHANGE

The Committee has observed the steep growth in the number of telephone scams involving impersonation of IRS agents or other Federal officials in recent years. The large volume of complaints about such telephone calls, the amount of money lost by the victims and the ability of the perpetrators to shift their activities and thwart law enforcement efforts is of great concern to the Committee. Accordingly, the Committee believes that a thorough analysis of the problem is needed to develop more effective strategies to prevent such scams.

EXPLANATION OF PROVISION

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 telephone calls from individuals who are falsely claiming to be calling from or on behalf of the IRS. The report would also identify telephone companies that offer services designed to help taxpayers protect themselves from such scams. The report is required within 12 months after the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Information on identity theft and tax scams (sec. 203 of the bill)

PRESENT LAW

No provision.

REASONS FOR CHANGE

The Committee believes that providing information to taxpayers regarding tax scams will help protect taxpayers from potential perpetrators.

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.

4. Report on Federal employee wage and tax withholding reporting to State tax agencies (sec. 204 of the bill)

PRESENT LAW

Information returns concerning certain payments

Present law requires persons to file an information return concerning certain transactions with other persons.[151] These returns are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such income tax returns are correct and complete.

One of the primary provisions requires every person engaged in a trade or business who makes payments aggregating $600 or more in any taxable year to a single payee in the course of the payor's trade or business to file a return reporting these payments.[152] Payments subject to this reporting requirement include fixed or determinable income or compensation, but do not include payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements. Other reporting requirements are provided for various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock) paid to U.S. persons.[153]

The person filing an information return with respect to payments described above is required to provide the recipient of the payment with a written payee statement showing the aggregate payments made and contact information for the payor.[154] The statement must be supplied to payees by the payors by January 31 of the following calendar year.[155] Payors generally must file the information return with the IRS on or before the last day of February of the year following the calendar year for which the return must be filed.[156]

Information returns regarding wages paid employees

Payors must report wage amounts paid to employees on information returns and provide the employee with an annual statement showing the aggregate payments made and contact information for the payor by January 31 of the following calendar year.[157] For wages paid to, and taxes withheld from, employees, the payors must file an information return with the Social Security Administration ("SSA") by January 31 of the year following the calendar year for which the return must be filed.[158]

[151] Secs. 6041–6050W. If the payment is by the U.S. or a State, or political subdivision, or any agency or instrumentality of any of these, the information reporting requirements for Forms 1096 and 1099 apply to officers or employees appropriately designated to make such returns. Treas. sec. 1.6041–1(i).

[152] Sec. 6041(a). The information return generally is submitted electronically as a Form 1099 (e.g., Form 1099–MISC, Miscellaneous Income) or Form 1096, Annual Summary and Transmittal of U.S. Information Returns, although certain payments to beneficiaries or employees may require use of Forms W–3 or W–2, respectively. Treas. Reg. sec. 1.6041–1(a)(2).

[153] Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest) and the Treasury regulations thereunder.

[154] Sec. 6041(d).

[155] Sec. 6041(d).

[156] Treas. Reg. sec. 31.6071(a)–1(a)(3)(i).

[157] Sec. 6051(a). If the payment is by the United States or a State, or political subdivision, or any agency or instrumentality of any of these, the information reporting requirements for Forms W–3 and W–2 apply to officers or employees appropriately designated to make such returns. Treas. sec. 1.6041–1(i).

[158] Pub. L. No. 114–114, PATH Act, Div. Q, sec. 201. For returns and statements relating to calendar years after 2015, the information returns containing wages reportable on Form W–2

Continued

Under the combined annual wage reporting ("CAWR") system, the SSA and the IRS have an agreement, in the form of a Memorandum of Understanding, to share wage data and to resolve, or reconcile, the differences in the wages reported to them. Employers submit Forms W–2, Wage and Tax Statement (listing Social Security wages earned by individual employees), and W–3, Transmittal of Wage and Tax Statements (providing an aggregate summary of wages paid and taxes withheld) directly to SSA.[159] After it records the Forms W–2 and W–3 wage information in its individual Social Security wage account records, SSA forwards the Forms W–2 and W–3 information to IRS.[160]

REASONS FOR CHANGE

The Committee believes that it may be possible to improve the process by which certain Federal agencies provide Federal employee wage and tax withholding information to State tax agencies. The Committee has reason to believe that the current process 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.

EXPLANATION OF PROVISION

The provision requires the GAO within 12 months after the date of enactment to review and prepare a report to the Senate Committee on Finance and the House Committee on Ways and Means on the process and timeline by which the following entities provide Federal employee wage and tax withholding information to State tax agencies, and provide recommendations for improvements where appropriate: (1) The National Finance Center of the Department of Agriculture; (2) The Defense Finance and Accounting Service of the Department of Defense; (3) The National Business Center of the Department of the Interior; and (4) the National Payroll Branch of the General Services Administration.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. Notification of suspected identity theft (sec. 205 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.[161] The definition

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and nonemployee compensation are due on the same date as the due date for employee and payee statements, and such returns are no longer eligible for the extended filing date for electronically filed returns under section 6071(b). For this purpose, Nonemployee compensation generally includes fees for professional services, commissions, awards, travel expense reimbursements, or other forms of payments for services performed for the payor's trade or business by someone other than in the capacity of an employee.

[159] Pub. L. No. 94–202, sec. 232, 89 Stat. 1135 (1976) (effective with respect to statements reporting income received after 1977).

[160] Employers submit quarterly reports to IRS on Form 941, Employer's Quarterly Federal Tax Return, regarding aggregate quarterly totals of wages paid and taxes due. IRS then compares the W–3 wage totals to the Form 941 wage totals.

[161] Sec. 6103(a).

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.[162] 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.[163] With respect to fraudulent tax returns, if the victim's name and Social Security 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.[164]

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 substan-

[162] Sec. 6103(b)(2). Return information is:

• 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,

• any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

• any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and

• any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

Return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

[163] 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).

[164] See, Internal Revenue Service, Instructions for Requesting Copy of Fraudulent Returns (March 28, 2016), available at *https://www.irs.gov/Individuals/Instructions-for-Requesting-Copy-of-Fraudulent-Returns.*

tiated and, if the subject has exhausted all reasonable appeals, any action taken.[165]

REASONS FOR CHANGE

The Committee is aware that victims of identity theft are often unaware that their identity has been stolen or compromised. As a result, they are unable to take timely measures to limit damage from the theft and to secure their identity against further compromise. The Committee is also aware that successful prosecution of identity thieves requires that the investigators exercise discretion in disclosing information to victims about an ongoing investigation. However, the Committee believes that victims must be provided an opportunity to safeguard their financial information and assets as soon as practicable.

The Committee also is aware that the unauthorized use of the identity of an individual to obtain employment causes severe hardship for the victims of this theft, including accusations of underreporting income and the loss of income-related benefits. Accordingly, to help protect these victims, in making a determination as to whether there has been or may have been an unauthorized use of an identity for purposes of notifying the victim, the IRS should be required to review information obtained from both its own internal processes on data mismatches as well as the information provided to the IRS by the Social Security Administration.

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.

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-re-

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

lated 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 of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the "Taxpayer Protection Act of 2016" as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2016 through 2026:

ESTIMATED BUDGET EFFECTS OF THE "TAXPAYER PROTECTION ACT OF 2016," AS REPORTED BY THE COMMITTEE ON FINANCE

Fiscal Years 2016 - 2026

[Millions of Dollars]

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
I. Protection of Taxpayer Rights														
A. Reform of Assessment and Collection Procedures														
1. Report on IRS authority to compromise tax matters	nlt 12ma DOE						*No Revenue Effect*							
2. Report on opportunity for hearing by the IRS Office of Appeals	nlt 12ma DOE						*No Revenue Effect*							
3. Extending time limit for contesting IRS levy	[1]						*Negligible Revenue Effect*							
4. Individuals held harmless on improper levy on retirement plans	[2]	---					*Negligible Revenue Effect*							
5. Report on IRS audit criteria	nlt 2ya DOE						*No Revenue Effect*							
B. Assistance to Individual Taxpayers in Filing Returns														
1. Return preparation programs for low-income taxpayers	DOE						*No Revenue Effect*							
2. Limiting redisclosures and uses of consent-based disclosures of tax return information	dma DOE						*No Revenue Effect*							
3. Clarification of equitable relief from joint liability	porfopo/a DOE						*Negligible Revenue Effect*							
4. Modification of user fees requirements for installment agreements	[3]	[4]	1	2	3	5	6	6	6	6	6	7	18	49
5. Reports on Future State and similar online initiatives	nlt 12ma DOE						*No Revenue Effect*							
6. Notice from IRS regarding closure of Taxpayer Assistance Centers	DOE						*Negligible Revenue Effect*							
7. Recovery of certain improperly withheld severance payments	[5]	---	[6]	[6]	---	---	---	---	---	---	---	---	[6]	[6]
C. Whistleblower Protections														
1. Reports concerning whistleblower awards	nlt 12ma DOE						*No Revenue Effect*							
2. Whistleblower reforms	dma DOE & DOE						*Negligible Revenue Effect*							
D. Reform of Laws Governing Internal Revenue Service Employees														
1. Electronic record retention	DOE						*No Revenue Effect*							
2. Sense of the Senate on revision of the Hatch Act	DOE						*No Revenue Effect*							
3. Prohibition on rehiring former IRS employees who were involuntarily separated for misconduct	[7]						*Negligible Revenue Effect*							

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
4. Authority to remove or transfer senior IRS executives who fail in their performance or engage in serious misconduct	DOE	*Negligible Revenue Effect*												
5. Limit participation of third-party contractors for sworn testimony taken pursuant to a summons from the IRS	DOE	[6]	-5	-10	-11	-11	-12	-12	-13	-13	-14	-15	-48	-115
6. Notification of unauthorized inspection or disclosure of returns and return information	dpa 180da DOE	*No Revenue Effect*												
E. Exempt Organizations														
1. Mandatory e-filing by exempt organizations	generally tyba DOE	*No Revenue Effect*												
2. Repeal of substantiation exception for certain charitable contributions reported by the donee organization	DOE	*Negligible Revenue Effect*												
3. Prohibit the use of IRS funds for political targeting	DOE	*No Revenue Effect*												
4. Notification to exempt organizations prior to revoking exempt status for failing to file information returns	narrtbfa 12/31/15	*Negligible Revenue Effect*												
Total of Protection of Taxpayer Rights		**[8]**	**-4**	**-8**	**-8**	**-6**	**-6**	**-6**	**-7**	**-7**	**-8**	**-8**	**-30**	**-66**
II. Protection of Taxpayers from Identity Theft and Tax Fraud														
1. Single point of contact for identity theft victims	DOE	*No Revenue Effect*												
2. Protecting taxpayers from telephone scams	nlt 12ma DOE	*No Revenue Effect*												
3. Information on identity theft and tax scams	DOE	*No Revenue Effect*												
4. Report on Federal employee wage and tax withholding reporting to State tax agencies	nlt 12ma DOE	*No Revenue Effect*												
5. Notification of suspected identify theft	Dma DOE	*No Revenue Effect*												
Total of Protection of Taxpayers from Identity Theft and Tax Fraud		***No Revenue Effect***												
NET TOTAL		**[8]**	**-4**	**-8**	**-8**	**-6**	**-6**	**-6**	**-7**	**-7**	**-8**	**-8**	**-30**	**-66**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

dma = disclosures made after
Dma = determinations made after
DOE = date of enactment
dpa = determinations proposed after
narrtbfa = notices and returns required to be filed after
nlt = not later than
porfopo/a = petitions or requests filed or pending on or after
tyba = taxable years beginning after
2ya = 2 years after
12ma = 12 months after
180da = 180 days after

[Footnotes for the Table appear on the following page]

Footnotes for the Table:

[1] Effective for levies made after the date of enactment; and levies made on or before the date of enactment provided that the two nine-month periods have not expired as of the date of enactment.
[2] Effective for levied amounts, and interest thereon, returned to individuals after December 31, 2016.
[3] Effective for agreements entered into on or after the date that is 60 days after the date of enactment.
[4] Gain of less than $500,000.
[5] Effective not later than one year after the date of enactment for identification, and not later than 15 months after the date of enactment for report.
[6] Loss of less than $500,000.
[7] Effective with respect to any employee removed from employment before, on or after the date of enactment.
[8] Negligible revenue effect.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 ("Budget Act"),[166] the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill have a negligible effect on tax expenditures (see revenue table in part A., above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

Motion to report the bill

In compliance with paragraph 7(b) of rule XXVI of the standing rules of the Senate, the Committee states that, with a majority and quorum present, the "Taxpayer Protection Act of 2016," as modified by the Chairman's modifications to the mark and amended by the Committee, was ordered favorably reported by voice vote on April 20, 2016.

Votes on amendments

The Committee approved by voice vote the following three amendments en bloc:

1. An amendment by Senators Grassley and Thune to require the Secretary to notify a taxpayer if the IRS or a 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;
2. An amendment by Senators Brown, Cardin, Stabenow, Bennet, Schumer, and Menendez to raise the cap for the IRS VITA matching grant program allocation to $30 million, subject to appropriation override; and
3. An amendment by Senator Coats to require that the IRS provide notice to victims of employment-related identity theft.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

[166] Pub. L. No. 93–344.

Impact on individuals and businesses, personal privacy and paperwork

The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

B. Unfunded Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995.

C. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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