DESCRIPTION OF H.R. 5444
THE "TAXPAYER FIRST ACT"

Scheduled for Markup
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HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
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JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5444, the "Taxpayer First Act." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5444, the "Taxpayer First Act"* (JCX-9-18), April 11, 2018. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (the "Code"), unless otherwise stated.

TITLE I – INDEPENDENT APPEALS PROCESS

1. Establishment of Internal Revenue Service Independent Office of Appeals

Present Law

The IRS Reform and Restructuring Act of 1998 ("RRA98") directed the Commissioner of Internal Revenue to restructure the Internal Revenue Service ("IRS") by establishing and implementing an organizational structure that features operating units serving particular groups of taxpayers with similar needs and which ensured an independent appeals function within the IRS.[2] Although the Code does not mandate the existence of an independent office within the IRS to review administrative determinations, it does require an independent administrative review of certain determinations,[3] and further requires that the Commissioner ensure that the duties of IRS employees are executed in a manner consistent with rights inferred from other Code provisions.[4]

Under the general authority of the Secretary to interpret the Code and that of the Commissioner to administer the Code and to employ the persons necessary to do so,[5] the IRS includes an Office of Appeals ("Appeals"), headed by a Chief, Appeals.[6] That office traditionally functions as the settlement arm of the IRS. In doing so, it reviews administrative determinations arising both from collection and examination activities, and attempts to resolve them without need for litigation, including by using alternative dispute resolution methods such as arbitration or mediation. As a result, review of administrative actions is generally available prior to payment of any tax underlying the controversy. Exceptions occur, such as cases in which inadequate time remains on the limitations period for assessment and collection and the

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[2] Pub. L. No. 105-206, sec. 1001(a).

[3] See, *e.g.*, sections 6320 (notice and opportunity for hearing upon filing of notice of lien), 6330 (notice and opportunity for hearing before levy), 7122 (rejection of a proposed offer-in-compromise or installment agreement), as well as 7123 (alternative dispute resolution procedures).

[4] Section 7803, as amended in 2015, embraces the taxpayer rights as general principles to be included in the training and evaluation of all employees.

[5] Secs. 7803(a) (The 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)) and 7804 (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, including determination and designation of posts of duty), and 7805 (Secretary authority to interpret the Code).

[6] According to its website, the Office of Appeals and its predecessors have existed since 1927. https://www.irs.gov/compliance/appeals/appeals-an-independent-organization.

taxpayer refuses to extend the limitations period, or in which the only arguments raised by the taxpayer are frivolous positions[7] that were previously identified by such in published guidance.

Similarly, if a case has reached a point at which litigation is initiated, the availability of consideration by Appeals may be limited. First, authority to settle cases referred to the Department of Justice for defense or initiation of litigation rests solely with that Department and are not eligible for referral to Appeals.[8] The terms under which a case pending in the United States Tax Court ("Tax Court") may be referred to Appeals are described in detail in published guidance that centralizes the decision to withhold a case from Appeals to assure consistent standards are applied.[9]

Employees of Appeals are compensated in accordance with the rules governing Federal employment generally.[10]

Description of Proposal

The proposal codifies the requirement of an independent administrative appeals function by establishing within the Internal Revenue Service an office to be known as the Internal Revenue Service Independent Office of Appeals ("Independent Appeals"), and to be headed by an official known as the Chief of Appeals, as described below. The purposes and duties of the office, as well as the taxpayers' general right to seek consideration by that office, subject to certain limitations, are described below.

Chief of Appeals and staff

The proposal grants authority to the Administrator of the IRS[11] to appoint the Chief of Appeals, who is to be compensated at the same rate as the highest rate of basic pay established for the Senior Executive Service.[12] The appointment is not subject to the rules under Title 5 of the United States Code that govern competitive service or the Senior Executive Service. The Chief of Appeals reports directly to the Administrator of the IRS. The person appointed to the position is required to have experience in a broad range of Federal tax law controversies and management of large service organizations.

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[7] Sec. 6702(c).

[8] Sec. 7122.

[9] Rev. Proc. 2016-22, 26 C.F.R. sec. 601.106. Exceptions to the general rule in favor of requiring Appeals consideration include cases that are withheld in the interests of sound tax administration, among other reasons.

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

[11] "Administrator" is used in lieu of "Commissioner" to reflect the proposed change made at section 401 of H.R. 5444, as described *infra*.

[12] 5 U.S.C. sec. 5382.

The proposal also confirms that the Chief of Appeals and her employees are to have access to legal assistance and advice from attorneys within the Office of Chief Counsel about cases pending at Independent Appeals. Chief Counsel is responsible for ensuring that the attorneys are able to provide independent advice, *i.e.*, that the attorneys assigned to answer inquiries from Independent Appeals were not involved in advising the IRS employees working on the case prior to its referral to Independent Appeals, nor are they involved in preparation of the case for litigation.

Functions of the Independent Appeals Office

The Independent Appeals Office is intended to continue to resolve tax controversies and review administrative decisions of the IRS in a fair and impartial manner, for the purpose of enhancing public confidence, promoting voluntary compliance, and ensuring consistent application and interpretation of the Federal tax laws. Resolution of tax controversies in this manner is generally available to all taxpayers, subject to reasonable exceptions that the Secretary may provide. Thus, cases of a type that are referred to Appeals under present law remain eligible for referral to Independent Appeals.

The proposal includes a savings provision that requires application of rules similar to those in RRA98 to ensure continuity of the validity of administrative and legal proceedings, including legal documents related to such proceedings and existing delegations of authority.

Taxpayer access to case files

The proposal requires that the administrative case file referred to Independent Appeals be available to certain individual and small business taxpayers. Eligible taxpayers are individuals with adjusted gross income below $400,000 and entities with gross receipts below $5 million. Under the proposal, eligible taxpayers may review the non-privileged portions of materials developed by the IRS for its administrative case file not later than ten days prior to the first conference with Independent Appeals. In providing the materials, the IRS need not produce for the taxpayer the documents that were initially provided to the IRS by the taxpayer. In addition, the taxpayer may elect to waive the ten-day period and accept access to the materials on the date of the scheduled conference.

Cases not referred to Independent Appeals

In cases in which the IRS has issued a notice of deficiency to a taxpayer, the proposal requires that the Administrator prescribe notice and protest procedures for taxpayers whose request for Independent Appeals consideration is denied. Such protest procedures will be available to taxpayers who have received a notice of deficiency in cases other than those involving only frivolous positions within the meaning of the Code.[13] The procedures must include a requirement that the Administrator notify a taxpayer of the denial in a written statement that includes a statement of the facts underlying the basis for the denial of the request together with a detailed explanation of the reasons for denying the request for referral to Independent Appeals. In addition, the written notice must advise the taxpayer of the right to protest the denial

[13] Sec. 6702(c).

of the request to the Administrator and include information about how to lodge such a protest must be included in the written notice of the denial.

The Administrator must provide to Congress an annual written report detailing the number of denials of access to Independent Appeals and the reasons for such denials.

Effective Date

The proposal is generally effective upon the date of enactment, except with regard to the portion of the proposal allowing taxpayer access to case files, which is effective for cases in which the conference is held more than one year after the date of enactment.

TITLE II − IMPROVED SERVICE

1. Comprehensive customer service strategy

Present Law

The Code provides that the Commissioner of the Internal Revenue Service ("the Commissioner") has such duties and powers as prescribed by the Secretary.[14] 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. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, the delivery of high quality and timely service to reduce taxpayer burden and encourage compliance is identified as Goal I.[15]

Within the IRS, the Office of the Taxpayer Advocate ("OTA") is expected to represent taxpayer interests independently in disputes with the IRS. The OTA has four principal functions: (1) to assist taxpayers in resolving problems with the IRS; (2) to identify areas in which taxpayers have problems in dealing with the IRS; (3) to propose changes in the administrative practices of the IRS to mitigate problems in areas in which taxpayers have issues in dealing with the IRS; and (4) to identify potential legislative changes which may be appropriate to mitigate such problems.[16] The National Taxpayer Advocate ("NTA") supervises the OTA. The NTA reports directly to the Commissioner.

Description of Proposal

The proposal requires the Secretary, in consultation with the National Taxpayer Advocate ("NTA"), to develop a comprehensive strategy for customer service and to submit such plan to Congress not later than the date which is one year after the date of enactment. The strategy will include: (1) a plan to determine appropriate levels of online services, telephone call back services, and training of employees providing customer services, based on best practices of businesses and customer expectations; (2) an assessment of all services that the IRS can co-locate with other Federal services or offer as self-service options; (3) proposals for long-term improvements over the next 10 fiscal years, with appropriate short-term goals over the current and following fiscal year and mid-term goals over the next three to five fiscal years; (4) a plan to update in a user friendly fashion and within two years of the date of enactment, guidance and training materials, including the Internal Revenue Manual, for customer service employees of the IRS to reflect such strategy; and (5) metrics for measuring the IRS's progress in implementing its strategy.

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[14] Sec. 7803(a).

[15] See *Internal Revenue Service Strategic Plan FY2014 – 2017*, Publication 3744 (Rev. 6-2014), available at https://www.irs.gov/pub/irs-pdf/p3744.pdf.

[16] Sec. 7703(c).

Effective Date

The proposal is effective on the date of enactment.

2. IRS Free File Program

Present Law

The IRS has entered into cooperative relationships with commercial return preparation service providers (known as the Free File Alliance) to provide free Federal tax preparation and electronic filing services to eligible low-income or elderly taxpayers. Some of these providers also offer free State tax preparation. This arrangement is commonly known as the Free File Program. Taxpayers generally must select a designated service provider through the IRS's website to access commercial online software provided by the Free File Alliance companies to prepare and file their tax returns. To qualify, taxpayers must have adjusted gross income (AGI) of $66,000 or less (for 2017 returns). Each participating company sets its own eligibility requirements and not all taxpayers will qualify to use the software of all companies. There is no fee for taxpayers using the Free File Program, and Free File Alliance companies also do not pay any fee to the IRS to participate in the program.

Description of Proposal

The proposal requires the Secretary, or the Secretary's delegate, in cooperation with the private sector, to maintain the current IRS Free File Program that provides free individual income tax preparation and electronic filing services to the lowest 70 percent of taxpayers by adjusted gross income as ranked by the prior year taxpayer adjusted gross income data. The proposal requires the IRS Free File Program to continue to make available to taxpayers at all income levels a basic, online electronic fillable forms utility. The proposal further requires the IRS Free File Program work with State government agencies to enhance and expand the use of the program to provide needed benefits to taxpayers while reducing the cost of processing returns.

The proposal also requires the Secretary, or the Secretary's delegate, in cooperation with the private sector, to identify and implement innovative new program features to improve and simplify the taxpayer experience with completing and filing individual tax returns.

Effective Date

The proposal is effective on the date of enactment.

3. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise

Present Law

The IRS is authorized to enter into offers-in-compromise under which the taxpayer and Federal government agree that a tax liability may be satisfied by payment of less than the full

amount owed.[17] An offer-in-compromise may be accepted on one of three grounds: (1) doubt as to liability, available in cases in which the validity of the actual tax liability is in question; (2) doubt as to collectability based on lack of sufficient assets from which the tax, interest, and penalties can be paid in full; or (3) effective tax administration, applicable in a case in which collection in full would cause the taxpayer economic hardship such that compromise rather than collection would better encourage tax compliance.[18] If the unpaid tax liabilities total $50,000 or more, an offer-in-compromise can be accepted only if a public report is filed, supported by a written opinion from the IRS Chief Counsel, stating the reasons for the compromise, the amounts of assessed tax, penalties and interest, and the amounts actually paid pursuant to the offer-in-compromise.[19]

Taxpayers making a lump sum offer-in-compromise must include a nonrefundable payment of 20 percent of the lump sum with the initial offer (herein, "upfront partial payment").[20] The IRS waives this upfront partial payment when an offer is submitted by a low-income taxpayer, defined as an individual who falls at or below 250 percent of the poverty guidelines published by the Department of Health and Human Services, or such other measure that is adopted by the Secretary (herein, "low-income taxpayer").[21] Taxpayers seeking an offer-in-compromise involving periodic payments must provide a nonrefundable payment of the first installment that would be due if the offer were accepted.[22]

In general, a taxpayer is required to provide a user fee for processing the offer-in-compromise.[23] However, no fee will be charged if an offer either is based solely on doubt as to liability or is made by a low-income taxpayer.[24]

Description of Proposal

The proposal codifies the current low-income taxpayer exception with respect to any user fee or upfront partial payment imposed with respect to any offer-in-compromise. The proposal makes clear that the determination of low-income is based on the individual's adjusted gross income as determined for the most recent tax year for which such information is available.

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[17] Sec. 7122.

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

[19] Sec. 7122(b); Treas. Reg. sec. 1.7122-1(e)(6). The $50,000 threshold was raised from $500 in 1996. Sec. 503 of the Taxpayer Bill of Rights 2, Pub. L. No. 104-168.

[20] Sec. 7122(c)(1)(A).

[21] Notice 2006-68, 2006-31 I.R.B. 105, July 31, 2006.

[22] Sec. 7122(c)(1)(B).

[23] Treas. reg. sec. 300.3(b). The fee for processing an offer to compromise on or after January 1, 2014, is $186.

[24] Treas. reg. sec. 300.3(b)(i) and (ii).

Effective Date

The proposal applies to offers-in-compromise submitted after the date of enactment.

TITLE III − SENSIBLE ENFORCEMENT

1. Internal Revenue Service seizure requirements with respect to structuring transactions

Present Law

The Bank Secrecy Act ("BSA") mandates a reporting and recordkeeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.[25] The reporting requirements are imposed on individuals, financial institutions, and non-financial trades and businesses that act similar to financial institutions.[26] The requirements include reporting currency transactions exceeding $10,000.

To circumvent these reporting requirements, persons sometimes structure cash transactions to fall below the $10,000 reporting threshold (referred to as "structuring"). In other words, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a financial institution, an individual conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, and to conceal income earned legally in order to evade the payment of taxes. Structuring (or attempts to structure) for the purpose of evading the reporting and record keeping requirements[27] is subject to both civil and criminal penalties.[28]

Present law authorizes forfeiture of property involved in transactions or attempted transactions[29] in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.[30]

The Secretary has delegated responsibility for implementing and enforcing the BSA to the Director, Financial Crimes Enforcement ("FinCEN"), who in turn re-delegated responsibility for civil compliance with the law to various Federal agencies including the IRS.[31] The scope of

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[25] The Bank Secrecy Act, 31 U.S.C. secs. 5311-5332.

[26] 31 U.S.C. sec. 5312(a)(1).

[27] 31 U.S.C. sec. 5324(a); 31 U.S.C. sec 5322.

[28] A person who willfully violates the law is subject to a fine of not more than $250,000, or imprisonment for not more than five years, or both. 31 U.S.C. sec. 5324(a); 31 U.S.C. sec. 5322.

[29] 31 U.S.C. sec. 5317(c)(2).

[30] See 18 U.S.C. sec. 981.

[31] Treasury Directive 15–41 (December 1, 1992). At the time of the initial delegation, FinCEN was an entity created by regulatory action, but has since been explicitly authorized by statute. 31 U.S.C. sec. 310.

that delegation of authority was expanded by the USA PATRIOT Act of 2001,[32] and includes authority to determine and enforce civil penalties.[33] The IRS administers its delegated authority under the BSA through the IRS Small Business/Self-Employed Division, with assistance from the IRS Criminal Investigation Division ("IRS-CID").

If a person prevails in a civil forfeiture proceeding involving seizure of currency, the United States is liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant, post-judgment interest, and interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument as well as imputed interest for any period for which no interest was paid.[34]

Prior to October 2014, the IRS provided partial relief in structuring transactions involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required its criminal investigation division to consider additional mitigating or aggravating factors. On October 17, 2014, IRS-CID issued guidance on how it will conduct seizures and forfeitures in its structuring cases.[35] Pursuant to this guidance, the IRS will not pursue seizure and forfeiture of funds associated only with so-called "legal source" structuring unless (1) there

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[32] Treasury Order 180-01, available at https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx, delegating authority to FinCEN. For a discussion of the relationship between FinCEN and the agencies to which it re-delegated authority, see, Office of Inspector General, "TERRORIST FINANCING/MONEY LAUNDERING: Responsibility for Bank Secrecy Act Is Spread Across Many Organizations," OIG-08-030 (April 9, 2008), available at https://www.treasury.gov/about/organizational-structure/ig/Documents/oig08030.pdf.

[33] 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 a related criminal action. 31 U.S.C. sec. 5321(b)(2).

[34] 28 U.S.C. sec. 2465(b)(1). The imputed interest that may be paid under that section is the amount that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period for which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

[35] Memorandum for Special Agents in Charge Criminal Investigation, October 17, 2014, available at http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf; Written Testimony of John A. Koskinen and Richard Weber, House Committee on Ways and Means Subcommittee on Oversight on "Financial Transaction Structuring," May 25, 2016, available at https://www.irs.gov/uac/newsroom/written-testimony-of-john-a-koskinen-and-richard-weber-before-the-house-committee-on-ways-and-means-subcommittee-on-oversight-on-financial-transaction-structuring-may-25-2016; New IRS Special Procedure to Allow Property Owners to Request Return of Property, Funds in Specific Structuring Cases, June 16, 2016, available at https://www.irs.gov/uac/newsroom/new-irs-special-procedure-to-allow-property-owners-to-request-return-of-property-funds-in-specific-structuring-cases; Letter to Chairman Roskam and Ranking Member Lewis summarizing planned actions, June 10, 2016, available at http://waysandmeans.house.gov/wp-content/uploads/2016/06/6.9-Roskam-Lewis-Response-Letter-and-Enclosure.pdf.

are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

Description of Proposal

In the case of a suspected structuring violation, the IRS may only pursue seizure or forfeiture of assets if either the property to be seized was derived from an illegal source or the transactions were structured for the purpose of concealing a violation of a criminal law or regulation other than rules against structuring.

The proposal establishes post-seizure notice and review procedures for IRS seizures based on suspected structuring violations. The IRS must, within 30 days, make a good faith effort to find the owner of the property seized and inform him or her of certain post-seizure hearing rights provided under the proposal. This 30-day notice requirement may be extended if the IRS can establish probable cause of an imminent threat to national security or personal safety. If a notice recipient requests a court hearing within 30 days of the notice, the property is required to be returned unless the court finds that there is probable cause to believe that the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than the structuring proposals of the BSA.

Effective Date

The proposal is effective on the date of enactment.

2. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction

Present Law

Nothing in the Bank Secrecy Act ("BSA") or the administrative guidance issued by the IRS affects the Federal tax treatment of the interest that may be paid to a successful litigant in civil asset forfeiture proceedings. The Code provides no specific exclusion from gross income or deduction from adjusted gross income for interest received by a successful litigant pursuant to an action to recover property seized by the IRS pursuant to the BSA. Accordingly, the interest received is includable in gross income under the Code.

Description of Proposal

The proposal amends the Code to exclude from gross income any interest received from the Federal Government in connection with an action to recover property seized by the IRS pursuant to a claimed violation of the structuring provisions of the BSA.

Effective Date

The proposal applies to interest received on or after the date of enactment.

3. Clarification of equitable relief from joint liability

Present Law

If a married couple elects to file a tax return on which they report their income jointly, they are generally jointly and severally liable for the entire tax liability that should have been reported on the joint return.[36] A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief provisions of the Code.

Grounds for relief from joint liability

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

General relief from joint liability with respect to an understatement of tax is available to all joint filers who make a timely election for such relief and are able to establish the following.[37] 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.[38] 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 proposals for general relief or separation of liabilities relief.[39] 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.

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[36] Sec. 6103(d).

[37] Sec. 6015(b).

[38] Sec. 6015(c).

[39] Sec. 6015(f).

Availability and scope of judicial review

If an individual elects to have the general relief provisions or the separation of liabilities relief provisions apply with respect to a deficiency, the individual may petition the United States Tax Court (the "Tax Court") to review unfavorable determinations by the IRS with respect to the claimed relief. The Tax Court has held that its authority to review such IRS determinations is under a *de novo* standard.[40]

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

In contrast to the above, the extent to which a denial of a claim for equitable relief from joint liability is also subject to judicial review by the Tax Court, the scope of that review, and the standard for any review have been the subject of conflicting appellate decisions. An abuse of discretion standard based on court review of the administrative record was held to be the correct standard in some instances,[41] but other courts have permitted review of information beyond the administrative record while applying an abuse of discretion standard.[42] Still others have applied a *de novo* standard to both the scope of the review and the standard of review.[43]

Description of Proposal

Under the proposal, 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 proposal 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 proposal 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.

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

[41] *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).

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

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

Effective Date

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

4. Modification of procedures for issuance of third-party summons

Present Law

The IRS has broad statutory authority to require production of information in the course of an examination.[44] A request for information in the form of an administrative summons is enforceable if the IRS establishes its good faith, as evidenced by the four factors enunciated by the Supreme Court in *United States v. Powell.*[45] The *Powell* factors require that the information is sought for a legitimate law enforcement purpose, is of a type that will shed light on the subject of the examination, is not already in the possession of the IRS, and that the IRS has complied with all applicable statutory requirements such as service of process. Subsequent to *United States v. Powell,* the legitimacy of using an administrative summons in furtherance of an investigation into criminal violations was validated in *United States v. LaSalle National Bank,*[46] in which the Supreme Court determined that the dual civil and criminal purpose was legitimate, so long as there had not yet been a commitment to refer the case for prosecution.

The use of this summons authority to obtain information from third-parties is subject to greater procedural safeguards,[47] but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced. When the existence of a possibly non-compliant taxpayer is known but not his identity, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, the IRS is able to issue a summons (referred to as a "John Doe" summons) to learn the identity of the taxpayer, but must first meet significantly greater statutory requirements to guard against fishing expeditions.

An effort to learn the identity of unnamed John Does requires that the United States seek judicial review in an *ex parte* proceeding prior to issuance of the John Doe summons. In its application and supporting documents,[48] the United States must establish that the information sought pertains to an ascertainable group of persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.[49] The reviewing court does not determine whether the John Doe summons will ultimately be enforceable. Once a court has determined that the predicate for issuance of a summons is met,

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[44] Sec. 7602.

[45] *United States v. Powell,* 379 U.S. 48 (1964).

[46] 437 U.S. 298 (1978); codified in section 7609(c).

[47] Sec. 7609.

[48] Sec. 7609(h)(2) provides that the determination will be made *ex parte,* solely on the pleadings.

[49] Sec. 7609(f).

the summons is served, and the summoned party served may challenge enforcement of the summons, based on the *Powell* factors. It is not entitled to judicial review of the *ex parte* ruling that permitted issuance of the summons.[50] Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period.

The limitations period for the tax year under investigation is suspended beginning six months after the service of a John Does summons, and ends with the final resolution of the response to the summons.[51]

Description of Proposal

The proposal prevents the Secretary from issuing a John Doe summons unless the information sought to be obtained pertains to the failure (or potential failure) of the person or group or class of persons referred to in the statute to comply with one or more provisions of the Code which have been identified. The proposal is not intended to change the *Powell* standard or otherwise affect the IRS's burden of proof.

Effective Date

The proposal applies to summonses served after the date of enactment.

5. Establishment of income threshold for referral to private debt collection

Present Law

The Code permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type[52] and to arrange payment of those taxes by the taxpayers.[53] It requires the Secretary to enter into qualified tax collection contracts for the collection of inactive tax receivables. Inactive tax receivables are defined as any tax receivable (i) removed from the active inventory for lack of resources or inability to locate the taxpayer, (ii) for which more than 1/3 of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable; and (iii) for which, a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection. Tax receivables are defined as any outstanding assessment which the IRS includes in potentially collectible inventory.

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[50] *United States v. Samuels, Kramer & Co., and First Western Government Securities, Inc.*, 712 F.2d 1342 (9th Cir. 1983), which affirmed a lower court determination that the issuance of the John Doe summons was not subject to review, but reversed and remanded to permit a limited evidentiary hearing on whether the *Powell* standard was met.

[51] Sec. 7609(e)(2).

[52] This provision generally applies to any type of tax imposed under the Internal Revenue Code.

[53] Sec. 6306.

Certain tax receivables are not eligible for collection under qualified tax collection contracts, specifically a contract that: (i) is subject to a pending or active offer-in-compromise or installment agreement; (ii) is classified as an innocent spouse case; (iii) involves a taxpayer identified by the Secretary as being (a) deceased, (b) under the age of 18, (c) in a designated combat zone, or (d) a victim of identity theft; (iv) is currently under examination, litigation, criminal investigation, or levy; or (v) is currently subject to a proper exercise of a right of appeal.

Description of Proposal

The proposal makes certain tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts through December 31, 2019. Such receivables are those of an individual taxpayer whose adjusted gross income does not exceed 250 percent of the applicable poverty level (as determined by the Secretary).

Effective Date

The proposal applies to tax receivables identified by the Secretary (or the Secretary's delegate) six months after the date of enactment.

6. Reform of notice of contact of third parties

Present Law

The IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the taxpayer. The IRS is required to provide periodically to the taxpayer a record of persons contacted during the prior period by the IRS with respect to the determination or collection of that taxpayer's tax liability. This record is also required to be provided upon request of the taxpayer. This notice requirement does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact.

Description of Proposal

The proposal replaces the requirement that the IRS provide reasonable notice in advance to the taxpayer with a requirement that the taxpayer be provided, at least 45 days before the beginning of the period of contact, notice that contacts with persons other than the taxpayer are intended. The period of contact may not be greater than one year. However, notices are permitted to be issued to the same taxpayer with respect to the same tax liability with periods specified that, in the aggregate, exceed one year. The proposal requires the notice to be provided only if there is a present intent at the time such notice is given for the IRS to make such contacts. This intent can be met on the basis of the assumption that the information sought to be obtained will not be obtained by other means before such contact.

Effective Date

The proposal applies to notices provided, and contacts made, after the date which is 45 days after the date of enactment.

7. Modification of authority to issue designated summons

Present Law

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate with such requests, whether by failing to respond or by providing inadequate or incomplete responses. In such cases, if the necessary information cannot be developed from other witnesses or sources, the IRS seeks information by issuing an administrative summons.[54] If the taxpayer does not cooperate with the request in the summons, the IRS may refer the summons to the Department of Justice to seek and obtain an order for enforcement in Federal court. If the summons in question was issued to a third-party rather than the taxpayer, the taxpayer may petition the court to quash an administrative summons.[55]

In *United States v. Powell,*[56] the U.S. Supreme Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and "may shed light on" that legitimate purpose; (3) the requested information is not be already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps. All petitions to enforce an administrative summons must include allegations and supporting declarations to establish that the good faith standards are met.[57] Although the good faith standards established in *United States v. Powell* apply to all administrative summonses, they are not the sole source of limitations on the IRS ability to compel production of information during an examination.[58]

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[54] Sec. 7602.

[55] Sec. 7609.

[56] *United States v. Powell, 379 U.S. 48,* (1964), at pages 57-58.

[57] Department of Justice, Tax Division, *Summons Enforcement Manual,* (updated through July 2011), available at https://www.justice.gov/sites/default/files/tax/legacy/2011/08/31/SumEnfMan_July2011.pdf.

[58] See, *e.g.*, secs. 7602 (summonses in furtherance of a criminal investigation may be issued, provided that the IRS has not referred the investigation to the Department of Justice for prosecution of the taxpayer whose tax liability is the subject of the summons), 7609 (summons issued to a third-party record-keeper), 7611 (examinations of churches), 7612 (summons for computer software). Summonses to obtain information responsive to a request for exchange of information under a tax treaty present special enforcement issues, both procedural and substantive as well. *Mazurek v. United States,* 271 F.3d 226 (5th Cir. 2001).

Neither service of an administrative summons nor government-initiated action for judicial enforcement is sufficient to suspend the limitations period.[59] As a result, in the case of an examination of complicated issues of a large corporation, involving voluminous records, numerous witness interviews and possible expert reports, the general three year period for assessment may be inadequate to allow for completion of an examination.[60] In such cases, the limitations period is often but not always extended by agreement of the parties. An uncooperative taxpayer could force a premature conclusion to an audit by delaying responses and allowing the statute to expire. To guard against such situations in cases in which the IRS requires additional information and time to complete its work,[61] the Code authorizes issuance of a designated summons that triggers suspension of the limitations period if judicial enforcement proceedings are initiated.

A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination in the coordinated industry case program and meets three conditions. First, it must be reviewed and approved by the Division Commissioner and Division Counsel of the relevant operating division or organization with jurisdiction over the return. Second, it must be issued at least 60 days before the expiration of the assessment limitations period (as extended). Finally, it must clearly state that it is a ''designated summons."[62] No more than one designated summons may be issued with respect to a return under examination.

If a designated summons is issued, and the taxpayer complies, without any judicial enforcement proceeding, no suspension of the limitations period occurs. If the government initiates enforcement proceedings, the limitations period is suspended for the judicial

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[59] In the case of third-party summonses, the limitations period is suspended if a taxpayer named in the summons initiates a proceeding to quash the summons, or if compliance with the summons remains unresolved as of the date which is six months after service of the summons.

[60] Sec. 6501(income taxes are generally required to be assessed within three years after a taxpayer's return is filed, whether or not it was timely filed); sec. 6501(c)(several circumstances under which the general three-year limitations period does not begin to run, include failure to file a return or filing a false or fraudulent return with the intent to evade tax, extensions by agreement of the taxpayer and IRS, substantial omissions of income, or failure to disclose or report a listed transaction as required under section 6011 on any return or statement for a taxable year); [s]sec. 6503 (there are also circumstances under which the three-year limitations period is suspended,[60] including the issuance of a designated summons).

[61] In describing the provision when it was first enacted, the Conference report for the Omnibus Reconciliation Act of 1990 explained, "This provision is designed to preserve the ability of the IRS to conclude the audit and assess any taxes that may be due regardless of the length of time that it might take to obtain judicial resolution of the summons enforcement lawsuit." H. Rept. 101-964, p. 1073. Omnibus Budget Reconciliation Act of 1990, Conf. Rept. to Accompany H.R. 5835.

[62] Section 6503(j) refers to the regional officials and the Coordinated Examination Program or their successors. The Division Counsel and Commissioner of the relevant office with jurisdiction over the return have been identified in regulation as the appropriate successor officials. Treas. Reg. sec. 301.6503(j)-1. In addition, the Coordinated Industry Case program is the successor to the Coordinated Examination Program.

enforcement period of that summons and any related summonses, *i.e.*, summonses relating to the same return and issued within 30 days after the issuance of the designated summons. If the court proceeding results in an order to comply with the summons, the limitations period is also suspended for a period of 120 days from the first day after the close of the judicial enforcement period. In addition, the limitations period expires no earlier than 60 days after the close of the judicial enforcement period, if the court does not order compliance with the summons.

Since enactment of the designated summons provision in 1990, few such summonses have been issued, resulting in several published opinions.[63] The IRS is now required to submit annual reports to Congress on the number of designated summonses issued each year.[64] Since 1995, three have been issued, most recently in 2014.[65]

Description of Proposal

Under the proposal, issuance of a designated summons must be preceded by review and written approval of the summons by both the head of the relevant operating division and its division counsel. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. In subsequent judicial proceedings concerning the enforceability of the summons, the IRS must establish that the prior reasonable requests for information were made.

Effective Date

The proposal applies to summonses issued after the date of enactment.

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[63] The earliest designated summons, involving a request to require testimony from an officer of Chevron Corporation, was enforced. *United States v. Derr*, 968, F 2d 943 (Cir. 9th 1992). See also, *United States v. Norwest*, 116 F.3d 1227 (8th Cir. 1997) (court enforced IRS request to produce tax preparation software licensed to Norwest); but see *United States v. Caltex Petroleum*, 12 F. Supp. 2d 545 (N.D. Tex. 1998) (denied IRS request to produce the software code used to calculate foreign tax credits).

[64] Sec. 1002(b) Taxpayers Bill of Rights Act 2, Pub. L. 104-168 (1996).

[65] *United States v. Microsoft*, Case No. C15-00102-RSM (W.D. Wash. May 5, 2017) (ruling on validity of privileges, orders further document production in compliance with the designated summons and related summonses, pursuant to the earlier opinion enforcing the designated summons, at *United States v. Microsoft*, 154 F. Supp. 3d 1134(W.D. Wash. 2015)).

8. Limitation on access of non-Internal Revenue Service employees to returns and return information

Present Law

Returns and return information

General rule of confidentiality

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.[66] The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term "return information" includes, among other items:

- a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . . [67]

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

There are several exceptions to the general rule of confidentiality. One exception permits the disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes ("tax administration contractor").[68]

Summons authority

In general

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

[66] Sec. 6103(a).

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

[68] Sec. 6103(n).

produce books, records and other data and to give testimony, under oath, as may be relevant or material to such inquiry.

Summons interview regulations

Under the Treasury regulations, a person authorized to receive returns and return information as a tax administration contractor may receive and examine books, papers, records, or other data produced to comply with the summons, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath.[69]

Proposed Treasury regulations would narrow this authority by excluding non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath.[70] An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise in an area other than Federal tax law. The proposed regulations would allow the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, or in non-tax substantive law, such as patent law, property law, or environmental law. It would not permit the IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. These changes are proposed to be effective for examinations begun and summonses served by the IRS on or after the date the proposed regulations were published in the Federal Register (March 28, 2018).

Description of Proposal

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

Effective Date

The proposal is generally effective on the date of enactment and applies to any tax administration contracts in effect on the date of enactment.

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

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

TITLE IV − ORGANIZATIONAL MODERNIZATION

1. Modification of title of Commissioner of Internal Revenue and related officials

Present Law

The Code explicitly prescribes the position of two officials at the IRS requiring appointment by the President and confirmation by the Senate, *i.e.*, the Commissioner of Internal Revenue and a Chief Counsel to the IRS.[71] The duties and powers of the Commissioner 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). The Commissioner is also 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, including determination and designation of posts of duty

Description of Proposal

The proposal replaces the title "Commissioner of Internal Revenue" with "Administrator of Internal Revenue," and makes necessary conforming changes to all references in the Code to the title of the head of the Internal Revenue Services or subordinate officials. It also specifies that the change is title is not to be construed to require reappointment of an incumbent Commissioner, nor would it shorten the term of office.

Effective Date

The proposal is effective upon the date of enactment.

2. Office of the National Taxpayer Advocate

Present Law

In general

The Office of the Taxpayer Advocate is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate ("NTA") supervises the Office of the Taxpayer Advocate. The NTA reports directly to the Commissioner of Internal Revenue and is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code, or if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

The Office of the Taxpayer Advocate has four principal functions:

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[71] Sec. 7803.

1. to assist taxpayers in resolving problems with the IRS;

2. to identify areas in which taxpayers have problems in dealing with the IRS;

3. to propose changes in the administrative practices of the IRS to mitigate problems identified in (2); and

4. to identify potential legislative changes which may be appropriate to mitigate such problems.

Taxpayer Assistance Orders

A taxpayer can request a Taxpayer Assistance Order ("TAO") if the taxpayer is suffering or about to suffer a "significant hardship" as a result of the manner in which the internal revenue laws are being administered by the IRS.[72] A TAO may require the IRS within a specified time period, to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer under specified provisions.[73]

The Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue may rescind a TAO issued by the NTA, only if a written explanation of the reasons for the modification or rescission is provided to the NTA.[74]

Taxpayer Assistance Directives

While a TAO is specific to a particular taxpayer, a Taxpayer Assistance Directive ("TAD") is systemic, intended to address groups of taxpayers. Delegation Order 13-3 authorizes the NTA to issue Taxpayer Advocate Directives to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.[75] The authority to modify or rescind a TAD is delegated to Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and to the National Taxpayer Advocate.

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[72] Sec. 7811(a)(1)(A). Significant hardship is deemed to occur if one of four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long term adverse impact if relief is not granted. Sec. 7811(a)(2). The NTA may also issue a TAO if the taxpayer meets requirements to be set forth in regulations. Sec. 7811(a)(1)(B).

[73] Sec. 7811(b). A TAO or action taken by the NTA applies to persons performing services under a qualified tax collection contract to the same extent and to the same manner as such order applies to the IRS.

[74] Sec. 7811(c). The NTA also may modify or rescind a TAO issued by the NTA.

[75] Delegation Order 13-3, Internal Revenue Manual 1.2.50.4 (January 17, 2001).

Annual Reports

The NTA is required to submit two reports annually to the House Committee on Ways and Means and to the Senate Finance Committee.[76] One report, due June 30 of each year, covers the Office of the Taxpayer Advocate's objectives for the fiscal year beginning in that calendar year. Besides statistical information, the report must contain a full and substantive analysis of the objectives.

The other report, due December 31 of each year, concerns the activities of the Office of the Taxpayer Advocate. The content of this report is set by statute.[77] Generally, the report must cover initiatives taken to improve taxpayer services and problems encountered, as well as the actions taken to resolve them and the results. Specifically, the report must cover the twenty most serious problems experienced by taxpayers. The report also must identify the ten most litigated issues for each category of taxpayer and the areas of the tax law that impose significant compliance burdens on taxpayers or the IRS. Recommendations received from individuals with the authority to issue Taxpayer Assistance Orders, and any Taxpayer Assistance Order not promptly honored by the IRS, must also be included in the report. The report must also set forth recommendations for administrative and legislative action to resolve problems encountered by taxpayers.

The NTA, is required by statute to submit the reports directly to the Congressional committees without prior review of the Commissioner, the Secretary, or any officer or employee of the Treasury, the Oversight Board, or the Office of Management and Budget.[78]

Description of Proposal

Taxpayer Advocate Directives

In the case of any TAD issued by the NTA pursuant to a delegation of authority from the Administrator of the IRS, the Administrator or Deputy Administrator shall modify, rescind or ensure compliance with such directive not later than 90 days after issuance of such directive. If the TAD is modified or rescinded by a Deputy Administrator, the NTA may (not later than 90 days after such modification or rescission) appeal to the Administrator and the Administrator must (not later than 90 days after such appeal is made) either (1) ensure compliance with such directive as issued by the NTA, or (2) provide the NTA with a description of the reasons for any modification or rescission made or upheld by the Administrator pursuant to such appeal.

The NTA's annual report is to identify any TAD that is not honored by the IRS in a timely manner.

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[76] Sec. 7803(c)(2)(B).

[77] Sec.7803(c)(2)(B)(ii)(I) through (XI).

[78] Sec. 7803(c)(2)(B)(iii).

Annual Reports to Congress

The proposal modifies requirements of the annual report on NTA activities to require a summary of the 10 most serious problems encountered by taxpayers. To avoid duplication of efforts on the same subject matter, before beginning any research or study, the NTA is required to coordinate with the Treasury Inspector General for Tax Administration ("TIGTA") to ensure that the NTA does not duplicate any action that the TIGTA has already undertaken or has a detailed plan to undertake. The proposal requires the IRS provide the NTA, upon request, with statistical support in connection with the preparation of the annual report on NTA activities. Such support is to include statistical studies, compilations and the review of information provided by the NTA for statistical validity and sound statistical methodology. With respect to any statistical information included in such report, the report is to include a statement of whether such statistical information was reviewed or provided by the IRS, and if so whether the IRS determined such information to be statistically valid and based on sound statistical methodology. The IRS review and provision of statistical support does not violate the requirement that the report be submitted directly without prior review or comment from any officer or employee of the Department of the Treasury or specified other persons.

Salary of the National Taxpayer Advocate

The proposal eliminates the provision relating to the determination of the NTA's salary under 5 U.S.C. sec. 9305. As under present law, the NTA is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code.

Effective Date

The proposal is generally effective on the date of enactment. The proposal as it relates to the salary of the NTA applies to appointments to the position of the National Taxpayer Advocate made after the date of enactment.

3. Elimination of IRS Oversight Board

Present Law

The Code has established the IRS Oversight Board and has given that board general oversight responsibilities for the IRS, as well as specific oversight responsibilities with respect to the IRS strategic plans, operational plans, management, budget, and taxpayer protections.[79] Among these responsibilities, the Board is required to review the Commissioner's selection, evaluation, and compensation of IRS senior executives and to review and approve the IRS budget request (having ensured that the budget request supports the annual and long-range strategic plans of the IRS). The Board must report annually to the Congress with respect to the conduct of its responsibilities.

[79] Sec. 7802. Pub. L. No. 105-206, sec. 1101(a) (July 22, 1998).

Explanation of Proposal

The proposal repeals the Code section that provides for the establishment of the IRS Oversight Board.

Effective Date

The proposal is effective on the date of enactment.

4. Modernization of Internal Revenue Service organizational structure

Present Law

The RRA98 directed the Commissioner of Internal Revenue to restructure the IRS by eliminating or substantially modifying the three-tier geographic structure (national, regional, and district) in place at the time and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs.[80]

Description of Proposal

The Administrator of the IRS ("Administrator") is required to submit to Congress by September 30, 2020 a comprehensive written plan to redesign the organization of the IRS. The comprehensive will (1) ensure the successful implementation of the priorities specified by Congress in this bill; (2) prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance they need; (3) streamline the structure of the agency including minimizing the duplication of services and responsibilities; (4) best position the IRS to combat cybersecurity and other threats to the IRS; and (5) address whether the Criminal Division of the IRS should report directly to the Administrator.

Beginning one year after the date on which the Administrator submits to Congress a comprehensive plan to modify the organization of the IRS, the proposal removes the RRA98 requirement of an organizational structure that features operating units serving particular groups of taxpayers with similar needs.

Effective Date

The proposal is effective on the date of enactment.

[80] Pub. L. No. 105-206, sec. 1001(a).

TITLE VI − TAX COURT

1. Disqualification of judge or magistrate judge of the Tax Court

Present Law

Section 455 of Title 28 of the United States Code establishes grounds for disqualification of any justice, judge, or magistrate judge. It specifies that any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned, and also in the following circumstances: 1) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; 2) the judge served as a lawyer in private practice or as a material witness in the case in controversy; 3) the judge served in governmental employment and in a capacity as counsel, adviser, or material witness concerning the case in controversy; 4) the judge has a financial interest in the subject matter in controversy or in a party to the proceeding; or 5) the judge, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, acting as a lawyer in the proceeding, has a personal interest in the outcome, or is likely to be a material witness in the proceeding.

A judge should inform himself about his personal financial interests and those of his spouse and minor children residing in his household. A judge may not accept a waiver for disqualification from the parties to the proceeding, except in limited cases. If a judge to whom a matter has been assigned discovers that he, a spouse, or a minor child residing in his household has a financial interest in a party, disqualification is not required if the judge, spouse, or minor divests himself of the interest that provides the grounds for disqualification.

These grounds for disqualification do not expressly apply to judges or magistrate judges of the Tax Court.

Description of Proposal

The proposal provides that Tax Court judges and magistrate judges are subject to the same statutory grounds for disqualification as other Federal judges.

Effective Date

This proposal is effective on the date of enactment.

2. Opinions and judgments

Present Law

The Code requires that a report be issued on any proceeding instituted by the Tax Court, and that as quickly as practicable, a decision be made by a judge in accordance with such report, which will be the decision of the Tax Court.[81]

Any findings of fact, opinion, or memorandum opinion must be included in such report. The Tax Court must report in writing all of its findings of fact, opinions, and memorandum opinions, unless these findings of fact or opinion are stated orally and are recorded in the transcript of the proceedings.

Description of Proposal

The proposal provides that the words "report" be replaced by "opinion," and "decision" be replaced by "judgment."

Effective Date

This proposal is effective on the date of enactment.

3. Title of special trial judge changed to magistrate judge of the Tax Court

Present Law

The chief judge of the Tax Court may appoint special trial judges to handle certain cases.[82] Special trial judges serve for an indefinite term. Special trial judges receive a salary of 90 percent of the salary of a Tax Court judge. Special trial judges do not have authority to impose punishment in the case of contempt of the authority of the Tax Court.[83]

Description of Proposal

Under the provision, the position of special trial judge of the Tax Court is renamed as magistrate judge of the Tax Court ("magistrate judge").

Effective Date

The proposal is effective on the date of enactment.

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[81] Sec. 7459

[82] Sec. 7443A.

[83] Sec. 7456(c) deals with contempt authority.

4. Repeal of deadwood related to Board of Tax Appeals

Present Law

Sections 7459(f) and 7447(a)(3) of the Code refer to the Board of Tax Appeals.

Description of Proposal

The proposal repeals as deadwood section 7459(f) and deletes the reference to the Board of Tax Appeals in section 7447(a)(3).

Effective Date

This proposal is effective on the date of enactment.