

**DESCRIPTION OF H.R. 8292,
THE “TAXPAYER DATA PROTECTION ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on May 15, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for May 15, 2024, of H.R. 8292, the “Taxpayer Data Protection Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 8292, the “Taxpayer Data Protection Act”* (JCX-17-24), May 13, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Taxpayer Data Protection Act

Present Law

General rule of confidentiality

As a general rule, section 6103 provides that returns and return information are confidential. The definition of return information is very broad and includes any information received or collected by the Internal Revenue Service (“IRS”) with respect to the liability under the Code of any person for any tax, penalty, interest, or offense. Returns and return information cannot be disclosed unless there is an applicable exception in the Code.

Section 6103 contains over 95 specific exceptions to the general rule of confidentiality, grouped into 13 categories (paragraphs (c) through (o)): (1) disclosures or return or return information to designees of the taxpayer (consent); (2) disclosures to State tax officials and State and local law enforcement; (3) disclosures to persons having material interest; (4) disclosure to committees of Congress; (5) disclosures to the President and certain other persons; (6) disclosure to certain Federal officers and employees for purposes of tax administration, etc.; (7) disclosure to Federal officers and employees for administration of Federal laws not relating to tax administration (generally disclosures relating to criminal law enforcement and GAO for audits of the IRS and certain other agencies), (8) statistical use; (9) disclosure of certain return and return information for tax administration purposes (including investigative disclosures and passport revocation); (10) disclosures of returns and return information for purposes other than tax administration (this is one of the largest categories, including 22 different exceptions); (11) disclosure of taxpayer identity information; (12) certain other persons (tax administration contractors); and (13) disclosure of return and return information with respect to certain taxes (alcohol, tobacco, firearms, wagering and the heavy vehicle use tax).

To protect the confidentiality of returns and return information, section 6103 imposes recordkeeping and safeguard requirements. By March 31 of each year, the IRS is required to report on the number of certain disclosures made in the previous calendar year. As a condition of receiving returns and return information, specified recipients are required to meet safeguard requirements to the satisfaction of the Secretary to protect the confidential returns and return information. In addition, the IRS performs periodic onsite inspections and is required to submit a report which describes the procedures and safeguards established and utilized by such recipients for ensuring the confidentiality of returns and return information they receive. The report is also required to describe instances of deficiencies in, and failure to establish or utilize, such procedures.

Criminal penalties for the unauthorized disclosure or inspection of returns or return information

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 proposal of section 6103.

Under section 7213, a person can be subject to a fine of up to \$5,000, up to five years imprisonment, or both, together with the costs of prosecution.² If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Under section 7213A, the willful and unauthorized inspection of returns and return information can subject Federal and State employees and others to a maximum fine of \$1,000, up to a year in prison, or both, in addition to the costs of prosecution.³ If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

In addition, any person who intentionally accesses a computer “without authorization or exceeds authorized access, and thereby obtains . . . information from any department or agency of the United States” can be prosecuted under 18 U.S.C. section 1030(a)(2) and upon conviction may be imprisoned for a year, or fined, or both.

Civil damage remedies for unauthorized disclosure or inspection

If a Federal employee makes an unauthorized disclosure or inspection, under section 7431, 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. In addition, if the Internal Revenue Service 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 taxpayer is also required to be notified.

² A fine of up to \$250,000 can be imposed pursuant to 18 U.S.C. sec. 3571. Section 3559 of Title 18 specifies that an offense with a maximum authorized term of imprisonment of “less than ten years but five or more years” is a “Class D felony,” and that an offense with a maximum authorized term of imprisonment of “less than twenty-five years but ten or more years” is a “Class C felony.”

³ A fine of up to \$100,000 can be imposed pursuant to 18 U.S.C. sec. 3571.

Description of Proposal

The proposal increases the specified maximum fine in section 7213 from \$5,000 to \$250,000, consistent with 18 U.S.C. section 3571. The proposal also increases from five years to 10 years the maximum term of imprisonment upon conviction of a section 7213 violation. Under the proposal, for a willful unauthorized disclosure involving the returns or return information of multiple taxpayers, a separate violation occurs with respect to each such taxpayer whose return or return information is disclosed.

Effective Date

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

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have a negligible effect on Federal fiscal year budget receipts over the 2024-2034 budget period.