TECHNICAL EXPLANATION OF THE SENATE COMMITTEE ON FINANCE CHAIRMAN'S STAFF DISCUSSION DRAFT OF PROVISIONS TO REFORM TAX ADMINISTRATION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of the Senate Committee on Finance Chairman's staff discussion draft (OTT13424) of provisions to reform tax administration. This document is prepared at the request of Senate Committee on Finance Chairman Max Baucus.

[1] This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of the Senate Committee on Finance Chairman's Staff Discussion Draft of Provisions to Reform Tax Administration* (JCX-16-13), November 20, 2013. This document can also be found on our website at www.jct.gov.

TITLE __ -- TAX ADMINISTRATION PROVISIONS

A. Reforms Relating to Information Returns

1. Accelerated filing of certain returns (sec. 01 of the discussion draft and sec. 6071 of the Code)

Present Law

Present law imposes a variety of information reporting requirements on participants in certain transactions.[2] These requirements are intended to assist taxpayers in preparing their income tax returns and to help the Internal Revenue Service ("IRS") determine whether such income tax returns are correct and complete.

The primary provision governing information reporting by payors requires an information return by 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.[3] Payments subject to reporting 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.[4] Detailed rules are provided for the reporting of 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.[5]

The payor of amounts described above is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.[6] The statement must be supplied to taxpayers by the payors by January 31 of the following calendar year. 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

[2] Secs. 6031 through 6060.

[3] Sec. 6041(a). The information return generally is submitted electronically as a Form-1099 or Form-1096, 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).

[4] Sec. 6041(a) requires reporting as to fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a), or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045). These payments excepted from section 6041(a) include most interest, royalties, and dividends.

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

[6] Sec. 6041(d).

be filed.[7] However, the due date for most information returns that are filed electronically is March 31.[8]

Payors also must report wage amounts paid to employees on information returns. For wages paid to, and taxes withheld from, employees, the payors must file an information return with the Social Security Administration ("SSA") by February 28 of the year following the calendar year for which the return must be filed.[9] However, the due date for information returns that are filed electronically is March 31.

Under the combined annual wage reporting ("CAWR") system, employers submit directly to SSA 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).[10] SSA records the Forms W-2 and W-3 wage information in its individual Social Security wage account records, and forwards the Forms W-2 and W-3 information to IRS.[11]

To implement the 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. The reconciliation process generally includes the SSA contacting employers to obtain corrected wage information. The SSA also refers certain cases to the IRS to contact employers and to assess penalties.

Explanation of Provision

The provision accelerates the information return filing date to February 21 of the year following the calendar year for which the return must be filed (either on paper or electronically) for transactions covered under sections 6041 through 6050W, which includes payments made by a person engaged in a trade or business, payments of fixed or determinable income or compensation, and investment income, including interest, dividends, and gross proceeds from brokered transactions. The provision also accelerates the information return filing date to February 21 of the year following the calendar year for which the return must be filed (either on paper or electronically) for wages paid to employees.

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[7] Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

[8] Secs. 6011(e) and 6071(b) apply to "returns made under subparts B and C of part III of this subchapter"; Treas. Reg. sec. 301.6011-2(b), mandates use of magnetic media by persons filing information returns identified in the regulation or subsequent or contemporaneous revenue procedures and permits use of magnetic media for all others.

[9] Treas. Reg. sec. 31.6051-2; IRS, "Filing Information Returns Electronically," Pub. 3609 (Rev. 12-2011); Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

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

[11] Employers submit quarterly reports to IRS on Form 941 regarding aggregate quarterly totals of wages paid and taxes due. IRS then compares the W-3 wage totals to the Form 941 wage totals.

The provision requires the Treasury to issue a report to the Senate Finance Committee and the House Ways and Means Committee evaluating whether the due dates for filing Forms W-2, W-3, and 1099 with the IRS and the SSA should be accelerated to January 31, and to provide recommendations for effective processing of these forms.

Effective Date

The provision is effective for returns due (without regard to extensions) after December 31, 2014.

2. Safe harbor for de minimis errors on information returns and payee statements (sec. 02 of the discussion draft and secs. 6721 and 6722 of the Code)

Present Law

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,[12] to furnish payee statements,[13] or to comply with other various reporting requirements.[14] No penalty is imposed if the failure is due to reasonable cause.[15]

Any person who is required to file an information return, but who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the information return is filed. If a person files an information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount of the penalty is $30 per return ("first-tier penalty"), with a maximum penalty of $250,000 per calendar year. If a person files an information return after the date that is 30 days after the prescribed filing date but on or before August 1, the amount of the penalty is $60 per return ("second-tier penalty"), with a maximum penalty of $500,000 per calendar year. If an information return is not filed on or before August 1 of any year, the amount of the penalty is $100 per return ("third-tier penalty"), with a maximum penalty of $1,500,000 per calendar year. If a failure to file is due to intentional disregard of a filing requirement, the minimum penalty for each failure is $250, with no calendar year limit.

Lower maximum levels for this failure to file correct information return penalty apply to small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent three taxable years that do not exceed $5 million. The maximum penalties for small businesses are: $75,000 (instead of $250,000) if the failures are corrected on or before 30 days after the prescribed filing date; $200,000 (instead of $500,000) if the failures are corrected

[12] Sec. 6721.

[13] Sec. 6722.

[14] Sec. 6723. The penalty for failure to timely comply with a specified information reporting requirement is $50 per failure, not to exceed $100,000 per calendar year.

[15] Sec. 6724.

on or before August 1; and $500,000 (instead of $1,500,000) if the failures are not corrected on or before August 1.

Any person who is required to furnish a payee statement who fails to do so on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the payee statement is furnished, similar to the penalty for filing an information return discussed above. A first-tier penalty is $30, subject to a maximum of $250,000, a second-tier penalty is $60 per statement, up to $500,000, and a third-tier penalty is $100, up to a maximum of $1,500,000. If a failure to furnish is due to intentional disregard of a filing requirement, the minimum penalty for each failure is $250, with no calendar year limit.

Lower maximum levels for this failure to furnish correct payee statement penalty apply to small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent three taxable years that do not exceed $5 million. The maximum penalties for small businesses are: $75,000 (instead of $250,000) if the failures are corrected on or before 30 days after the prescribed due date; $200,000 (instead of $500,000) if the failures are corrected on or before August 1; and $500,000 (instead of $1,500,000) if the failures are not corrected on or before August 1.

Both the failure to file and failure to furnish penalties are adjusted to account for inflation every five years beginning after 2012.

Explanation of Provision

The provision creates a safe harbor from the application of the penalty for failure to file a correct information return and the penalty for failure to furnish a correct payee statement in certain circumstances. A corrected information return and payee statement is not required to be filed or furnished if the failure is due to a misstatement of the amount required to be reported on such return or statement, the error on any single amount is less than $25, and the transaction for which the information return and payee statement are required to be filed is not a transaction involving the payment of interest.

Effective Date

The provision applies to information returns required to be filed and payee statements required to be furnished on or after the date of enactment.

3. Internet platform for Form 1099 filings (sec. 03 of the discussion draft)

Present Law

The Code does not presently require the IRS to make available an internet platform for preparation or filing of Forms 1099.

Explanation of Provision

The provision requires the Secretary of the Treasury (or his or her delegate) to make available, within three years after enactment, an internet website (the "site") or other electronic media, similar to the Business Services Online Suite of Services provided by the Social Security Administration.[16] The site will allow taxpayers, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and create and maintain taxpayer records. The provision also requires the site to be available, within one year after enactment, in a partial form that will allow taxpayers to prepare, file, and distribute Forms 1099-MISC.

Effective Date

The provision is effective upon date of enactment.

4. Requirement that electronically prepared paper returns include scannable code (sec. 04 of the discussion draft and sec. 6011 of the Code)

Present Law

Every citizen, whether residing in or outside the United States, and every resident of the United States within the meaning of section 7701(b) must file an income tax return if the individual has income that equals or exceeds the exemption amount.[17] Treasury regulations require individual taxpayers to make this return using a Form 1040.[18] Similarly, every corporation subject to Federal income tax, regardless of the amount of its gross or taxable income for the taxable year, is required to file a return.[19]

In 1998, Congress declared a policy that (1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns, (2) the IRS's goal should be to receive at least 80 percent of all returns electronically by 2007, and (3) the IRS should encourage private-sector competition to increase electronic filing.[20] Section 6011(f), also enacted in 1998, authorizes the Department of the Treasury to advertise the benefits of electronic tax administration programs and to make payment of appropriate incentives for electronically filed returns.

The Department of the Treasury generally is authorized to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in another machine-readable form. However, except under certain circumstances, the Department of the Treasury "may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts, to be other than on paper forms supplied by the Secretary."[21]

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[16] Available at http://www.ssa.gov/bso/bsowelcome.htm.

[17] Sec. 6012(a)(1); Treas. Reg. sec. 1.6012-1(a)(1).

[18] Treas. Reg. sec. 1.6012-1(a)(6).

[19] Sec. 6012(a)(2).

[20] The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, sec. 2001.

[21] Sec. 6011(e)(1).

Explanation of Provision

The provision requires that taxpayers who prepare their returns electronically but print and file the returns on paper must print their returns with a scannable bar code. A scannable bar code program enables the IRS to convert paper-filed tax returns into an electronic format using scanning technology.

Effective Date

The provision is effective for tax returns due after December 31, 2014.

B. Prevention of Identity Theft and Tax Fraud

1. Restriction on access to the Death Master File (sec. 11 of the discussion draft)

Present Law

A list of deceased individuals, known as the Death Master File ("DMF"), comprises information obtained by the Social Security Administration ("SSA") from a variety of sources other than State governmental bodies.[22] Updated weekly, the DMF contains the full name, Social Security Number ("SSN"), date of birth, and date of death for the decedents listed. This information is distributed through the Department of Commerce and is widely available on many websites free or for a nominal fee.

The DMF was first created and published as part of a settlement of a lawsuit under the Freedom of Information Act ("FOIA"), in which an individual attempted to determine whether pension benefits were being fraudulently claimed on behalf of individuals who had died.[23] The suit was resolved with a consent judgment entered in 1980, which remains in effect. The scope of the data included on the list was narrowed when data received from States was specifically exempted from FOIA in 1983. Social Security officials maintain that they have no legal grounds on which to depart from continuing to compile and publish the data the agency receives from sources other than States. The agency has not sought modification of the order.[24]

Explanation of Provision

The provision establishes a program under which the Secretary of Commerce restricts access to the information contained on the DMF, for a three-year period beginning on the date of the individual's death, except to persons who are certified under a program to be established by the Secretary of Commerce. Under the program, persons who have a fraud prevention interest or other legitimate need for the information and agree to maintain the information under safeguards similar to those required of Federal agencies that receive return information, as described in section 6103(p)(4), may apply for certification. The Secretary of Commerce reviews the eligibility of applicants, examines safeguards for protecting the information and conducts audits of certified entities to assure compliance with safeguards.

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[22] In 1983, Congress added subsection (r) to section 205 of the Social Security Act. This subsection requires collection of death information from States to update program records, provides the circumstances under which certain agencies may receive such information from SSA and exempts the death information obtained from States from FOIA and the Privacy Act. 42 U.S.C. sec. 405(r)(6).

[23] Thomas Hargrove and Isaac Wolf, "Fraud-fighter from Stuart, who won access to master death file, now says it's abused," *Scripps Howard News Service*, available at http://www.tcpalm.com/news/2011/nov/15/fraud-fighter-from-stuart-who-won-access-to-file/?print=1.

[24] Testimony of David F. Black, General Counsel, Social Security Administration before the House Committee on Ways and Means, Subcommittee on Social Security May 8, 2012, available at http://www.ssa.gov/legislation/testimony_050812.html. In his testimony, Mr. Black noted that the Department of Justice had advised SSA that there was no exemption to the FOIA or the Privacy Act that would justify withholding the data covered by the court-approved consent decree.

As part of his implementation of the required program, the Secretary of Commerce is required to establish and collect user fees sufficient to recover all costs associated with the certification program. The Secretary of Commerce is required to report both the total fees collected and the total costs of administering the certification program. The required report is to be submitted annually to both the Senate Committee on Finance and the House Committee on Ways and Means Committee.

A penalty of $1,000 for each disclosure or misuse of the information is imposed on any persons who improperly disclose the DMF information. A certified person in receipt of DMF information is responsible for any subsequent disclosure of such information. Even if the initial disclosure to a third-party is appropriate, if that third-party subsequently improperly discloses the information, the certified person is deemed to have also improperly disclosed the information. Thus, in a case in which the improper disclosure is made by a third-party who received the information from a certified person, both the certified person and the person who improperly disclosed the information are subject to the penalty. The penalty may not exceed $250,000 per person for any calendar year, except in the case of willful disclosure. In such cases, the penalty is not limited.

The provision also brings the DMF within the scope of the exemptions available under FOIA to ensure that Federal agencies do not disclose the information about deceased individuals maintained by SSA or contained in the DMF, except to recipients who are certified persons.

Effective Date

The provision is effective 90 days after the date of enactment, except for the FOIA exemption which is effective upon date of enactment.

2. Single point of contact for identity theft victims (sec. 12 of the discussion draft)

Present Law

There is currently no single IRS point of contact for identity theft victims.

In October 2008, the IRS established the Identity Protection Specialized Unit (IPSU), a unit dedicated to assisting victims of identity theft. The IPSU coordinates with various IRS functions to handle identity theft cases.[25] If a victim thinks he or she is not being properly served by the IRS or the IPSU, 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.

[25] 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).

Explanation of Provision

The provision requires, within six months of enactment, the Secretary of the Treasury (or his or her delegate) to establish new procedures to implement a single point of contact for taxpayers adversely affected by identity theft. These procedures are to ensure that any taxpayer whose return has been delayed or otherwise adversely affected due to identity theft is assigned one IRS employee contact who is responsible for the case. This person may be changed upon request of the taxpayer or where the employee ceases employment or is otherwise unavailable, or a change is required to meet IRS needs and the taxpayer is notified within five business days.

Effective Date

The provision is effective on date of enactment.

3. Criminal penalty for misappropriating taxpayer identity in connection with tax fraud (sec. 13 of the discussion draft and new sec. 7206 of the Code)

Present Law

The Code does not contain civil or criminal penalties specifically targeted at identity theft. Instead, most claims for tax refund-related identity theft are prosecuted as false claims under section 287 of title 18 and are classified as felonies, generally punishable by a penalty of up to $250,000 and imprisonment for up to five years. In addition, section 1028A of title 18 provides for the statutory crime of "aggravated identity theft" in cases where the identity of another individual is used to commit enumerated crimes and generally adds an additional two year prison term (herein the "Aggravated Identity Theft Statute"). However, that section does not cover and specifically carves out any tax offenses under the Code or tax-related offenses under Title 18, including conspiracy to defraud the government with respect to claims, false, fictitious or fraudulent claims, or conspiracy.

The Code includes two provisions, sections 7206 and 7207, that cover fraud and false statements and fraudulent returns. Sections 7206(1) and (2) cover situations that could potentially involve identity theft. Those provisions make it a felony, punishable by a penalty of up to $100,000 ($500,000 for a corporation), imprisonment for up to three years, or both, plus prosecution costs, for a person who: (i) makes a false declaration under penalties of perjury; and (ii) aids or assists in the preparation or presentation of any return or other document that is false as to a material matter. Section 7207 treats as a misdemeanor the willful delivery or disclosure to any officer or employee of the IRS of fraudulent or false lists, returns, accounts, statements, or other documents, punishable by a penalty of up to $10,000 ($50,000 for corporations), imprisonment for up to a year, or both.

Explanation of Provision

The provision makes it a felony under the Code, punishable by a penalty of up to $250,000 ($500,000 for a corporation), imprisonment for up to five years, or both, plus prosecution costs, for a person to use a stolen identity to file any return or other document and adds this crime to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

Effective Date

The provision applies to offenses committed on or after date of enactment.

4. Extend Internal Revenue Service authority to require a truncated Social Security Number (SSN) on Form W-2 (sec. 14 of the discussion draft and sec. 6051 of the Code)

Present Law

Section 6051(a) generally requires that an employer provide a written statement to each employee on or before January 31 of the succeeding year showing the remuneration paid to that employee during the calendar year and other information including the employee's Social Security number ("SSN"). The Form W-2, Wage and Tax Statement, is used to provide this information to employees and contains the taxpayer's SSN, wages paid, taxes withheld, and other information.

Other statements provided to taxpayers, such as Forms 1099, generally issued to any individual or unincorporated business paid in excess of $600 per calendar year for services rendered, are subject to rules under section 6109 dealing with identifying numbers. Section 6109 requires that the filer provide the taxpayer's "identifying number" which is an individual's SSN except as otherwise specified in regulations.[26] Accordingly, for Forms 1099, the Treasury Department has the authority to require or permit filers to use a number other than a taxpayer's SSN.

Explanation of Provision

The provision revises section 6051 to require employers to include an "identifying number" for each employee, rather than an employee's SSN, on Form W-2. This change will permit the Department of the Treasury to promulgate regulations requiring or permitting a truncated SSN on Form W-2, under authority currently provided in section 6109(d).

Effective Date

The provision is effective upon date of enactment.

5. Penalty for failure to meet due diligence requirements for the child tax credit (sec. 15 of the discussion draft and sec. 6695 of the Code)

Present Law

Two refundable credits available to individuals use both income level and the presence and number of qualifying children as factors in determining eligibility for the credit: the earned income credit ("EIC")[27] and the child tax credit.[28] Eligibility for the EIC is based on earned

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[26] Treas. Reg. sec. 301.6109-1.

[27] Sec. 32.

income, adjusted gross income ("AGI"), investment income, filing status, number of children, and immigration and work status in the United States. The EIC generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then decreases to zero over a specified phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum EIC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed.

An individual is not eligible for the EIC if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $3,300 (for 2013). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (both taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income that is not self-employment income (if greater than zero).

An individual may claim a child tax credit of $1,000 for each qualifying child under the age of 17,[29] provided that the child is a citizen, national, or resident of the United States.[30] The aggregate amount of child tax credits that may be claimed is phased out for individuals with income over certain threshold amounts. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories.[31] If the resulting child tax credit exceeds the tax liability of the taxpayer, the taxpayer is eligible for a refundable credit (known as the additional child tax credit)[32] equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula). Prior to 2009, the threshold dollar amount was $10,000 and was indexed for inflation. For taxable years beginning after 2009 and before January 1, 2018, the threshold amount is $3,000, and is not indexed for inflation. The $3,000 threshold currently is scheduled to expire for taxable years beginning after December 31, 2017, after which the threshold reverts to the indexed $10,000 amount ($13,350 for 2013).

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's Social Security taxes exceed the taxpayer's EIC.

Under section 6695(g), a paid preparer who prepares a return on which the EIC is claimed must exercise due diligence or face a fine of $500 for each such return. The statute

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[28] Sec. 24.

[29] Sec. 24(a).

[30] Sec. 24(c).

[31] Sec. 24(b).

[32] Sec. 24(d).

specifies that the scope of the due diligence requirements includes both the determination of eligibility for the credit and the amount of the credit. The details of the requirements and how to document one's compliance with those requirements are prescribed by regulation.[33] The position taken with respect to the EIC must be based on current and reasonable information that the paid preparer develops, either directly from the taxpayer or by other reasonable means. The preparer may not ignore implications of information provided by taxpayers, and is expected to make reasonable inquiries about incorrect, inconsistent, or incomplete information.

The conclusions about eligibility and computation for the EIC, as well as the steps taken to develop those conclusions, must be documented. The basis for the computation of the credit also must be documented, either on a Computation Worksheet, or in an alternative record containing the requisite information. The preparer is required to maintain that documentation for three years.

Application of the penalty may be waived with respect to a particular return or claim for refund on the basis of all facts and circumstances. The preparer must establish that he routinely follows reasonable office procedures to ensure compliance. The failure to comply with the requirements must be isolated and inadvertent.[34] The enhanced duties of due diligence required with respect to the EIC do not extend to other refundable credits.

Explanation of Provision

The provision requires paid return preparers who prepare Federal income tax returns on which a child credit is claimed to meet due diligence requirements similar to those applicable to returns claiming an earned income credit. The provision codifies the use of a checklist similar to that presently required by regulations. It requires that the IRS adapt the checklist to address both the child tax credit and the EIC and highlight differences between the two credits. In adapting the checklist, the IRS is directed to minimize the imposition of additional burden on the taxpayer or paid preparer.

Effective Date

The provision is effective for taxable years beginning after December 31, 2014.

6. Improvement in access to information in the National Directory of New Hires for tax administration purposes (sec. 16 of the discussion draft)

Present Law

The Office of Child Support Enforcement of the Department of Health and Human Services ("HHS") maintains the National Directory of New Hires (the "Directory"), which is a database that contains newly-hired employee data from Form W-4, quarterly wage data from State and Federal employment security agencies, and unemployment benefit data from State

[33] Treas. Reg. sec. 1.6695-2(b).

[34] Treas. Reg. sec. 1.6695-2(c).

unemployment insurance agencies. The Directory was created to help State child support enforcement agencies enforce obligations of parents across State lines.

Under the Social Security Act, the IRS may obtain data from the Directory for the sole purpose of administering the earned income credit ("EIC")[35] and verifying a taxpayer's employment that is reported on a tax return.[36] The IRS also may negotiate for access to employment data directly from State agencies responsible for such data, to the extent permitted by the laws of the various States. Generally, the IRS obtains such employment data less frequently than quarterly, due to the significant internal costs it incurs in preparing these data for use.[37]

Explanation of Provision

The provision amends the Social Security Act to expand IRS access to the Directory data for general tax administration purposes, including data matching, verification of taxpayer claims during return processing, preparation of substitute returns for noncompliant taxpayers, and identification of levy sources. Data obtained by the IRS from the Directory is protected by existing taxpayer privacy law.[38]

Effective Date

The provision is effective upon date of enactment.

7. Taxpayer notification of suspected identity theft (sec. 17 of the discussion draft)

Present Law

The Code does not generally require that the Secretary inform a taxpayer if possible unauthorized use of the taxpayer identity is observed.

Explanation of Provision

If the Secretary determines that there was an unauthorized use of a taxpayer's identity, the provision requires the Secretary to notify the taxpayer as soon as practicable of such

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[35] Sec. 32(a)(1).

[36] 42 U.S.C. Secs. 653 and 653a.

[37] See Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals*, p. 192. April 2013.

[38] See section 6103(b)(2)(A), providing that information received by or recorded by or furnished to the Secretary with respect to the existence of possible existence of a liability under Title 26 is return information. Section 6103(A) provides that return information is confidential and cannot be disclosed except as authorized. See section 7431, 7213 and 7213A for civil and criminal penalties for the unauthorized disclosure or inspection of return information.

unauthorized use. The provision also requires the Secretary of the Treasury to notify the taxpayer if any person is criminally charged with respect to such unauthorized use.

Effective Date

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

8. Study of expansion of PIN system for prevention of identity theft tax fraud (sec. 18 of the discussion draft)

Present Law

In 2011, the IRS launched a pilot program to test the Identity Protection Personal Identification Number (IP PIN). The IP PIN is a unique identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. For the 2013 filing season, the IRS issued IP PINs to more than 770,000 taxpayers who had identity theft markers on their tax accounts.[39] The IRS verified the presence of the IP PIN at the time of filing, and rejected returns associated with a taxpayer's account where an IP PIN had been assigned but was missing.

Explanation of Provision

The provision requires the Secretary of the Treasury (or his or her delegate) to provide a report to the Senate Finance Committee and the House Ways and Means Committee on the IRS's current IP PIN program. The report is due within one year of the date of enactment and must provide information about (i) the efficacy of the program in reducing tax fraud, (ii) whether such program can be expanded to include all taxpayers, and (iii) whether such program can be converted into an Internet system to allow taxpayers to authenticate their identity when e-filing.

Effective Date

The provision is effective on the date of enactment.

9. Clarification with respect to regulation of Federal tax return preparers (sec. 19 of the discussion draft)

Present Law

The Department of the Treasury has authority to regulate conduct of persons representing others before any office or agency of the Secretary.[40] In addition to the authority in Title 31, regulations provided in Treasury Department Circular No. 230 ("Circular 230")[41] establish

[39] Testimony of Steven T. Miller, Acting Commissioner Internal Revenue Service, Senate Committee on Finance Hearing on "Tax Fraud and Tax Identity Theft: Moving Forward with Solutions," April 16, 2013, available at http://www.finance.senate.gov/imo/media/doc/Miller%20Testimony.pdf.

[40] 31 U.S.C. sec. 330 et seq.

[41] 31 C.F.R. part 10.

standards that identify criteria to be eligible to appear before an official of the Department of Treasury as a representative.

Under Circular 230, certain persons, such as attorneys or certified public accountants, are qualified on the basis of maintaining licenses or professional credentials issued by a State or governmental entity. The regulations also provide that persons may qualify on the basis of successful completion of educational requirements and testing prescribed by the Department of the Treasury.

Circular 230 was revised in 2011 to specify three classes of representation that are authorized on the basis of testing: enrolled agents, registered tax return preparers, and qualified appraisers.[42] The inclusion of registered tax return preparers in these regulations establishes standards of conduct for previously unenrolled tax return preparers, including minimum educational and competence requirements, in order to be eligible to prepare and sign a return as a paid tax return preparer. The regulations now include a definition of "tax return preparer" that is consistent with use of that term in the Code. The regulations require all preparers to obtain a preparer tax identification number ("PTIN") and to use such number on all returns with respect to which the person is considered a tax return preparer.[43]

The status as tax return preparer triggers certain duties for tax return preparers and persons who employ tax return preparers and potential sanctions for failure to conform to those duties. For example, depending on the volume of a preparers' business, the preparer may be required to submit returns electronically.[44] Also, a tax return preparer must furnish copies of the completed return or statement to the client and retain copies for his own records,[45] and provide the identification number required by the IRS.[46] Tax return preparers are subject to civil penalties for failure to comply with the foregoing duties, negotiation of a check payable to a client, or failure to exercise diligence in determining eligibility for an earned income credit.[47]

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[42] Reg. section 1.6109-2; 31 C.F.R. part 10. A District court enjoined the Secretary of the Treasury from attempting to enforce the educational and testing components of the revised Circular 230 regulations on the grounds that the Secretary's general authority to regulate practitioners is insufficient to permit regulation of return preparers, who, according to the court, do not practice before an office of the Department of Treasury. *Loving v. Internal Revenue Service*, 2013 U.S. Dist. LEXIS 7980 (D.D.C. 2013), modified by 2013 U.S. Dist. LEXIS 13878 (D.D.C. 2013), *appeal pending*, D.C.C. Dkt. No. 13-0561 (February 20, 2013).

[43] The use of a preparer tax identification number was specifically authorized in section 6109(a)(4), which provides that such number must be included on all returns or claims for refund, when required by regulations prescribed by the Secretary.

[44] Sec. 6011(e)(3).

[45] Sec. 6107.

[46] Sec. 6109. In addition, persons who employ tax return preparers are subject to specific recordkeeping requirements. Sec. 6050.

[47] Sec. 6695.

Tax return preparers also may be subject to civil or criminal penalties for the disclosure or use of a client's tax return information.[48]

Tax return preparers also are subject to a penalty for preparation of a return or refund claim with respect to which an understatement of tax liability results. If the understatement is due to an "unreasonable position," the penalty is the greater of $1,000 or 50 percent of the income derived by the return preparer with respect to that return.[49] Any position that a return preparer does not reasonably believe is more likely than not to be sustained on its merits is an "unreasonable position" unless the position is disclosed on the return or there is "substantial authority" for the position.[50] There is substantial authority for a position if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. If the position taken meets the definition of a tax shelter (as defined in section 6662(d)(2)(B)(ii)(I)) or a listed or reportable transaction (as referenced in 6662A), the preparer must have a reasonable belief that the position would more likely than not be sustained on its merits. If the understatement is due to willful or reckless conduct, the penalty increases to the greater of $5,000 or 50 percent of the income derived by the return preparer with respect to that return.[51]

Explanation of Provision

The provision modifies title 31 to confirm that the Department of the Treasury has the authority to regulate the conduct of all persons preparing and filing tax returns.

Effective Date

The provision applies to regulations promulgated before, on, or after the date of the enactment. No negative inference is created regarding the authority of the Secretary of the Treasury with respect to regulations promulgated before the date of enactment.

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[48] Sec. 7216.

[49] Sec. 6694(a)(1).

[50] Sec. 6694(a)(2).

[51] Sec. 6694(b).

C. Closing the Tax Gap

1. Improved information reporting on unreported and underreported financial accounts (sec. 21 of the discussion draft and sec. 6049 and new sec. 6049A of the Code)

Present Law

The Code requires that every person who makes a payment of reportable interest (as defined) of $10 or more to any other person during any calendar year report the aggregate amount of the payment and information identifying the recipient on an information return (Form 1099-INT) to the IRS. This report is not required to be filed for payments to exempt recipients and certain non-U.S. persons. The Code also requires that the payor furnish the corresponding information statements to payees named on the information returns showing the information that is reported to the IRS.

Explanation of Provision

The provision revises the reporting requirement to eliminate the minimum interest threshold of $10 and applies information reporting requirements and penalties for banks that hold non-interest bearing deposits.

Effective Date

The provision applies to returns filed after December 31, 2014.

2. Additional information on returns relating to mortgage interest (sec. 22 of the discussion draft and sec. 6050H of the Code)

Present Law

Any person who, in the course of a trade or business during a calendar year, received from an individual $600 or more of interest during a calendar year on an obligation secured by real property (such as mortgage interest) must file an information return with the IRS and must provide a copy of that return to the payor. The information return generally must include the name, address, and taxpayer identification number of the individual from whom the interest was received, and the amount of the interest and points received for the calendar year.

Explanation of Provision

The provision amends section 6050H to require the information return filed with the IRS and provided to the payor to include the following additional information: (i) the unpaid balance with respect to the mortgage, (ii) the address of the property securing the mortgage, (iii) information with respect to whether the mortgage is a refinancing that occurred in the calendar year; (iv) real estate taxes paid from an escrow account, and (v) the loan origination date.[52]

Effective Date

The provision applies to returns and statements due after December 31, 2014.

3. Tax reporting for life settlement transactions, clarification of tax basis of life insurance contracts, and exception to transfer for valuable consideration rules (secs. 23, 24, and 25 of the discussion draft and new sec. 6050X and secs. 1016 and 101 of the Code)

Present Law

An exclusion from Federal income tax is provided for amounts received under a life insurance contract paid by reason of the death of the insured.[53]

Under rules known as the transfer for value rules, if a life insurance contract is sold or otherwise transferred for valuable consideration, the otherwise available exclusion of the amount paid by reason of the death of the insured is limited.[54] Under the limitation, the excludable amount may not exceed the sum of (1) the actual value of the consideration, and (2) the premiums or other amounts subsequently paid by the transferee of the contract. Thus, for example, if a person buys a life insurance contract, and the consideration he pays combined with his subsequent premium payments on the contract are less than the amount of the death benefit he later receives under the contract, then the difference is includable in the buyer's income.

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[52] Government Accountability Office, Report to the Joint Committee on Taxation, *Home Mortgage Interest Deduction: Despite Challenges Presented by Complex Tax Rules, IRS Could Enhance Enforcement and Guidance*, (GAO-09-769), July 29, 2009. (report found that expanding information reporting on taxpayers mortgages to include property addresses, debt balances, and an indicator of loan refinancing would allow the IRS to identify taxpayers reporting mortgage interest exceeding the acquisition debt limit).

[53] Sec. 101(a)(1). In the case of certain accelerated death benefits and viatical settlements, special rules treat certain amounts as amounts paid by reason of the death of an insured (that is, generally, excludable from income). Sec. 101(g). The rules relating to accelerated death benefits provide that amounts treated as paid by reason of the death of the insured include any amount received under a life insurance contract on the life of an insured who is a terminally ill individual, or who is a chronically ill individual (provided certain requirements are met). For this purpose, a terminally ill individual is one who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. A chronically ill individual is one who has been certified by a licensed health care practitioner within the preceding 12-month period as meeting certain ability-related requirements. In the case of a viatical settlement, if any portion of the death benefit under a life insurance contract on the life of an insured who is terminally ill or chronically ill is sold to a viatical settlement provider, the amount paid for the sale or assignment of that portion is treated as an amount paid under the life insurance contract by reason of the death of the insured (that is, generally, excludable from income). For this purpose, a viatical settlement provider is a person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of terminally ill or chronically ill individuals (provided certain requirements are met).

[54] Sec. 101(a)(2).

Exceptions are provided to the limitation on the excludable amount. The limitation on the excludable amount does not apply if (1) the transferee's basis in the contract is determined in whole or in part by reference to the transferor's basis in the contract,[55] or (2) the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.[56]

IRS guidance sets forth more details of the tax treatment of a life insurance policyholder who sells or surrenders the life insurance contract and the tax treatment of other sellers and of buyers of life insurance contracts. The guidance relates to the character of taxable amounts (ordinary or capital) and to the taxpayer's basis in the life insurance contract.

In Revenue Ruling 2009-13,[57] the IRS ruled that income recognized under section 72(e) on surrender to the life insurance company of a life insurance contract with cash value is ordinary income. In the case of sale of a cash value life insurance contract, the IRS ruled that the insured's (seller's) basis is reduced by the cost of insurance, and the gain on sale of the contract is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered (the "inside buildup"), and any excess is long-term capital gain. Gain on the sale of a term life insurance contract (without cash surrender value) is long-term capital gain under the ruling.

In Revenue Ruling 2009-14,[58] the IRS ruled that under the transfer for value rules, a portion of the death benefit received by a buyer of a life insurance contract on the death of the insured is includable as ordinary income. That portion is the excess of the death benefit over the consideration and other amounts (*e.g.*, premiums) paid for the contract. Upon sale of the contract by the purchaser of the contract, the gain is long-term capital gain, and in determining the gain, the basis of the contract is not reduced by the cost of insurance.

Explanation of Provision

In general

The provision imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the payor in the case of the payment of reportable death benefits. The provision sets forth rules for determining the basis of a life insurance or annuity contract. Lastly, the provision modifies the transfer for value rules in a transfer of an interest in a life insurance contract in a reportable policy sale.

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[55] Sec. 101(a)(2)(A).

[56] Sec. 101(a)(2)(B).

[57] 2009-21 I.R.B. 1029.

[58] 2009-21 I.R.B. 1031.

Reporting requirements for acquisitions of life insurance contracts

Reporting upon acquisition of life insurance contract

The reporting requirement applies to every person who acquires a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale during the taxable year. A reportable policy sale means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured (apart from the acquirer's interest in the life insurance contract). An indirect acquisition includes the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.

Under the reporting requirement, the buyer reports information about the purchase to the IRS, to the insurance company that issued the contract, and to the seller. The information reported by the buyer about the purchase is (1) the buyer's name, address, and taxpayer identification number ("TIN"), (2) the name, address, and TIN of each recipient of payment in the reportable policy sale, (3) the date of the sale, and (4) the amount of each payment. The statement the buyer provides to any issuer of a life insurance contract is not required to include the amount of the payment or payments for the purchase of the contract.

Reporting of seller's basis in the life insurance contract

On receipt of a report described above, or on any notice of the transfer of a life insurance contract to a foreign person, the issuer is required to report to the IRS and to the seller (1) the basis of the contract (i.e., the investment in the contract within the meaning of section 72(e)(6)), (2) the name, address, and TIN of the seller or the transferor to a foreign person, and (3) the policy number of the contract. Notice of the transfer of a life insurance contract to a foreign person is intended to include any sort of notice, including information provided for nontax purposes such as change of address notices for purposes of sending statements or for other purposes, or information relating to loans, premiums, or death benefits with respect to the contract.

Reporting with respect to reportable death benefits

When a reportable death benefit is paid under a life insurance contract, the payor insurance company is required to report information about the payment to the IRS and to the payee. Under this reporting requirement, the payor reports (1) the gross amount of the payment; (2) the taxpayer identification number of the payee; and (3) the payor's estimate of the buyer's basis in the contract. A reportable death benefit means an amount paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale.

For purposes of these reporting requirements, a payment means the amount of cash and the fair market value of any consideration transferred in a reportable policy sale.

Determination of basis

The provision provides that in determining the basis of a life insurance or annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract (known as "cost of insurance"). This reverses the position of the IRS in Revenue Ruling 2009-13 that on sale of a cash value life insurance contract, the insured's (seller's) basis is reduced by the cost of insurance.

Scope of transfer for value rules

The provision provides that the exceptions to the transfer for value rules do not apply in the case of a transfer of a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale. Thus, some portion of the death benefit ultimately payable under such a contract may be includable in income.

Effective Date

Under the provision, the reporting requirement is effective for reportable policy sales occurring after December 31, 2014, and reportable death benefits paid after December 31, 2014. The clarification of the basis rules for life insurance and annuity contracts is effective for transactions entered into after August 25, 2009. The modification of exception to the transfer for value rules is effective for transfers occurring after December 31, 2014.

4. Modification to information required on returns for higher education tuition and related expenses (sec. 26 of the discussion draft and sec. 6050S of the Code)

Present Law

Eligible educational institutions that enroll individuals for any academic period are required to furnish, both to the IRS and to the student, an information return known as Form 1098-T.[59] Using this form, the educational institution is required to report the aggregate amount of payments received, or the aggregate amount billed by the institution to the student, for qualified tuition with respect to the student to whom the Form 1098-T pertains.

Explanation of Provision

The provision requires educational institutions to report amounts received by the educational institution, and not amounts billed, on the Form 1098-T.

Effective Date

The provision applies to payments received after the date of enactment, for education furnished in academic periods beginning after such date.

[59] Sec. 6050S.

5. Clarification of information required to be reported with respect to a business (sec. 27 of the discussion draft and sec. 6011 of the Code)

Present Law

Any person subject to tax must file returns and statements in accordance with prescribed forms and regulations.[60] For tax purposes, businesses may be organized as various entities, including as a C corporation, as a passthrough entity (*e.g.*, S corporation or partnership), or as a sole proprietorship. A C corporation is taxed directly on its current income, but its shareholders are not, although they are taxed separately on distributions by the corporation. Conversely, Federal income tax normally does not apply at the entity level in the case of a passthrough entity. Rather, items of income, gain, or loss are taken into account for tax purposes by the partners or S corporation shareholders on their own tax returns. Similarly, income from a sole proprietorship is included on the tax return of the individual owner.

To report income and losses from a sole proprietorship, individual taxpayers generally use a Schedule C, Form 1040, Profit or Loss from Business.[61] The Schedule C is divided into five main parts: (i) income, (ii) expenses, (iii) cost of goods sold, including the value of existing inventory, (iv) vehicle information, and (v) other expenses not previously covered.

Explanation of Provision

The provision requires individual taxpayers engaged in a trade or business as a sole proprietor to separately state the aggregate amount of gross receipts or sales reported to the taxpayer through payee statements, and the number of payee statements received. The provision also requires the taxpayer to separately state the total amounts of expenses reported to the taxpayer through payee statements, the number of payee statements furnished by the taxpayer, and other information as the Secretary deems necessary.

The provision further requires the Secretary of the Treasury (or his or her delegate) to prepare a report for Congress, within three years of enactment, providing recommendations on (i) whether the IRS should provide additional assistance to first-time business filers, (ii) ways the IRS can work with stakeholders to determine whether and how specific changes to existing education and guidance would be helpful; (iii) clarifying the instructions to indicate that information returns may be required in certain cases, (iv) how to adopt the best practices used by States and foreign governments to encourage voluntary compliance by sole proprietors, (v) whether indicating a Form 1099-MISC filing requirement affects voluntary compliance; and (vi) other suggestions to improve voluntary compliance.

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[60] Sec. 6011(a).

[61] The Schedule C also is used to claim wages and expenses garnered as a statutory employee, income and deductions from qualified joint ventures, and certain income reported on Forms 1099-Misc.

<u>Effective Date</u>

The provision applies to returns due after December 31, 2014.

D. Expansion of Electronic Filing

1. Increase electronic filing of returns (sec. 31 of discussion draft and secs. 6011, 6033 and 6104 of the Code)

Present law

In general

The Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998")[62] states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.[63] Section 2001(b) of RRA 1998 requires the IRS 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.[64] The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,[65] 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 income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006. In determining whether the 250 returns 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 less than $50,000 − may provide an abbreviated notice on Form 990-N, sometimes referred to as an

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[62] Pub. L. No. 105-206.

[63] 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.

[64] Sec. 6011(e).

[65] 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.

"e-postcard." Which form to file depends on the annual receipts, value of assets, and types of activities of the tax-exempt entity. The Forms 990, 990-EZ, and 990-PF 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.[66] Finally, smaller organizations that file Form 990-N (the e-postcard) also must electronically file.[67]

The majority of tax-exempt organizations that are required to file a Form 990-series return are not required to do so electronically and in fact do not do so.

Explanation of Provision

The provision relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns or statements during a calendar year in order to be subject to a regulatory mandate. That threshold is reduced from 250 to 100 for calendar year 2015, and further reduced to 50 for calendar year 2016 and 25 for calendar years thereafter. The provision directs the Secretary to require partnerships and corporations with assets in excess of $10 million to file electronically without regard to the number of returns such entities file with respect to a given calendar year.

The provision also requires that any individual income tax return prepared by a tax return preparer be filed electronically, regardless of the number of returns filed by such return preparers. The Secretary is authorized to waive this requirement if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to technological constraints such as lack of internet availability in the geographic location in which the return preparation business is operated.

The provision also extends the requirement to e-file to all tax-exempt organizations that have a filing obligation. The provision also requires that the IRS make the information provided on the forms available to the public in a machine-readable format as soon as practicable. 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.

[66] 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.

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

A hardship waiver of the electronic filing requirement is permitted if the taxpayer demonstrates that the taxpayer has limited or no access to the technology necessary to file returns electronically. In addition, even if the organization is not eligible for the hardship waiver of the electronic filing requirement, transitional relief is granted in the form of a delayed effective date in the case of an organization for which the requirement would present a hardship.

Effective Date

The provision is effective for returns with a due date, determined without regard to extensions, after December 31, 2014. The Secretary may delay the effective date up to three years for the filing of reports or returns by exempt organizations for which the requirement would constitute an undue hardship in the absence of additional transition time.

2. Increased authority for electronic filing of employee benefit plan tax information (sec. 32 of the discussion draft and sec. 6011 of the Code)

Present Law

Form 5500

An employer that maintains a pension, annuity, stock bonus, profit-sharing, or other funded deferred compensation plan (or the plan administrator of the plan) is required to file an annual return containing information required under regulations with respect to the qualification, financial condition, and operation of the plan.[68] The plan administrator of a defined benefit plan subject to the minimum funding requirements[69] is required to file an annual actuarial report.[70] These filing requirements are met by filing an Annual Return/Report of Employee Benefit Plan, Form 5500 series, and providing the information as required on the form and related instructions.[71]

Similarly, the Employee Retirement Income Security Act of 1974 ("ERISA") requires the administrator of certain pension and welfare benefit plans to file annual reports disclosing certain information to the Department of Labor ("DOL") and, with respect to some defined benefit plans, to the Pension Benefit Guaranty Corporation ("PBGC").[72] Plan administrators also comply with these ERISA filing requirements by filing Form 5500.[73]

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[68] Sec. 6058.

[69] Sec. 412. Most governmental plans (defined in section 414(d)) and church plans (defined in section 414(e)) are exempt from the minimum funding requirements.

[70] Sec. 6059.

[71] Treas. Reg. secs. 301.6058-1(a) and 301.6059-1.

[72] ERISA secs. 103, 104, and 4065. Most governmental plans and church plans are exempt from ERISA, including the ERISA reporting requirements. ERISA section 3004 requires that, when the IRS and DOL carry out provisions relating to the same subject matter, they must consult with each other and develop rules, regulations, practices and forms designed to reduce duplication of effort, duplication of reporting, and the burden of compliance

Because of parallel or similar requirements under the Code and ERISA, some information reported on Form 5500 fulfills a reporting requirement under both laws, whereas some information reported on Form 5500 potentially relates to only one law. All Forms 5500 are filed with DOL,[74] and information from Form 5500 filings is shared with the IRS and PBGC.

Electronic filing and public disclosure

The IRS is required to provide standards for electronically filed returns, but may not require a person to file a return electronically unless the person is required to file at least 250 returns during the calendar year.[75] Returns (including information returns) and return information received by the IRS are generally subject to confidentiality protections and cannot be disclosed, including to another Federal agency, unless specifically authorized.[76] The Code provides that information required to be filed in the annual return of a pension, annuity, stock bonus, profit-sharing, or other funded deferred compensation plan is to be made available to the public at such times and in such places as the IRS provides.[77]

DOL is required to make copies of pension and welfare benefit plan annual reports available for public inspection.[78] Information in the annual report is required to be filed with DOL in an electronic format that accommodates display on the Internet, in accordance with DOL regulations, which require electronic filing for any plan year beginning on or after January 1, 2009.[79] Thus, Form 5500 for any plan year beginning on or after January 1, 2009, must be filed electronically. No process exists for filing Form 5500 for those plan years in paper form. Forms 5500 filed with DOL for those years are available on DOL's website.

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by plan administrators and employers. Under ERISA section 4065, the PBGC is required to work with the IRS and DOL to combine the annual report to PBGC with reports required to be made to those agencies.

[73] Form 5500 consists of a main form and various schedules, some of which require additional information to be included. The schedules that must be filed and the additional information that must be included with Form 5500 depend on the type and size of plan. A simplified annual reporting form, Annual Return/Report of Small Employee Benefit Plan, Form 5500-SF, is available to certain plans (covering fewer than 100 employees) that are subject to reporting requirements under ERISA and the Code. References herein to Form 5500 include Form 5500-SF. Some plans are exempt from ERISA (and the filing requirements under ERISA) and thus are subject only to the filing requirements under the Code. These filing requirements are generally met by filing Form 5500-EZ with the IRS, but may be met by filing Form 5500-SF with DOL.

[74] The IRS does not have a system for accepting Form 5500 filings.

[75] Sec. 6011(a) and (e). The IRS is also required to take into account (among other relevant factors) the ability of a taxpayer to comply at reasonable cost with electronic filing requirements.

[76] Sec. 6103.

[77] Sec. 6104(b); Treas. Reg. sec. 301.6104(b)-1.

[78] ERISA secs. 104(a)(1) and 106(a).

[79] ERISA sec. 104(b)(5); 29 C.F.R. 2520.104a-2. Section 104(b)(5) was added to ERISA by section 504 of the Pension Protection Act of 2006, Pub. L. No. 109-280.

As a result of the restriction on the IRS's authority to require electronic filing for persons filing fewer than 250 returns (as described above), information relevant only for Code purposes cannot uniformly be required to be reported on Form 5500 (which is filed only electronically with DOL) because to do so could be an indirect electronic filing requirement that exceeds IRS authority. Therefore, questions relating to information relevant only for Code purposes, such as information on compliance with the nondiscrimination requirements for qualified retirement plans,[80] are not included on the current version of Form 5500. In addition, no separate IRS reporting or filing process exists as an alternative to Form 5500, so information relevant only for Code purposes is not currently collected.

Annual registration statement and notification of changes

In the case of a plan subject to the vesting requirements under ERISA, the plan administrator is required to file an annual registration statement with the IRS with respect to any plan participant who (1) separated from service during the year and (2) has a vested benefit under the plan, but who was not paid the benefit during the year (a "deferred vested benefit").[81] The registration statement must include the name of the plan, the name and address of the plan administrator, the name and taxpayer identification number of the separated participant, and the nature, amount, and form of the participant's deferred vested benefit. The plan administrator must also notify the IRS of certain changes relating to the plan, such as a change in the name of the plan or the name or address of the plan administrator, or the occurrence of certain plan transactions.[82] The information in these filings is generally subject to the confidentiality protections applicable to returns (including information returns) and return information. However, the IRS is required to provide the information to the Social Security Administration ("SSA"), which, in turn, provides this information to the participant (or the participant's beneficiary) when the participant (or beneficiary) becomes eligible for Social Security benefits.[83]

These required filings were previously included with Form 5500. However, because, under the current filing system, Forms 5500 are filed electronically and posted on the Internet, these filing requirements are fulfilled by filing Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits, with the IRS.

Proposed regulations

The IRS has issued proposed regulations to require that, if a filer (that is, plan administrator or employer) of Form 5500 or Form 8955-SSA is required to file at least 250 returns during a calendar year, the filer generally is required to file Form 5500 or

[80] Secs. 401(a)(4) and 410.

[81] Code sec. 6057(a). Under Code section 6057(e) and ERISA section 105(c), similar information must be provided to the separated participant.

[82] Sec. 6057(b).

[83] Code secs. 6057(d) and 6103(l)(1)(B) and sec. 1131 of the Social Security Act.

Form 8955-SSA electronically. For purposes of determining whether a filer is required to file at least 250 returns, all types of returns are aggregated, including, for example, income tax returns, employment tax returns, and information returns.[84] The regulations are proposed to apply for filings for plan years beginning on or after January 1, 2014, but only for filings due after December 31, 2014.

Returns for certain fringe benefit plans

An employer maintaining a specified fringe benefit plan under which any benefits are excludable from gross income is required to file a return with respect to such plan at such time and in such manner as prescribed by the IRS.[85] For this purpose, a specified fringe benefit plan is a plan providing employees with group-term life insurance, health benefits, educational assistance, dependent care assistance or adoption assistance or a cafeteria plan.[86] The IRS does not currently require the filing of returns relating to specified fringe benefit plans.[87]

Explanation of Provision

Under the provision, the restriction that the IRS may not require a person to file a return electronically unless the person is required to file at least 250 returns during the calendar year[88] does not apply to (1) annual returns with respect to pension, annuity, stock bonus, profit-sharing, or other funded deferred compensation plans, (2) annual actuarial reports with respect to defined benefit plans, (3) annual registration statements with respect to participants with deferred vested benefits under a plan and notifications of plan changes, or (4) returns with respect to specified fringe benefit plans.

Effective Date

The provision is effective for plan years beginning after December 31, 2014.

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[84] Prop. Treas. Reg. secs. 301.6057-3, 301.6058-2 and 301.6059-2, 78 Fed. Reg. 53704, 53707, 53708 (August 30, 2013). The regulations provide for waiver of the electronic filing requirement in the case of undue economic hardship.

[85] Sec. 6039D.

[86] Secs. 79, 105-106, 127, 129, 137 or 125.

[87] Notice 2002-24, 2002-1 C.B. 785; Notice 90-24, 1990-1 C.B. 335.

[88] Sec. 31 of the discussion draft reduces this requirement to at least 100 returns for calendar year 2015, at least 50 returns for calendar year 2016, and at least 25 returns for calendar years after 2016.

E. Reforms Relating to Audit and Collections

1. 100 percent continuous levy on payment to Medicare providers and suppliers (sec. 41 of the discussion draft and sec. 6331 of the Code)

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property (or rights to property) to pay the taxpayer's tax liability.[89] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[90] the property is not exempt from levy,[91] and the IRS has provided both notice of intention to levy[92] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[93] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[94] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[95]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[96]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases,

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[89] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[90] *Ibid*.

[91] Sec. 6334.

[92] Sec. 6331(d).

[93] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[94] Secs. 6331(e) and 6343.

[95] Sec. 6321.

[96] Secs. 6331(d)(3), 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[97]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[98] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[99] The levy (either up to 15 percent or up to 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service ("FMS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Payments to Medicare Providers

In 2008, the Government Accountability Office ("GAO") found that over 27,000 Medicare providers (*i.e.*, about six percent of all such providers) owed more than $2 billion of tax debt, consisting largely of individual income and payroll taxes.[100] As of 2008, the Centers for Medicare & Medicaid Services ("CMS") had not incorporated most of its Medicare payments into the continuous levy program, despite the IRS authority to continuously levy up to 15 percent of these payments. Following the GAO study, Congress directed CMS to participate in the FPLP and ensure that all Medicare provider and supplier payments are processed through it, in specified graduated percentages, by the end of fiscal year 2011.[101] CMS has since incorporated its payments into the continuous levy program to ensure that it collects delinquent tax debts from Medicare providers as authorized.

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[97] Sec. 6330(f).

[98] Pub. L. No. 105-34.

[99] Sec. 6331(h)(3). The word "property" was added to "goods or services" in section 301 of the "3% Withholding Repeal and Job Creation Act," Pub. L. No. 112-56.

[100] Government Accountability Office, *Medicare: Thousands of Medicare Providers Abuse the Federal Tax System* (GAO-08-618), June 13, 2008.

[101] Medicare Improvement for Patients and Providers Act of 2008, Pub. L. No. 110-275, sec. 189.

Explanation of Provision

The provision allows Treasury to levy up to 100 percent of a payment to a Medicare provider to collect unpaid taxes.

Effective Date

The provision is effective for levies issued on or after the date which is 180 days after the date of enactment.

2. Waiver of user fee for installment agreements using automated withdrawals (sec. 42 of the discussion draft 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 period during which payments may be made and while other IRS enforcement actions are held in abeyance.[102] 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. If the request for an installment agreement is approved by the IRS, a user fee is charged.[103] The Independent Offices Appropriations Act (IOAA) authorizes agencies to prescribe regulations that establish charges for services provided by the agencies.[104] The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President. Those policies currently are set by the Office of Management and Budget ("OMB").[105] As required by the OMB, the IRS recently completed a routine review of the installment agreement program and determined that the full cost of an installment agreement is $282, except that the cost is only

[102] Sec. 6331(k).

[103] 31 USC sec. 9701; Treas. reg. sec. 300.1.

[104] *Ibid.*

[105] OMB Circular A-25, 58 FR 38142 (July 15, 1993).

$122 for a direct debit installment agreement. The IRS also determined that the full cost of restructuring or reinstating an installment agreement is $85.[106]

Under sections 300.1 and 300.2 of the Treasury Regulations, the IRS currently charges $105 for entering into an installment agreement, and $52 in the case of a direct debit installment agreement, which is an agreement whereby the taxpayer authorizes the IRS to request the monthly electronic transfer of funds from the taxpayer's bank account to the IRS. This fee is $43 if the taxpayer is a low-income taxpayer (notwithstanding the method of payment). Also, the IRS currently charges $45 for restructuring or reinstating an installment agreement that is in default. The amount of the fees has not changed since 2007.

Explanation of Provision

The provision waives the user fee for taxpayers who enter into an installment agreement which provides for automated installment payments.

Effective Date

The provision applies to agreements entered into on or after the date which is 180 days after the date of enactment.

3. Revocation or denial of passport in case of certain unpaid taxes (sec. 43 of the discussion draft and new secs. 7345 and 6103(l)(23) of the Code)

Present Law

The administration of passports is the responsibility of the Department of State.[107] State may refuse to issue or renew a passport if the applicant owes child support in excess of $2,500 or owes certain types of Federal debts, such as expenses incurred in providing assistance to an applicant to return to the United States. The scope of this authority does not extend to rejection or revocation of a passport on the basis of delinquent Federal taxes. Issuance of a passport does not require the applicant to provide a social security number or taxpayer identification number.

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 such information except as provided in the Internal Revenue Code.[108] There are a number of exceptions to the general rule of nondisclosure that authorize disclosure in specifically identified circumstances, including disclosure of information about federal tax debts for purposes of reviewing an

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[106] Proposed regulations issued in August 30, 2013 would increase the installment agreement fees to recover more of the costs associated with such agreements. 78 Fed. Reg. 53702-53704, August 30, 2013.

[107] "Passport Act of 1926," 22 U.S.C. sec. 211a et seq.

[108] Sec. 6103.

application for a Federal loan[109] and for purposes of enhancing the integrity of the Medicare program.[110]

Explanation of Provision

Under this provision, the Secretary of State is required to deny a passport (or renewal of a passport) to a seriously delinquent taxpayer and is permitted to revoke any passport previously issued to such person. In addition to the revocation or denial of passports to delinquent taxpayers, the Secretary of State is authorized to deny an application for a passport if the applicant fails to provide a social security number or provides an incorrect or invalid social security number. With respect to an incorrect or invalid number, the inclusion of an erroneous number is a basis for rejection of the application only if the erroneous number was provided willfully, intentionally, recklessly or negligently. Exceptions to these rules are permitted for emergency or humanitarian circumstances, including issuance of a passport for short-term use to return travel to the United States by the delinquent taxpayer.

The provision authorizes limited sharing of information between the Secretary of State and Secretary of Treasury. If the Commissioner of Internal Revenue certifies to the Secretary of the Treasury the identity of persons who have seriously delinquent Federal taxes as defined in this provision, the Secretary of Treasury or his delegate is authorized to transmit such certification to the Secretary of State for use in determining whether to issue, renew, or revoke a passport. Applicants whose names are included on the certifications provided to the Secretary of State are ineligible for a passport. The Secretary of State and Secretary of Treasury are held harmless with respect to any certification issued pursuant to this provision.

A seriously delinquent tax debt generally includes any outstanding debt for Federal tax in excess of $50,000, including interest and any penalties, for which a notice of lien or a notice of levy has been filed. This amount is to be adjusted for inflation annually, using calendar year 2013, and a cost-of-living adjustment. Even if a tax debt otherwise meets the statutory threshold, it may not be considered seriously delinquent if (1) the debt is being paid in a timely manner pursuant to an installment agreement or offer-in-compromise, or (2) collection action with respect to the debt is suspended because a collection due process hearing or innocent spouse relief has been requested or is pending.

Effective Date

The provision is effective on January 1, 2014.

[109] Sec. 6103(l)(3).

[110] Sec. 6103(l)(22).

F. Improvements to Tax Filing

1. New due date for partnership Form 1065, S corporation Form 1120S and C corporation Form 1120 (sec. 51 of the discussion draft and sec. 6072 of the Code)

Present Law

Persons required to file income tax returns[111] must file such returns in the manner prescribed by the Secretary, in compliance with due dates established in the Code, if any, or by regulations. Partnership returns are due under the general rule that requires income tax returns to be filed on or before the 15th day of the fourth month after the end of the taxable year.[112] For a partnership with a taxable year that is a calendar year, for example, the partnership return due date (and the date by which Schedules K-1 must be furnished to partners) is April 15. However, a partnership is allowed an automatic five-month extension of time to file the partnership return and the Schedule K-1s (to September 15 in the foregoing example) by submitting an application on Form 7004 in accordance with the rules prescribed by the Treasury regulations.[113]

An exception to the general income tax due date is established for corporations. Both C corporations and S corporations are generally required to file a Federal income tax return on or before the 15th day of the third month following the close of the corporation's taxable year. For a corporation with a taxable year that is a calendar year, for example, the corporate return due date is March 15.[114] However, a corporation is allowed an automatic six-month extension of time to file the corporate return (to September 15 in the foregoing example) by submitting an application on Form 7004 in accordance with the rules prescribed by the Treasury regulations.[115]

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[111] Section 6012 provides general rules identifying who must file an income tax return, while other Code provisions referenced herein specifically address filing requirements of partnerships, corporations, and other entities.

[112] Secs. 6031, 6072.

[113] Sec. 6081. Treas. Reg. sec. 1.6081-2. See Department of the Treasury, Internal Revenue Service, *2011 Instructions for Form 1065, U.S. Return of Partnership Income*, p. 3. Unlike other partnerships, an electing large partnership is required to furnish a Schedule K-1 to each partner by the first March 15 following the close of the partnership's taxable year (sec. 6031(b)). For calendar year 2012 partnerships, for example, the due date is March 15, 2013 even though the partnership return due date is April 15, 2013. However, an electing large partnership is allowed an automatic six-month extension of time to file the partnership return and the Schedule K-1s by submitting an application on form 7004 in accordance with the rules prescribed by the Treasury Regulations. Treas. Reg. sec. 1.6081-2(a)(2).

[114] Secs. 6012, 6037, 6072. Section 6012(a)(2) provides that every corporation subject to taxation under subtitle A shall be required to file an income tax return. Section 6037, which governs the returns of S corporations, provides that any return filed pursuant to section 6037 shall, for purposes of chapter 66 (relating to limitations) be treated as a return filed by the corporation under section 6012. Section 6072, which sets forth the due dates for filing various income tax returns, provides that returns of corporations with a taxable year that is a calendar year under section 6012 (and section 6037 based on the language in that section) are due March 15.

[115] Section 6081(b) provides that a corporation is allowed an automatic extension of three months to file its income tax return if the corporation files the form prescribed by the Secretary and pays on or before the due date prescribed for payment, the amount properly estimated as its tax. However, section 6081(a) provides that the

The annual returns required to be filed by various employee benefit plans are due on the last day of the seventh month following the close of the plan year, and may be extended up to the 15th day of the third month following the due date. For a calendar year plan, the original due date would be July 31, with a maximum extension until October 15.[116]

Explanation of Provision

The provision accelerates the original filing date of Federal income tax returns of partnerships and delays the original filing dates of Federal income tax returns of C corporations and S corporations.

The provision requires that the partnership returns be filed on or before the 15th day of the third month following the close of the taxpayer's taxable year, or March 15 in the case of a calendar year taxpayer. Returns for S corporations are due on or before the 30th day of the third month following the close of the taxpayer's taxable year, or March 30 in the case of a calendar year taxpayer. Under the provision, C corporations are subject to the general due date for filing original returns, that is, the 15th day of the fourth month after the close of a taxable year, or April 15 in the case of a calendar year taxpayer.

Effective Date

The provision is effective for returns for taxable years beginning after December 31, 2014.

Secretary may grant an automatic extension of up to six months to file and the Treasury regulations do so provide. Treas. Reg. sec. 1.6081-3.

[116] Treas. Reg. sec. 1.6081-11 permits an automatic extension.

G. Taxpayer Access to Judicial Forum

1. Filing period for interest abatement cases (sec. 61 of the discussion draft and sec. 6404 of the Code)

Present Law

Section 6404(h) vests with the Tax Court jurisdiction over actions brought by a taxpayer for review of a denial of a request for interest abatement if (1) the taxpayer meets certain net worth requirements, and (2) the petition is filed within 180 days of mailing of a final determination by the Secretary not to abate interest.

Under present law, section 6404(h) does not authorize the filing of a Tax Court petition in the absence of the mailing of a final determination by the Secretary and, accordingly, does not confer jurisdiction on the Tax Court in such circumstances. Hence, where the Secretary fails to respond to a taxpayer's claim for abatement of interest, the taxpayer is unable to seek judicial review of the claim.

Explanation of Provision

The provision amends section 6404(h), relating to review of denials of requests for abatement of interest, to provide that a petition under the section may be filed with the Tax Court upon the expiration of a 180-day period after the filing with the IRS of a claim (in such form as the Secretary may prescribe) for abatement of interest, in instances where the Secretary has failed to issue a final determination within that period.

Effective Date

The provision is effective for claims for abatement of interest filed after the date of enactment.

2. Small tax case election for interest abatement cases (sec. 62 of the discussion draft and sec. 7463 of the Code)

Present Law

Section 7463 of the Code provides certain proceedings for small tax cases, generally those that involve disputes of $50,000 or less.[117] Under section 6404(h), the Tax Court has exclusive jurisdiction to review a failure by the Secretary to abate interest.[118] However, section 7463 presently does not authorize cases to be conducted using small tax case procedures, unless the issue arises as part of a request for review of collection actions under section 6330.

[117] These cases are handled under less formal procedures than regular cases. The Tax Court's decision in a small tax case is final and cannot be appealed to any court by the IRS or by the petitioner. See 7463, Title XVII of the United States Tax Court rules, and http://www.ustaxcourt.gov/forms/Petition_Kit.pdf.

[118] *Hinck v. United States*, 127 S.Ct. 2011 (2007).

Explanation of Provision

The provision amends section 7463(f), relating to additional cases which may be conducted as a small tax case, by adding a new paragraph (3) enumerating petitions brought under section 6404(h), for review of a decision by the Secretary not to abate interest, as a matter which may be conducted under section 7463. The provision extends the small tax case procedures to actions for interest abatement in which the total amount of interest for which abatement is sought does not exceed $50,000.

Effective Date

The provision applies to cases pending as of the day after the date of enactment, and cases commencing after such date of enactment.

3. Venue for appeal of spousal relief and collection cases (sec. 63 of the discussion draft and sec. 7482 of the Code)

Present Law

Sections 6015, 6320, and 6330 provide rights for taxpayers, principally through the establishment of administrative procedures and judicial review of administrative actions taken in matters involving spousal relief from joint and several liability and collection of taxes by lien and levy. The Tax Court is vested with jurisdiction to render decisions on the taxpayer's entitlement to relief under these provisions.

Section 7482 provides for appellate review of Tax Court decisions by the U.S. Court of Appeals and subsection (b) of that statute governs venue for such review. In general, section 7482 enumerates types of cases appealable to the U.S. Court of Appeals for the circuit in which is located the taxpayer's legal residence, principal place of business, or principal office or agency and then establishes a default rule for review of all other cases by the U.S. Court of Appeals for the District of Columbia. Sections 6015, 6320, and 6330 are not among those expressly identified as appealable to the circuit of residence or principal business/office. However, routine practice since enactment, on the part of both the litigants and the courts, has been to treat such cases as appealable to the U.S. Court of Appeals for the circuit corresponding to the petitioner's residence or principal business or office.

Explanation of Provision

The provision amends section 7482(b) to clarify that Tax Court decisions rendered in cases involving petitions under sections 6015, 6320, or 6330 follow the generally applicable rule for appellate review. That rule provides that the cases are appealable to the U.S. Court of Appeals for the circuit in which is located the petitioner's legal residence in the case of an individual or the petitioner's principal place of business or principal office of agency in the case of an entity other than an individual.

Effective Date

The provision applies to petitions filed after the date of enactment. No inference is intended with respect to the application of section 7482 to court proceedings filed on or before the date of enactment.

4. Suspension of running of period for filing petition of spousal relief and collection cases (sec. 64 of the discussion draft)

Present Law

Section 6015(e) addresses procedures by which taxpayers may petition the Tax Court to determine the appropriate relief available to the individual in matters involving spousal relief from joint and several liability and collection of taxes by lien and levy. It also provides for suspension of the running of a period of limitations[119] on the collection of assessments that may apply, limits on tax court jurisdictions in certain circumstances, and rules for providing adequate notice of proceedings to the other spouse.

Section 6330 disallows levies to be made on property or right to property unless the Secretary has notified the taxpayer in writing of their right to a hearing before such levy is made. Under subsection (d), once a determination is made, the taxpayer may appeal the determination to the Tax Court within 30 days. Under subsection (e), the levy actions which are the subject of the requested hearing and the running of any relevant period of limitations[120] are suspended for the period during which such hearing and appeals are pending.

Explanation of Provision

The provision adds to existing rules a suspension of the running of a period of limitations on filing petition as described in section 6015(e) for a taxpayer who is prohibited from filing such a petition under U.S.C. Title 11. The suspension is for the period during which the taxpayer is prohibited from filing such a petition and for 60 days thereafter.

The provision also adds to existing rules a suspension of the running of a period of limitations on filing petition as described in section 6330(e) for a taxpayer who is prohibited from filing such a petition under U.S.C. Title 11. The suspension is for the period during which the taxpayer is prohibited from filing such a petition and for 30 days thereafter.

Effective Date

The provision applies to petitions filed under section 6015(e) of the Code after the date of enactment and to petitions filed under section 6330 of the Code after the date of enactment.

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[119] Sec. 6502.

[120] Secs. 6502, 6531, and 6532.

5. Application of Federal rules of evidence (sec. 65 of the discussion draft and sec. 7453 of the Code)

Present Law

In general, section 7453 provides that the proceedings of the Tax Court shall be conducted in accordance with rules of practice and procedure (other than rules of evidence) as prescribed by the Tax Court, and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia. The Tax Court has interpreted section 7453 to require the Tax Court to apply the evidentiary precedent of the D.C.Circuit in all cases[121], an exception to the Tax Court's regular practice under *Golsen v. Commissioner*[122] of applying the precedent of the circuit court of appeals to which its decision is appealable.

The Federal Rules of Evidence[123] are the applicable rules of evidence for all Federal district courts in all judicial districts, including the District of Columbia. In addition, the United States Code includes specific rules and procedures for evidence.[124] Rule 143 of the Rules of Practice and Procedure promulgated by the Tax Court, states "those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia)."

Explanation of Provision

The provision amends section 7453 of the Code to provide that proceedings of the Tax Court be conducted in accordance with rules of practice and procedure as prescribed by the Tax Court, and in accordance with Federal Rules of Evidence. Thus, the Tax Court will apply the evidentiary precedent of the circuit court of appeals to which its decision is appealable.

Effective Date

The provision applies to proceedings commenced after the date of enactment, and to the extent that it is just and practicable, to all proceedings pending on such date.

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[121] All cases except those cases in which section 7453 does not apply, *e.g.*, small tax cases, discussed in section 62, *supra*.

[122] 54 T.C. 742 (1970), aff'd, 445 F.2d 985 (10th Cir. 1971).

[123] The Federal Rules of Evidence, as amended through 2012, under the authority of 28 U.S.C. sec. 2074, is available at http://www.uscourts.gov/uscourts/rules/rules-evidence.pdf. "The Act to Establish Rules of Evidence for Certain Courts and Proceedings," Pub. L. No. 93-595 (January 2, 1975).

[124] 28 U.S.C. secs. 1731 through 1828.

H. Other Provisions

1. Authorize the limited sharing of business tax return information with the Bureau of Economic Analysis and Bureau of Labor Statistics (sec. 71 of the discussion draft and sec. 6103 of the Code)

Present Law

General rule

Under present law, section 6103 provides that returns and return information are confidential and cannot be disclosed by the IRS, other Federal employees, State employees, and certain others having access to such information except as provided by specified exceptions.

Returns and information returns

A "return" means any tax or information return, declaration of estimated tax, or claim for refund which, under the Code, is required (or permitted) to be filed on behalf of, or with respect to, any person. It also includes any amendment, supplemental schedule or attachment filed with the tax return, information return, declaration of estimated tax, or claim for refund. For example, Form W-2, Wage and Tax Statement, is an information return, and is the return of both the employer who filed it with the IRS and the employee with respect to whom it was filed.

Return information

The Code defines "return information" broadly. It includes a taxpayer's identity (the name of the person with respect to whom a return is filed; his or her mailing address; his or her taxpayer identifying number ("TIN"), Social Security number ("SSN"), or a combination thereof). In addition to taxpayer identity, return information includes any information gathered by the IRS with regard to a taxpayer's liability under the Code, including the following data:

- the nature, source, or amount of 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;
- 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 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 the agreement or any application for an advance pricing agreement; and

- any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)).

The term "return information" does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. However, return information with the identifiers (name, address, SSN) simply removed is still protected by section 6103.

Exceptions to the general rule of confidentiality for statistical use

Section 6103(j) permits the disclosure of returns and return information for statistical use. The information received under this section can only be redisclosed in a form that cannot identify the taxpayer, unless it is being provided to the taxpayer. As provided by regulation, upon written request by the Secretary of Commerce, returns and return information are available to the Bureau of the Census ("Census"). Corporate return information is available to the Bureau of Economic Analysis ("BEA") as provided by regulation for the purpose of structuring censuses, national economic accounts, and related statistical activities.[125] The information disclosed to Census and BEA is only to the extent necessary in the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

The Bureau of Labor Statistics ("BLS") is not authorized to receive confidential returns and return information.

Sharing among authorized recipients

Under Treasury regulations, the Commissioner of the Internal Revenue Service may approve an arrangement to allow one authorized recipient to disclose confidential tax information that another recipient is authorized by section 6103 to receive.[126] The second recipient may only use the information as such recipient is authorized under section 6103.

Safeguards against and penalties for unauthorized disclosure or inspection of returns and information

Safeguards

Section 6103 requires as a condition for receiving tax information, that recipient agencies establish, to the satisfaction of the IRS, physical, administrative, and technical safeguards to

[125] Treas. Reg. sec. 301.6103(j)(1)-1(c). Such information includes Statistics of Income transcript edit sheets regarding designated categories of corporations and microfilm records regarding corporate returns as needed. Treas. Reg. sec. 301.6103(j)(1)-1(c)(1). The Social Security Administration can redisclose to the Bureau of Economic Analysis a limited amount of corporate return information that it receives from the IRS. Treas. Reg. sec. 301.6103(j)(1)-1(c)(2).

[126] Treas. Reg. sec. 301.6103(p)(2)(B)-1.

protect the confidentiality of the information received.[127] Such safeguards include a standardized system of records with respect to requests for disclosure of tax information and the reason for such disclosure, secure storage for the tax information, restrictions which limit access to the tax information to persons whose duties and responsibilities require access, and other safeguards as the IRS deems appropriate. The IRS is to review the safeguards established by such agencies and is permitted to terminate access if the safeguards are found unsatisfactory.

Civil and criminal penalties for unauthorized disclosure or inspection

The Code provides for criminal penalties and civil damages in the event of an unauthorized disclosure. The willful unauthorized disclosure of tax information is a felony punishable by a $5,000 fine, up to five years imprisonment, or both.[128] Willful unauthorized inspection of tax information is a misdemeanor punishable by a $1,000 fine, up to one-year imprisonment, or both.[129] Federal employees and officers are required to be discharged from employment upon conviction of willful unauthorized disclosure or inspection.

An action for damages against the United States is permitted when any Federal officer or employee knowingly or by reason of negligence inspects or discloses tax information in violation of any provision of section 6103.[130] A plaintiff is entitled to: (1) actual damages sustained as a result of unauthorized disclosure (including punitive damages for willful or grossly negligent disclosures), or (2) liquidated damages of $1,000 per disclosure, whichever is greater, as well as costs of the action and in certain cases, attorney fees. No liability arises from a good faith but erroneous interpretation of section 6103 or a disclosure made at the request of the taxpayer.

Explanation of Provision

Bureau of Economic Analysis

The provision expands BEA access to confidential return information to cover sole proprietorships with receipts in excess of $750,000 and the return information of all partnerships. The return information of partnerships does not include individual partner items, such as that found on the Schedule K-1. As under present law, the specific items of return information to be disclosed will be provided for in regulations. BEA contractors do not have access to confidential return information under the provision.

[127] Sec. 6103(p)(4). See also Internal Revenue Service, Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information* (2012).

[128] Sec. 7213(a)(1).

[129] Sec. 7213A(a)(2)(b).

[130] Sec. 7431.

Bureau of Labor Statistics

In general

Under the provision, officers and employees of BLS are allowed access to the following items of return information for all types of businesses that function as an employer, including that of tax-exempt entities, and State, local and Indian tribal government employers: name, trade name, mailing address, and physical location address; taxpayer identification number; principal industry activity (including business description); number of employees and total business-level wages (including wages, tips, and other compensation quarterly from Form 941 and annually from Forms 943 and 944); and sales and revenue. The provision does not authorize the disclosure of information regarding individual employees, only aggregate information at the business entity level.

BLS is permitted to receive this information but only to the extent necessary in the structuring and conducting of censuses and surveys of labor and employment, prices, compensation and working conditions, and related statistical activities as authorized by law.

Redisclosure to State statistical agencies

For the purpose of assisting BLS and Census to identify and resolve discrepancies in their lists of businesses, the proposal permits employees of State statistical agencies to receive from BLS the following identity elements: business name(s), address(es), principal industry activity (including business description), and taxpayer identification number. Only the independently verified information may be incorporated into State files.

Under the provision, no BLS contractor or State agency contractor has access to confidential return information. BLS is required to monitor compliance by State agencies with the prescribed safeguard protocols.

Sharing of data among authorized Federal agencies

Pursuant to an agreement approved by the IRS, the provision permits the Department of Commerce and BLS to share information each agency is otherwise authorized to receive directly from the IRS. This is intended to facilitate in the identification and resolution of discrepancies among the agency business registers and such agreements are to be conducted in accordance with present law regulations governing sharing among authorized recipients.

Effective Date

The proposal applies to disclosures after the date of enactment.

2. Increased refund and credit threshold for Joint Committee on Taxation review of C corporation return (sec. 72 of the discussion draft and sec. 6405 of the Code)

Present Law

No refund or credit in excess of a specified dollar threshold of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues. The specified dollar threshold for review is $2,000,000.

Explanation of Provision

The provision increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $2,000,000 to $5,000,000 in the case of a C corporation, which is defined for purposes of the Code as any corporation that is not an S corporation.[131] The staff of the Joint Committee on Taxation continues to be authorized to conduct a program of expanded post-audit reviews of large deficiency cases and other select issues.

Effective Date

The provision is effective on the date of enactment, except that the higher threshold does not apply to a refund or credit with respect to which the IRS has submitted a report to the Joint Committee on Tax before the date of enactment.

[131] Sec. 1361(a)(2).