

**DESCRIPTION OF TAXPAYER BILL OF RIGHTS 2 PROVISIONS  
(Scheduled for Markup by the Senate Committee on Finance  
on March 3, 1992)**

**I. Additional Safeguards to Protect Taxpayers' Rights**

**1. Establishment of Taxpayers' Advocate**

**Present Law**

The IRS Ombudsman assists taxpayers in resolving administrative difficulties with the IRS.

**Explanation of Provision**

The provision statutorily establishes the position of Taxpayers' Advocate in the IRS as a replacement for the Ombudsman. The Advocate would be appointed by the Commissioner. The provision also requires detailed annual reports to the tax-writing committees, provides that problems resolution officers report to the Taxpayer Advocate, and provides that the Taxpayer Advocate report directly to the IRS Commissioner.

**2. Expansion of Authority to Issue Taxpayer Assistance Orders (TAOs)**

**Present Law**

The Ombudsman may issue a Taxpayer Assistance Order, which requires the IRS to cease taking an action (such as a collection action).

**Explanation of Provision**

The provision permits the issuance of a TAO requiring the IRS to take action (such as issue a refund faster), deletes the requirement of present law that the hardship experienced by the taxpayer be "significant" as a condition for the issuance of a TAO, provides that only the Taxpayer Advocate, the Commissioner of the IRS, or a superior of those two positions, as well as a delegate of the Taxpayer Advocate, may modify or rescind a TAO, and permits the TAO to specify a time period within which the TAO must be followed.

## II. Modifications to Installment Agreement Provisions

### 3. Notification of Reasons for Termination of Installment Agreement

#### Present Law

The IRS must give prior notice and an explanation before it terminates an installment agreement because the taxpayer's financial condition has changed.

#### Explanation of Provision

The provision requires that this notice be given before any termination (except in cases of jeopardy).

### 4. Administrative Review of Denial of Request for Installment Agreement

#### Present Law

The Code does not require that the IRS provide an administrative review of denials of installment agreements.

#### Explanation of Provision

The provision requires the IRS to provide written notice of the reasons for denial of an installment agreement. The IRS also must establish procedures for independent administrative review of denials and terminations of installment agreements.

## III. Interest

### 5. Expansion of Authority to Abate Interest

#### Present Law

IRS may in its discretion abate interest attributable to IRS error or delay in performing a ministerial act.

#### Explanation of Provision

The provision requires the IRS to abate interest in any case in which the taxpayer establishes that there was an unreasonable and excessive IRS delay and the taxpayer has fully cooperated in resolving outstanding issues. In order to allow the taxpayer to develop the facts, the IRS shall be required, upon written request, to provide the taxpayer within 30 days with all information and relevant records that the IRS has with respect to the history of the taxpayer's case for the time period involved. The IRS shall develop a form for the purpose of such requests.

6. Extension of Interest-Free Period for Payment of Tax After Notice and Demand

Present Law

The Code provides a 10-day interest-free period within which taxpayers may pay after notice and demand is made.

Explanation of Provision

The provision extends from 10 to 21 days the interest-free period within which taxpayers may pay after notice and demand is made, applicable only to amounts of less than \$100,000 (amounts of \$100,000 and above continue to be subject to a 10 day period).

IV. Joint Returns

7. Requirement of Separate Deficiency Notices in Certain Cases

Present Law

IRS must send duplicate original deficiency notices to both spouses when the IRS has been notified that separate residences have been established.

Explanation of Provision

This rule will apply to all instances in which the spouses did not file a joint return for the most recent taxable year.

8. Disclosure of Collection Activities With Respect to a Joint Return

Present Law

It is unclear whether IRS has authority to disclose to one spouse whether the IRS has attempted to collect a deficiency arising from a joint return from the other spouse.

Explanation of Provision

The provision requires the IRS, upon written request of the spouse, to disclose in writing to the spouse whether the IRS has attempted to collect a deficiency from the other spouse, the general nature of the collection activities, and the amount collected.

**9. Joint Return May be Made After Separate Returns  
Without Full Payment of Tax**

**Present Law**

Married taxpayers who had previously filed separate returns may not file a joint return without first fully paying the tax.

**Explanation of Provision**

The provision permits married taxpayers who had previously filed separate returns to file joint returns without fully paying the tax.

**10. Representation of Absent Divorced or Separated Spouse  
by Other Spouse**

**Present Law**

A taxpayer who has filed a joint return with a spouse may represent the spouse with respect to a deficiency for any year a joint return was filed. IRS administrative procedures may allow each spouse to appeal separately from the statutory notice of deficiency.

**Explanation of Provision**

The provision provides that an individual who had filed a joint return with a spouse but who is no longer married to that spouse (or no longer resides in the same household) may not represent the absent spouse at an examination of that return unless the absent spouse permits it in writing.

**V. Collection Activities**

**11. Notice of Proposed Deficiency**

**Present Law**

Although not statutorily required to do so, the IRS often issues a notice of proposed deficiency prior to issuance of a notice of deficiency. Failure to issue a notice of proposed deficiency does not invalidate the notice of deficiency.

**Explanation of Provision**

The provision requires IRS to issue a notice of proposed deficiency in every instance (except jeopardy). The notice of proposed deficiency must be mailed at least 60 days before any notice of deficiency. Failure to issue a notice of proposed deficiency would invalidate the notice of deficiency. The provision is effective one year from the

date of enactment.

## 12. Modifications to Lien and Levy Provisions

### Present Law

IRS may withdraw a notice of a lien only if the notice was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable. IRS may return levied property only when the taxpayer has overpaid its tax liability.

### Explanation of Provision

The provision permits the IRS to withdraw a notice of a lien in specified situations. Upon the taxpayer's request, the IRS shall notify credit agencies and financial institutions of the withdrawal. Further, the IRS shall return levied property in parallel specified situations. Finally, the provision increases the dollar value of certain items exempt from levy and indexes those amounts for inflation.

## 13. Offers-in-Compromise

### Present Law

The IRS can compromise any assessed tax. An opinion of the Chief Counsel is necessary for any compromise of \$500 or more. Information relating to accepted compromises is public.

### Explanation of Provision

The provision clarifies that the IRS may make any compromise that would be in the best interests of the United States and raises the threshold above which an opinion of the Chief Counsel of the IRS is necessary from \$500 to \$50,000. The provision requires that opinions below the \$50,000 threshold be subject to continuing quality review.

## 14. Notification of Examination

### Present Law

IRS generally notifies a taxpayer in writing before commencing an examination (sometimes it does so by telephone).

### Explanation of Provision

IRS must both notify a taxpayer in writing that the taxpayer is under examination and furnish a copy of Publication 1, Your Rights as a Taxpayer, prior to commencing

any examination.

15. Recovery of Civil Damages for Unauthorized Collection Action

Present Law

A taxpayer may sue the United States for up to \$100,000 of damages caused by an IRS employee who recklessly or intentionally disregards the provisions of the Code or Treasury regulations.

Explanation of Provision

The provision increases the cap to \$1 million with respect to reckless or intentional acts. In addition, it permits a taxpayer to sue the United States for damages caused by an IRS employee who negligently disregards the provisions of the Code or regulations, subject to a cap of \$100,000 in damages.

16. Designated Summons

Present Law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS on the appropriate form.

During an audit, the IRS may seek information by issuing an administrative summons. Such a summons will not be enforced by judicial process unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court.

In certain cases the running of the assessment period is suspended during the period (if any) in which the parties are in court for the purpose of obtaining or avoiding judicial enforcement with respect to an administrative summons. Such a suspension is provided with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the limitation period (as extended, if extensions have been made) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated

summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the audit occurs.

#### Explanation of Provision

The provision requires that issuance of any designated summons be preceded by review by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region in which the audit occurs.

In addition, the provision requires that the corporation whose return is in issue be promptly notified in writing in any case where the Secretary issues a designated summons (or another summons litigation over which tolls the running of the assessment period under the designated summons procedure) to a third party. The provision applies to summonses issued after date of enactment.

### VI. Information Returns

#### 17. Phone Number of Person Providing Payee Statements Required to be Shown on Such Statement

##### Present Law

Businesses are not required to put their telephone numbers on information returns.

##### Explanation of Provision

The provision requires businesses to put their telephone numbers and the name of a contact person on information returns (1099 forms).

#### 18. Civil Damages for Fraudulent Filing of Information Returns

##### Present Law

Present law does not provide for civil damages for fraudulent filing of information returns.

##### Explanation of Provision

If a person willfully files a false or fraudulent information return with respect to payments purported to be made to another person, the other person may bring a civil action for damages.

19. Requirement to Verify Accuracy of Information Returns

Present Law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

Explanation of Provision

If a taxpayer asserts a reasonable dispute with respect to any income reported on an information return and has fully cooperated, the IRS shall have the obligation in court to introduce evidence of the deficiency (beyond the Form 1099 itself) in order to prevail.

VII. Modifications to Penalty for Failure to Collect and Pay Over Taxes

20. Trust Fund Taxes

Present Law

A responsible officer is subject to a penalty equal to 100 percent of trust fund taxes (social security and withheld income taxes) that are not paid to the Government on a timely basis. IRS provides for administrative appeals as to whether a person is in fact a responsible officer.

Explanation of Provision

The provision requires IRS to issue a notice to an individual the IRS has determined to be a responsible officer at least 60 days before issuing a notice and demand for the penalty. After exhausting administrative remedies within the IRS, the taxpayer may seek a declaratory judgment in the Tax Court as to whether the taxpayer is in fact a responsible officer.

21. Disclosure of Certain Information Where More Than One Person Is Subject to Responsible Officer Penalty

Present Law

It is unclear whether IRS has authority to disclose to a responsible officer whether the IRS has attempted to collect from other responsible officers.

Explanation of Provision

The IRS shall, upon written request of the responsible officer, disclose in writing to the responsible officer whether the IRS has attempted to collect a deficiency from any other responsible officers, the general nature of

collection activities, and the amount collected.

**22. Penalties Under Section 6672**

**Present Law**

A responsible officer is subject to a penalty equal to 100 percent of trust fund taxes that are not paid to the Government on a timely basis.

**Explanation of Provision**

The IRS must print appropriate warnings and issue new publications containing information regarding this penalty. This penalty does not apply to volunteer officers of tax-exempt organizations if they are unpaid and do not participate in the day-to-day or financial activities of the organization. The IRS must provide prompt notification of failures to deposit trust fund taxes.

**VIII. Awarding of Costs and Certain Fees**

**23. Attorney's Fees: Recovery for Costs during IRS Appeals Process**

**Present Law**

Taxpayers may recover reasonable administrative costs under the same conditions that attorney's fees are recoverable, commencing with the earlier of the notice of decision by IRS Appeals or the notice of deficiency.

**Explanation of Provision**

The provision expands the availability of administrative costs by moving the commencement date to the earlier of the notice of proposed deficiency or the notice of deficiency. Once a taxpayer substantially prevails in litigation and files a written request, the IRS is required to provide within 30 days all information and relevant records of the IRS concerning the history of the taxpayer's case and the substantial justification for the position taken by the IRS. The IRS shall develop a form for this purpose.

**24. Increase Limit on Attorney Fees**

**Present Law**

Allowable attorney's fees may not exceed \$75 per hour, unless the court determines that the cost of living or another factor justifies a higher rate.

Explanation of Provision

The provision indexes the maximum rate for inflation, effective from the date the \$75 rate became effective.

**25. Attorney's Fees: Failure to Agree to Extension  
Not Taken Into Account**

Present Law

To be eligible to receive attorney's fees, a taxpayer must have exhausted administrative remedies in the IRS. Under Treasury regulations, failure to agree to extend the statute of limitations is considered to be failure to exhaust administrative remedies. The Tax Court has held this aspect of the regulations to be invalid.

Explanation of Provision

Failure by the taxpayer to agree to an extension of the statute of limitations for assessment is not to be taken into account for purposes of determining whether the taxpayer is entitled to receive attorney's fees.

**IX. Other Provisions**

**26. Required Content of Certain Notices**

Present Law

IRS tax deficiency notices must describe the basis for and identify the amounts of tax, interest, and penalties.

Explanation of Provision

IRS notices must contain more detailed information.

**27. Relief from Retroactive Application  
of Treasury Department Regulations**

Present Law

Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Explanation of Provision

Any proposed or temporary Treasury regulation shall apply prospectively from the date of publication of the regulation in the Federal Register (unless specifically superseded by subsequent legislation authorizing a retroactive effective date or unless Treasury permits taxpayers to elect to apply the regulations retroactively and the taxpayer so elects). Final regulations may take effect

from the date the proposed or temporary regulations are published. For the period from the effective date of the statute until the publication of the proposed or temporary regulations, taxpayers will be governed by the statute and other authorities, as under present law.

**28. Required Notice to Taxpayers of Certain Payments**

**Present Law**

The IRS receives payments that it cannot associate with any outstanding tax liability.

**Explanation of Provision**

The IRS must make reasonable efforts to notify taxpayers who have made payments that IRS cannot associate with any outstanding tax liability.

**29. Prohibition of Exchanging Confidential Client Information for Forgiveness of Taxes**

**Present Law**

It is unlawful for any person who prepares a tax return for compensation knowingly or recklessly to disclose tax return information.

**Explanation of Provision**

It is unlawful for any Federal employee to forgive (or offer to forgive) any taxes due from an attorney, certified public accountant, or enrolled agent in exchange for information about that person's clients.