

[JOINT COMMITTEE PRINT]

**DESCRIPTION OF S. 850
TAXPAYERS' BILL OF RIGHTS ACT**

SCHEDULED FOR A HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF
THE INTERNAL REVENUE SERVICE
OF THE
COMMITTEE ON FINANCE
ON JUNE 2, 1981

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
BY THE STAFF OF THE
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INTRODUCTION

The Senate Finance Committee's Subcommittee on Oversight of the Internal Revenue Service has scheduled a hearing on June 2, 1981, on S. 850, the Taxpayers' Bill of Rights Act (introduced by Senator Baucus).

The bill deals with the following areas of tax administration procedures and tax payment requirements: (1) establishment of an independent taxpayer's ombudsman in the IRS; (2) provide administrative appeal of tax liens; (3) revision of rules relating to levies and seizures of property for collection of taxes; (4) setting time requirements for issuance of Treasury Regulations; (5) modifying estimated income tax payment requirements for individuals; and (6) changing the rule for time of furnishing Forms W-2 to terminated employees.

This pamphlet, prepared in connection with the hearing, contains four parts. The first part is a summary of present law and the bill. The second part is a discussion of present law and procedures relating to the items considered in the bill. The third part provides a listing and brief discussion of issues raised by the bill. Part four provides a more detailed description of the provisions of S. 850, including effective dates and the revenue costs of the estimated tax payment provision.

I. SUMMARY

A. Present Law

IRS taxpayer services

The Internal Revenue Service currently provides a number of taxpayer services. These services are provided in three major ways: (1) telephone assistance, (2) walk-in assistance, and (3) taxpayer information and education programs.

The Problem Resolution Program (PRP) was established within the IRS for the purpose of providing special attention for persistent taxpayer problems and complaints that are not resolved in a prompt or proper manner through normal procedures. The Taxpayer Ombudsman, an IRS employee, administers the Problem Resolution Program and exercises other functions on behalf of taxpayers.

Tax liens

Under present law, if a taxpayer refuses to pay tax after a tax assessment has been made and the payment has been demanded, the tax owed becomes a lien in favor of the United States on all property owned by the taxpayer. Present law contains very specific and detailed rules concerning lien priorities and the recordation of liens. There are no administrative procedures for appealing the imposition of a Federal tax lien. (However, there are several opportunities for appeal prior to the assessment of tax.)

Seizure of property for the collection of taxes

In general, if a person who is liable to pay tax, after an assessment has been made, neglects or refuses to do so within ten days after notice and demand, the tax may be collected by levy upon that person's property. However, there are several types of property, including a portion of a taxpayer's wages, that are exempt from levy. The Secretary of the Treasury is not required to obtain a court order before making a levy.

Issuance of Treasury Regulations

Present law does not impose time limitations upon the issuance of Treasury Regulations. Often, the regulations process can take a substantial amount of time because of the number of levels of review involved, the resource limitations of the Treasury Department, and the input that must be received from persons within and without the Treasury Department.

Installment payments of estimated taxes by individuals

Present law generally requires individuals to make quarterly declarations and payments of estimated taxes if their tax liability is expected to exceed withheld taxes by \$100 or more. Farmers and fisher-

men generally may wait until January 15 of the following year to declare and pay estimated tax.

Time for furnishing Forms W-2 to terminated employees

In general, employees who terminate employment prior to the close of the calendar year must be provided with Forms W-2 at the time of their last salary payment.

B. Summary of S. 850

1. Establishment of an Office of Ombudsman

The bill would establish an independent Ombudsman, within the IRS, who would be appointed by the President, by and with the advice and consent of the Senate. The Ombudsman primarily would be an advocate for taxpayers' rights. In addition, the Ombudsman would be permitted to take certain actions on behalf of taxpayers who are suffering from unusual hardships because of the manner in which the tax laws are being administered by the IRS.

2. Administrative appeal of tax liens

Under the bill, a taxpayer would be able to appeal, administratively, the imposition of a lien upon his property.

3. Revision of rules relating to property levies

In general, the bill would require the Secretary of the Treasury to obtain a court order prior to making a levy upon property. A taxpayer also would be permitted to appeal a decision by the Secretary to make a levy.

4. Time requirements for issuance of Treasury Regulations

In general, the bill would require that Treasury Regulations be issued within 18 months after an amendment to the Internal Revenue Code is enacted. If this time limitation is not met, then a taxpayer who is contesting an issue with respect to which regulations have not been promulgated would be permitted to rely on any reasonable position regardless of what is contained in the regulations when promulgated.

5. Installment payments of estimated income tax by individuals

Under the bill, declarations of estimated income tax would not be required. Instead, individuals would make quarterly payments of estimated taxes from the time they first meet the estimated tax payment requirements. Furthermore, estimated tax payments would not be required if an individual's annual estimated tax could reasonably be expected to be less than \$300. Moreover, the bill would give farmers and fishermen the option to wait until March 1 of the succeeding taxable year to make full payment of their estimated taxes.

6. Time for furnishing Forms W-2 to terminated employees

In general, the bill would permit an employer to furnish Forms W-2 to employees who terminate employment during the calendar year at the same time as they are furnished to all other employees (that is, by January 31 of the succeeding calendar year).

II. PRESENT LAW

A. Overview of Taxpayer Services Provided by the Internal Revenue Service

1. Programs under the Assistant Commissioner of Internal Revenue (Taxpayer Service and Returns Processing)

In general

The Internal Revenue Service conducts a year-round tax information program in each of its 7 regions, 58 internal revenue districts, 10 internal revenue service centers, and in various foreign countries (through the IRS Office of International Operations). The basic assistance part of the program is operated by a Taxpayers Service Division under the supervision of the Assistant Commissioner of Internal Revenue (Taxpayer Service and Returns Processing). Assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers. In addition, since 1977, the Service has operated a special Problem Resolution Program (discussed below) to handle situations in which normal procedures are considered inadequate.

Taxpayer assistance is provided by three principal methods: telephone assistance, assistance to taxpayers who walk into an Internal Revenue Service office, and taxpayer information and education programs, including programs directed at special groups.

Telephone assistance

A toll-free telephone network, centralized in 57 answering locations, allows taxpayers to call IRS personnel for tax assistance. This service covers all of the United States, Puerto Rico, and the Virgin Islands. In addition, assistance is provided without cost to deaf and hearing-impaired taxpayers through a television/telephone/teletypewriter system.

Walk-in taxpayer assistance

The walk-in taxpayer assistance program is available both at permanent and temporary (during the filing season) sites located throughout the country. (During the 1980 fiscal year, the IRS offered this assistance at 702 permanent and 142 temporary offices.) The scope of the program includes answering taxpayer questions, furnishing tax forms and publications, assisting in preparation of returns for taxpayers, and reviewing returns completed by taxpayers.

Taxpayer information and education

In addition to its telephone and walk-in assistance programs, the IRS presently conducts a year-round public information program with special emphasis on the filing period (January through April). This program includes training participants in several volunteer programs and supervising the programs, directing educational programs for taxpayers, and preparing media efforts for targeted groups and the general public.

The Volunteer Income Tax Assistance Program (VITA), begun in 1969, provides assistance in completing tax returns to low-income,

elderly, and non-English speaking persons who have difficulty obtaining assistance from paid tax return preparers or IRS walk-in assistance personnel. Community volunteers are trained by the IRS in simple tax return preparation skills. These individuals then offer free tax return preparation assistance in neighborhood locations throughout the country.

Tax Counseling for the Elderly, a similar volunteer program, was established by the Revenue Act of 1978, to help meet the special tax needs of persons aged 60 and older. Under this program, the IRS enters into agreements with selected nonprofit organizations which provide volunteers to furnish tax assistance to the elderly. The volunteers are reimbursed by the IRS, through the sponsoring organizations, for out-of-pocket expenses incurred in providing the assistance.

The Student Tax Clinic Program is conducted at 15 colleges and universities across the country. Under this program, law and graduate accounting students represent low-income taxpayers before the IRS in examination and appeal proceedings.

Small Business Workshops and Tax Practitioner Institutes are conducted in each internal revenue district to educate small businessmen and tax practitioners on recent tax developments which may affect them.

Disaster and Emergency Assistance Programs are conducted by IRS in cooperation with other government agencies to provide specialized tax information to victims of major disasters and emergencies.

The Understanding Taxes and Fundamentals of Tax Preparation Programs provide free student publications to high schools and colleges. Additionally, under this program, IRS employees may meet with teachers to explain these publications and answer questions on tax laws and procedures.

2. Problem Resolution Program and Office of the Taxpayer Ombudsman

In 1977, the Internal Revenue Service implemented a taxpayer complaint handling system, known as the Problem Resolution Program (PRP), in each of its districts. Under this program, there is a Problem Resolution Officer in each district who reports directly to the district director. In 1979, this program was expanded to cover all Internal Revenue Service centers, as well as districts.

PRP was established to handle taxpayers' problems and complaints not promptly or properly resolved through normal procedures, or those problems which taxpayers believe have not received appropriate attention. In addition, the program provides for the analysis of problems resolved by it to determine their underlying causes so corrective action can be taken to prevent their recurrence.

In 1979, the IRS established a Taxpayer Ombudsman in the Office of the Commissioner of Internal Revenue. The Ombudsman works under the direct supervision of the Deputy Commissioner of Internal Revenue. The responsibilities of the Ombudsman include the administration of the Problem Resolution Program; representation of taxpayer interests and concerns within the IRS decision-making process; review of IRS policies and procedures for possible adverse effects on taxpayers; proposal of ideas on tax administration that will benefit taxpayers; and representation of taxpayer views in the design of tax forms and instructions.

B. Tax Liens

Assessment of tax

Present law authorizes and requires the Secretary of the Treasury to make assessments of all taxes, imposed by the Internal Revenue Code, which have not been duly paid (Code sec. 6201(a)). Under Treasury Regulations, this authority has been delegated to the district director for the district in which the taxpayer's property is located (Treas. Reg. sec. 301.6201-1). In general, under the assessment procedure, the district director records the liability of the taxpayer and, upon request, furnishes the taxpayer with a record of the assessment.

If income, estate, or gift tax liability is understated on a tax return (or, if no tax return is filed), the amount of the deficiency becomes the assessment amount. The deficiency (assessment amount) is, in general, the excess of tax due over the tax shown on the tax return (Code sec. 6211(a)). The taxpayer is notified of a deficiency, generally after completion of the audit process, through a Notice of Deficiency, which is sent by certified mail or registered mail to the taxpayer's last known address (Code sec. 6212). Within 90 days (150 days if the taxpayer is outside the United States) from the date the Notice of Deficiency is mailed, the taxpayer may petition the Tax Court for a redetermination of the deficiency. Thus, with the exception of certain types of assessments (for example, termination assessments and jeopardy assessments authorized under Code secs. 6851 and 6861), an assessment may not be made until the 90-day period for petitioning the Tax Court expires or until a decision of the Tax Court becomes final.¹

After the tax has been assessed, the taxpayer must receive, within 60 days, a notice ("Notice of Demand") stating the amount of the unpaid tax and demanding payment thereof (Code sec. 6303). The Notice of Demand is left at the dwelling or usual place of business of the taxpayer or mailed to the taxpayer's last known address. However, a 60-day notice is not required if the deficiency has been redetermined by the Tax Court. The redetermined deficiency is assessed when the decision of the Tax Court has become final and is due immediately upon notice and demand (Code sec. 6215).

Imposition of tax lien

If, after the tax has been assessed and payment has been demanded, the taxpayer refuses to pay, then the amount owed becomes a lien in favor of the United States on all property and rights to property, whether real or personal, belonging to the taxpayer (Code sec. 6321). The lien arises at the time the assessment is made and, unless removed

¹ The Tax Court is not the only judicial forum in which the taxpayer can contest his or her tax liability. The taxpayer also may contest the liability in a Federal district court or the Court of Claims by paying the tax and filing a suit for refund. Liability for taxes other than income, estate, and gift taxes can be litigated only by refund suits.

or released, continues until the tax has been paid or until the lien becomes unenforceable by reason of lapse of time (Code sec. 6322).²

Tax lien priorities

A Federal tax lien is not valid against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until a notice of the lien has been properly filed (Code sec. 6323(a)).³

Moreover, certain commercial transactions financing agreements are protected against a Federal tax lien even though notice of the lien has been filed (Code sec. 6323(c)).⁴ Such a transaction generally is protected if the transaction takes place pursuant to a written agreement entered into with the taxpayer before the date of the filing of the notice of the lien, and is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation. In addition, if these requirements are met, security interests, created within 45 days after the tax lien is filed, in property existing at the time of filing, also are protected (Code sec. 6323(d)).

Ten types of transactions are protected against Federal tax liens without regard to when a purchaser's, creditor's or lienholder's interest in the taxpayer's property arose (Code sec. 6323(b)). A Federal tax lien is invalid in the following situations: (1) Against purchasers of securities, or holders of security interests in securities, who at the time of purchase, or creation, of the security did not have actual notice or knowledge of the existence of the lien; (2) against a purchaser of a motor vehicle if, at the time of purchase and taking of possession, the purchaser has no actual notice or knowledge of the existence of the lien and does not thereafter relinquish possession to the seller or his agent; (3) against a purchaser of personal property at retail in the ordinary course of the seller's business (even if the purchaser knows of the lien), unless the purchaser intends the purchase to (or knows the purchase will) hinder, evade, or defeat the collection of tax; (4) against a purchaser of household goods, personal effects, or other tangible personal property in a casual sale for less than \$250, provided that the purchaser does not have actual notice or knowledge of the lien or of an intention on the part of the seller to dispose of his tangible personal property in a series of sales; (5) against the holder of a lien under local law to secure the reasonable price of repair or improvement of tangible personal property, so long as the holder is, and has been, continuously in possession of the

² In general, the statute of limitations with respect to the collection of tax runs for six years after the assessment of the tax (Code sec. 6502).

³ In the case of real property, notice of the Federal tax lien must be filed in the one office within the State (or the county or other governmental subdivision) designated by the State where the real property is situated. Likewise, in the case of personal property, notice of the lien must be filed in the one office within the State (or the county or other governmental subdivision) designated by the State in which the personal property is situated. (Personal property is situated at the residence of the taxpayer.) If the taxpayer has real property located in the District of Columbia, or resides therein, notice of the lien must be filed in the Office of the Recorder of Deeds. If a State has not designated one office for the filing of notice, then notice of the lien must be filed with the clerk of the U.S. District Court for the District in which the property is situated. (Code sec. 6323(f).)

⁴ These agreements are (1) commercial transactions financing agreements, (2) real property construction or improvement financing agreements, and (3) obligatory disbursement agreements.

property from the time the lien arose; (6) against the holder of a lien on real property to secure payment of: (a) real property taxes, (b) special assessments imposed on real property by any taxing authority to defray the expenses of any public improvement, or (c) utility or public service charges for services furnished to the property by any governmental instrumentality (if, under local law, the lien is entitled to priority over security interests in the property that are prior in time); (7) against a mechanic's lienor with respect to real property subject to a lien for repair or improvement of a personal residence (containing no more than four dwelling units) occupied by the owner, provided that the contract price on the contract with the owner is not more than \$1,000; (8) against an attorney who holds a lien or a contract enforceable under local law against the proceeds of a judgment or settlement of a claim, to the extent of reasonable compensation for services; (9) against an organization that is an insurer under a life insurance, endowment, or annuity contract with respect to actions taken before the organization has actual notice or knowledge of the existence of a tax lien; and (10) against certain financial institutions with respect to a loan secured by a savings deposit, share, or other account evidenced by a passbook, if the loan was made without actual notice or knowledge of existence of the lien and if the institution has been continuously in possession of the passbook from the time the loan was made. Purchase money mortgages, although not specifically noted in the statute, also are entitled to protection even if they arise after the filing of a Federal tax lien.⁵

Release, discharge or subordination of a tax lien

A district director may issue a certificate of release of a lien whenever he finds that the entire tax liability, plus interest, has been satisfied or has become legally unenforceable (Code sec. 6325(a) and Treas. Reg. sec. 301.6325-1(a)). Moreover, the district director has the discretion to issue a certificate of release of a tax lien if he accepts a bond that is conditioned upon the payment of the amount assessed (together with interest) within the time agreed upon in the bond, but no later than six months before the expiration of the statutory period for collection.

Property subject to a tax lien may be discharged if the value of the property remaining subject to the lien is at least twice the amount of the unsatisfied liability secured by the lien (Code sec. 6325(b)(1)). Furthermore, property subject to a tax lien may be discharged if the Treasury is paid an amount which is not less than the value of the government's interest in the property or if it is determined that the government's interest has no value (Code sec. 6325(b)(2)).

If a dispute arises between competing lienors, including the United States, the property subject to the tax lien may be sold and the proceeds from the sale may be substituted as a fund subject to the claims of the competing lienors (Code sec. 6325(b)(3)).

Under certain conditions, a district director may subordinate a tax lien to another lien or interest in the property. A tax lien can be subordinated to another lien if an amount equal to the lien amount is received (Code sec. 6325(d)(1)). In addition, the district director has the authority to subordinate the government's lien, if it is believed

⁵ See, Rev. Rul. 68-57, 1968-1 C.B. 553.

that such action will ultimately aid in the collection of the entire lien ⁶ (Code secs. 6325(d)(2) and (3)).

In order to qualify for subordination, or any other type of discharge from a lien, the interested person must apply in writing to the district director (Treas. Regs. secs. 301.6325-1(b)(4) and (c) and Rev. Proc. 68-8, 1968-1 C.B. 754). In general, the person seeking to have a lien discharged or subordinated must persuade the district director that to do so would be in the best interests of the government.

In situations where there has been confusion, such as a similarity in names, which results in a mistake in tax lien filing, a certificate of nonattachment of lien, certifying that the property of an individual is free from a tax lien, may be issued (Code sec. 6325(e)).

Special rules—gift and estate tax liens

Special rules apply with respect to gift tax liens and estate tax liens. In general, a gift tax lien arises at the time a gift is made and attaches to all gifts made during the period for which the return was filed (Code sec. 6324(b)). A gift tax lien continues for ten years from the date of the gift unless sooner terminated. If the gift tax is not paid when due, the donee of the gift becomes personally liable for the tax to the extent of the value of the gift.

An estate tax lien arises at the time of the decedent's death and continues for ten years unless sooner terminated (Code sec. 6324(a)). An estate tax lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator (Treas. Reg. sec. 301.6324-1(a)). Thus, the attached assets may include such items as gifts made within three years of death and gifts taking effect at death.

Further, special liens apply with respect to deferred estate taxes attributable to a farm or other closely held business and with respect to the recapture of estate taxes attributable to special use valuation of farm or closely held business real property (Code secs. 6324A and 6324B).

Enforcement of a tax lien

A Federal tax lien may be enforced by sale of seized property (discussed below) or by an action in a U.S. district court to enforce the lien (Code sec. 7403).

The Federal Government may intervene in any civil action or suit in order to assert its tax lien (Code sec. 7424). If the application of the government to intervene is denied, the adjudication in such civil action or suit will have no effect on the lien.

Special rules are provided to protect Federal tax liens that are subordinate to other interests and that may be discharged by the holder of a senior security interest in a judicial, or other, State foreclosure proceeding. (Code sec. 7425). In general, if the Federal Government has

⁶ This may occur, for example, in a situation where a farmer needs money to harvest his crop and a bank would be willing to make a loan that is secured by a first mortgage on the farm which is prior to the Federal tax lien. In such a situation, the district director might believe that the collection of the tax liability would be facilitated by the availability of cash when the crop is harvested and sold and, thus, might subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan (see, Treas. Reg. sec. 301.6325-1(d)(2)(ii), example (1)).

properly filed a notice of tax lien before a judicial foreclosure proceeding has begun, but has not been joined in the proceedings, a judgment does not discharge the Federal tax lien. However, if notice of a Federal tax lien was not properly filed, then a judgment in a State judicial proceeding discharges the Federal tax lien, if State law so provides. With respect to non-judicial State foreclosure sales, if a notice of the Federal tax lien was filed more than 30 days prior to the sale and the Federal Government was not given notice of the sale, then the Federal tax lien cannot be discharged. The Federal tax lien may be discharged, however, if notice of the Federal tax lien was improperly filed or if the government is properly notified of the sale.

Present law allows a person (other than the person against whom was assessed the tax out of which the levy arose) to bring an action in a Federal district court to recover property which was seized under a wrongful levy (Code sec. 7426). Moreover, a junior lien holder may bring an action to enforce his interest in surplus proceeds realized by the Federal Government on a sale after levy.

C. Levies on and Seizure of Property for Collection of Taxes

Procedures for collection of tax by levy

After a tax assessment has been made, if a person who is liable to pay the tax neglects or refuses to do so within ten days after notice and demand, the district director may collect the tax by levy (Code sec. 6331(a) and Treas. Reg. sec. 301.6331-1(a)). If the district director finds that the collection of tax is in jeopardy, notice and demand for immediate payment may be made and, upon failure or refusal by the taxpayer to pay, collection of the tax by levy is lawful without waiting the usual ten-day period.

Property subject to levy includes any property, or rights to property, whether real or personal, whether tangible or intangible, belonging to the taxpayer (unless specifically exempted from levy). The district director also may levy upon property with respect to which there is a lien for the payment of tax.

Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality thereof, by serving a notice of levy upon the employer. Levy also may be made upon the salary or wages of any individual with respect to any unpaid tax after the individual has been notified in writing of the intent to levy (Code sec. 6331(d)). This notice must be given in person, left at the dwelling or usual place of business of the individual, or be mailed to the individual's last known address, no less than ten days before the day of levy. The notice requirement, however, does not apply if there has been a finding that the collection of the tax is in jeopardy. A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is satisfied or becomes unenforceable due to lapse of time.

In general, any person in possession of (or obligated with respect to) property or rights to property upon which levy has been made must surrender such property or rights (or discharge such obligation) upon demand (Code sec. 6332(a)).⁷ This, however, does not apply with respect to property or property rights that are subject to an attachment or execution under any judicial process. A person who fails, or refuses, to surrender any property, or rights to property, upon demand becomes personally liable for an amount equal to the lesser of the value of the property or the amount of the tax liability with respect to which the levy was made, plus costs and interest from the date of the levy (Code sec. 6332(c)). In addition to personal liability, a person who fails or refuses to surrender property upon which levy has been made, without reasonable cause, is liable for a penalty equal to 50 percent of

⁷ Special rules apply in the case of life insurance and endowment contracts. (See Code sec. 6332(b) and Treas. Reg. sec. 301.6332-2).

ERRATA SHEET RE P. 25

of

Joint Committee Pamphlet: "Description of S. 85
The Taxpayers' Bill of Rights Act" (JCS-23-81)

The following is the corrected page 25
of the pamphlet:

E. Time Requirements for Issuance of Treasury Regulations

The bill would provide that, unless any law provides otherwise, all final regulations necessary to implement any addition to, or amendment of, the Internal Revenue Code would have to be promulgated within 18 months after the enactment of such addition or amendment.

The failure by the Secretary to promulgate regulations within the prescribed time would have the following effects: (1) the effective date of the regulations could be no earlier than the date of publication in the *Federal Register*, and (2) any reasonable position advanced by a taxpayer, with respect to an issue for which regulations have not been promulgated, would apply to the taxpayer, with respect to that issue, notwithstanding that regulations are promulgated subsequently. In a legal proceeding involving issues concerning which regulations have not been issued within the time prescribed, the taxpayer would have the burden of proving that his position is reasonable. Moreover, with respect to such issues, the position of the Secretary would not be given any greater weight than that of the taxpayer. These rules would apply only to issues which arise with respect to a taxpayer after the 18-month period for promulgating regulations and on or before the date of publication of the regulations in the *Federal Register*. Moreover, these rules would not apply to reoccurrences of issues with respect to the taxpayer after the regulations are published in the *Federal Register*.

Effective date

In general, these provisions would apply to Internal Revenue Code amendments enacted after December 29, 1969. However, in the case of Internal Revenue Code amendments enacted after December 29, 1969, and before six months after the date of enactment of the bill, any regulations necessary to implement those amendments would have to be issued within 36 months after the date of enactment of the Taxpayers' Bill of Rights.

the amount for which there is personal liability.⁸ A person in possession of property upon which a levy has been made who honors the levy and surrenders the property is discharged from any liability to the delinquent taxpayer (Code sec. 6332(d)).

Exemptions from levy

Present law exempts from levy the following items of property:⁹

- (1) Wearing apparel and school books necessary for the taxpayer or members of his family (not including expensive items that are luxuries);
- (2) Fuel, provisions, furniture, personal household effects, arms for personal use, livestock, and poultry, not exceeding \$500 in value, provided that the taxpayer is the head of a family;
- (3) Books and tools necessary for the trade, business, or profession of the taxpayer, not exceeding \$250 in aggregate value;
- (4) Unemployment benefits;
- (5) Undelivered mail;
- (6) Certain annuity and pension payments;¹⁰
- (7) Amounts payable under workmen's compensation laws;
- (8) So much of the wages, salary, or other income of the taxpayer as is necessary to comply with a prior judgment of a court of competent jurisdiction for support of the taxpayer's minor children; and
- (9) A minimum amount of wages, salary, and other income (in general, \$50 per week plus \$15 per week for each dependent).

Seizure and sale of property

As soon as practicable after the seizure of property, notice must be given to the owner of the property. Moreover, notice of sale generally must be published in a newspaper that is published or generally circulated in the county where the seizure was made. The time of sale of seized property may be no less than 10 days or more than 40 days from the time that public notice is given. A minimum price must be determined prior to the sale. If no person offers such minimum price, the property is declared to be purchased at such price by the United States or the property is declared to be sold to the highest bidder. Seized property may be sold only by public auction or by public sale under sealed bids (Code sec. 6335).

Special rules are provided for perishable goods (Code sec. 6336). Such property will be returned to the owner if the owner pays an amount equal to the property's appraised value or gives an acceptable bond. Otherwise, the property will be sold as soon as practicable.

A person whose property has been levied upon has the right to pay the amount due, together with any costs and expenses, prior to the sale of the property (Code sec. 6337). Upon such payment, the property

⁸ This penalty is not applicable if a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy (Treas. Reg. sec. 301.6332-1(d)).

⁹ Code sec. 6334 and Treas. Reg. secs. 301.6334-1 and 301-6334-2.

¹⁰ That is, annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and annuities based on retired or retainer pay under chapter 73 of title 10 of the U.S. Code.

will be returned to the taxpayer. Furthermore, the owner of real property which is sold, his heirs, executors, administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, may redeem the property sold (or a portion thereof) within 120 days after the sale.

Any money realized from the sale of seized property is applied in the following manner: first, against the expenses of the sale; second, against any specific tax liability on the seized property; and, finally, against the liability of the delinquent taxpayer (Code sec. 6342). Any surplus proceeds are credited or refunded to the person or persons legally entitled thereto (generally, the delinquent taxpayer unless another person establishes a superior claim).

Release of a levy

A levy may be released, if it is determined that such action will facilitate the collection of the tax liability. Moreover, if it is determined that property has been wrongfully levied upon, the IRS may return the specific property levied upon, an amount of money equal to the amount of money levied upon, or the amount of money equal to an amount of money received by the United States from a sale of such property. Interest at the current effective rate is paid for property seized under a wrongful levy. (Code sec. 6343)

D. Description of Procedures Relating to the Issuance of Treasury Regulations

The principal method used by the Internal Revenue Service to interpret the tax law is regulations adopted as Treasury decisions.¹¹

Types of tax regulations

Tax regulations are of two broad types. First, interpretative regulations advise taxpayers of the Treasury's interpretation of statutory law. Second, legislative regulations provide detail necessary to implement rules of law pursuant to specific Congressional grants of rule-making authority. Most tax regulations are interpretative. Tax regulations may be relied upon as precedent by taxpayers and are entitled to a presumption of correctness in court proceedings. Moreover, the position taken in the regulations generally is binding on the IRS.

Procedures for adoption of tax regulations

Treasury tax regulations are adopted after detailed consideration by the Office of Chief Counsel for the IRS, nearly all functions of IRS, and the Treasury Department Office of Tax Policy. Primary responsibility for drafting regulations and coordinating their adoption is assigned to the Office of Chief Counsel for the IRS. The Office of Chief Counsel issues a monthly status report on pending regulations.

Development of proposed regulations

Most tax regulations are developed in response to new legislation; however, some regulations result from internal review of existing regulations or suggestions received from the public. When a regulations project is opened, a Regulations Work Plan must be approved by the Chief Counsel, the Commissioner, the Office of Tax Policy, and the Secretary of the Treasury, before further development can proceed beyond the stage of study and issue classification.¹² After the work plan is approved, the regulation project is assigned a priority (priority numbers range from 1 to 3). A preliminary draft of a regulation is prepared in the Office of Chief Counsel and circulated to designated

¹¹ The Internal Revenue Service also uses other methods of issuing interpretations of the tax law. Revenue rulings, ruling letters, and Technical Advice Memoranda are developed by personnel working under the Assistant Commissioner (Technical) and are subject to varying levels of review both within the IRS and by the Office of Chief Counsel and the Treasury Department's Office of Tax Policy, including many of the same personnel who are involved in developing regulations.

¹² Temporary regulations, which are issued to answer questions on an interim basis when timing is critical, and nonsignificant regulations (primarily those that are only clerical or clarifying) are exempt from the work plan requirement.

In addition to the work plan requirement, Treasury Directive 50.04F requires that a regulatory analysis be prepared before development of any regulation whose economic impact is estimated to exceed \$50 million.

offices for review and comments. The Treasury Department's Office of Tax Policy reviews the draft for legal accuracy, as well as on issues of tax policy.

A revised draft is prepared to incorporate comments from these offices, and a proposed notice of proposed rulemaking is forwarded for formal approval to the Assistant Commissioner (Technical), who also coordinates with other Assistant Commissioners. After approval by the Assistant Commissioner (Technical), the proposed notice of proposed rulemaking is forwarded for formal approval to the Director of the Legislation and Regulations Division of the Office of Chief Counsel, the Chief Counsel, the Commissioner, the Assistant Secretary of Treasury for Tax Policy, and the Executive Secretariat of the Secretary of the Treasury.¹³ After approval by all of these offices, the proposed regulation is published in the *Federal Register* together with a request for written comments from members of the public, and notice that a hearing will be held upon request.

Public comment on proposed regulations

The standard period allowed for public comment on a proposed regulation is 60 days; however, if public interest warrants, this period is extended by notice published in the *Federal Register*. If requests for a public hearing are received, a separate notice is published in the *Federal Register* announcing the date and time of the hearing. A minimum of 30-days notice of the hearing date is provided. The public hearing is the final step in the formal process for public input into the regulatory process.

Final approval and publication of regulations

After all formal input is completed, the regulation process continues with preparation of a proposed Treasury decision. This proposed Treasury decision is circulated, reviewed, and approved in the same manner as the proposed regulation, first for comment, and then, formally, for approval. After final approval is secured, the regulation is adopted and published in the *Federal Register* as a Treasury decision.

¹³ The Paperwork Reduction Act of 1980 (P.L. 96-511) requires Office of Management and Budget review and approval of any "information collection request" imposed by an agency after April 1, 1981. It is unclear whether regulations that impose such requirements are subject to OMB review under this Act. If they are, failure to secure the necessary OMB approval would mean that IRS could not require taxpayers to comply with the requirements after December 31, 1981.

E. Installment Payments of Estimated Income Tax by Individuals

Estimated tax requirements generally

Declaration and payment of estimated tax generally is required of single persons, or married couples with one earner entitled to file a joint return, whose gross income is expected to exceed \$20,000 for the taxable year; a married individual entitled to file a joint return, whose gross income is expected to exceed \$10,000 for the taxable year, if both spouses receive wages; and a married individual, not entitled to file a joint return, whose gross income is expected to exceed \$5,000 (Code sec. 6015). In addition, an individual taxpayer who expects to receive more than \$500 from sources other than wages (*e.g.*, dividends or interest) during the year generally is required to file a declaration of estimated tax. However, no declaration is required if an individual's tax liability for the year, including self employment tax liability, reasonably can be expected to be no more than \$100 over the amounts withheld during the year.

In general, the time for filing declarations of estimated tax is on April 15 if the requirements of Code sec. 6015 are first met on or before April 1 (Code sec. 6073). If the declaration filing requirements are first met after April 1, a calendar year taxpayer must file a declaration in accordance with the following requirements:

<i>Date requirements are met—</i>	<i>Date declaration is due—</i>
After April 1 and before June 2.....	June 15.
After June 1 and before September 2.....	September 15.
After September 1.....	January 15 of the succeeding year.

For calendar year taxpayers, estimated tax payments are due on April 15, June 15, and September 15 of the current tax year and on January 15 of the following tax year (Code sec. 6153). Fiscal year taxpayers are subject to similar rules as to time of payment. Farmers or fishermen who expect to receive at least two-thirds of their gross income for the calendar year from farming or fishing may elect to wait until January 15 of the following calendar year to file their declaration or pay the tax.

Underpayment penalties

Individuals who fail to pay in full an installment of estimated tax on or before the due date may be subject to a penalty which cannot be waived for reasonable cause (Code sec. 6654). The penalty, which is applied to the period of the underpayment of any installment at an annual rate of 12 percent, applies to the difference between the payments (including any withholding), if any, made on or before the due date of each installment and 80 percent (66 $\frac{2}{3}$ percent for farmers or fishermen) of the total tax shown on the return for the year, divided by

the number of installments that should have been made. Thus, there is no penalty if the sum of a taxpayer's estimated tax payments, plus taxes withheld, is at least 80 percent (66 $\frac{2}{3}$ percent for farmers or fishermen) of the tax liability as shown on the tax return.

In addition, present law contains four exceptions to the general underpayment penalty. No penalty is imposed upon a taxpayer if: (1) total tax payments (withholding plus estimated tax payments) exceed the preceding year's tax liability; (2) total tax payments exceed the tax on prior year's income under the current year's tax rates and exemptions; (3) total tax payments exceed 80 percent (66 $\frac{2}{3}$ percent for farmers or fishermen) of the taxes which would be due if the income already received during the current year were placed on an annual basis; or (4) total tax payments exceed 90 percent of the tax which would be due on the income actually received from the beginning of the year to the computation date.

F. Time for Furnishing Forms W-2 to Terminated Employees

General requirements

Under present law, every employer who pays wages from which Federal income tax or FICA (Social Security) tax must be withheld is required to furnish each employee a statement (Form W-2) which sets forth: the names of the employer and employee; the amount of wages subject to income tax withholding and the amount withheld; the amount of FICA wages and FICA tax withheld; and the amount, if any, of advance payment of the earned income credit (Code sec. 6051 (a)). In the case of most employees, W-2 Forms for the calendar year must be furnished no later than January 31 of the following year. However, if an employee terminates employment prior to the close of the calendar year, that employee must be furnished with a Form W-2 on the day on which his or her last salary payment is received.

IRS procedures

The Internal Revenue Service has provided through regulations that an employer may furnish a Form W-2 to an employee whose employment terminates prior to the close of the calendar year at any time after the termination but no later than January 31 of the following year. However, if an employee who terminates employment prior to the close of the calendar year requests earlier receipt of a Form W-2, and if there is no reasonable expectation on the part of the employer and employee of further employment during the calendar year, then the employee must be given a Form W-2 on or before the later of the 30th day after the request or the 30th day after the last salary payment (Treas. Reg. sec. 31.6051-1(d)(1)).

III. ISSUES

Summary of principal issues

The bill presents several issues for consideration. The principal issues include the following:

- (1) Whether there should be an independent ombudsman within IRS or the Treasury Department to act as an advocate of taxpayers' right and, if so, the proper scope of powers that could be exercised by an ombudsman;
- (2) Whether there should be a procedure for administratively appealing the imposition of Federal tax liens;
- (3) Whether a court order should be required before the IRS can levy upon a taxpayer's property;
- (4) Whether statutory time requirements should be imposed with respect to the issuance of Treasury Regulations and, if so, what those requirements should be;
- (5) Whether the declaration requirements with respect to the rules relating to the payment of estimated taxes by individuals should be repealed and whether the tax liability threshold for the payment of estimated taxes should be increased; and
- (6) Whether employees who terminate employment during the year should be provided with Forms W-2 at the same time as all other employees (rather than with the last salary payment).

Discussion of certain issues

The primary issues raised by the bill involve the proper level of IRS taxpayer services and scope of an ombudsman, the level of protection which should be afforded to taxpayers in regard to IRS collection procedures, and the tax regulations process.

Taxpayer services and ombudsman

Taxpayer services

Many individuals believe that increasingly complex tax laws mandate that the IRS provide continually increasing levels of taxpayer services. These people especially are concerned that, in times of budget cuts, taxpayer services are an easy target, and believe that the Congress should send a signal to the IRS that it does not want taxpayer services to be cut. Other people feel that the primary function of the IRS should be to collect taxes and that taxpayer services should be provided only to the extent that they do not detract from that function. In general, the problem is one of how existing IRS resources should properly be allocated.

Ombudsman

Many people believe that there is no need for the law to provide for an ombudsman in the IRS since the IRS already has established, internally, an Office of Ombudsman. Others, however, would point out that taxpayers might perceive that an ombudsman could not operate as a

truly independent spokesman for taxpayer rights unless legally independent of the IRS.

Tax collection procedures

The present law tax collection procedures provide important tools (including liens and levies) necessary for the IRS to collect taxes which have been assessed but not paid. While collection procedures may be necessary to assure the Federal Government a means for collecting taxes and to preserve the integrity of the tax system, many people have expressed a concern that certain tax collection devices have been administered in a heavy-handed manner and have the potential of depriving innocent taxpayers of their property. These people feel that there should be some sort of appeals process prior to collection and that the IRS generally should be required to get a court order before levying against or seizing a taxpayer's property. Others argue that taxpayers are currently afforded adequate protection prior to the time an issue reaches the collection stage and that to provide for appeals or to require a court order for levy would enable taxpayers to further delay the collection of taxes properly due.

Regulations process

With respect to Treasury Regulations, many have voiced concern that the time involved in issuing regulations contributes to ambiguity in the tax law. Some people believe that time limits should be placed on the issuance of regulations. Others would argue, however, that because of resource limitations, complexity of issues, the need to provide proper guidance, and input that must be considered both from sources inside and outside the IRS, time limitations would be unrealistic.

IV. DESCRIPTION OF S. 850
(THE TAXPAYERS' BILL OF RIGHTS ACT)

A. Statement of Findings and Purpose

This part of the bill contains a declaration by Congress that the success of our tax system depends upon the willingness of taxpayers to accurately assess and voluntarily pay their taxes; that it is in the national interest to encourage all Americans to voluntarily comply with the tax laws; and that the Internal Revenue Service can encourage voluntary compliance by improving the assistance it provides to taxpayers in answering tax questions, helping taxpayers complete tax returns, and explaining notices and bills.

The stated purpose of the bill would be to protect the rights of American taxpayers, basic to which would be the ability to receive the assistance needed to deal with tax laws that have become increasingly complex and difficult to understand.

B. Establishment of an Office of Ombudsman

1. In general

The bill would establish, within the Internal Revenue Service, the Office of Ombudsman. Although established within the IRS, this office would be under the supervision and discretion of the Ombudsman. The Ombudsman would be appointed by the President, by and with the consent of the Senate, for a term of six years. The Ombudsman would be permitted to employ personnel he deems necessary to carry out the functions of the office. The Ombudsman would be compensated at the rate established for Federal Government personnel at level V¹ of the Executive Schedule.

2. Duties of the Ombudsman

The Ombudsman would be an advocate of the rights of taxpayers. Under the bill, the Ombudsman would have the following duties:

- (1) To establish procedures to review and evaluate complaints of taxpayers relating to improper, abusive, or inefficient service by IRS employees and, with due regard to the rights both of taxpayers and IRS employees, to take action, under regulations to be prescribed, to correct such service;
- (2) To survey taxpayers for the purpose of obtaining their evaluation of the quality of the service provided by the IRS and the Office of Ombudsman;
- (3) To compile data concerning the number and type of taxpayer complaints in each Internal Revenue district and service center and to evaluate actions taken to resolve those complaints;

¹ Compensation for personnel at this level currently is \$53,600. This is the same compensation paid to the Chief Counsel of IRS.

- (4) To issue "Stop Action Orders" (described below);
- (5) To provide a forum for taxpayers to communicate their problems in dealing with the tax forms, publications, complex regulations, and internal procedures of the IRS; and
- (6) To carry out any other functions, relating to the assistance of taxpayers, that the Ombudsman deems appropriate.

In addition to these duties, the Ombudsman would be required to submit to the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Taxation an annual report on the activities of the Office of the Ombudsman (including any recommended legislation).

3. Stop Action Orders

Under the bill, a taxpayer could apply (in such form, manner, and at such time as prescribed by Treasury Regulations) for the issuance of a "Stop Action Order." The Ombudsman would issue a Stop Action Order if it is determined that a taxpayer is suffering, or is about to suffer, an irreparable loss as a result of the manner in which the Internal Revenue laws are being administered by the Secretary.

The effect of a Stop Action Order would be to prevent the Secretary from taking any action adverse to the taxpayer (for a period of up to 60 days) under any provision of the Internal Revenue Code relating to collection, bankruptcy and receiverships, discovery of liability and enforcement of title, or any other provision of law that is specifically described by the Ombudsman in the Order. A Stop Action Order, however, would not be effective if the Secretary determines that the collection of tax would be jeopardized by a delay.

4. Effective date

These provisions would become effective on the 90th day after the date of enactment.

C. Administrative Appeal of Tax Liens

Under the bill, a person who has a lien placed upon his property, or rights to property, would be able to appeal the imposition of the lien. The appeal would be to the Secretary and would be made in a manner to be prescribed by regulations to be issued no later than 180 days after the bill is enacted.

Effective date

This provision of the bill would be effective with respect to liens imposed 180 days or more after the date of enactment.

D. Revision of Rules Relating to Levies on and Seizure of Property for Collection of Taxes

The bill would require that in order for the IRS to levy upon any property, with respect to any unpaid tax liability, a court order authorizing such levy would have to be issued. However, if the collection of tax is found to be in jeopardy, a court order would not be required.

The Secretary could seek a court order from any Federal judge or from any judge of a State court of record within the district where the property (or right to property) to be levied upon is located. A court order authorizing a levy would be granted only upon a finding that: (1) the owner of the property to be levied upon has exhausted all administrative appeals with respect to the imposition of a lien upon the property (or that the time for making such appeals has expired); (2) the Secretary has established that the statutory requirements for making a levy upon property have been met; and (3) there is reasonable cause to believe that the Secretary has met all of the requirements for making a levy.

(The bill is unclear whether the taxpayer would be a party to the action seeking a court order. If the taxpayer is not a party, then the proceeding would amount to a judicial review of the IRS file. If the taxpayer is a party, it is not clear what defenses to the levy request could be raised by the taxpayer.)

In addition to the court order requirement, a person would be permitted to appeal the decision of the Secretary to levy upon his property or rights to property. The Secretary would be required to prescribe regulations to implement an administrative appeal procedure within 180 days after enactment of the bill.

Effective date

This provision of the bill would be effective with respect to any levy issued 180 days or more after the date of enactment.

E. Time Requirements for Issuance of Treasury Regulations

The bill would provide that, unless any law provides otherwise, all final regulations necessary to implement any addition to, or amendment of, the Internal Revenue Code would have to be promulgated within 18 months after the enactment of such addition or amendment.

The failure by the Secretary to promulgate regulations within the prescribed time would have the following effects: (1) the effective date of the regulations could be no earlier than the date of publication in the *Federal Register*, and (2) any reasonable position advanced by a taxpayer, with respect to an issue for which regulations have not been promulgated, would apply to the taxpayer, with respect to that issue, notwithstanding that regulations are promulgated subsequently. In a legal proceeding involving issues concerning which regulations have not been issued within the time prescribed, the taxpayer would have the burden of proving that his position is reasonable. Moreover, with respect to such issues, the position of the Secretary would not be given any greater weight than that of the taxpayer. These rules would apply only to issues which arise with respect to a taxpayer after the 180 day period for promulgating regulations and on or before the date of publication of the regulations in the *Federal Register*. Moreover, these rules would not apply to reoccurrences of issues with respect to the taxpayer after the regulations are published in the *Federal Register*.

Effective date

In general, these provisions would apply to Internal Revenue Code amendments enacted after December 29, 1969. However, in the case of Internal Revenue Code amendments enacted after December 29, 1969, and before six months after the date of enactment of the bill, any regulations necessary to implement those amendments would have to be issued within 36 months after the date of enactment of the Taxpayers' Bill of Rights.

F. Installment Payments of Estimated Income Tax by Individuals

The bill would repeal the present law requirement that individual taxpayers make declarations of estimated tax;² it would raise the annual estimated tax payment threshold from \$100 of tax liability in excess of withholding to \$300; and it would allow farmers and fishermen to have until March 1 of the succeeding taxable year (rather than January 15) to make full payment of estimated tax.

The bill would not change the requirements with respect to who must pay estimated taxes (except for the increase in the tax liability threshold). Under the bill, individuals required to pay estimated taxes would make payments according to the following schedule:

If the estimated tax requirements are met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	1st month of succeed- ing taxable year
Before the 1st day of the 4th month of the taxable year---	25	25	25	25
After the last day of the 3d month and before the 1st day of the 6th month of the taxable year-----		33%	33%	33%
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year-----			50	50
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year-----				100

Effective date

These provisions would apply to taxable years beginning after the date of enactment.

² The General Accounting Office has made a similar recommendation in a report entitled "Legislative Change Needed to Eliminate the Requirement for a Declaration of Estimated Tax" (May 8, 1980).

Revenue effect

It is estimated that this provision would reduce budget receipts by \$107 million in fiscal year 1982, \$22 million in 1983, \$27 million in 1984, \$31 million in 1985, and \$37 million in 1986.

G. Time for Furnishing Forms W-2 to Terminated Employees ³

Under the bill, the employer of an employee who terminates employment prior to the close of the calendar year would be required to furnish the employee with a Form W-2 no later than January 31 of the following calendar year, unless the employee requests earlier receipt. If a terminated employee makes a written request for early receipt of a Form W-2, then the employer would be required to furnish the form no later than 30 days after the receipt of the request.

In addition, an employer would be required to furnish to a terminated employee (on the day on which the last salary payment is made) a written notice stating that: (1) the employee may request early receipt of a Form W-2; (2) that an amount of Federal taxes has been withheld; and (3) that, if the employee is entitled to a refund, he must file a return based on information which, unless requested earlier, will be sent to the employee's last known address prior to January 31 of the next year.

Effective date

These provisions would become effective 30 days after enactment of the bill.

³ These provisions are similar to section 225 of H.R. 5829 (The Tax Reduction Act of 1980), as reported by the Senate Finance Committee on September 15, 1980 (Sen. Rept. 96-940). This bill was not considered by the Senate.

