

DESCRIPTION OF S. 1444
RELATING TO
AWARDS OF ATTORNEY'S FEES
IN TAX CASES
SCHEDULED FOR A HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE INTERNAL REVENUE SERVICE
OF THE
COMMITTEE ON FINANCE
ON JULY 19, 1979

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



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I. INTRODUCTION

On July 19, 1979, the Subcommittee on Oversight of the Internal Revenue Service of the Committee on Finance will hold a hearing on S. 1444, a bill introduced by Senators Baucus, Long, Kennedy, Dole, Bentsen, Bradley and DeConcini to provide for awards of attorney's fees in certain tax cases. This pamphlet, prepared by the staff of the Joint Committee on Taxation, provides a description of the present law governing awards of attorney's fees in tax cases, an explanation of S. 1444 and descriptions of three additional Senate bills which include provisions for such awards.

II. DESCRIPTION OF BILLS

A. Taxpayer Protection and Reimbursement Act

S. 1444—(Senators Baucus, Long, Kennedy, Dole, Bentsen, Bradley, and DeConcini)

1. Present law

In any civil action or proceeding, brought by or on behalf of the United States, to enforce, or charging a violation of, the Internal Revenue Code, the court in its discretion may allow the prevailing party, other than the United States, court costs, including reasonable attorney's fees.¹ The statutory provision allowing awards of attorney's fees is limited to actions brought by or on behalf of the Government, that is, to cases where the taxpayer is the defendant. Thus, there are few tax cases in which prevailing taxpayers are eligible for such awards because most civil tax litigation is initiated by the taxpayer who brings a claim against the Government. In the U.S. Tax Court, the taxpayer is the petitioner in a deficiency proceeding. In the Federal district courts and in the U.S. Court of Claims, the taxpayer is the plaintiff suing the Government for a refund.

2. Issue

The issue is whether a taxpayer who prevails against the Government in a civil tax case should be eligible for an award of attorney's fees, regardless of whether the taxpayer is the plaintiff or the defendant.

3. Explanation of provisions

This bill would provide for the award of reasonable court costs, including attorney's fees, to prevailing parties, generally taxpayers, in civil tax actions. Costs could be awarded in civil actions or pro-

¹Civil Rights Attorney's Fees Awards Act of 1976, Public Law 94-559, 42 U.S.C. 1988.

ceedings brought by or against the United States in any United States court, including the Tax Court. Parties who are plaintiff or defendants in suits involving the determination, collection, or refund of any tax, interest, or penalty imposed by the Internal Revenue Code would be eligible for these awards. However, neither the United States nor any creditor of a taxpayer would be eligible for such awards.

Limitations

Awards for costs would be allowed only to the extent the costs are allocable to the United States and not to any other party to the action or proceeding. In addition, the bill would limit any award for reasonable court costs, including attorney's fees, to a maximum of \$20,000 for any one civil action or proceeding.

Definitions

Under the bill, the term "attorney's fees" includes, for purposes of any Tax Court proceedings, fees for the services of an individual who is not an attorney but who is authorized to practice before the Tax Court

The bill also would provide guidelines for determining when a taxpayer is a prevailing party. Under the bill, a taxpayer would be deemed to have prevailed only, if on the basis of the entire record of the case, as well as any other relevant evidence—

- (1) the taxpayer is sustained either by judicial determination or by agreement of the parties, on all or all except an insignificant portion of the amount in controversy, or if no amount is at issue, on all, or all except an insignificant portion, of the issue or issues presented, and
- (2) the taxpayer establishes that the United States' position in the action or proceeding was unreasonable.

Excluded actions

The bill would exclude certain types of cases from those eligible for awards. No award for reasonable court costs, including attorney's fees, would be allowed for declaratory judgments with respect to—

- (1) the status and classification of organizations as exempt organizations under section 501(c)(3) (relating to corporations, etc., organized and operated exclusively for religious, charitable, scientific . . . or educational purposes . . .),
- (2) the qualifications of certain retirement plans,
- (3) transfers of property from the United States, or
- (4) the status of certain governmental obligations.

However, taxpayers in actions or proceedings for declaratory judgments involving the revocation of the tax-exempt status of an organization under section 501(c)(3) would be eligible for such awards.

Multiple actions

If multiple actions could have been joined or consolidated, or if a case or cases involving a return or returns of the same taxpayer (including a married couple's joint returns) could have been joined in a

single proceeding in the same court, such actions or cases would be treated as a single action, regardless of whether they were joined or consolidated, unless the court determines that it would be inappropriate to treat them as joined or consolidated for purposes of awarding costs.

Right of appeal

An order granting or denying an award would be incorporated as part of the court's decision or judgment, and would be appealable in the same way as the decision or judgment.

Source of awards

Payments of awards would be made from the general appropriations of the government agency conducting the action or proceeding.

4. Effective date

The provisions of the bill would apply to civil actions or proceedings filed after December 31, 1978, and before January 1, 1983.

5. Revenue effect

It is estimated that awards would amount to less than \$1 million annually, not including the cost of litigation on issue of the award itself. However, the bill would have no revenue effect because awards would be made from agency budgets.

B. Equal Access to Justice Act

S. 265—(Senators Domenici, Nelson and DeConcini)

S. 265, the "Equal Access to Justice Act," as ordered to be reported by the Committee on the Judiciary on July 17, 1979, would broaden the present law provisions on awards of costs and attorney's fees. The bill would allow awards of costs and attorney's fees to the prevailing party in a civil proceeding brought by or against the United States or any agency or official of the United States acting in his official capacity. In disputes between a taxpayer and the United States, the bill would cover certain costs, including reasonable attorney's fees, relating to judicial proceedings in which the taxpayer is the prevailing party. To be eligible for such awards, individual taxpayers must have net assets of \$1 million or less, taxpayers who are partnerships, corporations, associations, or organizations must have net assets of \$5 million or less.

The amount of fees awarded would be based upon prevailing market rates, generally not in excess of \$75 per hour, for the kind and quality of services furnished. The court would be allowed to deny an award if it found that the position of the United States was justified or that special circumstances made an award unjust.

Awards in tax cases would be paid from the appropriated funds of the Internal Revenue Service. No special appropriations would be allowed for the purpose of paying such awards.

C. The Taxpayer's Bill of Rights Act**S. 326—(Senator Bumpers)****S. 955—(Senators Helms and Leahy)**

Two bills, S. 326 (introduced by Senator Bumpers) and S. 955 (introduced by Senators Helms and Leahy), both entitled "The Taxpayers' Bill of Rights Act," contain identical provisions for the award of costs, including reasonable attorney's fees, to prevailing taxpayers in any proceeding before the Tax Court for the redetermination of a deficiency. A Tax Court judgment of costs could cover both the costs of the Tax Court proceeding and the costs in any administrative proceeding relating to the same deficiency.

In addition, the bills would allow a prevailing taxpayer in any civil action brought by or against the United States for the collection or recovery of any internal revenue tax to recover costs, including reasonable attorney's fees.

