

DESCRIPTION OF S. 2400

TAXPAYERS' PROCEDURAL SAFEGUARD ACT

Scheduled for a Hearing

Before the

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

of the

SENATE COMMITTEE ON FINANCE

on March 19, 1984

Prepared by the Staff

of the

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INTRODUCTION

The Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance has scheduled a public hearing, to be held on March 19, 1984, on S. 2400, the Taxpayers' Procedural Safeguard Act (Senator Grassley).

The first part of this document is a summary of S. 2400. The second part is a more detailed description of the bill, including present law, explanation of the bill's provisions, and effective date.

I. SUMMARY

S. 2400, the "Taxpayers' Procedural Safeguard Act," would revise extensively the procedural rules governing enforcement of the Internal Revenue Code. The bill would expand the types and amounts of property exempt from levy in satisfaction of unpaid liabilities and would provide new rights to review of Internal Revenue Service actions in levying on property or enforcing tax liens. The new review procedures would be both within the IRS and before the courts.

The bill would expand the circumstances under which a taxpayer is entitled to enter into an agreement with the IRS providing for installment payments of any unpaid liability. In addition, new procedural requirements would be imposed on IRS employees regarding all interviews with taxpayers, and the IRS would be bound by all written communications furnished by it to taxpayers.

The present rules granting courts discretionary authority to award attorneys fees and court costs in tax cases to prevailing parties other than the United States would be changed to make such awards mandatory. The present requirement that the prevailing parties demonstrate that the position of the United States was unreasonable would be changed. Under the bill, awards would be made if the position of the United States was not substantially justified, and the specific requirement that the prevailing party carry the burden of proof on this issue would be deleted.

Finally, the bill would establish a new, statutory Office of Taxpayer Ombudsman headed by an independent Presidential appointee approved by the Senate. The new Ombudsman would be permitted to issue "taxpayer assistance orders" which could prevent the IRS from carrying out otherwise permitted actions with respect to specific taxpayers.

The provisions of the bill would be effective on the date of enactment.

II. DESCRIPTION OF THE BILL

A. Levy and Distraint and Tax Lien Provisions

Present Law

Levy and Distraint

Procedural rules

In general, present law provides that levy upon (i.e., taking of) property may be made if a taxpayer neglects or refuses to pay tax within 10 days after notice and demand (Code sec. 6331). Collection of tax by levy is lawful without regard to the 10-day period, if the Internal Revenue Service finds that collection of tax is in jeopardy.

Provided that collection of tax is not in jeopardy, levy may be made upon the salary, wages, or other property of any person with respect to any unpaid liability only after the IRS has notified such person in writing of its intention to make the levy.

This notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by registered or certified mail to the taxpayer's last known address, no less than 10 days before the day of the levy. A single notice is sufficient to cover all property of the taxpayer subject to levy.

The effect of a levy on salary or wages payable to, or received by, a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable by reason of lapse of time. The IRS must release promptly such a levy when the liability out of which the levy arose is satisfied or becomes unenforceable by reason of expiration of the period of limitations, and must notify promptly the taxpayer upon whom such levy was made that the levy has been released.

Under present law, the owners of real property that is sold after a seizure, as well as their heirs, executors or administrators, or any other person having an interest therein, may redeem the property at any time within 180 days after the sale (sec. 6337).

Property exempt from levy

Present law exempts certain property from levy (sec. 6334). Among other items, this exemption covers (1) fuel, provisions, furniture, and personal effects; (2) books and tools of a trade, business, or profession; and (3) wages, salary, or other income.¹

For a taxpayer who is head of a family, an exemption of \$1,500 for fuel, provisions, furniture, and personal effects in his or her household, and for arms for personal use, livestock, and poultry is available.

A \$1,000 exemption for books and tools necessary for the trade, business, or profession of the taxpayer is provided.

The exemption for wages, salary, and other income is \$75 per week plus \$25 per week with respect to each individual over half of whose support is received from the taxpayer, who is a spouse or dependent of the taxpayer, and who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy pursuant to a support judgment entered prior to the date of levy.

Tax Liens

If any tax is not paid when due, the full amount of the liability (tax, interest, and penalties) is a lien in favor of the United States against all property of the taxpayer owing the liability (sec. 6321). This lien arises automatically, but present law provides numerous rules governing the priority of the the lien as against interests of third parties also having an interest in the property (sec. 6323).

A lien imposed with respect to any tax must be released no later than 30 days after either (1) the liability for the amount assessed, together with all interest and penalties in respect thereof, has been satisfied fully or has become legally unenforceable, or (2) acceptance of a bond that is conditioned upon the payment of the amount assessed, together with all penalties and interest (sec. 6325). Present law provides no appeal of a lien separate from the right to challenge assessment of the underlying liability.

¹ Wearing apparel and school books, unemployment benefits, undelivered mail, certain annuity and pension payments, workmen's compensation, and judgments for support of minor children are also exempt from levy under this provision.

Amount of damages in case of wrongful levy

In the case of an alleged wrongful levy, a person (other than the taxpayer against whom is assessed the liability out of which such levy arose) who claims an interest in, or lien on, the property levied upon may bring a civil action against the United States in a U.S. district court (sec. 7426). If the court determines that there has been a wrongful levy, then the court may (1) order the return of the property if the United States is in possession thereof; (2) grant a judgment for the amount of money levied upon; or (3) if the property has been sold, grant a judgment for an amount not exceeding the greater of the amount received by the United States from the sale or the fair market value of the property immediately before the levy.

Explanation of Provisions

Levy and distraint

Procedural rules

The bill would amend the rules pursuant to which the Internal Revenue Service enforces payment of tax by levying on a taxpayer's property in several ways. First, the bill would increase the period that the IRS must wait before levying after notice of the levy has been sent to the taxpayer from 10 days to 30 days. As under present law, the waiting period would not apply in cases where collection of the liability was in jeopardy.

Second, the bill would provide that specific disclosures must be made in all notices of levy. These notices would be required to describe the levy provisions of the Code and the procedures (including appeal rights) pursuant to which a levy occurs. Additionally, all alternatives available to the taxpayer, including methods by which property may be redeemed and tax liens released would have to be disclosed in the notice of levy.

Third, the bill would expand the circumstances under which a continuing levy on a taxpayer's salary or wages would terminate. Under the bill, the levy would terminate if the taxpayer and the IRS entered into an agreement for installment payment of the unpaid tax liability (see Part II. B.) or if the IRS determined that the liability was unenforceable due to the financial condition of the taxpayer.

The bill does not establish guidelines for determining when a taxpayer would be determined to be financially unable to pay a liability to an extent justifying termination of a continuing levy on salary or wages.

Fourth, the IRS would be precluded from taking property in payment of a liability if the expenses associated with the levy were greater than the value of the property or the liability to be satisfied. Additionally, a levy could not be made on any day on which a taxpayer responded to a summons issued by the IRS.

Fifth, the Treasury Department would be directed to prescribe regulations establishing new rules for determining the minimum price at which property levied upon would be sold. The bill would direct that these regulations not limit the minimum price to the amount of the liability for which the sale is made, the expenses of the levy, or any combination of the two.

Property exempt from levy

The bill would expand the types and amounts of property which are exempt from levy. The amount of exempt fuel, provisions, furniture, and personal effects would be increased from \$1,500 to \$20,000. Additionally, animals in addition to livestock and poultry (presently exempt) would be exempt within this category. Property of a trade or business would be exempt to the extent of \$10,000, but only if the trade or business was not a corporation.

The amount of salary or wages exempt from levy would be increased to \$200 per week plus \$50 per week for the taxpayer's spouse and each dependent other than a minor child with respect to whom a support order existed. Income exempt from levy would continue to be exempt if the income were deposited in a bank or other savings institution to the extent that the deposit (or share purchase) occurred within thirty days after receipt of the exempt funds.

Under the bill, a taxpayer's principal residence, a motor vehicle used as a primary source of transportation for commuting to and from the taxpayer's place of business, and any tangible personal property the taking of which would preclude the taxpayer from carrying on his trade or business would be exempt from levy except in certain cases. This property could be taken for payment of tax only if a district director or assistant district director of internal revenue personally approved the levy or if collection of the tax were determined to be in jeopardy.

Release of levy

Specific new standards would be provided for determining when a levy would be released. Under the new rules, the IRS would be required to release a levy if,

- (1) the unpaid liability was paid;
- (2) the release of levy would otherwise facilitate collection of the liability;
- (3) the taxpayer entered into an agreement to pay the liability in installments (see Part II. B, below);
- (4) the expenses of the levy and sale of property exceeded the amount of unpaid liability;
- (5) the taxpayer was prevented by the levy from meeting necessary living expenses; and
- (6) the value of the property levied upon exceeded the unpaid liability and the release could occur without hindering collection of the liability.

The bill does not define the term "necessary living expenses" for purposes of Item 5, above.

Tax Liens

The Treasury Department would be directed to prescribe regulations within 180 days of enactment of the bill to implement a procedure for administrative appeal of any lien imposed on a taxpayer's property. The bill would not otherwise change the rules under which a lien for unpaid tax attaches to property or the priority of such a lien as compared to other interests in the property.

Taxpayer actions against IRS procedural violations

The provisions of present law permitting administrative and judicial review of assessments of tax and wrongful levies would be expanded. The bill would authorize any taxpayer to bring a civil action in United States district court if a lien were imposed or levy made on the taxpayer's property in a manner violating the procedures established by the Code. The taxpayer would be required to have filed a written request with the IRS Taxpayer Ombudsman for an order to stop the lien or levy (see the discussion in Part II. E., below)

as a prerequisite for bringing action. The district court could provide any remedy which it determined appropriate.

B. Time for Payment of Tax

Present Law

In general, any tax is required to be paid in full by the date the return for the tax is due to be filed (sec. 6151). Numerous exceptions are provided to this rule. Some of these exceptions require advance payments through periodic deposits as payments are made or received (e.g., payroll tax withholding). Other exceptions provide that, at the election of the taxpayer, tax may be paid in installments after the due date otherwise established for filing a return of the particular tax. Examples of taxes that may be paid in installments after the return due date are the highway use tax (sec. 6156) and estate tax attributable to certain interests in closely held businesses (sec. 6166). Finally, the Internal Revenue Service generally has discretion to extend the time for payment of tax for a reasonable period not exceeding 6 months (12 months in the case of estate tax) (sec. 6161).

Explanation of Provisions

The bill would specifically authorize the IRS to enter into written agreements with any taxpayer providing for installment payments of tax in any case where IRS determined that such an agreement would facilitate the collection of tax. In addition, the bill would require the IRS to make a written offer of such an agreement to any individual whose tax liability did not exceed \$20,000 and who had not been delinquent in payments under any other similar agreement entered within the three years preceding the due date of the currently unpaid tax liability.

Agreements under this new provision would be binding on the IRS unless the Service showed that the information provided by the taxpayer prior to the date of agreement was inaccurate or incomplete. Additionally, if the financial condition of the taxpayer changed subsequent to the agreement, the IRS could alter or annul the agreement. Before an agreement could be unilaterally changed by the IRS, however, the taxpayer would be entitled to a hearing.

C. Provisions Affecting IRS Communications with Taxpayers

Present Law

Written communications

The Internal Revenue Service communicates with taxpayers using numerous written and oral means. The principal written methods are tax regulations, revenue rulings and ruling letters, forms and publications, and letters in response to taxpayer inquiries. In addition, the IRS conducts an extensive taxpayer service program through which agency employees respond to taxpayer problems orally.

Tax regulations, revenue rulings, and ruling letters

The broadest form of written communication provided for taxpayers by the IRS is tax regulations. Tax regulations provide general interpretations of the Code and are subject to extensive review before adoption as Treasury decisions. Tax regulations generally are published in proposed form before being adopted. Once adopted, tax regulations are binding on the IRS with respect to all taxpayers. A tax regulation may be withdrawn by the IRS at any time the Service determines that it is no longer appropriate by publication of notice in the Federal Register.

The Internal Revenue Service publishes revenue rulings and procedures in the Internal Revenue Bulletin. Revenue rulings and procedures, like Treasury decisions, may be cited as precedent and the positions taken in them generally are binding on the IRS. These interpretations apply the tax law to a specific fact pattern rather than providing broad, general rules. Rulings and procedures generally are subject to review by many of the same offices that review regulations. Typically, however, revenue rulings and procedures are not published in proposed form before being adopted.

The IRS also interprets the tax law through ruling letters and technical advice memoranda. These interpretations generally are subject to less review than regulations and revenue rulings. Ruling letters are issued to a specific taxpayer and may be relied upon only by that taxpayer and only with regard to the specific transaction addressed by the letter.

Forms and publications

The IRS regularly reviews and publishes all forms and schedules necessary for filing returns for the various taxes imposed under the Internal Revenue Code. These forms range from the Form 1040 (income tax) to Form 706 (estate tax) and Form 720 (excise taxes). Instructions are provided for each form published by IRS. In addition, the IRS publishes and distributes, free-of-charge, more than 90 booklets on specific tax topics. These booklets are reviewed and revised regularly to reflect the most recent changes in the tax law.

Taxpayer service programs

The Internal Revenue Service conducts a year-round tax information program in each of its regions, internal revenue districts, 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 taxpayer service division. 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.

Taxpayer assistance is provided by three principal methods: (1) telephone assistance; (2) assistance to taxpayers who walk into an IRS office; and (3) taxpayer information and education programs, including programs directed toward special groups.

Telephone assistance

A toll-free telephone network 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, toll-free assistance is provided to deaf and hearing-impaired taxpayers through a television/telephone/typewriter 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. The scope of the

program includes answering taxpayer questions, furnishing tax forms and publications, and assisting in preparation of returns for taxpayers.

Taxpayer information and education

In addition to its telephone and walk-in assistance programs, the IRS 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 may 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. The 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 certain colleges and universities across the country. Under this program, law and graduate accounting students represent low-income taxpayers before the IRS in examination and appeals proceedings.

Small Business Workshops are conducted in each internal revenue district to educate owners of small businesses, and institutes are available in most districts for tax practitioners on recent tax developments which may affect them.

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

The "Understanding Taxes" program provides free student

publications to high schools. Additionally, under this program, IRS employees also meet with teachers to explain the publications and answer questions on tax laws and procedures.

Other Investigations and Return Examinations

The IRS annually investigates millions of cases of suspected civil and criminal violations of the tax law. These investigations may arise from a routine examination of a taxpayer's return or as a result of receipt of other evidence of violations of the tax law.

To enforce compliance with the tax law, the IRS also examines or "audits" selected tax returns. Returns generally are selected for examination as a result of a high score on a computer program designed to detect improperly claimed deductions or credits, as a result of underreported income discovered by matching payor information returns (e.g. Forms 1099) with tax returns, or through the IRS' Taxpayer Compliance Measurement Program (TCMP). Most IRS communications in these programs involve suspected civil, as opposed to criminal, violations of the tax law.

Explanation of Provisions

Reliance on IRS written advice

The bill would provide that all written advice furnished by any employee of the IRS acting in an official capacity would be binding upon the Service if the information were provided in response to a specific request by the taxpayer and the taxpayer did not provide inadequate or inaccurate information to the IRS. Therefore, the IRS generally could not collect any deficiency (including interest and penalties associated with any deficiency) which resulted from its incorrect written advice.

Rules governing IRS contacts with taxpayers

The bill would establish new rules governing all interviews with taxpayers conducted by the IRS. Under the new rules, the IRS would be required to conduct interviews at "a reasonable time and place convenient to the taxpayer" and to allow the taxpayer to make a recording of the interview. IRS personnel could likewise record interviews provided they informed the taxpayer that the recording was being made and provided the taxpayer with a transcript of the interview upon

request. Taxpayers requesting transcripts would be required to pay the costs of reproduction.

New procedural warnings would be required before any interview with a taxpayer could be conducted by the IRS. Under this new rule, taxpayers would be advised that they had the right to remain silent, that any statement that they made could be used against them, and that they had the right to the presence of an attorney or accountant. These warnings are similar to those provided persons suspected of criminal activity under present law. Under the bill, however, the warnings would apply as well to interviews where no specific violation of civil or criminal law was suspected.

D. Awards of Attorneys Fees and Court Costs

Present Law

Present law generally provides that taxpayers who prevail in civil tax actions in which the position of the United States was unreasonable may be awarded reasonable litigation costs (including attorney's fees) up to a maximum of \$25,000. An award of reasonable litigation costs to the prevailing party in a civil tax action is discretionary with the court hearing the action. The determination of whether the position of the United States was unreasonable is made by the court or by agreement of the parties. A taxpayer is considered to have prevailed in an action if the taxpayer has established that the position of the United States was unreasonable and has prevailed (1) with respect to the amount in controversy or (2) has substantially prevailed with respect to the most significant issue or set of issues in the action.

Litigation costs may be awarded in civil actions or proceedings brought by or against the United States (or any agency, officer, or employee of the United States acting in his or her official capacity) in any United States court, including the Tax Court, in connection with the determination, collection, or refund of any tax, interest, or penalty. Civil actions and proceedings include proceedings to enforce a summons, jeopardy assessments, wrongful levies, and interpleaders (i.e., generally, a proceeding to enable a person to compel parties making the same claim against him or her to litigate the matter between them).

Most parties who are plaintiffs or defendants in actions brought in connection with the determination, collection, or refund of any tax, interest, or penalty imposed by the Internal Revenue Code may be eligible for these awards. However, under present law, no award can be made to the United States or to any creditor of the taxpayer. Thus, for example, awards would not be made to creditors of a taxpayer in interpleaders, wrongful levy actions, and lien priority cases.

Explanation of Provisions

The bill would make mandatory the award of attorneys fees and court costs to taxpayers who prevail in civil actions and proceedings against the Internal Revenue Service. Awards of these fees and costs would be made in all cases

where the position of the United States was not "substantially justified." The definition of prevailing party would remain the same as under present law except the burden of proving that the United States was not substantially justified in its position would not be specifically placed upon the taxpayer. (Under present law, taxpayers are specifically required to demonstrate that the position of the United States was unreasonable.)

E. Problem Resolution Program and Office of Taxpayer Ombudsman

Present Law

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 district offices.

The program was established to handle taxpayers' problems and complaints not promptly or properly resolved through normal administrative 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.

Explanation of Provisions

The bill would establish an Office of Ombudsman within the Internal Revenue Service. The office would be headed by an independent Ombudsman appointed by the President and confirmed by the Senate. The responsibilities of the new Office of Ombudsman generally would be similar to those performed by the present administratively appointed Ombudsman through the Problem Resolution Program.

In addition to these responsibilities, the new Ombudsman would be authorized to issue "taxpayer assistance orders" requiring the IRS to cease certain actions with respect to specifically identified taxpayers. Under the bill, the

Ombudsman could direct the IRS to release property which had been levied upon, to cease any collection action or other action relating to discovery of taxpayer liability, or to cease any other action otherwise authorized under any other provision of law.

F. Effective Date

The provisions of the bill would take effect on the date of enactment.