DESCRIPTION OF AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO THE CHAIRMAN'S MARK RELATING TO A PROPOSED TAXPAYER BILL OF RIGHTS 2

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INTRODUCTION

The House Committee on Ways and Means has scheduled a markup of proposed "Taxpayer Bill of Rights 2" on September 18, 1995. This document, prepared by the staff of the Joint Committee on Taxation, provides a description of the provisions of the proposed Taxpayer Bill of Rights 2.[1]

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of an Amendment in the Nature of a Substitute to the Chairman's Mark Relating to a Proposed Taxpayer Bill of Rights 2* (JCX-36-95), September 18, 1995.

DESCRIPTION OF PROPOSED TAXPAYER BILL OF RIGHTS 2

1. Taxpayer Advocate

a. Establishment of position of Taxpayer Advocate within Internal Revenue Service

Present Law

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service (IRS) in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at the Commissioner's discretion.

Description of Proposal

The proposal would establish a new position, Taxpayer Advocate, within the IRS. This would replace the position of Taxpayer Ombudsman. The Taxpayer Advocate would be appointed by and would report directly to the Commissioner. Compensation of the Taxpayer Advocate would be at a level equal to that of the highest level official reporting directly to the Deputy Commissioner of the IRS.

The proposal also would establish the Office of Taxpayer Advocate within the IRS. The functions of the office would be (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

While the Taxpayer Advocate would not have direct line authority over the regional and local Problem Resolution Officers (PROs), all PROs should take direction from the Taxpayer Advocate and they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc. Accordingly, regional PROs are encouraged to actively participate in the selection and evaluation of local PROs.

The Taxpayer Advocate would be required to make two annual reports to the tax-writing Committees. The first report would contain the objectives of the Taxpayer Advocate for the next calendar year. This report would contain full and substantive analysis, in addition to statistical information, and would be due not later than June 30 of each year.

The second report would be on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order (TAO), describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and to include other such information as the Taxpayer Advocate may deem advisable. The Commissioner would be required to establish internal procedures that will ensure a formal IRS response within three months to all recommendations submitted to the Commissioner by the Taxpayer Advocate. This second report is due not later than December 31 of each year.

The reports submitted to Congress by the Taxpayer Advocate would not be subject to prior review by the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget. The objective is for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate would not be official legislative recommendations of the Administration; providing official legislative recommendations would remain the responsibility of the Department of Treasury.

Effective Date

The proposal would be effective on the date of enactment. The first annual reports of the Taxpayer Advocate would be due June and December, 1996.

b. Expansion of authority to issue Taxpayer Assistance Orders

Present Law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

Description of Proposal

The proposal would provide the Taxpayer Advocate with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. In addition, the proposal would provide that a TAO may specify a time period within which

the TAO must be followed. Finally, the proposal would provide that only the Taxpayer Advocate, the Commissioner of the IRS, the Deputy Commissioner, or a regional problem resolution officer, may modify or rescind a TAO. Any official who modifies or rescinds a TAO would be required to provide the Taxpayer Advocate a written explanation of the reasons for the modification or rescission.

Effective Date

The proposal would be effective on the date of enactment.

2. Modifications to installment agreement provisions

a. Notification of reasons for termination of installment agreements

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

Description of Proposal

The proposal would require the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action.

Effective Date

The proposal would be effective six months after the date of enactment.

b. Administrative review of termination of installment agreements

Present Law

A taxpayer whose request for an installment agreement is denied can appeal to successively higher levels of Collection Division management, including the District Director. The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

Description of Proposal

The proposal would require the IRS to establish additional procedures for an independent administrative review of terminations of installment agreements for taxpayers who request a review.

Effective Date

The proposal would be effective on January 1, 1996.

3. Abatement of interest and penalties

a. Expansion of authority to abate interest

Present Law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

Description of Proposal

The proposal would permit the IRS to abate interest with respect to any unreasonable error or delay on the part of the IRS. The proposal would also expand the authority to abate interest to managerial acts as well as ministerial acts. Such managerial acts would include extensive delays resulting from: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave. On the other hand, interest would not be abated for delays resulting from general administrative decisions. For example, the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable delay in the IRS's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived. Also, if the taxpayer agrees to extend the statute of limitations in order to allow a test

case to determine a common issue involved in numerous returns, the taxpayer would not be eligible for abatement of the interest which accrues while waiting for the test case to be resolved.

Effective Date

The proposal would apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

b. Review of IRS failure to abate interest

Present Law

Federal courts generally do not have the jurisdiction to review the IRS's failure to abate interest.

Description of Proposal

The proposal would grant the Tax Court jurisdiction to determine whether the IRS's failure to abate interest for an eligible taxpayer was an abuse of discretion. The action must be brought within six months after the date of the Secretary's final determination not to abate interest. An eligible taxpayer must meet the net worth and size requirements imposed with respect to awards of attorney's fees. No inference is intended as to whether under present law any court has jurisdiction to review IRS's failure to abate interest.

Effective Date

The proposal would apply to requests for abatement after the date of enactment.

c. Extension of interest-free period for payment of tax after notice and demand

Present Law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of 10 days is provided to taxpayers who pay the tax due within 10 days of notice and demand.

Description of Proposal

The proposal would extend the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 days to 10 business days (21 calendar days, provided that the total tax liability shown on the notice of deficiency is less than $100,000).

Effective Date

The proposal would apply in the case of any notice and demand given after June 30, 1996.

4. Joint returns

a. Studies of joint and several liability for married persons filing joint tax returns and other joint return-related issues

Present Law

Spouses who file a joint tax return are each fully responsible for the accuracy of the return and for the full tax liability. This is true even though only one spouse may have earned the wages or income which is shown on the return. This is "joint and several" liability. Spouses who wish to avoid joint liability may file as a "married person filing separately."

Spouses often file a joint tax return but then are later separated or divorced. If the IRS later disputes the accuracy of the joint tax returns, one spouse may be held liable for the entire tax deficiency stemming from erroneous deductions or omitted income attributable to the other spouse. Therefore, the "innocent" spouse may be held liable for the full deficiency in a subsequent audit occurring after the separation or divorce. This has resulted in a serious hardship being imposed on an "innocent spouse" in a number of cases.

In some cases, a couple addresses the responsibility for tax liability as part of their divorce decree. However, these agreements are not binding on the IRS because the IRS was not a party to the divorce proceeding. Thus, if a former spouse violates the tax responsibilities assigned to him or her in a divorce decree, the other spouse may not rely on the decree in dealing with the IRS.

While present law does contain provisions which give relief to certain innocent spouses in these situations, the provisions are narrowly drawn and strictly interpreted. Therefore, many former spouses are not able to qualify for the protections of the current "innocent spouse" rules.

In 1930, the Supreme Court ruled in Poe v. Seaborn, 282 U.S. 101 (1930), that all the earnings of a married couple in community property States were part of the marital property to which each spouse had an equal right. At the time, married couples generally welcomed this decision because it allowed couples in community property States to benefit from income "splitting" between the husband and wife for income tax purposes. Later, the Federal tax law was changed to allow all married taxpayers to "split" their income by means of filing a joint tax return.

While the income-splitting effect of Poe v. Seaborn is now moot, the decision continues to affect married couples in community property States, but in an adverse way. For example, there are cases where a divorced spouse owes the IRS a tax liability based on his or her joint

return filed during the marital years. When this spouse remarries, the new spouse's income may become subject to levy in order to satisfy the tax deficiency of the prior spouse. In contrast, if the couple did not live in a community property State, the second spouse's wages could not be levied to pay a tax liability arising from this spouse's first marriage.

Description of Proposal

The proposal would direct the Treasury Department and the General Accounting Office (GAO) to conduct separate studies analyzing the following matters:

(1) The effects of changing the current standard of "joint and several" liability for married couples to a "proportionate" liability standard. That is, each spouse would be liable only for the income tax attributable to the income of each spouse.

(2) The effects of requiring the IRS to be bound by the terms of a divorce decree which addresses the responsibility for the tax liability on prior joint tax returns.

(3) Whether the current "innocent spouse" provisions provide meaningful relief to former spouses.

(4) The effects of overturning the application of Poe v. Seaborn for income tax purposes in community property States.

The Treasury Department and the GAO would be directed to examine the tax policy implications, the equity implications, and operational changes which would face the IRS if the liability standard were changed. For example, the studies would consider how a system of proportionate liability would change the way the IRS communicates with taxpayers, conducts audits of joint returns, and enforces tax lien and levies against married couples.

Effective Date

The studies would be due six months after the date of enactment.

b. Joint return may be made after separate returns without full payment of tax

Present Law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

Description of Proposal

The proposal would repeal the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective Date

The proposal would apply to taxable years beginning after the date of the enactment.

c. Disclosure of collection activities with respect to joint returns

Present Law

The IRS does not disclose collection information to spouses that have filed a joint return.

Description of Proposal

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the proposal would require the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Such requests would be required to be made in writing. The IRS would be allowed to develop procedures to address the frequency of such requests in order to prevent taxpayers from abusing this provision by making numerous requests without good cause. For example, one request per quarter would be a reasonable rate unless the taxpayer had good cause to seek more frequent information.

In making these disclosures, the IRS would be allowed to omit the current home address and business location of the former spouse. This would prevent the disclosure of such personal information to persons who might be hostile towards a former spouse.

Effective Date

The proposal would be effective on the date of enactment.

5. Collection activities

a. Modifications to lien and levy provisions

i. Withdrawal of public notice of lien

Present Law

The IRS files a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS is required to issue a certificate of release for such notices for erroneous liens only.

Description of Proposal

The proposal would allow the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer without prejudice, if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and of the Government. The IRS must also provide a copy of the notice of withdrawal. The proposal also would require that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to creditors, credit reporting agencies, and financial institutions specified by the taxpayer.

Effective Date

The proposal would be effective on the date of enactment.

ii. Return of levied property

Present Law

The IRS is authorized to return levied property to a taxpayer only when the taxpayer has overpaid its liability with respect to tax, interest, and penalty.

Description of Proposal

The proposal would allow the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will

facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the Government.

Effective Date

The proposal would be effective on the date of enactment.

iii. Modifications in certain levy exemption amounts

Present Law

Property exempt from levy includes personal property with a value of up to $1,650.

Description of Proposal

The proposal would increase the exemption amount to $2,500 for personal property. This amount would be indexed for inflation commencing January 1, 1996.

Effective Date

The proposal would be effective with respect to levies issued after December 31, 1995.

b. Offers-in-compromise

Present Law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

Description of Proposal

The proposal would increase from $500 to $100,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $100,000 threshold would be subject to continuing quality review by the IRS.

Effective Date

The proposal would be effective on the date of enactment.

6. Information returns

a. Civil damages for fraudulent filing of information returns

Present Law

Federal law provides no private cause of action to a taxpayer who is injured because a fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

Description of Proposal

The proposal would provide that, if any person willfully files a fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. A copy of the complaint initiating the action must be provided to the IRS. Recoverable damages would be the greater of (1) $5,000 or (2) the amount of actual damages (including the costs of the action) and, in the court's discretion, reasonable attorney's fees. The court would be required to specify in its judgment the correct amount (if any) that should have been reported on the information return. An action seeking damages under this provision would be required to be brought within six years after the filing of the fraudulent information return, or one year after the fraudulent information return would have been discovered through the exercise of reasonable care, whichever is later.

Effective Date

The proposal would apply to fraudulent information returns filed after the date of enactment.

b. Requirement to conduct reasonable investigations of information returns

Present Law

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

Description of Proposal

The proposal would provide that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (Form 1099 or Form W-2) filed by a third party and the taxpayer has fully cooperated with the IRS, the Government shall have the burden of producing reasonable and probative information concerning the deficiency (in addition to the information return itself). Fully cooperating with the IRS would include (but would not be limited to) the following: bringing the reasonable dispute over the item of income to the attention of the IRS within a reasonable period of time, and providing (within a

reasonable period of time) access to and inspection of all witnesses, information, and documents within the control of the taxpayer (as reasonably requested by the Secretary).

Effective Date

The proposal would be effective on the date of enactment.

7. Awarding of costs and certain fees

a. United States must establish that its position in a proceeding was substantially justified

Present Law

Under section 7430, a taxpayer who successfully challenges a determination of deficiency by the IRS may recover attorney's fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it: (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements. A taxpayer must exhaust administrative remedies to be eligible to receive an award of attorney's fees.

Description of Proposal

The proposal would provide that, once a taxpayer substantially prevails over the IRS in a tax dispute, the IRS will have the burden of proof to establish that it was substantially justified in maintaining its position against the taxpayer. This would switch the current procedure which places the burden of proof on the taxpayer to establish that the IRS was not substantially justified in maintaining its position. Therefore, the successful taxpayer would receive an award of attorney's fees unless the IRS satisfies its burden of proof. The proposal also would establish a rebuttable presumption that the position of the United States was not substantially justified if the IRS did not follow in the administrative proceeding (1) its published regulations, revenue rulings, revenue procedures, information releases, notices, or announcements, or (2) a private letter ruling, determination letter, or technical advice memorandum issued to the taxpayer. This provision would only apply to the version of IRS guidance that is most current on the date the position was taken.

Effective Date

The proposal would be effective for proceedings commenced after the date of enactment.

b. Increased limit on attorney's fees

Present Law

Attorney's fees recoverable by prevailing parties as litigation or administrative costs are limited to a maximum of $75 per hour.

Description of Proposal

The proposal would raise the statutory rate to $110 per hour, indexed for inflation beginning after 1996.

Effective Date

The proposal would apply to proceedings commenced after the date of enactment.

c. Failure to agree to extension not taken into account

Present Law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS. The IRS has taken the position in regulations that attorney's fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations. In Minahan v. Commissioner, 88 T.C. 492 (1987), the Tax Court held that regulation invalid insofar as it provides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer.

Description of Proposal

The proposal would provide that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective Date

The proposal would apply to proceedings commenced after the date of enactment.

d. Award of litigation costs permitted in declaratory judgment proceedings

Present Law

Section 7430(b)(3) denies any reimbursement for attorney's fees in all declaratory judgment actions, except those actions related to the revocation of an organization's qualification under section 501(c)(3) (relating to tax-exempt status).

Description of Proposal

The proposal would eliminate the present-law restrictions on awarding attorney's fees in all declaratory judgment proceedings.

Effective Date

The proposal would apply to proceedings commenced after the date of enactment.

8. Modification to recovery of civil damages for unauthorized collection actions

a. Increase in limit on recovery of civil damages for unauthorized collection actions

Present Law

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

Description of Proposal

The proposal would increase the cap from $100,000 to $1 million.

Effective Date

The proposal would apply to actions by IRS employees that occur after the date of enactment.

b. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies

Present Law

A taxpayer suing the United States for civil damages for unauthorized collection activities must exhaust administrative remedies to be eligible for an award.

Description of Proposal

The proposal would permit (but not require) a court to reduce an award if the taxpayer has not exhausted administrative remedies in the collection process.

Effective Date

The proposal would be effective for proceedings commenced after the date of enactment.

9. Modification to penalty for failure to collect and pay over tax

a. Preliminary notice requirement

Present Law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Description of Proposal

The proposal would require the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations would not expire before the date 90 days after the date on which the notice was mailed. The proposal would not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective Date

The proposal would apply to assessments made after June 30, 1996.

b. Disclosure of certain information where more than one person subject to penalty

Present Law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

Description of Proposal

The proposal would require the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person

the IRS has determined to be a responsible person with respect to the tax liability. The IRS would be required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision would not absolve any individual for any liability for this penalty.

Effective Date

The proposal would be effective on the date of enactment.

c. Right of contribution from multiple responsible parties

Present Law

A responsible person may seek to recover part of the amount which he has paid to the IRS from other individuals who also may have the obligations of a responsible person but who have not yet contributed their proportionate share of their liability under section 6672. Taxpayers must pursue such claims for contribution under state law (to the extent state law permits such claims). The variations in state law sometimes make it difficult or impossible to press successful suits in state courts to force a contribution from other responsible persons.

Description of Proposal

If more than one person is liable for this penalty, each person who paid the penalty would be entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. This proceeding would be a Federal cause of action and would be required to be entirely separate from any proceeding involving IRS's collection of the penalty from any responsible party.

Effective Date

The provision would apply to penalties assessed after the date of enactment.

d. Board members of tax-exempt organizations

Present Law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Description of Proposal

The proposal would clarify that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial activities of the organization, and do not have actual knowledge of the failure. The proposal could not operate in such a way as to eliminate all responsible persons from responsibility.

The proposal would require the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS would be required to make such materials routinely available to tax-exempt organizations. The proposal also would require the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective Date

The proposal would be effective on the date of enactment.

10. Modifications of rules relating to summonses

a. Enrolled agents included as third-party recordkeepers

Present Law

Section 7609 contains special procedures that the IRS must follow before it issues a third-party summons. A third-party summons is a summons issued to a third-party recordkeeper compelling him to provide information with respect to the taxpayer. An example of this would be a summons served on a stock brokerage house to provide data on the securities trading of the taxpayer-client.

If a third-party summons is served on a third-party recordkeeper listed in section 7609(a)(3), then the taxpayer must receive notice of the summons and have an opportunity to challenge the summons in court. Otherwise the taxpayer has no statutory right to receive notice of the summons and accordingly he will not have the opportunity to challenge it in court.

Section 7609(a)(3) lists attorneys and accountants as third-party recordkeepers, but it does not list "enrolled agents", who are authorized to practice before the IRS.

Description of Proposal

The proposal would include enrolled agents as third-party recordkeepers.

Effective Date

The proposal would apply to summonses issued after the date of enactment.

b. Safeguards relating to designated summonses

Present Law

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

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[2]

In certain cases, the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

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[2] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

Description of Proposal

The proposal would require that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region in which the examination of the corporation's return is being conducted.

The proposal would also limit the use of a designated summons to corporations (or to any third party to whom the corporation has transferred records) that are being examined as part of the Coordinated Examination Program (CEP) or its successor. CEP audits cover about 1,600 of the largest corporate taxpayers. If a corporation moves between CEP and non-CEP audit categories, then only the tax years covered by the CEP may be the subject of a designated summons.

The proposal would also require that the Treasury report annually to the Congress on the number of designated summonses issued in the preceding 12 months.

Effective Date

The proposal would apply to summonses issued after date of enactment.

11. Relief from retroactive application of Treasury Department regulations

Present Law

Under section 7805(b), Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Description of Proposal

Temporary and proposed regulations would be required to have an effective date no earlier than the date of publication in the Federal Register or the date on which any notice substantially describing the expected contents of such regulation is issued to the public. However, any regulations issued within 12 months of the enactment of the statutory provision to which the regulation relates may be issued with retroactive effect. This proposal could be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury would be permitted to issue retroactive temporary or proposed regulations to prevent abuse. The Treasury would also be permitted to issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. Taxpayers could elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations could take effect from the date of publication of the temporary or proposed regulation to which they relate. The proposal would

not apply to any regulation relating to internal Treasury Department policies, practices, or procedures. Present law with respect to rulings is unchanged.

Effective Date

The proposal would apply with respect to any temporary or proposed regulation filed on or after the date of enactment with respect to statutes enacted on or after the date of enactment.

12. Miscellaneous provisions

a. Report on pilot program for appeal of enforcement actions

Present Law

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. Certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may, however, be appealed to the Appeals Division. The IRS recently conducted a pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division of enforcement actions (including lien, levy, and seizure actions).

Description of Proposal

The Secretary would be required to report to the tax-writing committees on the effectiveness of the pilot program, together with any recommendations he may deem advisable.

Effective Date

The report is due by March 1, 1996.

b. Phone numbers of person providing payee statement required to be shown on such statement

Present Law

Information returns must contain the name and address of the payor.

Description of Proposal

The proposal would require that information returns contain the name, address, and phone number of the information contact. A payor may, for example, provide the name and phone number of the department with the relevant information. It is intended that the telephone number

provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

Effective Date

The proposal would apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

c. Required notice to taxpayers of certain payments

Present Law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

Description of Proposal

The proposal would require the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with the taxpayer.

Effective Date

The proposal would be effective on the date of enactment.

d. Unauthorized enticement of information disclosure

Present Law

There is no statutory disincentive for enticing a tax professional to disclose information about clients in exchange for the favorable treatment of the taxes of the professional.

Description of Proposal

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, the taxpayer may bring a civil action for damages against the United States in a district court of the United States. Upon a finding of liability, damages would equal the lesser of $500,000 or the sum of (1) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure and (2) the costs of the action. These

remedies would not apply to information conveyed to an attorney, certified public accountant or enrolled agent for the purpose of perpetrating a fraud or crime.

Effective Date

The proposal would apply to actions taken after the date of enactment.

e. Annual reminders to taxpayers with outstanding delinquent accounts

Present Law

There is no requirement in the Code that the IRS send annual reminders to persons who have outstanding tax liabilities.

Numerous taxpayers become delinquent in paying their tax liability. The delinquencies may occur because the person did not make enough payments through payroll withholding or quarterly estimated payments or because of a major adjustment following an audit.

The IRS generally pursues larger tax deficiencies first, and then it pursues small deficiencies. Because of the limited amount of IRS resources to work collection cases, cases with smaller deficiencies may not be addressed for years. In the meantime, the taxpayer may come to believe that the apparent lack of IRS collection activity means that it has abandoned its claim against the taxpayer. The taxpayer may be surprised when the IRS resumes collection action years later, when the 10-year statute of limitations on collections is close to expiring.

Description of Proposal

The proposal would require the IRS to send taxpayers an annual reminder of their outstanding tax liabilities. The fact that a taxpayer did not receive a timely, annual reminder notice would not affect the tax liability.

Effective Date

The proposal would require the IRS to send annual reminder notices beginning in 1996.

f. Five-year extension of authority for undercover operations

Present Law

The Anti-Drug Abuse Act of 1988 exempted IRS undercover operations from the otherwise applicable statutory restrictions controlling the use of Government funds (which generally provide that all receipts be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the exemption permits the IRS to

"churn" the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations. The exemption originally expired on December 31, 1989, and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991. The IRS has not had the authority to churn funds from its undercover operations since 1991.

Description of Proposal

The proposal would reinstate the IRS's offset authority under section 7608(c) from the date of enactment until January 1, 2001. The proposal would amend the IRS annual reporting requirement under section 7608(c)(4)(B) to require the provision of the following data: (1) the date the operation was initiated; (2) the date offsetting was approved; (3) the total current expenditures and the amount and use of proceeds of the operation; (4) a detailed description of the undercover operation projected to generate proceeds, including the potential violation being investigated and whether the operation is being conducted under grand jury auspices; and (5) the results of the operation to date, including the results of criminal proceedings.

Effective Date

The proposal would be effective on the date of enactment.

g. Disclosure of returns on cash transactions

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Under section 6050I, any person who receives more than $10,000 in cash in one transaction (or two or more related transactions) in the course of a trade or business generally must file an information return (Form 8300) with the IRS specifying the name, address, and taxpayer identification number of the person from whom the cash was received and the amount of cash received.

The Anti-Drug Abuse Act of 1988 provided a special rule permitting the IRS to disclose these information returns to other Federal agencies for the purpose of administering Federal

criminal statutes. The special rule originally was to expire after November 18, 1990, and was extended by the Comprehensive Crime Control Act of 1990 to November 18, 1992.

Description of Proposal

The proposal would permanently extend the special rule for disclosing Form 8300 information. Moreover, the proposal would permit disclosures not only to Federal agencies but also to State, local and foreign agencies and for civil, criminal and regulatory purposes (i.e., generally in the same manner as CTRs filed by financial institutions under the Bank Secrecy Act.) Disclosure, however, would not be permitted to any such agency for purposes of tax administration. The proposal also (1) would extend the dissemination policies and guidelines under section 6103 to people having access to Form 8300 information, and (2) would apply section 6103 sanctions to persons having access to Form 8300 information that disclose this information without proper authorization.

Effective Date

The proposal would be effective on the date of enactment.

h. Disclosure of returns and return information to designee of taxpayer

Present Law

Under present law, the IRS is authorized to disclose the return of any taxpayer, or return information pertaining to a taxpayer, to such person(s) as the taxpayer has designated in a written request. However, the IRS's move to a paperless system depends on the ease and functionality of electronic communication systems, e.g., telephones, facsimile machines, computers, communications networks, etc.

Description of Proposal

The proposal would delete the word "written" from the requirement that "written consent" from the taxpayer is necessary for the disclosure of taxpayer information to a designated third party. Allowing the IRS to adopt alternatives to the written request requirement will expedite such changes and facilitate the development and implementation of Tax System Modernization projects. It is anticipated that the IRS will continue to utilize its regulatory authority to impose reasonable restrictions on the form in which a request is made, and that IRS will in no event accept an unconfirmed verbal request.

Effective Date

The proposal would be effective on the date of enactment.

i. Report on netting of interest on overpayments and liabilities

Present Law

If any portion of a tax is satisfied through the crediting of an overpayment of tax, no interest is imposed on that portion of the tax for any period during which, if the credit had not been made, interest would have been allowable.

The Tax Reform Act of 1986 first implemented an interest rate differential. The underpayment rate was set 1 percent higher than the overpayment rate. The Conference Report to the Tax Reform Act of 1986 stated:

> [t]o the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax. Consequently, if an underpayment of $1,000 occurs in year 1, and an overpayment of $1,000 occurs in year 2, no interest is imposed in year 2 because of the rule of section 6601(f). The IRS can at present net many of these offsetting overpayments and underpayments. Nevertheless, the IRS will require a transition period during which to coordinate differential interest rates...[t]he Secretary of the Treasury may prescribe regulations providing for netting of tax underpayments and overpayments through the period ending three years after the date of enactment of the bill. By that date, the IRS should have implemented the most comprehensive netting procedures that are consistent with sound administrative practice.

The Omnibus Budget Reconciliation Act of 1990 increased the underpayment rate on certain large corporate underpayments to 3 percent higher than the overpayment rate. The Conference Report stated:

> Under present law, the Secretary has the authority to credit the amount of any overpayment against any liability under the Code...to the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax...The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice.

The General Agreement on Tariffs and Trade (GATT) reduced the overpayment rate on certain corporate tax refunds. The legislative history of the GATT legislation stated that:

> The Secretary of the Treasury should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice, and should do so as rapidly as is practicable.

Description of Proposal

The proposal would require the Secretary of the Treasury to issue a report to the tax-writing committees to report on how the IRS has implemented netting procedures to date and to discuss the policy and administrative implications of global netting. The Treasury would be required to hold a public hearing to receive comments from any interested party prior to submitting the report.

Effective Date

The report would be due six months after the date of enactment.

j. Credit for certain expenses incurred in connection with TCMP audits

Present Law

The IRS has announced that it will soon begin taxpayer compliance measurement program (TCMP) audits of returns filed for taxable year 1994. There is no tax credit for expenses incurred in connection with these audits. However, any expenses in connection with the determination, collection, or refund of any tax are deductible under either section 162 or section 212(3).

Description of Proposal

The proposal would provide a refundable tax credit to individuals (not including estates, trusts, or partnerships) for up to $3,000 of expenses otherwise deductible under either section 162 or section 212(3) incurred in connection with a TCMP audit of the taxpayer for taxable year 1994. In some circumstances, such as where a taxpayer has a net operating loss carryback, adjustments may also be made to an earlier tax return of the taxpayer as a consequence of the TCMP audit of the taxpayer for taxable year 1994. Expenses incurred with respect to this type of adjustment on an earlier return would also be eligible for the credit, because they are incurred in connection with the TCMP audit of the taxpayer for taxable year 1994. The $3,000 credit is the total available with respect to an audit, regardless of whether the expenses are incurred in two (or more) years. The credit would be in lieu of a deduction with respect to these expenses.

Effective Date

The proposal would be effective with respect to amounts paid or incurred after December 31, 1994, in taxable years ending after that date. The credit would be allowable with respect to the taxable year in which the expenses are incurred.