

**BACKGROUND AND INFORMATION
RELATING TO THE TAXPAYER
BILL OF RIGHTS**

Scheduled for a Public Hearing

Before the

SUBCOMMITTEE ON OVERSIGHT

of the

HOUSE COMMITTEE ON WAYS AND MEANS

on March 24, 1995

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

March 21, 1995

JCX-15-95

CONTENTS

	Page
INTRODUCTION	ii
I. DESCRIPTION OF TAXPAYER BILL OF RIGHTS, AS ENACTED IN 1988	1
II. DESCRIPTION OF TAXPAYER BILL OF RIGHTS 2, AS CONTAINED IN THE CONFERENCE REPORT TO H.R. 11, 102d CONGRESS, AND AS CONTAINED IN H.R. 22, 103d CONGRESS	8
III. DESCRIPTION OF TAXPAYER BILL OF RIGHTS ACT OF 1991, H.R. 3838, 102d CONGRESS	27
IV. DESCRIPTION OF TAXPAYER BILL OF RIGHTS 2, H.R. 661, 104th CONGRESS, AND S. 258, 104th CONGRESS	29
V. DESCRIPTION OF ATTORNEY ACCOUNTABILITY ACT OF 1995, H.R. 988, 104th CONGRESS, PASSED BY THE HOUSE OF REPRESENTATIVES	35
VI. DESCRIPTION OF H.R. 390, 104th CONGRESS	36

INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of present-law Taxpayer Bill of Rights provisions (as enacted in 1988), and of subsequent Taxpayer Bill of Rights proposals from the 102d, 103d, and 104th Congresses. The Subcommittee on Oversight of the House Committee on Ways and Means has scheduled a public hearing to explore the development of Taxpayer Bill of Rights II legislation. The hearing will be held on March 24, 1995.

Part I of the pamphlet describes the provisions of the Taxpayer Bill of Rights as enacted in the Technical and Miscellaneous Revenue Act of 1988 ("the 1988 Act"). Part II is a description of the Taxpayer Bill of Rights 2 provisions as contained in the conference report on H.R. 11 (102d Cong.), as vetoed by President Bush, for reasons unrelated to the Taxpayer Bill of Rights 2, and as contained in H.R. 22 (103d Cong.). Part III is a description of the Taxpayer Bill of Rights Act of 1991 (H.R. 3838, 102d Cong.). Part IV is a description of the provisions of the Taxpayer Bill of Rights 2 as contained in H.R. 661 (104th Cong.) and S. 258 (104th Cong.). Part V describes the Attorney Accountability Act of 1995 (H.R. 988, 104th Cong.) as passed by the House of Representatives on March 7, 1995. Part VI is a description of H.R. 390 (104th Cong.).

¹ This document may be cited as follows: Joint Committee on Taxation, *Background and Information Relating to the Taxpayer Bill of Rights* (JCX-15-95), March 21, 1995.

I. DESCRIPTION OF TAXPAYER BILL OF RIGHTS, AS ENACTED IN 1988²

1. Disclosure of rights of taxpayers (sec. 6227 of the 1988 Act)

When the Internal Revenue Service (IRS) contacts a taxpayer concerning the determination or collection of any tax, the IRS is required to provide a written statement of the rights of the taxpayer and the obligations of the IRS during the audit, appeal, refund, and collection processes. The statement is not required to be included with tax forms.

2. Procedures involving taxpayer interviews (secs. 7521 and 7605 of the Code³)

Recordings.--A taxpayer is permitted, upon advance notice to the IRS, to make an audio recording of an in-person interview at the taxpayer's own expense. IRS employees also are authorized to record taxpayer interviews, provided the taxpayer receives prior notice of such recording and is supplied a copy or a transcript of the recording upon request and payment of the costs of the copy or transcript.

IRS explanation.--Prior to initial in-person audit interviews, the IRS must explain to taxpayers the audit process and taxpayers' rights under that process. In addition, prior to initial in-person collection interviews, the IRS must explain the collection process and taxpayers' rights under that process. For this purpose, routine telephone conversations initiated by either the taxpayer or the IRS are not considered initial interviews. A written statement handed to the taxpayer at an audit or collection interview or within a short time before the interview is sufficient. The explanation must provide that the taxpayer has the right to suspend the interview to consult with a qualified representative.

Taxpayer representatives.--A taxpayer may be represented during a taxpayer interview by an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent a taxpayer before the IRS, who is not disbarred or suspended from practice before the IRS and who has a properly executed power of attorney from the taxpayer.

If a taxpayer clearly states during an interview with the IRS (other than an interview pursuant to an administrative summons) that the taxpayer wishes to consult with that representative, the interview must be suspended to afford the taxpayer a reasonable opportunity to consult with the representative. Absent an administrative summons, a taxpayer cannot be required to accompany the representative to an interview.

² Subtitle J of Title VI of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, November 10, 1988 ("the 1988 Act").

³ References to the "Code" are references to the Internal Revenue Code of 1986, as amended.

The IRS may directly notify a taxpayer that the taxpayer's representative is responsible for unreasonable delay or hindrance, request that the taxpayer appear for an interview, and inform the taxpayer that an administrative summons requiring the taxpayer's attendance at an interview may be issued.

The provisions relating to taxpayer interviews do not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the IRS.

Reasonable time and place.--The 1988 Act required the IRS to publish within one year of the date of enactment regulations enumerating standards for determining whether the selection of a time and place for interviewing a taxpayer is reasonable.⁴

3. Taxpayers may rely on written advice of the Internal Revenue Service (sec. 6404 of the Code)

The IRS is required to abate any portion of any penalty or addition to tax that is attributable to erroneous written advice furnished by the IRS to a taxpayer, where such advice was specifically requested in writing by the taxpayer and reasonably relied upon, unless the taxpayer failed to provide adequate or accurate information when requesting the advice.

4. Taxpayer assistance orders (sec. 7811 of the Code)

The Taxpayer Ombudsman (or any designee of the Ombudsman) is provided statutory authority to issue a taxpayer assistance order, if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the internal revenue laws. The Ombudsman may take action whether or not a taxpayer has filed an application requesting relief. A taxpayer assistance order may require remedial actions, such as release from levy of property of the taxpayer. A taxpayer assistance order is binding on the IRS unless modified or rescinded by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or a superior of such directors.

Any applicable statute of limitations (e.g., the statute of limitations under sec. 6501 relating to the assessment or collection of tax) is suspended starting on the date that the taxpayer files an application for a taxpayer assistance order with the Ombudsman and ending on the date that the Ombudsman makes a decision on the taxpayer's application (or a later date if the Ombudsman's order resulting from a taxpayer's application provides for continued suspension of the statute of limitations).

⁴ Pursuant to this requirement, IRS published temporary regulations (Treas. Reg. 301.7605-1T (T.D. 8297, 19901 C.B. 190-193)), which were superseded by final regulations (amending Treas. Reg. 301.7605-1 (T.D. 8469, 1993-1 C.B. 220-225)).

5. Basis for evaluation of IRS employees (sec. 6231 of the 1988 Act)

The IRS is prohibited from using records of tax enforcement results to evaluate IRS employees directly involved in collection activities and their immediate supervisors or to impose or suggest production quotas or goals with respect to those employees. Each district director must certify quarterly that enforcement results are not being used in a prohibited manner.

6. Procedures relating to IRS regulations (secs. 7805(e) and (f) of the Code)

The IRS is required to solicit comments from the Chief Counsel for Advocacy of the Small Business Administration (SBA) after the publication of proposed and temporary regulations. If the IRS issues final regulations directly (without the issuance of proposed regulations), the IRS must solicit comments from the SBA prior to the promulgation of final regulations. The SBA is allowed four weeks after the receipt of the regulations to provide its comments on the impact of the regulations on small businesses. IRS must consider any comments submitted by the SBA and discuss any response to those comments in the preamble of the final regulations.

In addition, each time the IRS issues temporary regulations, the IRS must simultaneously issue those regulations in proposed form. The IRS may issue proposed regulations by cross-reference at the time temporary regulations are issued. Temporary regulations are permitted to remain in effect for no more than three years after the date of their issuance. The expiration of temporary regulations at the end of this three-year period is not to affect the validity of those regulations during the three-year period.

7. Content of tax due and deficiency notices (sec. 7522 of the Code)

All specified tax due notices or deficiency notices must describe the basis for, and identify the amounts (if any) of, tax due, interest, additions to tax, and penalties. The specified notices are tax due or deficiency notices described in sections 6155, 6212, and 6303, notices generated out of information reporting matching programs, or the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals. An inadequate description in a notice of deficiency or tax due does not invalidate the notice.

8. Installment payment of tax liability (sec. 6159 of the Code)

The IRS has statutory authority to enter into a written installment payment agreement if the IRS determines that an agreement will facilitate collection of the tax owed. The agreement is to remain in effect for the term of the agreement unless (1) the taxpayer provided inaccurate or incomplete information, (2) the taxpayer fails to pay an installment when due, (3) the taxpayer fails to pay any other tax liability when due, (4) the taxpayer fails to respond to any reasonable request by the IRS to supply updated financial information, or (5) the IRS determines that the collection of any tax to which an agreement relates is in jeopardy.

In addition, the IRS may alter, modify or terminate an installment payment agreement if the IRS determines that the financial condition of the taxpayer has significantly changed. This action may be taken only if the IRS notifies the taxpayer of the determination at least 30 days prior to the date of the action and provides the reason for such determination in the notification.

9. Assistant Commissioner for Taxpayer Services (sec. 7802 of the Code)

The statute establishes statutorily an Assistant Commissioner for Taxpayer Services who is responsible for taxpayer services as designated by the Commissioner, such as telephone, walk-in, and taxpayer educational services, and the design and production of tax and informational forms.

10. Levy and distraint (secs. 6331, 6332, 6334, and 6343 of the Code)

Notice.--The period from the date the IRS provides written notice to a taxpayer to the first permissible date of the collection of tax by levy was extended by the Act to 30 days. The notice and waiting period requirements do not apply if the IRS finds that collection of the tax is in jeopardy. The notice preceding levy must be a brief statement in simple and nontechnical terms, and is required to contain a description of Code provisions and administrative procedures and appeals applicable to specific aspects of collection, as well as a description of the alternatives available to taxpayers that may prevent levy on the taxpayers' property.

Property subject to levy.--The type of property exempt from levy was expanded under the Act. First, the exemption from levy for fuel, provisions, furniture, and personal household effects is \$1,650 for 1990 and years thereafter. Second, the exemption from levy for books, tools, machinery, or equipment that are necessary for the trade, business, or profession of the taxpayer is \$1,100 for 1990 and years thereafter. Third, the provision exempts from levy a taxpayer's principal residence, unless an IRS district director or assistant director personally approves the levy in writing or the collection of the tax is found to be in jeopardy. In cases where tangible personal property essential to a taxpayer's trade or business is levied upon by the IRS, an accelerated appeals process must be provided by the IRS in order to determine whether the levy should be released due to any of the statutory grounds that govern release of levy (e.g., the IRS determines that release of such levy will facilitate the collection of tax, the IRS determines that such levy is creating an economic hardship due to the financial condition of the taxpayer, or the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability). Fourth, the Act exempts from levy certain AFDC, SSI, State and local welfare, and Job Training Partnership Act benefits. No levy may be made on property if the estimated expenses of levy and sale exceed the fair market value of the property.

The IRS is prohibited from levying on property of any person on any day on which the person is required to appear in response to a summons issued by the IRS, unless the IRS determines that the collection of tax is in jeopardy. In addition, banks and other financial institutions are required to hold accounts garnished by the IRS for 21 days after receiving the IRS

notice of levy, in order to provide taxpayers an opportunity to notify the IRS of errors with respect to garnished accounts. Any interest accruing on the accounts during the 21-day period is to be surrendered to the IRS at the end of the 21-day period. The levy on any account may be released before the expiration of the 21-day period with the permission of the IRS.

Levy on wages.--The amount of wages exempt from levy for each week was increased by the Act to an amount equal to the taxpayer's standard deduction and personal exemptions allowable for the taxable year in which the levy occurs, divided by 52.

Release of levy.--The IRS must release a levy on property if (1) the liability for which the levy was made is satisfied or becomes unenforceable due to the lapse of time, (2) the IRS determines that release will facilitate the collection of the liability, (3) an installment payment agreement has been executed with respect to such liability, (4) the IRS has determined that the levy is creating an economic hardship due to the taxpayer's financial condition, or (5) the fair market value of the property exceeds the liability and partial release would not hinder collection of the tax and related costs owed to the IRS. The release of a levy under this provision is not to prevent a subsequent levy on the same property. Also, a taxpayer may request that the IRS sell levied property.

11. Review of jeopardy levy and assessment procedures (sec. 7429 of the Code)

The rules relating to the review of jeopardy assessments were extended by the Act to the review of jeopardy levies. The Act also provided the Tax Court with jurisdiction concurrent with Federal district courts regarding challenges to a jeopardy assessment or jeopardy levy if the taxpayer has filed a petition with the Tax Court prior to the making of the assessment or levy with respect to any deficiency covered by the jeopardy assessment or jeopardy levy notice. In all other cases, the appropriate district court continues to have exclusive jurisdiction over such an action.

12. Administrative appeal of liens (sec. 6326 of the Code)

The IRS must provide taxpayers with an administrative procedure to obtain review of the filing of a notice of lien in the public record and an opportunity to petition for the release of such lien. If the IRS determines that filing of a notice of lien was erroneous, the IRS is required to issue immediately a certificate of release of the lien and include in the certificate a statement that the filing of the lien was erroneous. This certificate of release of an erroneous lien must be issued whether or not the lien was challenged in an administrative review procedure. The IRS must issue a certificate of release of lien expeditiously (and, to the extent practicable, within 14 days) after determining that the filing of the notice of lien was erroneous.

13. Awarding of costs and certain fees in administrative and civil actions (sec. 7430 of the Code)

Recoverable costs.--Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax,

interest, or penalty may be awarded recoverable costs. Recoverable costs include only reasonable litigation costs plus reasonable administrative costs incurred after the earlier of (1) the date of the receipt by the taxpayer of the notice of the decision of the IRS Office of Appeals, or (2) the date of the notice of deficiency.

Position of the United States.--In determining whether the position of the United States was substantially justified, the position of the United States is determined as of the earlier of (1) the date of the receipt by the taxpayer of the notice of the decision of the IRS Office of Appeals, or (2) the date of the notice of deficiency. If neither is applicable, the position of the United States is that taken in the litigation.

Administrative settlement of claims for administrative costs and litigation costs.--The IRS has the authority to settle claims for administrative costs and litigation costs. A decision by the IRS granting or denying an award of costs is appealable to the Tax Court under the small case procedures.

14. Civil cause of action for damages sustained due to failure to release lien (sec. 7432 of the Code)

Taxpayers may sue the Federal Government in Federal district court if any IRS employee knowingly or negligently fails to release a lien on the taxpayer's property as required under the Code. Taxpayers may recover the costs of the action plus actual, direct economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained. The damages recoverable under this provision are to be reduced to the extent that the damages could reasonably have been mitigated by the taxpayer.

15. Civil cause of action for damages sustained due to certain unauthorized actions by IRS (sec. 7433 of the Code)

Taxpayers may sue the Federal Government in Federal district court for damages if, in connection with the collection of any Federal tax, an IRS employee recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated thereunder. The taxpayer may recover the costs of the action plus actual, direct economic damages sustained by the taxpayer as a proximate result of the unlawful actions or inaction of the IRS employee. The total of actual damages plus the costs of the action recoverable under this provision may not exceed \$100,000. The damages recoverable under this provision are to be reduced to the extent that the damages could reasonably have been mitigated by the taxpayer.

16. Penalty for improper disclosure or use of information by preparers of returns (sec. 6713 of the Code)

If a tax return preparer discloses any information furnished to him or her in connection with the preparation of an income tax return, or uses such information for any purpose other than to prepare the return, then the preparer is subject to a civil penalty of \$250 for each such

disclosure or use, up to a maximum of \$10,000 per calendar year. The penalty shall not be imposed if disclosure or use of return information was made pursuant to a court order or one of the provisions of the Internal Revenue Code that permit disclosure under specified circumstances.

17. Jurisdiction to restrain certain premature assessments (sec. 6213 of the Code)

The Tax Court is granted jurisdiction (concurrent with Federal district courts) to restrain the assessment and collection of any tax by the IRS if the tax is the subject of a timely filed petition pending before the Tax Court.

18. Jurisdiction to enforce overpayment determinations (sec. 6512 of the Code)

The Tax Court has jurisdiction to order the refund of an overpayment plus interest if, within 120 days after a Tax Court decision has become final, the IRS fails to refund to a taxpayer an overpayment determined by the Tax Court.

19. Jurisdiction to review certain sales of seized property (sec. 6863 of the Code)

The Tax Court has jurisdiction during the pendency of proceedings before it to review the IRS' determination to sell seized property under one of the exceptions to the stay of sale.

20. Jurisdiction to redetermine interest on deficiencies (sec. 7481 of the Code)

If a dispute arises over the IRS' computation of the interest due on a deficiency, then within one year from the date the Tax Court decision becomes final the taxpayer may move to reopen the Tax Court proceeding for a determination of interest due. The taxpayer is required to pay the entire deficiency redetermined by the Tax Court and the interest determined by the IRS before challenging the IRS' computation of interest in the Tax Court.

21. Jurisdiction to modify decisions in certain estate tax cases (sec. 7481 of the Code)

The Tax Court has authority to modify a final decision in an estate tax case solely to reflect the estate's entitlement to a deduction for interest paid during an extended-payment period on the Federal or State estate tax liability. Thus, the Tax Court may enter a final decision in an estate tax case in which an extended-payment period is elected and subsequently, if necessary, modify the decision at the end of the extended-payment period to reflect interest actually paid by the estate. The Tax Court has discretion to hold a hearing on this matter at the end of the extended-payment period.

II. DESCRIPTION OF TAXPAYER BILL OF RIGHTS 2, AS CONTAINED IN THE CONFERENCE REPORT TO H.R. 11,⁵ 102d CONGRESS,⁶ AND AS CONTAINED IN H.R. 22,⁷ 103d CONGRESS⁸

A. Taxpayer Advocate

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

Present Law (as of 1992)

The Office of the Taxpayer Ombudsman was created by the 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 his or her discretion.

H.R. 11 Provision

The bill would have established a new position, Taxpayer Advocate, within the IRS. This would have replaced the position of Taxpayer Ombudsman. The Taxpayer Advocate would have been nominated by the President, by and with the advice and consent of the Senate. The Taxpayer Advocate would have reported directly to the Commissioner.

The bill also would have established the Office of Taxpayer Advocate within the IRS. All problem resolution officers would have been part of that office, and would have been under the supervision and direction of the Taxpayer Advocate. The functions of the office would have been

⁵ Title V of H.R. 11 (102d Congress).

⁶ H.R. 11 was vetoed by President Bush for reasons unrelated to the Taxpayer Bill of Rights 2 on November 4, 1992.

⁷ Title V of H.R. 22 (103d Congress). In general, H.R. 22 (103d Congress) updates the effective dates of identical provisions from H.R. 11 (102d Congress). Effective dates are not generally discussed in this pamphlet with respect to either H.R. 11 (102d Congress) or H.R. 22 (103d Congress). H.R. 22 (103d Congress) is identical to H.R. 11 (102d Congress) except for (a) effective date changes and (b) the omission of the IRS Employees' Suggestions Study.

⁸ Introduced by Mr. Pickle, Mr. Rostenkowski, Mr. Stark, Mr. Rangel, Mr. Jacobs, Mr. Ford of Tennessee, Mr. Thomas of California, Mr. Sundquist, and Mr. Shaw.

(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.

2. Expansion of authority to issue taxpayer assistance orders

Present Law (as of 1992)

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 is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

H.R. 11 Provision

The bill would have provided the Taxpayer Advocate with broader authority to affirmatively take any action 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.

B. Modifications to Installment Agreement Provisions

1. Notification of reasons for termination or denial of installment agreements

Present Law (as of 1992)

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 who 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.

H.R. 11 Provision

The bill would have required 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 would have been required to include in the notification an explanation of why the IRS intends to take this action. The bill also would have required that the IRS notify taxpayers 30 days before denying any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy.

2. Administrative review of denial of requests for, or termination of, installment agreements

Present Law (as of 1992)

A taxpayer whose request for an installment agreement is denied can appeal to successively higher levels of Collection Division management, including the District Director.

H.R. 11 Provision

The bill would have required the IRS to establish additional procedures for administrative review of denials of requests for installment agreements and terminations of installment agreements.

C. Interest

1. Expansion of authority to abate interest

Present Law (as of 1992)

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.

H.R. 11 Provision

The bill would have expanded the authority of the IRS to abate interest with respect to any unreasonable error or delay by an officer or employee of the IRS with respect to managerial acts, as well as ministerial acts.

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

Present Law (as of 1992)

In general, a taxpayer must pay interest on late payments of tax. No interest is charged with respect to taxpayers who pay the tax due within ten days of notice and demand.

H.R. 11 Provision

The bill would have extended the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 days to 21 days, provided that the total tax liability shown on the notice of deficiency is less than \$100,000.

D. Joint Returns

1. Disclosure of collection activities with respect to joint returns

Present Law (as of 1992)

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

H.R. 11 Provision

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 bill would have permitted the IRS to respond in writing to a written request by an individual whether the IRS has attempted to collect the deficiency from his or her spouse, the general nature of the collection activities, and the amount (if any) collected.

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

Present Law (as of 1992)

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.

H.R. 11 Provision

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

E. Collection Activities

1. Modifications to lien and levy provisions

a. Withdrawal of public notice of lien

Present Law (as of 1992)

The IRS must file 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 Federal Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

H.R. 11 Provision

The bill would have allowed the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer if the Secretary determined that (1) the filing of the notice was premature or otherwise not in accordance with the administration procedures of the IRS, (2) the taxpayer had entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien would 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 the United States (with the consent of the taxpayer or the Taxpayer Advocate). The bill also would have required 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, or financial institutions specified by the taxpayer, if their addresses were supplied by the taxpayer to the IRS. A copy of the notice of withdrawal would have to be provided to the taxpayer.

b. Return of levied property

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have allowed the IRS to return property (including money deposited in the Treasury) that had been levied upon if the Secretary determined that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer had entered into an installment agreement to satisfy the tax liability, (3) the return of the property would have facilitated collection of the tax liability, or (4) the return of the property would have

been in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States (with the consent of the taxpayer or the Taxpayer Advocate).

c. Modifications in certain levy exemption amounts

Present Law (as of 1992)

Property exempt from levy includes personal property with a value of up to \$1,650, and books and tools necessary for the taxpayer's trade, business, or profession with a value of up to \$1,100.

H.R. 11 Provision

The bill would have increased the exemption amounts to \$1,700 for personal property and \$1,200 for books and tools. Both of these amounts would have been indexed for inflation commencing with calendar year 1997.

2. Offers-in-compromise

Present Law (as of 1992)

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.

H.R. 11 Provision

The bill would have allowed acceptance of an offer-in-compromise where the compromise would be in the best interest of the Government. The bill also would have increased from \$500 to \$50,000 the threshold for requiring a written opinion from the Office of Chief Counsel. Compromises below the \$50,000 threshold would have been subject to continuing quality review by the IRS.

3. Notification of examination

Present Law (as of 1992)

In general, the IRS notifies taxpayers in writing prior to commencing an examination and encloses a copy of Publication 1, "Your Rights as a Taxpayer," with the notice. Sometimes, however, the IRS uses the telephone to schedule an examination.

H.R. 11 Provision

The bill would have required the IRS to notify a taxpayer in writing prior to commencing an examination under all subtitles of the Code and to provide the taxpayer with an explanation of the examination process prior to commencing the examination. The notice would have been required to include an explanation of the process as described in section 7521. The bill would have exempted from this requirement any examination with respect to which the Secretary determined (1) that it was in connection with a criminal investigation, (2) that the collection of the tax was in jeopardy, (3) that the requirements were inconsistent with national security needs, or (4) that the requirements would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity.

4. Modification of certain limits on recovery of civil damages for unauthorized collection activities

Present Law (as of 1992)

A taxpayer may sue the United States for up to \$100,000 of damages caused by an officer or employee of the IRS who, with respect to the collection of any Federal tax with respect to the taxpayer, recklessly or intentionally disregards provisions of the Code or the Treasury regulations promulgated thereunder.

H.R. 11 Provision

The bill would have increased the cap to \$1 million with respect to reckless or intentional acts.

5. Designated summons

Present Law (as of 1992)

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.⁹

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.

The IRS need not establish that the taxpayer had been uncooperative or dilatory in responding to earlier requests for documents in order to issue an enforceable designated summons.¹⁰

H.R. 11 Provision

The bill would have required 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 was being conducted.

In addition, the bill would have required that the corporation whose return was in issue be promptly notified in writing in any case where the Secretary issued a designated summons (or another summons, the litigation over which suspends the running of the assessment period under the designated summons procedure) to a third party.

⁹ 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).

¹⁰ See U.S. vs. K. T. Derr, 968 F.2d 943 (9th Cir., 1992).

F. Information Returns

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

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have required that information returns contain the name, address, and phone number of the payor's information contact.

2. Civil damages for fraudulent filing of information returns

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have provided that if any person willfully files a false or 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. Recoverable damages would have been limited to the greater of \$5,000 or the amount of actual damages (including the costs of the action). A copy of the complaint initiating the action would have been required to be provided to the IRS. The court would have been 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 have been required to be brought within four years after the filing of the false or fraudulent information return, or one year after the false or fraudulent information would have been discovered by the exercise of reasonable care, whichever was later.

3. Requirement to verify accuracy of information returns

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have provided 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) filed by a third party and the taxpayer has fully cooperated with the IRS, the Government must, in presenting evidence of the deficiency based on the information return, present reasonable and probative information concerning the deficiency (in addition to the information return itself).

G. Modifications to Penalty for Failure to Collect and Pay Over Tax

1. Preliminary notice requirements

Present Law (as of 1992)

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. In general, anyone who has the authority to direct the payments of money to creditors may be considered to be a responsible person.

H.R. 11 Provision

The bill would have required 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 have expired before the date 90 days after the date on which the notice was mailed. The provision would not have applied if the Secretary found that the collection of the penalty was in jeopardy.

2. No penalty if prompt notification of IRS

Present Law (as of 1992)

A responsible person may be subject to a penalty equal to 100 percent of the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

H.R. 11 Provision

The bill would have provided that a responsible person who notifies the IRS within 10 days of the failure to pay over trust fund taxes to the Government is not liable for this penalty, so long as the notification is made prior to the IRS' contacting the business about the failure to pay over the taxes, and provided that the person is not a significant owner (of a 5-percent or more interest) or a highly compensated employee (with compensation in excess of \$75,000). The provision would not have applied if the failure to pay was part of a plan to defraud the Government. The provision would have applied only once to a taxpayer in that taxpayer's lifetime

and once to a business in its existence. The provision would not have applied if the effect would have been to leave no financially responsible person liable for the penalty.

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

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have required 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 have been required to disclose in writing whether it had attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected.

4. Penalties relating to failure to collect and pay over tax

a. Public information requirements

Present Law (as of 1992)

Under section 6672, a "responsible person" is 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.

H.R. 11 Provision

The bill would have required the IRS to print warnings on payroll tax deposit coupon books and appropriate tax returns indicating that certain employees may be liable for this penalty and to develop a special information packet relating to this penalty.

b. Board members of tax-exempt organizations

Present Law (as of 1992)

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.

H.R. 11 Provision

The bill would have clarified 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 and do not participate in the day-to-day or financial activities of the organization. To be exempt, an honorary board member could not have had actual knowledge of the failure to deposit taxes and the provision would not have operated in such a way as to eliminate all responsible persons from responsibility. The bill would have required 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 have been required to make such materials routinely available to tax-exempt organizations. The bill also would have required 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.

c. Prompt notification

Present Law (as of 1992)

The IRS is not required to notify promptly taxpayers who fall behind in depositing trust fund taxes.

H.R. 11 Provision

The bill would have required the IRS, to the maximum extent practicable, to notify all taxpayers with delinquent trust fund deposits within 30 days of the first indication that there has been a failure to make a timely and complete deposit. The notice requirement would have been limited to delinquent taxes described under section 6672 of the Code. Notification would have been required to be within 30 days after the return was filed reflecting the delinquency or within 30 days of the first indication that there has been a failure to make a timely and complete deposit, whichever is earlier. A taxpaying entity notified by the Secretary of a failure to pay such taxes would have been required to notify, within 15 days of such notification by the Secretary, all of the entity's officers, general partners, trustees or other managers of the failure to make a timely and complete deposit.

H. Awarding of Costs And Certain Fees

1. Motion for disclosure of information

Present Law (as of 1992)

A taxpayer who successfully challenges a determination of deficiency by the IRS may recover attorneys' 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.

H.R. 11 Provision

The bill would have provided that, once a taxpayer has substantially prevailed, the taxpayer could file a motion for an order requiring the disclosure (within a reasonable period of time specified by the court and subject to the confidentiality restrictions of section 6103) of all information and copies of relevant records in the possession of the IRS with respect to the taxpayer's case and the substantial justification for the position taken by the IRS.

2. Increased limit on attorney fees

Present Law (as of 1992)

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

H.R. 11 Provision

The bill would have raised the statutory limit on recoverable attorney's fees to \$110 per hour, indexed for inflation beginning after 1992.

3. Failure to agree to extension not taken into account

Present Law (as of 1992)

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

H.R. 11 Provision

The bill would have provided that any failure to agree to an extension of the statute of limitations could not 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.

I. Other Provisions

1. Required content of certain notices

Present Law (as of 1992)

The Code requires the IRS to describe the basis for and identify the amounts of tax due, interest, penalties, and any other additional amounts owed in the notice of deficiency sent to taxpayers.

H.R. 11 Provision

The bill would have required that the IRS set forth the components of and explanation for each specific adjustment that is the basis for the total tax deficiency. An inadequate description would not have invalidated the notice.

2. Treatment of substitute returns for purposes of the penalty for failure to pay taxes

Present Law (as of 1992)

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate ten days after the IRS sends the taxpayer a notice and demand for payment of the tax.

H.R. 11 Provision

The bill would have applied the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

3. Relief from retroactive application of Treasury Department regulations

Present Law (as of 1992)

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

H.R. 11 Provision

Temporary and proposed regulations would have been required to have an effective date no earlier than the date of filing with the Federal Register or from the date any notice that substantially describes the regulation is issued to the public, whichever is earlier. This provision

could have been superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury would have been permitted to issue retroactive temporary or proposed regulations to prevent abuse of the statute. The Treasury also would have been permitted to issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. The Treasury would have been permitted to provide that taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations would have been permitted to take effect from the date of publication of the temporary or proposed regulation to which they relate. The provision would not have applied to any regulation issued within 12 months of the enactment date of the relevant statute. The provision would not have applied to regulations relating to internal Treasury Department policies, practices, or procedures.

4. Required notice to taxpayers of certain payments

Present Law (as of 1992)

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.

H.R. 11 Provision

The bill would have required the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments that the IRS cannot associate with any outstanding tax liability.

5. Civil damages for unauthorized enticement of information disclosure

Present Law (as of 1992)

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

H.R. 11 Provision

If a Government employee intentionally compromises the determination or collection of any tax due from a tax professional in exchange for certain information concerning a taxpayer who is the professional's client, the taxpayer to whom such information pertains would have been permitted to bring a civil action for damages against the United States in a district court of the United States without regard to the amount in controversy. The taxpayer would have been required to bring such an action within two years after the date the right of action accrues. Upon a finding of liability, damages would have been limited to the lesser of \$500,000 or the sum of (i) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure, and (ii) the costs of the action. The district court would have been required to stay

any proceedings with respect to such an action pending completion of any ongoing investigation or prosecution of the taxpayer (which the Commissioner has certified is ongoing to the court).

J. Form Modifications; Studies

1. Explanation of certain provisions

Present Law (as of 1992)

Section 6159 authorizes the IRS to enter into written installment agreements with any taxpayer. Section 7122 authorizes the IRS to accept offers in compromise from taxpayers in certain situations. Section 6161 authorizes the IRS to extend the time for payment of tax.

H.R. 11 Provision

The bill would have required the IRS to take such actions as may be appropriate (including improved publicity) to ensure that taxpayers are aware of the availability of installment agreements, offers in compromise, and the extension of time to pay tax. The IRS would have been required to do so in both the income tax return instructions and collection notices.

2. Improved procedures for notifying IRS of change of address or name

Present Law (as of 1992)

Generally, the IRS posts the new address of a taxpayer only upon the filing of the subsequent tax return that contains a new address or if the taxpayer submits a Form 8822, Change of Address, to the IRS.

H.R. 11 Provision

The bill would have required the IRS to provide improved procedures for taxpayers to notify the IRS of changes in names or addresses. In addition, the bill would have required that the IRS institute procedures for the timely updating of all IRS records with change of address information provided to the IRS by taxpayers.

3. Rights and responsibilities of divorced individuals

Present Law (as of 1992)

The IRS provides information on the rights and responsibilities of divorced individuals in Publication 504, Tax Information for Divorced or Separated Individuals. This publication is not as widely utilized as Publication 1, Your Rights As a Taxpayer.

H.R. 11 Provision

The bill would have required the IRS to include a section on the rights and responsibilities of divorced individuals in Publication 1, Your Rights As a Taxpayer.

K. Studies

1. Pilot programs for appeal of enforcement actions

Present Law (as of 1992)

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 section 6672 penalty, offers-in-compromise, and employment tax issues may, however, be appealed to the Appeals Division.

H.R. 11 Provision

The bill would have required the IRS to establish a one-year 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) where the deficiency was assessed without the actual knowledge of the taxpayer, where the deficiency was assessed without an opportunity for administrative appeal, and in other appropriate circumstances.

2. Study on taxpayers with special needs

Present Law (as of 1992)

The IRS is responsible for providing timely and accurate assistance to taxpayers who want to comply with Federal tax laws.

H.R. 11 Provision

The bill would have required the IRS to conduct a study of ways to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the tax laws.

3. Reports on taxpayer rights education program

Present Law (as of 1992)

The IRS is currently conducting a program to educate revenue officers concerning the rights of taxpayers.

H.R. 11 Provision

The bill would have required the IRS to report to the tax-writing Committees on its taxpayer rights education program for its officers and employees, including the scope and content of the program, and on the effectiveness of the program.

4. Biennial reports on misconduct by IRS employees

Present Law (as of 1992)

As mandated by the Inspector General Act, every six months the Inspector General of the Department of the Treasury receives information from the IRS for the Secretary of the Treasury's semiannual report to Congress on employee misconduct. The Inspector General Act, in part, requires that these reports include summary information and descriptions of significant investigative activities and a summary of matters referred to prosecuting authorities and the prosecutions and convictions that have resulted.

H.R. 11 Provision

The bill would have required the IRS to report to the tax-writing committees every two years on all cases involving complaints about IRS employee misconduct and on the disposition of those complaints.

5. Study of notices of deficiency

Present Law (as of 1992)

Under section 6212, the IRS is required to send a notice of tax deficiency to taxpayers by registered or certified mail.

H.R. 11 Provision

The bill would have required the GAO to study the effectiveness of current IRS efforts to notify taxpayers with regard to tax deficiencies under section 6212, the number of registered or certified letters and other notices returned to the IRS as undeliverable, any follow-up action taken by the IRS to locate the taxpayers, the effect that failures to receive actual notice have on taxpayers, and recommendations on how the IRS can better notify taxpayers of tax deficiencies.

6. Notice and form accuracy study

Present Law (as of 1992)

The IRS is responsible for providing accurate and instructive notices, forms, and instructions to taxpayers to assist them in complying with Federal tax laws.

H.R. 11 Provision

The bill would have required the GAO to study annually the accuracy of 25 of the most commonly used IRS forms, notices, and publications. In conducting its review, the GAO would have been required to seek and consider the comments of organizations representing taxpayers, employers, and tax professionals.

7. IRS employees' suggestions study¹¹

Present Law (as of 1992)

The IRS maintains several programs to encourage and reward employees who make suggestions for improving the administration of the tax system.

H.R. 11 Provision

The bill would have required the GAO to conduct a review of the IRS employee suggestion programs. The study was to include a review of all suggestions that were accepted and rewarded by the IRS, an analysis as to how many of these suggestions were implemented, and why the remaining suggestions were not implemented.

¹¹ This provision was not included in H.R. 22 (103d Congress).

III. DESCRIPTION OF TAXPAYER BILL OF RIGHTS ACT OF 1991, H.R. 3838, 102d CONGRESS¹²

H.R. 3838 (102d Congress) was one of several bills upon which the Taxpayer Bill of Rights 2 provisions of H.R. 11 (103d Congress) were based. Many of the provisions in H.R. 3838 were incorporated into H.R. 11, some with and some without modifications. A description of the seven provisions in H.R. 3838 that were not incorporated into H.R. 11 follows.

1. Equalization of interest rates

The bill would have eliminated the then-existing one percent differential between the overpayment and underpayment rates by raising the overpayment rate.

2. Waiver of interest on all overpayments refunded within 45 Days after return is filed

The bill would have made applicable to all taxes the present-law income-tax-only rule that waives interest on overpayments if the refund is made within 45 days after the return is filed.¹³

3. Treatment of spouses under deficiency procedures

Present law provides that the IRS must send duplicate original deficiency notices to both spouses when the IRS has been notified that separate residences have been established. The bill would have applied this rule to all instances in which the spouses did not file a joint return for the most recent taxable year.

4. Attorney's fees: Definition of prevailing party

The bill would have deleted the requirement that the taxpayer establish that the position of the United States was not substantially justified.

5. Attorney's fees: Treatment of prevailing party who represents himself

The bill would have permitted a taxpayer who represents himself to receive an award for the value of the taxpayer's time in representing himself.

¹² Introduced on November 21, 1991 by Mr. Pickle, Mr. Schulze, Mr. Archer, Mr. Anthony, Mr. Ford of Tennessee, Mr. Rangel, Mr. Jacobs, Mr. Jenkins, Mr. Russo, Mr. Shaw, Mr. Sundquist, and Mr. Bunning.

¹³ A modified version of this provision was enacted in section 13271 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, August 10, 1993).

6. IRS employees personally liable

The bill would have made IRS employees personally liable for taxpayer's attorney's fees if the court determines that the litigation "resulted from any arbitrary, capricious, or malicious act of such employee."

7. Protection for taxpayers who rely on certain IRS guidance

The bill would have provided that if a taxpayer takes a position or other action in reasonable reliance on IRS guidelines in a press release, information release, or revenue ruling, the position taken by the taxpayer is to be treated as being consistent with the guidance. Any subsequent IRS guidance would not have caused the taxpayer's position to be considered inconsistent for any period before the publication of the subsequent guidance.

IV. DESCRIPTION OF TAXPAYER BILL OF RIGHTS 2, H.R. 661, 104TH CONGRESS,¹⁴ AND S. 258, 104TH CONGRESS¹⁵

A. Taxpayer Advocate

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

Same as H.R. 11 provision,¹⁶ except the bill would delete the requirement that the Taxpayer Advocate be nominated by the President, by and with the advice and consent of the Senate.

2. Expansion of authority to issue taxpayer assistance orders

Same as H.R. 11 provision. In addition, the bill would delete the requirement for issuing a Taxpayer Assistance Order that the hardship suffered by the taxpayer must be "significant."

B. Modifications to Installment Agreement Provisions

1. Taxpayer's right to installment agreement

The bill would provide that any taxpayer (other than a corporation) has an automatic right to enter into an installment payment agreement with the IRS, provided that (a) the taxpayer requests the agreement, (b) the tax liability is for income taxes in an amount less than \$10,000, and (c) the taxpayer has paid any tax liability for the three preceding taxable years at the time it was due. The IRS would also be required to include a description of this right and how to exercise it in all Form 1040 instructional booklets.

¹⁴ H.R. 661 was introduced by Mr. Thornton on January 24, 1995.

¹⁵ S. 258 was introduced by Senators Pryor, Grassley, Reid, Bryan, Hatch, Baucus, Murkowski, Breaux, Nickles, Exon, Cochran, Glenn, Cohen, Johnston, Lott, Kerry, Smith, Mikulski, Sarbanes and Simon on January 23, 1995.

¹⁶ In general, H.R. 661 (104th Congress) and S. 258 (104th Congress) update the effective dates of similar or identical provisions from H.R. 11 (102d Congress). Effective dates are not generally discussed in this pamphlet with respect to H.R. 11 (102d Congress), H.R. 661 (104th Congress) and S. 258 (104th Congress).

2. Running of failure to pay penalty suspended during period installment agreement in effect

The bill would suspend the running of the failure to pay penalty under Code section 6651(b) and (c) during the period an installment agreement is in effect provided that the taxpayer requests the agreement by the due date (including extensions) of the tax return.

3. Notification of reasons for termination or denial of installment agreements

Same as H.R. 11 provision. In addition, the notice of a proposed denial of an installment agreement would include a statement of the taxpayer's right to an administrative review.

4. Administrative review of denial of requests for, or termination of, installment agreements

Same as H.R. 11 provision.

C. Interest

1. Expansion of authority to abate interest

The bill would expand the authority of the IRS to abate interest with respect to any unreasonable error or delay by an officer or employee of the IRS. It also would require the abatement of all interest prior to the date demand for payment is made for individuals with net worths of \$2,000,000 or less and for businesses with net worths of \$7,000,000 or less.

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

Same as H.R. 11 provision.

D. Joint Returns

1. Disclosure of collection activities with respect to joint returns

Same as H.R. 11 provision.

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

Same as H.R. 11 provision.

E. Collection Activities

1. Modifications to lien and levy provisions

a. Withdrawal of public notice of lien

Same as H.R. 11 provision.

b. Return of levied property

Same as H.R. 11 provision.

c. Modifications in certain levy exemption amounts

The bill would increase the exemption amounts to \$1,750 for personal property and \$1,250 for books and tools. Both these amounts would be indexed for inflation commencing with calendar year 1997.

2. Offers-in-compromise

Same as H.R. 11 provision.

3. Notification of examination

Same as H.R. 11 provision.

4. Modification of certain limits on recovery of civil damages for unauthorized collection activities

Same as H.R. 11 provision.

5. Designated summons

Same as H.R. 11 provision.

F. Information Returns

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

Same as H.R. 11 provision.

2. Civil damages for fraudulent filing of information returns

Same as H.R. 11 provision, except that an action seeking damages under this provision must be brought within six years (rather than four years) after the filing of the false or fraudulent information return, or one year after the false or fraudulent information would have been discovered by the exercise of reasonable care, whichever is later.

3. Requirement to verify accuracy of information returns

The bill does not include the H.R. 11 provision. The bill, however, would provide that where a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (such as a Form W-2 or a Form 1099), the IRS will have the burden of proof in any refund or deficiency proceeding unless the IRS has conducted a reasonable investigation to corroborate the accuracy of the information return.

G. Modifications To Penalty For Failure To Collect and Pay Over Tax

1. Preliminary notice requirements

Same as H.R. 11 provision.

2. No penalty if prompt notification of IRS

Does not include the H.R. 11 provision.

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

Same as H.R. 11 provision.

4. Penalties relating to failure to collect and pay over tax

a. Public information requirements

Same as H.R. 11 provision.

b. Board members of tax-exempt organizations

Same as H.R. 11 provision.

c. Prompt notification

Same as H.R. 11 provision.

H. Awarding of Costs And Certain Fees

1. Motion for disclosure of information

Same as H.R. 11 provision.

2. Increased limit on attorney fees

Same as H.R. 11 provision.

3. Failure to agree to extension not taken into account

Same as H.R. 11 provision.

4. Authority for court to award reasonable administrative costs

Under present law, the position of the United States must be "not substantially justified" as a precondition of a taxpayer receiving an award of costs and certain fees. The bill would expand the "position of the United States" to include the position taken in an administrative proceeding, without regard to the level in the administrative process at which the position was taken.

I. Other Provisions

1. Required content of certain notices

Same as H.R. 11 provision.

2. Treatment of substitute returns for purposes of the penalty for failure to pay taxes

Same as H.R. 11 provision.

3. Relief from retroactive application of Treasury Department regulations

Same as H.R. 11 provision, except the bill does not include the exception for any regulation issued within twelve months of the enactment date of the relevant statute.

4. Required notice to taxpayers of certain payments

Same as H.R. 11 provision.

5. Civil damages for unauthorized enticement of information disclosure

Same as H.R. 11 provision.

J. Form Modifications; Studies

1. Explanation of certain provisions

Same as H.R. 11 provision.

2. Improved procedures for notifying IRS of change of address or name

Same as H.R. 11 provision.

3. Rights and responsibilities of divorced individuals

Same as H.R. 11 provision.

K. Studies

1. Pilot programs for appeal of enforcement actions

Same as H.R. 11 provision.

2. Study on taxpayers with special needs

Same as H.R. 11 provision.

3. Reports on taxpayer rights education program

Same as H.R. 11 provision.

4. Biennial reports on misconduct by IRS employees

Same as H.R. 11 provision.

5. Study of notices of deficiency

Same as H.R. 11 provision.

6. Notice and form accuracy study

Same as H.R. 11 provision.

7. IRS employees' suggestions study

Does not include the H.R. 11 provision.

**V. DESCRIPTION OF ATTORNEY ACCOUNTABILITY ACT OF 1995, H.R. 988,
104TH CONGRESS, PASSED BY THE HOUSE OF REPRESENTATIVES¹⁷**

1. Award of costs and attorney's fees in Federal civil diversity litigation after an offer of settlement

The bill would allow a party to make a formal offer to settle any or all claims in a suit for a specified amount by filing a written offer with the court and serving it on an adverse party, at any time up to 10 days before trial. If the offer of settlement is accepted, the claim or claims would be resolved pursuant to the terms of the agreement. If the offer is rejected and the offeree does not obtain a judgment, order, or verdict more favorable than that offered on the applicable claims, the offeree would be liable for the costs and attorney's fees of the offeror for those claims from the date the last offer was made by the adverse party. This provision would apply only to suits brought under a Federal court's diversity jurisdiction. The bill would provide two exceptions to the general rule.

2. Admissibility of scientific and technical evidence

The bill would amend the Federal Rules of Evidence to make an expert scientific opinion inadmissible unless it (a) is scientifically valid and reliable, (b) has a valid scientific connection to the fact it is offered to prove, and (c) is sufficiently reliable so that the probative value outweighs the dangers of unfair prejudice, confusion of the issues, or misleading the jury.

3. Sanctions against attorneys

The bill would strengthen the sanctions that can be imposed against lawyers who file frivolous lawsuits or engage in abusive litigation tactics under rule 11 of the Federal Rules of Civil Procedure.

¹⁷ H.R. 988, as reported by the Committee on the Judiciary, was passed by the House of Representatives on March 7, 1995.

VI. DESCRIPTION OF H.R. 390, 104TH CONGRESS¹⁸

1. Burden of proof

Present Law

There is a rebuttable presumption that the Commissioner's determination of tax liability is correct.¹⁹ "This presumption in favor of the Commissioner is a procedural device that requires the plaintiff to go forward with prima facie evidence to support a finding contrary to the Commissioner's determination. Once this procedural burden is satisfied, the taxpayer must still carry the ultimate burden of proof or persuasion on the merits. Thus, the plaintiff not only has the burden of proof of establishing that the Commissioner's determination was incorrect, but also of establishing the merit of its claims by a preponderance of the evidence".²⁰

The following civil provisions in the Code explicitly place the burden of proof on the Commissioner in specifically designated circumstances:

(a) Fraud. Any proceeding involving the issue of whether the taxpayer has been guilty of fraud with intent to evade tax (secs. 7454(a); 7422(e)).

(b) Foundation managers. Any proceeding involving the issue of whether a foundation manager has knowingly participated in prohibited transactions (sec. 7454(b)).

(c) Transferee liability. Any proceeding in the Tax Court to show that a petitioner is liable as a transferee of property of a taxpayer (sec. 6902(a)).

(d) Review of jeopardy levy or assessment procedures. Any proceeding to review the reasonableness of a jeopardy levy or jeopardy assessment (sec. 7429(g)(1)).

(e) Property transferred in connection with performance of services. In the case of property subject to a restriction that by its terms will never lapse and that allows the transferee to sell only at a price determined under a formula, the price is deemed to be fair market value unless established to the contrary by the Secretary (sec. 83(d)(1)).

(f) Illegal bribes, kickbacks, and other payments. As to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment (sec. 162(c)(1) and (2)).

¹⁸ H.R. 390 was introduced by Mr. Traficant on January 4, 1995.

¹⁹ Welch v. Helvering, 290 U.S. 111, 115 (1933).

²⁰ Danville Plywood Corp. v. U.S., U.S. Cl. Ct., 63 AFTR 2d 89-1036, 1043 (1989); citations omitted.

(g) Golden parachute payments. As to whether a payment is a parachute payment on account of a violation of any generally enforced securities laws or regulations (sec. 280G(b)(2)(B)).

(h) Unreasonable accumulation of earnings and profits. In any Tax Court proceeding as to whether earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, provided that the Commissioner has not fulfilled specified procedural requirements (sec. 534).

(i) Expatriation. As to whether it is reasonable to believe that an individual's loss of citizenship would result in a substantial reduction in the individual's income taxes or transfer taxes (secs. 877(e); 2107(e); 2501(a)(4)).

(j) Public inspection of written determinations. In any proceeding seeking additional disclosure of information (sec. 6110(f)(4)(A)).

(k) Penalties for promoting abusive tax shelters, aiding and abetting the understatement of tax liability, and filing a frivolous income return. As to whether the person is liable for the penalty (sec. 6703(a)).

(l) Income tax return preparers' penalty. As to whether a preparer has willfully attempted to understate tax liability (sec. 7427).

(m) Bankruptcy claims. As to whether the IRS has a valid claim against the debtor's assets in any bankruptcy proceeding (11 U.S.C. 3001(f)).²¹

(n) Status as employees. As to whether individuals are employees for purposes of employment taxes (sec. 530 of the Revenue Act of 1978).²²

Description of Provision

The bill would provide that, in the case of any court proceeding, the burden of proof with respect to all issues shall be upon the Secretary.

²¹ Also see In re Fidelity Holding Company, Ltd., 837 F.2d 696 (5th Cir. 1988) (holding that burden of proof does not change because Government is claimant).

²² Pub. L. 95-600, November 6, 1978.

2. Secretary of the Treasury required to specify, on request, regulations implementing specific taxes

Present Law

Every person liable for any tax (or for the collection of any tax) must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe.

Description of Provision

The bill would provide that the Secretary must identify in writing the specific kind or type of tax, and its specific implementing regulations within 14 days, upon the written request from any person made liable for the payment of any tax.

3. Increase in limit on recovery of civil damages for unauthorized collection actions and exclusion of these damages from gross income

Present Law

Taxpayers can sue the Federal Government in Federal district court for damages if in connection with the collection of any Federal tax, an IRS employee recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated thereunder. The taxpayer may recover the costs of the action plus actual direct economic damages sustained by the taxpayer as a proximate result of the unlawful actions or inaction of the IRS employee. The total of actual damages plus the costs of the action recoverable under this provision may not exceed \$100,000.

Description of Provision

The bill would increase the limit on these damages to \$1,000,000, and would exclude these damages from gross income.