

**DESCRIPTION OF H.R. 1957,
THE “TAXPAYER FIRST ACT OF 2019”**

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup on April 2, 2019 of H.R. 1957, the “Taxpayer First Act of 2019.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 1957, the “Taxpayer First Act of 2019”* (JCX-15-19), April 1, 2019. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein “Code”), unless otherwise stated.

TITLE I – PUTTING TAXPAYERS FIRST

A. Independent Appeals Process

1. Establishment of Internal Revenue Service Independent Office of Appeals

Present Law

The IRS Reform and Restructuring Act of 1998 (“RRA98”) directed the Commissioner of Internal Revenue (the “Commissioner”) to restructure the Internal Revenue Service (“IRS”) by establishing and implementing an organizational structure that features operating units serving particular groups of taxpayers with similar needs and ensures an independent appeals function within the IRS.² Although the Code does not mandate the existence of an independent office within the IRS to review administrative determinations, it does require an independent administrative review of certain determinations,³ and further requires that the Commissioner ensure that the duties of IRS employees are executed in a manner consistent with rights inferred from other Code proposals.⁴

Under the general authority of the Secretary of the Treasury (“Secretary”) to interpret the Code and that of the Commissioner to administer the Code and to employ the persons necessary to do so,⁵ the IRS includes an Office of Appeals (“Appeals”) headed by a Chief, Appeals.⁶ That office traditionally functions as the settlement arm of the IRS. In doing so, it reviews administrative determinations arising both from collection and examination activities, and attempts to resolve them without need for litigation, including by using alternative dispute resolution methods such as arbitration or mediation. As a result, review of administrative actions is generally available prior to payment of any tax underlying the controversy. Exceptions occur,

² Pub. L. No. 105-206, sec. 1001(a).

³ See, e.g., sections 6320 (notice and opportunity for hearing upon filing of notice of lien), 6330 (notice and opportunity for hearing before levy), 7122 (rejection of a proposed offer-in-compromise or installment agreement), as well as 7123 (alternative dispute resolution procedures).

⁴ Section 7803, as amended in 2015, embraces the taxpayer rights as general principles to be included in the training and evaluation of all employees.

⁵ Secs. 7803(a) (The duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel)) and 7804 (The Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons, including determination and designation of posts of duty), and 7805 (Secretary authority to interpret the Code).

⁶ According to its website, the Office of Appeals and its predecessors have existed since 1927. <https://www.irs.gov/compliance/appeals/appeals-an-independent-organization>.

and include cases in which inadequate time remains on the limitations period for assessment and collection or those in which the only arguments raised by the taxpayer are frivolous positions.⁷

Similarly, if a case has reached a point at which litigation is initiated, the availability of consideration by Appeals may be limited. First, authority to settle cases referred to the Department of Justice for defense or initiation of litigation rests solely with that Department. Therefore, such cases are not eligible for referral to Appeals.⁸ The terms under which a case pending in the United States Tax Court (“Tax Court”) may be referred to Appeals are described in published guidance that centralizes the decision to withhold a case from Appeals to assure consistent standards are applied.⁹

Employees of Appeals are compensated in accordance with the rules governing Federal employment generally.¹⁰

Description of Proposal

The proposal codifies the requirement of an independent administrative appeals function by establishing within the IRS an office to be known as the Internal Revenue Service Independent Office of Appeals (“Independent Appeals”) and to be headed by an official known as the Chief of Appeals, as described below. The purposes and duties of the office as well as the taxpayers’ general right to seek consideration by that office, subject to certain limitations, are described below.

Chief of Appeals and staff

The proposal grants authority to the Commissioner to appoint the Chief of Appeals, who is to be compensated at the same rate as the highest rate of basic pay established for the Senior Executive Service.¹¹ The appointment is not subject to the rules under Title 5 of the United States Code that govern competitive service or the Senior Executive Service. The Chief of Appeals reports directly to the Commissioner of the IRS. The person appointed to the position is required to have experience in a broad range of Federal tax law controversies and management of large service organizations.

The proposal also confirms that the Chief of Appeals and her employees are to have access to legal assistance and advice from staff within the Office of Chief Counsel about cases pending at Independent Appeals. Chief Counsel is responsible for ensuring that the attorneys are

⁷ See section 6702(c), which requires that the Secretary periodically review and list positions that have been identified as frivolous for purposes of the frivolous return penalty.

⁸ Sec. 7122.

⁹ Rev. Proc. 2016-22, 26 C.F.R. sec. 601.106. Exceptions to the general rule in favor of requiring Appeals consideration include cases that are withheld in the interests of sound tax administration, among other reasons.

¹⁰ Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

¹¹ 5 U.S.C. sec. 5382.

able to provide independent advice. In doing so, to the extent practicable, staff assigned to answer inquiries from Independent Appeals should not include those involved in advising the IRS employees working directly on the case prior to its referral to Independent Appeals or in preparation of the case for litigation.

Functions of Independent Appeals

Independent Appeals is intended to continue to resolve tax controversies and review administrative decisions of the IRS in a fair and impartial manner, for the purposes of enhancing public confidence, promoting voluntary compliance, and ensuring consistent application and interpretation of Federal tax laws. Resolution of tax controversies in this manner is generally available to all taxpayers, subject to reasonable exceptions that the Secretary may provide. Thus, cases of a type that are referred to Appeals under present law remain eligible for referral to Independent Appeals.

The proposal includes a savings clause that requires application of rules similar to those in RRA98 to ensure continuity of the validity of administrative and legal proceedings, including legal documents related to such proceedings and existing delegations of authority.

Enhancement of taxpayer access to Independent Appeals

In making access to Appeals generally available to all taxpayers, the establishment of the new office clarifies the rights of taxpayers to review administrative case files and to protest denial of access to Appeals.

Taxpayer access to case files

The proposal requires that the administrative case file referred to Independent Appeals be available to certain individual and small business taxpayers. The specified taxpayers that are eligible are (1) individuals with adjusted gross incomes not exceeding \$400,000 and (2) entities with gross receipts not exceeding \$5 million for the taxable year to which the dispute relates. In determining whether persons are within the scope of the latter category, rules similar to those used to determine whether persons should be treated as a single employer for purposes of cash method accounting are to be applied.¹² Eligible taxpayers must be able to review the non-privileged portions of materials developed by the IRS not later than 10 days prior to the requested conference with Independent Appeals. In providing the materials, the IRS need not produce for the taxpayer the documents that were initially provided to the IRS by the taxpayer. In addition, the taxpayer may elect to waive the 10-day period and accept access to the materials on the date of the scheduled conference.

Cases not referred to Independent Appeals

In cases in which the IRS has issued a notice of deficiency to a taxpayer, the Commissioner must prescribe notice and protest procedures for taxpayers whose request for

¹² The aggregation rules are found at section 448(c)(2).

Independent Appeals consideration is denied. Such protest procedures will be available to taxpayers who have received a notice of deficiency in cases other than those involving only frivolous positions within the meaning of the Code.¹³ The procedures must include a requirement that the Commissioner notify a taxpayer of the denial in a written statement that includes a statement of the facts underlying the basis for the denial of the request together with a detailed explanation of the reasons for denying the request for referral to Independent Appeals. In addition, the written notice must advise the taxpayer of the right to protest the denial of the request to the Commissioner and include information about how to lodge such a protest.

The Commissioner must provide to Congress an annual written report detailing the number of denials of access to Independent Appeals and the reasons for such denials.

Effective Date

The proposal is generally effective upon the date of enactment, except with regard to the portion of the proposal allowing taxpayer access to case files, which is effective for cases in which the conference occurs more than one year after the date of enactment.

¹³ Sec. 6702(c).

B. Improved Service

1. Comprehensive customer service strategy

Present Law

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.¹⁴ Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, the delivery of high quality and timely service to reduce taxpayer burden and encourage compliance is identified as Goal I.¹⁵

Description of Proposal

The proposal requires the Secretary to develop a comprehensive strategy for customer service and to submit such plan to Congress not later than the date which is one year after the date of enactment. The strategy will include: (1) a plan to determine appropriate levels of online services, telephone call back services, and training of employees providing customer services, based on best practices of businesses and designed to meet reasonable customer expectations; (2) an assessment of all services that the IRS can co-locate with other Federal services or offer as self-service options; (3) proposals for long-term improvements over the next 10 fiscal years, with appropriate short-term goals over the current and following fiscal year and mid-term goals over the next three to five fiscal years; (4) a plan to update guidance and training materials, including the Internal Revenue Manual, for customer service employees of the IRS to reflect such strategy; and (5) metrics for measuring the IRS's progress in implementing its strategy. Within two years after the date of enactment, the Secretary or the Secretary's delegate is required to make public the updated guidance and training materials in a user friendly fashion.

Effective Date

The proposal is effective on the date of enactment.

2. IRS Free File Program

Present Law

The IRS has entered into cooperative relationships with commercial return preparation service providers (known as the Free File Alliance) to provide free Federal tax preparation and electronic filing services to eligible low-income or elderly taxpayers. Some of these providers also offer free State tax preparation. This arrangement is commonly known as the Free File Program. Taxpayers generally must select a designated service provider through the IRS's

¹⁴ Sec. 7803(a).

¹⁵ See *Internal Revenue Service Strategic Plan FY2018 – 2022*, Publication 3744, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

website to access commercial online software provided by the Free File Alliance companies to prepare and file their tax returns. To qualify, taxpayers must have adjusted gross income (AGI) of \$66,000 or less (for 2018 returns). Each participating company sets its own eligibility requirements and not all taxpayers will qualify to use the software of all companies. There is no fee for taxpayers using the Free File Program, and Free File Alliance companies also do not pay any fee to the IRS to participate in the program.

Description of Proposal

The proposal requires the Secretary, or the Secretary's delegate, in cooperation with the private sector, to maintain the current IRS Free File Program that provides free individual income tax preparation and electronic filing services to the lowest 70 percent of taxpayers by adjusted gross income ("AGI") as ranked annually by the prior year taxpayer AGI data. The proposal requires the IRS Free File Program to continue to make available to taxpayers at all income levels a basic, online electronic fillable forms utility. The proposal further requires the IRS Free File Program work with State government agencies to enhance and expand the use of the program to provide needed benefits to taxpayers while reducing the cost of processing returns.

The proposal also requires the Secretary, or the Secretary's delegate, in cooperation with the private sector, to identify and implement innovative new program features to improve and simplify the taxpayer experience with completing and filing individual tax returns.

Effective Date

The proposal is effective on the date of enactment.

3. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise

Present Law

The IRS is authorized to enter into offers-in-compromise under which the taxpayer and Federal government agree that a tax liability may be satisfied by payment of less than the full amount owed.¹⁶ An offer-in-compromise may be accepted on one of three grounds: (1) doubt as to liability, available in cases in which the validity of the actual tax liability is in question; (2) doubt as to collectability based on lack of sufficient assets from which the tax, interest, and penalties can be paid in full; or (3) effective tax administration, applicable in a case in which collection in full would cause the taxpayer economic hardship such that compromise rather than collection would better encourage tax compliance.¹⁷ If the unpaid tax liabilities total \$50,000 or more, an offer-in-compromise can be accepted only if a public report is filed, supported by a written opinion from the IRS Chief Counsel, stating the reasons for the compromise, the amounts

¹⁶ Sec. 7122.

¹⁷ Treas. Reg. sec. 1.7122-1(b). For this purpose, economic hardship is defined under Treas. Reg. sec. 301.6343-1.

of assessed tax, penalties and interest, and the amounts actually paid pursuant to the offer-in-compromise.¹⁸

Taxpayers making a lump sum offer-in-compromise must include a nonrefundable payment of 20 percent of the lump sum with the initial offer (herein, “upfront partial payment”).¹⁹ The IRS waives this upfront partial payment when an offer is submitted by a low-income taxpayer, defined as an individual who falls at or below 250 percent of the poverty guidelines published by the Department of Health and Human Services, or such other measure that is adopted by the Secretary (herein, “low-income taxpayer”).²⁰ Taxpayers seeking an offer-in-compromise involving periodic payments must provide a nonrefundable payment of the first installment that would be due if the offer were accepted.²¹

In general, a taxpayer is required to provide a user fee for processing the offer-in-compromise.²² However, no fee will be charged if an offer either is based solely on doubt as to liability or is made by a low-income taxpayer.²³

Description of Proposal

The proposal codifies the current low-income taxpayer exception with respect to any user fee or upfront partial payment imposed with respect to any offer-in-compromise. The proposal makes clear that the determination of low-income is based on the individual’s adjusted gross income as determined for the most recent tax year for which such information is available.

Effective Date

The proposal applies to offers-in-compromise submitted after the date of enactment.

¹⁸ Sec. 7122(b); Treas. Reg. sec. 1.7122-1(e)(6). The \$50,000 threshold was raised from \$500 in 1996. Sec. 503 of the Taxpayer Bill of Rights 2, Pub. L. No. 104-168.

¹⁹ Sec. 7122(c)(1)(A).

²⁰ Notice 2006-68, 2006-31 I.R.B. 105, July 31, 2006.

²¹ Sec. 7122(c)(1)(B).

²² Treas. Reg. sec. 300.3(b). The fee for processing an offer to compromise on or after January 1, 2014, is \$186.

²³ Treas. Reg. sec. 300.3(b)(i) and (ii).

C. Sensible Enforcement

1. Internal Revenue Service seizure requirements with respect to structuring transactions

Present Law

The Bank Secrecy Act (“BSA”) mandates a reporting and recordkeeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.²⁴ The reporting requirements are imposed on individuals, financial institutions, and non-financial trades and businesses that act similar to financial institutions.²⁵ The requirements include reporting currency transactions exceeding \$10,000.

To circumvent these reporting requirements, individuals sometimes structure cash transactions to fall below the \$10,000 reporting threshold (referred to as “structuring”). In other words, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a financial institution, an individual conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, and to conceal income earned legally in order to evade the payment of taxes. Structuring (or attempts to structure) for the purpose of evading the reporting and recordkeeping requirements²⁶ is subject to both civil and criminal penalties.²⁷

Present law authorizes forfeiture of property involved in transactions or attempted transactions²⁸ in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.²⁹

The Secretary has delegated responsibility for implementing and enforcing the BSA to the Director, Financial Crimes Enforcement Network (“FinCEN”), who in turn re-delegated responsibility for civil compliance with the law to various Federal agencies including the IRS.³⁰

²⁴ The Bank Secrecy Act, 31 U.S.C. secs. 5311-5332.

²⁵ 31 U.S.C. sec. 5312(a)(1).

²⁶ 31 U.S.C. sec. 5324(a); 31 U.S.C. sec 5322.

²⁷ A person who willfully violates the law is subject to a fine of not more than \$250,000, or imprisonment for not more than five years, or both. 31 U.S.C. sec. 5324(a); 31 U.S.C. sec. 5322.

²⁸ 31 U.S.C. sec. 5317(c)(2).

²⁹ See 18 U.S.C. sec. 981.

³⁰ Treasury Order 180-01, available at <https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx>, delegating authority to FinCEN. 31 C.F.R. sec. 103.56(b)(8). At the time of the initial delegation, FinCEN was an entity created by regulatory action, but has since been explicitly authorized by statute. 31 U.S.C. sec. 310.

The scope of that delegation of authority was expanded by the USA PATRIOT Act of 2001,³¹ and includes authority to determine and enforce civil penalties.³² The IRS administers its delegated authority under the BSA through the IRS Small Business/Self-Employed Division, with assistance from the IRS Criminal Investigation Division (“IRS-CID”).

If a person prevails in a civil forfeiture proceeding involving seizure of currency, the United States is liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant, post-judgment interest, and interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument as well as imputed interest for any period for which no interest was paid.³³

Prior to October 2014, the IRS provided partial relief in structuring transactions involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required its criminal investigation division to consider additional mitigating or aggravating factors. On October 17, 2014, IRS-CID issued guidance on how it will conduct seizures and forfeitures in its structuring cases.³⁴ Pursuant to this guidance, the IRS will not pursue seizure and forfeiture of funds associated only with so-called “legal source” structuring unless (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

³¹ Treasury Order 180-01. For a discussion of the relationship between FinCEN and the agencies to which it re-delegated authority, see, Office of Inspector General, “TERRORIST FINANCING/MONEY LAUNDERING: Responsibility for Bank Secrecy Act Is Spread Across Many Organizations,” OIG-08-030 (April 9, 2008), available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/oig08030.pdf>.

³² A penalty may be assessed before the end of the six-year period beginning on the date of the transaction with respect to which the penalty is assessed. 31 U.S.C. sec. 5321(b)(1). A civil action for collection may be commenced within two years of the later of the date of assessment and the date a judgment becomes final in any a related criminal action. 31 U.S.C. sec. 5321(b)(2).

³³ 28 U.S.C. sec. 2465(b)(1). The imputed interest that may be paid under that section is the amount that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period for which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

³⁴ Memorandum for Special Agents in Charge Criminal Investigation, October 17, 2014, available at <http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf>. Written Testimony of John A. Koskinen and Richard Weber, House Committee on Ways and Means Subcommittee on Oversight on “Financial Transaction Structuring,” May 25, 2016, available at <https://www.irs.gov/uac/newsroom/written-testimony-of-john-a-koskinen-and-richard-weber-before-the-house-committee-on-ways-and-means-subcommittee-on-oversight-on-financial-transaction-structuring-may-25-2016>; New IRS Special Procedure to Allow Property Owners to Request Return of Property, Funds in Specific Structuring Cases, June 16, 2016, available at <https://www.irs.gov/uac/newsroom/new-irs-special-procedure-to-allow-property-owners-to-request-return-of-property-funds-in-specific-structuring-cases>; Letter to Chairman Roskam and Ranking Member Lewis summarizing planned actions, June 10, 2016, available at <http://waysandmeans.house.gov/wp-content/uploads/2016/06/6.9-Roskam-Lewis-Response-Letter-and-Enclosure.pdf>.

Description of Proposal

The proposal provides that in the case of a suspected structuring violation, the IRS may only pursue seizure or forfeiture of assets if either the property to be seized was derived from an illegal source or the transactions were structured for the purpose of concealing a violation of a criminal law or regulation other than rules against structuring.

The proposal establishes post-seizure notice and review procedures for IRS seizures based on suspected structuring violations. The IRS must, within 30 days, make a good faith effort to find all persons with an ownership interest in the property seized and inform him or her of certain post-seizure hearing rights provided under the proposal. This 30-day notice requirement may be extended an additional 30 days if the IRS can establish to a court probable cause of an imminent threat to national security or personal safety. If a notice recipient requests a court hearing within 30 days of the notice, the property is required to be returned unless the court finds that there is probable cause to believe that a structuring violation occurred involving such property and the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than the structuring proposals of the BSA.

Effective Date

The proposal is effective on the date of enactment.

2. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction

Present Law

Nothing in the Bank Secrecy Act (“BSA”) or the administrative guidance issued by the IRS affects the Federal tax treatment of the interest that may be paid to a successful litigant in civil asset forfeiture proceedings. The Code provides no specific exclusion from gross income or deduction from adjusted gross income for interest received by a successful litigant pursuant to an action to recover property seized by the IRS pursuant to the BSA. Accordingly, the interest received is includable in gross income under the Code.

Description of Proposal

The proposal amends the Code to exclude from gross income any interest received from the Federal Government in connection with an action to recover property seized by the IRS pursuant to a claimed violation of the structuring provisions of the BSA.

Effective Date

The proposal applies to interest received on or after the date of enactment.

3. Clarification of equitable relief from joint liability

Present Law

If a married couple elects to file a tax return on which they report their income jointly, they are generally jointly and severally liable for the entire tax liability that should have been reported on the joint return.³⁵ A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief proposals of the Code.

Grounds for relief from joint liability

There are three types of relief: general innocent spouse relief; relief for spouses no longer married or legally separated (separation of liabilities); and equitable relief. The grounds for relief and its scope differ among these three types of relief. In addition, the first two types of relief must be sought no later than two years after the date the IRS began collection activities against the electing spouse. For equitable relief, there is no limitations period in the statute.

General relief from joint liability with respect to an understatement of tax is available to all joint filers who make a timely election for such relief and are able to establish the following.³⁶ First, the electing spouse must establish that the underpayment is attributable to the erroneous items of the other spouse. Second, the electing spouse must show that at the time of signing the return, he or she did not know or have reason to know there was an understatement of tax. Finally, relief is granted only if it is inequitable to hold the electing spouse liable for the deficiency in tax, based on all facts and circumstances.

Separation of liabilities relief from joint liability with respect to a deficiency is available to persons who are no longer married, are legally separated, or were no longer living together in the 12 months ending with the date innocent spouse relief is elected.³⁷ The individual electing relief on this basis must establish the portion of any deficiency that is appropriately allocable to him or her. Special rules are provided in the Code for determining allocation of items that benefit one spouse more than the other, property transfers, and children's liability. Relief otherwise available is not permitted with respect to items of which a spouse was aware at the time the return was signed and which contributed to a deficiency.

Equitable relief from joint liability may be available to those spouses who are ineligible under the proposals for general relief or separation of liabilities relief.³⁸ Such relief is granted only if, taking into account all facts and circumstances, it is inequitable to hold the individual liable for the unpaid portion of tax or for a deficiency with respect to the joint return.

³⁵ Sec. 6103(d).

³⁶ Sec. 6015(b).

³⁷ Sec. 6015(c).

³⁸ Sec. 6015(f).

Availability and scope of judicial review

If an individual elects to have the general relief proposals or the separation of liabilities relief proposals apply with respect to a deficiency, the individual may petition the Tax Court to review unfavorable determinations by the IRS with respect to the claimed relief. The Tax Court has held that its authority to review such IRS determinations is under a *de novo* standard.³⁹

The claim for relief from joint liability must be filed no later than 90 days after the notice of final determination on relief from joint liability and no earlier than the earlier of the mailing of such notice of final determination or the date which is six months after electing such relief. During the pendency of the Tax Court proceeding, or during the period in which a petition may be filed, collection action is restricted.

In contrast to the above, the extent to which a denial of a claim for equitable relief from joint liability is also subject to judicial review by the Tax Court, the scope of that review, and the standard for any review have been the subject of conflicting appellate decisions. An abuse of discretion standard based on court review of the administrative record was held to be the correct standard in some instances,⁴⁰ but other courts have permitted review of information beyond the administrative record while applying an abuse of discretion standard.⁴¹ Still others have applied a *de novo* standard to both the scope of the review and the standard of review.⁴²

Description of Proposal

Under the proposal, Tax Court review of innocent spouse equitable relief cases is not limited to the administrative record, but it may consider evidence that is newly discovered or was previously unavailable. The proposal also clarifies that the Tax Court has jurisdiction to review a denial of equitable claims for relief from joint liability, and is not limited to a review for abuse of discretion by the IRS.

The proposal allows taxpayers to request equitable relief with respect to any unpaid liability before the expiration of the collection period or, if paid, before the expiration of the applicable limitations period for claiming a refund or credit.

³⁹ Sec. 6015(e)(1).

⁴⁰ *Jonson v. Commissioner*, 118 T.C. 106, 125 (2002), aff'd on other grounds, 353 F.3d 1181 (10th Cir. 2003); *Mitchell v. Commissioner*, 292 F.3d 800, 807 (D.C. Cir. 2002); *Cheshire v. Commissioner*, 282 F.3d 326, 337-38 (5th Cir. 2002).

⁴¹ *Commissioner v. Neal*, 557 F.3d 1262 (11th Cir. 2009).

⁴² *Wilson v. Commissioner*, 705 F.3d 980 (9th Cir. 2013); *Porter v. Commissioner*, 132 T.C. 203, 132 T.C. No. 11 (2009).

Effective Date

The proposal applies to petitions or requests filed or pending on or after the date of enactment.

4. Modification of procedures for issuance of third-party summons

Present Law

The IRS has broad statutory authority to require production of information in the course of an examination.⁴³ A request for information in the form of an administrative summons is enforceable if the IRS establishes its good faith, as evidenced by the four factors enunciated by the Supreme Court in *United States v. Powell*.⁴⁴ The *Powell* factors require that the information is sought for a legitimate law enforcement purpose, is of a type that will shed light on the subject of the examination, is not already in the possession of the IRS, and that the IRS has complied with all applicable statutory requirements such as service of process. Subsequent to *United States v. Powell*, the legitimacy of using an administrative summons in furtherance of an investigation into criminal violations was validated in *United States v. LaSalle National Bank*,⁴⁵ in which the Supreme Court determined that the dual civil and criminal purpose was legitimate, so long as there had not yet been a commitment to refer the case for prosecution.

The use of this summons authority to obtain information from third-parties is subject to greater procedural safeguards,⁴⁶ but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced.⁴⁷ When the existence of a possibly non-compliant taxpayer is known but not his identity, as in the case of holders of offshore bank accounts or investors in particular abusive transactions, the IRS is able to issue a summons (referred to as a “John Doe” summons) to learn the identity of the taxpayer, but must first meet significantly greater statutory requirements to guard against fishing expeditions.

An effort to learn the identity of unnamed John Does requires that the United States seek judicial review in an *ex parte* proceeding prior to issuance of the John Doe summons. In its application and supporting documents,⁴⁸ the United States must establish that the information sought pertains to an ascertainable group of persons, that there is a reasonable basis to believe that taxes have been avoided, and that the information is not otherwise available.⁴⁹ The

⁴³ Sec. 7602.

⁴⁴ *United States v. Powell*, 379 U.S. 48 (1964).

⁴⁵ 437 U.S. 298 (1978); codified in section 7609(c).

⁴⁶ Sec. 7609.

⁴⁷ *Tiffany Fine Arts, Inc. v. United States*, 479 U.S. 310 (1985).

⁴⁸ Sec. 7609(h)(2) provides that the determination will be made *ex parte*, solely on the pleadings.

⁴⁹ Sec. 7609(f).

reviewing court does not determine whether the John Doe summons will ultimately be enforceable. Once a court has determined that the predicate for issuance of a summons is met, the summons is served, and the summoned party served may challenge enforcement of the summons, based on the *Powell* factors. It is not entitled to judicial review of the *ex parte* ruling that permitted issuance of the summons.⁵⁰ Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period.

Description of Proposal

The proposal prevents the Secretary from issuing a John Doe summons unless the information sought to be obtained is narrowly tailored and pertains to the failure (or potential failure) of the person or group or class of persons referred to in the statute to comply with one or more provisions of the Code which have been identified. The proposal is not intended to change the *Powell* standard or otherwise affect the IRS's burden of proof.

Effective Date

The proposal applies to summonses served after the date that is 45 days after the date of enactment.

5. Private debt collection and special compliance personnel program

Present Law

Qualified tax collection contracts

The Code permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type⁵¹ and to arrange payment of those taxes by the taxpayers.⁵² For this purpose, the Secretary enters into qualified tax collection contracts for the collection of inactive tax receivables. Under these contracts, if the taxpayer cannot pay in full immediately, the private debt collection company offers the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as five years.

Inactive tax receivables are defined as any tax receivable (i) removed from the active inventory for lack of resources or inability to locate the taxpayer, (ii) for which more than 1/3 of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable; and (iii) for which, a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of

⁵⁰ *United States v. Samuels, Kramer & Co., and First Western Government Securities, Inc.*, 712 F.2d 1342 (9th Cir. 1983), which affirmed a lower court determination that the issuance of the John Doe summons was not subject to review, but reversed and remanded to permit a limited evidentiary hearing on whether the *Powell* standard was met.

⁵¹ This provision generally applies to any type of tax imposed under the Internal Revenue Code.

⁵² Sec. 6306.

furthering the collection. Tax receivables are defined as any outstanding assessment which the IRS includes in potentially collectible inventory.

Certain tax receivables are not eligible for collection under qualified tax collection contracts, specifically a contract that: (i) is subject to a pending or active offer-in-compromise or installment agreement; (ii) is classified as an innocent spouse case; (iii) involves a taxpayer identified by the Secretary as being (a) deceased, (b) under the age of 18, (c) in a designated combat zone, or (d) a victim of tax-related identity theft; (iv) is currently under examination, litigation, criminal investigation, or levy; or (v) is currently subject to a proper exercise of a right of appeal.

Special compliance personnel program

An amount not greater than 25 percent of the amount collected under any qualified tax collection contract is to be used to fund a special compliance personnel program. The Secretary is required to establish an account for the hiring, training, and employment of special compliance personnel. No other source of funding for the program is permitted, and funds deposited in the special account are restricted to use for the program, including reimbursement of the IRS and other agencies for the cost of administering the qualified debt collection program and all costs associated with employment of special compliance personnel and the retraining and reassignment of other personnel as special compliance personnel. Special compliance personnel are individuals employed by the IRS to serve either as revenue officers performing field collection functions, or as persons operating the automated collection system.

Description of Proposal

The proposal makes certain additional tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts. Such receivables involve a taxpayer (1) substantially all of whose income consists of disability insurance benefits under section 233 of the Social Security Act (referred to as Social Security Disability Insurance or SSDI) or supplemental security income benefits under title XVI of the Social Security Act (referred to as Supplemental Security Income or SSI) or (2) whose adjusted gross income, as determined for the most recent taxable year for which information is available, does not exceed 200 percent of the applicable poverty level (as determined by the Secretary).

The proposal also modifies the definition of inactive tax receivable by replacing the condition that more than 1/3 of the applicable limitations period has lapsed with the requirement that “more than two years has passed since assessment.” The proposal retains the requirement that no IRS employee has been assigned to collect the receivable.

The proposal also modifies the definition of a qualified tax collection contract to allow the private debt collection company to offer the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as seven years, replacing the current law period of five years.

The proposal clarifies that the IRS may use funds from the special compliance personnel program account for various program costs, including the costs of hiring any personnel,

communications, software, technology, and reimbursement of the IRS or other government agencies for the cost of administering the qualified tax collection program.

Effective Date

The proposal to make certain tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts and the proposal to modify the definition of inactive tax receivables applies to tax receivables identified by the Secretary (or the Secretary's delegate) after December 31, 2020.

The proposal to modify the definition of a qualified tax collection contract applies to contracts entered into after the date of enactment.

The proposal relating to the use of the special compliance personnel program account applies to amounts expended from the account after the date of enactment.

6. Reform of notice of contact of third parties

Present Law

The IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the taxpayer. The IRS is required to provide periodically to the taxpayer a record of persons contacted during the prior period by the IRS with respect to the determination or collection of that taxpayer's tax liability. This record is also required to be provided upon request of the taxpayer. This notice requirement does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact.

Description of Proposal

The proposal replaces the requirement that the IRS provide reasonable notice in advance to the taxpayer with a requirement that the taxpayer be provided, at least 45 days before the beginning of the period of contact, notice that contacts with persons other than the taxpayer are intended. The period of contact may not be greater than one year. However, notices are permitted to be issued to the same taxpayer with respect to the same tax liability with periods specified that, in the aggregate, exceed one year. The proposal requires the notice to be provided only if there is a present intent at the time such notice is given for the IRS to make such contacts. This intent can be met on the basis of the assumption that the information sought to be obtained will not be obtained by other means before such contact.

Effective Date

The proposal applies to notices provided, and contacts made, after the date which is 45 days after the date of enactment.

7. Modification of authority to issue designated summons

Present Law

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 with such requests, whether by failing to respond or by providing inadequate or incomplete responses. In such cases, if the necessary information cannot be developed from other witnesses or sources, the IRS seeks information by issuing an administrative summons.⁵³ If the taxpayer does not cooperate with the request in the summons, the IRS may refer the summons to the Department of Justice to seek and obtain an order for enforcement in Federal court. If the summons in question was issued to a third-party rather than the taxpayer, the taxpayer may petition the court to quash an administrative summons.⁵⁴

In *United States v. Powell*,⁵⁵ the U.S. Supreme Court articulated four basic elements necessary to establish that the government issued a summons in good faith: (1) the investigation must be conducted for a legitimate purpose; (2) the information sought is relevant to and “may shed light on” that legitimate purpose; (3) the requested information is not already in the possession of the IRS; and (4) the IRS complied with all statutorily required administrative steps. All petitions to enforce an administrative summons must include allegations and supporting declarations to establish that the good faith standards are met.⁵⁶ Although the good faith standards established in *United States v. Powell* apply to all administrative summonses, they are not the sole source of limitations on the IRS’ ability to compel production of information during an examination.⁵⁷

Neither service of an administrative summons nor government-initiated action for judicial enforcement is sufficient to suspend the limitations period.⁵⁸ As a result, in the case of an examination of complicated issues of a large corporation, involving voluminous records,

⁵³ Sec. 7602.

⁵⁴ Sec. 7609.

⁵⁵ *United States v. Powell*, 379 U.S. 48, at pp. 57-58, (1964).

⁵⁶ Department of Justice, Tax Division, *Summons Enforcement Manual*, (updated through July 2011), available at https://www.justice.gov/sites/default/files/tax/legacy/2011/08/31/SumEnfMan_July2011.pdf.

⁵⁷ See, e.g., secs. 7602 (summonses in furtherance of a criminal investigation may be issued, provided that the IRS has not referred the investigation to the Department of Justice for prosecution of the taxpayer whose tax liability is the subject of the summons), 7609 (summons issued to a third-party record-keeper), 7611 (examinations of churches), 7612 (summons for computer software). Summonses to obtain information responsive to a request for exchange of information under a tax treaty present special enforcement issues, both procedural and substantive as well. *Mazurek v. United States*, 271 F.3d 226 (5th Cir. 2001).

⁵⁸ In the case of third-party summonses, the limitations period is suspended if a taxpayer named in the summons initiates a proceeding to quash the summons, or if compliance with the summons remains unresolved as of the date which is six months after service of the summons.

numerous witness interviews, and possible expert reports, the general three-year period for assessment may be inadequate to allow for completion of an examination.⁵⁹ In such cases, the limitations period is often but not always extended by agreement of the parties. An uncooperative taxpayer could force a premature conclusion to an audit by delaying responses and allowing the statute to expire. To guard against such situations in cases in which the IRS requires additional information and time to complete its work,⁶⁰ the Code authorizes issuance of a designated summons that triggers suspension of the limitations period if judicial enforcement proceedings are initiated.

A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination in the Coordinated Industry Case program and meets three conditions. First, it must be reviewed and approved by the Division Commissioner and Division Counsel of the relevant IRS operating division or organization with jurisdiction over the return. Second, it must be issued at least 60 days before the expiration of the assessment limitations period (as extended). Finally, it must clearly state that it is a “designated summons.”⁶¹ No more than one designated summons may be issued with respect to a return under examination.

If a designated summons is issued, and the taxpayer complies without any judicial enforcement proceeding, no suspension of the limitations period occurs. If the government initiates enforcement proceedings, the limitations period is suspended for the judicial enforcement period of that summons and any related summonses, *i.e.*, summonses relating to the same return and issued within 30 days after the issuance of the designated summons. If the court proceeding results in an order to comply with the summons, the limitations period is also suspended for a period of 120 days from the first day after the close of the judicial enforcement period. In addition, the limitations period expires no earlier than 60 days after the close of the judicial enforcement period, if the court does not order compliance with the summons.

⁵⁹ Sec. 6501 (income taxes are generally required to be assessed within three years after a taxpayer’s return is filed, whether or not it was timely filed); sec. 6501(c) (there are several circumstances under which the general three-year limitations period does not begin to run, including failure to file a return or filing a false or fraudulent return with the intent to evade tax, extensions by agreement of the taxpayer and IRS, substantial omissions of income, or failure to disclose or report a listed transaction as required under section 6011 on any return or statement for a taxable year); sec. 6503 (there are also circumstances under which the three-year limitations period is suspended, including the issuance of a designated summons).

⁶⁰ In describing the proposal when it was first enacted, the Conference report for the Omnibus Reconciliation Act of 1990 explained, “This proposal is designed to preserve the ability of the IRS to conclude the audit and assess any taxes that may be due regardless of the length of time that it might take to obtain judicial resolution of the summons enforcement lawsuit.” H. Rept. 101-964, p. 1073. Omnibus Budget Reconciliation Act of 1990, Conf. Rept. to Accompany H.R. 5835.

⁶¹ Section 6503(j) refers to the regional officials and the Coordinated Examination Program or their successors. The Division Counsel and Commissioner of the relevant office with jurisdiction over the return have been identified in regulation as the appropriate successor officials. Treas. Reg. sec. 301.6503(j)-1. In addition, the Coordinated Industry Case program is the successor to the Coordinated Examination Program.

Since enactment of the designated summons proposal in 1990, few such summonses have been issued.⁶² The IRS is now required to submit annual reports to Congress on the number of designated summonses issued each year.⁶³ Since 1995, three have been issued, most recently in 2014.⁶⁴

Description of Proposal

Under the proposal, issuance of a designated summons must be preceded by review and written approval of the summons by the head of the relevant operating division and the Chief Counsel, who may delegate the authority to approve the summons, but not below the level of the person in the Office of Chief Counsel who is the counterpart to the head of the operating division. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. In subsequent judicial proceedings concerning the enforceability of the summons, the IRS must establish that the prior reasonable requests for information were made.

Effective Date

The proposal applies to summonses issued after the date that is 45 days after the date of enactment.

8. Limitation on access of non-Internal Revenue Service employees to returns and return information

Present Law

Returns and return information

General rule of confidentiality

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.⁶⁵ The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability

⁶² The earliest designated summons, involving a request to require testimony from an officer of Chevron Corporation, was enforced. *United States v. Derr*, 968, F 2d 943 (Cir. 9th 1992). See also *United States v. Norwest*, 116 F.3d 1227 (8th Cir. 1997) (court enforced IRS request to produce tax preparation software licensed to Norwest) and *United States v. Caltex Petroleum*, 12 F. Supp. 2d 545 (N.D. Tex. 1998) (denied IRS request to produce the software code used to calculate foreign tax credits).

⁶³ Sec. 1002(b) Taxpayers Bill of Rights Act 2, Pub. L. 104-168 (1996).

⁶⁴ *United States v. Microsoft*, Case No. C15-00102-RSM (W.D. Wash. May 5, 2017) (in ruling on validity of privileges, the Court ordered further document production in compliance with the designated summons and related summonses, pursuant to the earlier opinion enforcing the designated summons, at *United States v. Microsoft*, 154 F. Supp. 3d 1134(W.D. Wash. 2015)).

⁶⁵ Sec. 6103(a).

under the Code of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . . ⁶⁶

Disclosure exception for tax administration contracts (section 6103(n))

There are several exceptions to the general rule of confidentiality. One exception permits the disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes (“tax administration contractor”).⁶⁷

Summons authority

In general

For the purposes of ascertaining the correctness of any return, making a return when none has been made, determining the liability of any person for any internal revenue tax, and certain other purposes, the Secretary is authorized to examine any books, records, or other data which may be relevant or material to such inquiry, and to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The Secretary also is authorized to issue summonses to appear before the Secretary at the time and place named in the summons to produce books, records and other data and to give testimony, under oath, as may be relevant or material to such inquiry.

Summons interview regulations

Under the Treasury regulations, a person authorized to receive returns and return information as a tax administration contractor may receive and examine books, papers, records, or other data produced to comply with the summons, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath.⁶⁸

⁶⁶ Sec. 6103(b)(2)(A).

⁶⁷ Sec. 6103(n).

⁶⁸ Treas. Reg. sec. 301.7602-1(b)(3).

Proposed Treasury regulations would narrow this authority by excluding non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath.⁶⁹ An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise in an area other than Federal tax law. The proposed regulations would allow the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, including tax law, or in non-tax substantive law, such as patent law, property law, or environmental law. It would not permit the IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. These changes are proposed to be effective for examinations begun and summonses served by the IRS on or after March 27, 2018.

Description of Proposal

The proposal provides that the Secretary shall not, under the authority of section 6103(n) (relating to tax administration contracts), provide to a tax administration contractor any books, papers, records or other data obtained by summons, except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS (including, for example, access to such information by translators). Further, no person other than an officer or employee of the IRS or Office of Chief Counsel may on behalf of the Secretary question a witness under oath whose testimony was obtained by summons. The proposal is not intended to restrict the Office of Chief Counsel's ability to use court reporters, translators or interpreters, photocopy services, and other similar ancillary contractors.

Effective Date

The proposal is generally effective on the date of enactment and applies to any tax administration contracts under section 6103(n) in effect on the date of enactment.

⁶⁹ Prop. Treas. Reg. sec. 301.7602-1(b)(3), 83 Fed. Reg. 13206 (March 28, 2018).

D. Organizational Modernization

1. Office of the National Taxpayer Advocate

Present Law

In general

The Office of the Taxpayer Advocate (“OTA”) is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate (“NTA”) supervises the OTA. The NTA reports directly to the Commissioner and is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code, or if the Secretary so determines, at a rate fixed under section 9503 of such title.

The OTA has four principal functions:

1. to assist taxpayers in resolving problems with the IRS;
2. to identify areas in which taxpayers have problems in dealing with the IRS;
3. to propose changes in the administrative practices of the IRS to mitigate problems identified in (2); and
4. to identify potential legislative changes that may be appropriate to mitigate such problems.

Taxpayer Assistance Orders

A taxpayer can request a Taxpayer Assistance Order (“TAO”) if 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 by the IRS.⁷⁰ A TAO may require the IRS within a specified time period, to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer under specified proposals.⁷¹

⁷⁰ Sec. 7811(a)(1)(A). Significant hardship is deemed to occur if one of four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer’s problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long term adverse impact if relief is not granted. Sec. 7811(a)(2). The NTA may also issue a TAO if the taxpayer meets requirements to be set forth in regulations. Sec. 7811(a)(1)(B).

⁷¹ Sec. 7811(b). A TAO or action taken by the NTA applies to persons performing services under a qualified tax collection contract to the same extent and to the same manner as such order applies to the IRS.

The Commissioner, or the Deputy Commissioner may rescind a TAO issued by the NTA, only if a written explanation of the reasons for the modification or rescission is provided to the NTA.⁷²

Taxpayer Assistance Directives

While a TAO is specific to a particular taxpayer, a Taxpayer Assistance Directive (“TAD”) is systemic, intended to address groups of taxpayers. Delegation Order 13-3 authorizes the NTA to issue TADs to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.⁷³ The authority to modify or rescind a TAD is delegated to Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and to the NTA.

Annual Reports

The NTA is required to submit two reports annually to the House Committee on Ways and Means and to the Senate Finance Committee.⁷⁴ One report, due June 30 of each year, covers the OTA’s objectives for the fiscal year beginning in that calendar year. Besides statistical information, the report must contain a full and substantive analysis of the objectives.

The other report, due December 31 of each year, concerns the activities of the OTA. The content of this report is set by statute.⁷⁵ Generally, the report must cover initiatives taken to improve taxpayer services and problems encountered, as well as the actions taken to resolve them and the results. Specifically, the report must cover the 20 most serious problems experienced by taxpayers. The report also must identify the 10 most litigated issues for each category of taxpayer and the areas of the tax law that impose significant compliance burdens on taxpayers or the IRS. Recommendations received from individuals with the authority to issue TAOs, and any TAO not promptly honored by the IRS, must also be included in the report. The report must also set forth recommendations for administrative and legislative action to resolve problems encountered by taxpayers.

The NTA, is required by statute to submit the reports directly to the Congressional committees without prior review of the Commissioner, the Secretary, or any officer or employee of the Treasury, the Oversight Board, or the Office of Management and Budget (“OMB”).⁷⁶

⁷² Sec. 7811(c). The NTA also may modify or rescind a TAO issued by the NTA.

⁷³ Delegation Order 13-3, Internal Revenue Manual 1.2.50.4 (January 17, 2001).

⁷⁴ Sec. 7803(c)(2)(B).

⁷⁵ Sec. 7803(c)(2)(B)(ii)(I) through (XI).

⁷⁶ Sec. 7803(c)(2)(B)(iii).

Description of Proposal

Taxpayer Advocate Directives

In the case of any TAD issued by the NTA pursuant to a delegation of authority from the Commissioner, the Commissioner or Deputy Commissioner shall modify, rescind or ensure compliance with such directive not later than 90 days after issuance of such directive. If the TAD is modified or rescinded by a Deputy Commissioner, the NTA may (not later than 90 days after such modification or rescission) appeal to the Commissioner and the Commissioner must (not later than 90 days after such appeal is made) either (1) ensure compliance with such directive as issued by the NTA, or (2) provide the NTA with the reasons for any modification or rescission made or upheld by the Commissioner pursuant to such appeal.

The NTA's annual report is to identify any TAD that is not honored by the IRS in a timely manner.

Annual Reports to Congress

The proposal modifies requirements of the annual report on NTA activities to require a summary of the 10 most serious problems encountered by taxpayers. Before beginning any research or study, the NTA is required to coordinate with the U.S. Treasury Inspector General for Tax Administration ("TIGTA") to ensure that the NTA does not duplicate any action that TIGTA has already undertaken or has a detailed plan to undertake. The proposal requires the IRS provide the NTA, upon request and to the extent practicable, with statistical support in connection with the preparation of the annual report on NTA activities. Such support is to include statistical studies, compilations and the review of information provided by the NTA for statistical validity and sound statistical methodology. With respect to any statistical information included in such report, the report is to include a statement of whether such statistical information was reviewed or provided by the IRS, and if so whether the IRS determined such information to be statistically valid and based on sound statistical methodology. The IRS review and provision of statistical support does not violate the requirement that the report be submitted directly without prior review or comment from any officer or employee of the Department of the Treasury or specified other persons.

Salary of the National Taxpayer Advocate

The proposal eliminates the provision relating to the determination of the NTA's salary under 5 U.S.C. sec. 9503. As under present law, the NTA is entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of Title 5 of the United States Code.

Effective Date

The proposal is generally effective on the date of enactment. The proposal as it relates to the salary of the NTA applies to appointments to the position of the NTA made after March 31, 2019.

2. Modernization of Internal Revenue Service organizational structure

Present Law

RRA98 directed the Commissioner to restructure the IRS by eliminating or substantially modifying the three-tier geographic structure (national, regional, and district) in place at the time and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs.⁷⁷

Description of Proposal

The Secretary (or the Secretary's delegate) is required to submit to Congress by September 30, 2020, a comprehensive written plan to redesign the organization of the IRS. The comprehensive plan will (1) ensure the successful implementation of the priorities specified by Congress in this bill; (2) prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance they need; (3) streamline the structure of the agency including minimizing the duplication of services and responsibilities; (4) best position the IRS to combat cybersecurity and other threats to the IRS; and (5) address whether the Criminal Division of the IRS should report directly to the Commissioner.

Beginning one year after the date on which a comprehensive plan to modify the organization of the IRS is submitted to Congress, the proposal removes the RRA98 requirement of an organizational structure that features operating units serving particular groups of taxpayers with similar needs.

Effective Date

The proposal is effective on the date of enactment.

⁷⁷ Pub. L. No. 105-206, sec. 1001(a).

E. Other Provisions

1. Return preparation programs for applicable taxpayers

Present Law

The Code provides that the Secretary may allocate up to \$6 million per year for matching grants to certain qualified low-income taxpayer clinics.⁷⁸ Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than \$100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) that either represents low-income taxpayers or provides referral to qualified representatives. A clinic is treated as representing low-income taxpayers if (i) at least 90 percent of the taxpayers represented by the clinic have income that does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the OMB,⁷⁹ and (ii) the amount in controversy for any taxable year is \$50,000 or less.⁸⁰

While the Code does not provide funding for matching grants, funding for such grants was provided by the Consolidated Appropriations Act, 2019.⁸¹ Congress appropriated approximately \$2.492 billion to the IRS for taxpayer services, of which not less than \$18 million is to be made available for a Community Volunteer Income Tax Assistance (“VITA”) matching grants program for tax return preparation assistance. VITA is a program created by the IRS in 1969 that utilizes volunteers to provide tax return preparation and filing service assistance to certain low-income taxpayers and members of underserved populations.

Description of Proposal

The proposal codifies the VITA program and provides that the Secretary, unless otherwise provided by specific appropriation, may allocate from otherwise appropriated funds up to \$30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting applicable taxpayers and members of underserved populations. The Secretary is authorized to award a multi-year grant not to exceed three years.

⁷⁸ Sec. 7526.

⁷⁹ For a family of four, the 2019 income limit in the 48 contiguous states, Puerto Rico, and the District of Columbia is \$64,375, available at <https://www.irs.gov/advocate/low-income-taxpayer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines>.

⁸⁰ Sec. 7463.

⁸¹ Pub. L. No. 116-6, Div. D, Title I (February 15, 2019).

The grant funds may be used for ordinary and necessary operation costs (including for wages or salaries of persons coordinating the activities of the program, to develop training materials, conduct training, and perform quality reviews of the returns for which assistance has been provided under the program, for equipment purchases, and for vehicle-related expenses associated with remote or rural tax preparation services), outreach and educational activities relating to the eligibility and availability of income supports available through the Code, and services related to financial education and capability, asset development, and the establishment of savings accounts in connection with tax return preparation.

Matching funds are required to be provided on a dollar-for-dollar basis for all grants provided. Matching funds may include: (1) the salary (including fringe benefits) of individuals performing services for the program; (2) the cost of equipment used in the program; and (3) other ordinary and necessary costs that may be associated with the program. Indirect expenses, including general overhead of any entity administering the program, are not counted as matching funds.

In awarding grants, priority is given to applications that (1) demonstrate assistance to certain applicable taxpayers with an emphasis on outreach, (2) demonstrate taxpayer outreach and education around available income supports available through the Code, and (3) demonstrate specific outreach and focus on one or more underserved populations.

The proposal requires the Secretary to establish procedures for periodic site visits not less than once every five calendar years (i) to ensure the program is carrying out the stated purpose and (ii) to determine whether the VITA grant program meets certain program adherence standards as the Secretary will require. If any qualified return preparation program is awarded a grant and is subsequently determined not to meet the adherence standards or not to be carrying out the stated purposes, such program will not be eligible for additional grants unless the program provides sufficient documentation of corrective measures established to address any deficiencies determined.

Qualified return preparation program means any program (1) that provides assistance to individuals, at least 90 percent of whom are applicable taxpayers, in preparing and filing Federal income tax returns, (2) that is administered by a qualified entity, (3) in which all volunteers who assist in the preparation of Federal income tax returns meet the training requirements prescribed by the Secretary, and (4) that uses a quality review process which reviews 100 percent of all returns. Qualified entity means any entity that (1) is an eligible organization (as defined), (2) is in compliance with Federal tax filing and payment requirements, (3) is not debarred or suspended from Federal contracts, grants, or cooperative agreements, and (4) agrees to provide documentation to substantiate any matching funds provided under the VITA grant program. Eligible organization means (1) an institution of higher education described in section 102 (other than subsection (a)(1)(C) thereof) of the Higher Education Act of 1965, as in effect on the date of enactment, and that has not been disqualified from participating in a program under Title IV of such Act, (2) an exempt organization described in Code section 501(c), (3) a local government agency, including a county or municipal government agency, and an Indian tribe, as defined in section 4(13) of the Native American Housing Assistance and Self-Determination Act of 1996 (“Act”), including any tribally designated housing entity (as defined in such Act), tribal subsidiary, subdivision, or other wholly owned tribal entity, or (4) a local, State, regional, or

national coalition (with one lead organization that meets the eligibility requirements described above acting as the applicant organization). If no eligible organization is available to assist the targeted population or community, the eligible organization includes a State government agency and a Cooperative Extension Service office.

Applicable taxpayer means a taxpayer who has income for the taxable year that does not exceed an amount equal to the completed phaseout amount under section 32(b) for a married couple filing a joint return with three or more qualifying children, as determined in a revenue procedure or other published guidance.⁸² Underserved population includes populations of persons with disabilities, persons with limited English proficiency, Native Americans, individuals living in rural areas, members of the Armed Forces and their spouses, and the elderly.

The proposal allows the IRS to use mass communications and other means to promote the benefits and encourage the use of the program. The Secretary can provide taxpayers information regarding qualified return preparation programs receiving grants and those programs are encouraged to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from local or regional low-income taxpayer clinics. The programs are also encouraged to provide taxpayers information regarding the location and contact information for the low-income taxpayer clinics.

Effective Date

The proposal is effective on the date of enactment.

2. Provision of information regarding low-income taxpayer clinics

Present Law

The Code provides that the Secretary is authorized to provide up to \$6 million per year in matching grants to certain qualified low-income taxpayer clinics.⁸³ Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. No clinic can receive more than \$100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) that either represents low-income taxpayers or provides referral to qualified representatives. A low-income taxpayer is an individual whose income does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the OMB.

⁸² For 2019, the amount is \$55,952. Rev. Proc. 2018-57, 2018- 49, I.R.B. 827, 832, December 3, 2018.

⁸³ Sec. 7526.

The Department of the Treasury prohibits its officers and employees from referring taxpayers to qualified low-income taxpayer clinics for advice and assistance.⁸⁴

Description of Proposal

The proposal allows officers and employees of the Department of the Treasury to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from qualified low-income taxpayer clinics that receive funding under the Code, and to provide location and contact information for such clinics.

Effective Date

The proposal is effective on the date of enactment.

3. Notice from IRS regarding closure of taxpayer assistance centers

Present Law

The IRS operates taxpayer assistance centers (“TAC”) around the country to provide face-to-face assistance with preparing tax returns and understanding tax laws.

The IRS is not currently required to publish information or give notice to Congress before closing a TAC.

Description of Proposal

The proposal requires the IRS to publish (including by non-electronic means such as local press and other media), 90 days in advance, a notice containing information identifying the TAC proposed for closure, the date of the proposed closure, and the relevant alternative sources of assistance that may be utilized by affected taxpayers. The proposal also requires the IRS to provide, 90 days in advance, a report to Congress containing the information in the notice, the reasons for a proposed closure of the TAC, and other information as the Secretary may find appropriate.

Effective Date

The proposal is effective on the date of enactment.

4. Rules for seizure and sale of perishable goods restricted to only perishable goods

Present Law

Under the Code, if it is determined that any tangible property seized to satisfy unpaid taxes (1) is liable to perish, (2) is liable to become greatly reduced in price or value by keeping, or (3) cannot be kept without great expense, the property may be sold after it has been appraised

⁸⁴ 5 C.F.R. sec. 3101.106(a).

and the owner has been given an opportunity to pay the appraised value or furnish bond for payment.⁸⁵ The general procedures governing the sale of seized property that are set forth in the Code (e.g., requiring 10-day notice before sale and the determination of a minimum bid) are not applicable to sales of perishables.⁸⁶ Instead, the streamlined procedures referred to above apply to the sale of perishable goods.⁸⁷

Description of Proposal

The proposal limits the property that may be sold pursuant to the streamlined procedures to property that is liable to perish.

Effective Date

The proposal applies to property seized after the date of enactment.

5. Whistleblower reforms

Present Law

In general

Under section 7623, individuals who submit information leading to detection of underpayment of tax or to detection, trial, and punishment of persons guilty of violating internal revenue laws, may file a claim for an award of 15 to 30 percent of recovered funds resulting from such action.

Disclosure rules for whistleblowers

Section 6103 provides a general rule of confidentiality for returns and return information: “returns and return information shall be confidential and except as authorized by this Title . . . [none of the specified recipients] shall disclose any return or return information obtained by him . . .”⁸⁸ One of the exceptions to the general rule of confidentiality permits the IRS to make investigative disclosures of return information to third parties. The disclosures, subject to the conditions provided in regulations, are to be made to the extent necessary to obtain information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, the amount to be collected, or with respect to the enforcement of any proposal of

⁸⁵ Sec. 6336.

⁸⁶ Sec. 6335.

⁸⁷ Sec. 6336; Treas. Reg. sec. 301.6336-1.

⁸⁸ Sec. 6103(a).

Title 26.⁸⁹ The third party recipient of the return information furnished during an investigative disclosure is not subject to the general rule of confidentiality provided by section 6103.

There is no provision of section 6103 to provide whistleblowers with status updates regarding what the IRS has done with the information provided by the whistleblower. Such status information would be the return information of the taxpayer being audited/investigated for additional tax liability.

A taxpayer can file or sue for civil damages for the unauthorized disclosure and/or inspection of returns and return information.⁹⁰ In addition, criminal penalties apply for the willful unauthorized disclosure or inspection of returns and return information.⁹¹

Protection against retaliation

Though other statutes such as the False Claims Act⁹² currently protect some individuals from employer retaliation, those who file claims under the Code are not explicitly afforded these same protections.

Description of Proposal

This proposal amends section 6103 to: (1) allow the IRS to exchange information with whistleblowers to the extent disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability or the amount to be collected with respect to the enforcement of any other proposal of the Code; and (2) require the Secretary to notify the whistleblower as to the status of their case not later than 60 days after: (i) the case has been referred for an audit or examination; and (ii) the taxpayer makes a payment of tax with respect to the tax liability to which the information provided by the whistleblower relates. Subject to such requirements and conditions prescribed by the Secretary, upon written request by the whistleblower and so long as the disclosure would not seriously impair Federal tax administration, the Secretary is to provide information on the status and stage of any investigation, and in the case of a determination of the amount of any award, the reasons for such determination. To ensure taxpayer information is protected, whistleblowers receiving information under this provision are subject to the general rule of confidentiality and criminal penalties for unauthorized disclosure of taxpayer information.

The proposal adds to section 7623, anti-retaliation whistleblower protections for employees. A person who alleges discharge or other reprisal by any person in violation of these protections may file a complaint with the Secretary of Labor (within 180 days after the date on which the violation occurs), and if the Secretary of Labor has not issued a final decision on such complaint within 180 days (and the delay is not due to the bad faith of the claimant), an action

⁸⁹ Treas. Reg. sec. 301.6103(k)(6)-1.

⁹⁰ Sec. 7431.

⁹¹ Secs. 7213 and 7213A.

⁹² 31 U.S.C. sec. 3730(h)(2).

may be brought in the appropriate district court. The remedies provided are consistent with those currently available under the False Claims Act, including compensatory damages of reinstatement, 200 percent of back pay and all lost benefits, with interest, and compensation for other special damages including litigation costs, expert witness fees, and reasonable attorney fees.

Effective Date

The modifications made to the disclosure rules apply to disclosures made after the date of enactment. The protections from retaliation are effective on the date of enactment.

6. Customer service information

Present Law

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.⁹³ Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage IRS resources. In the current strategic plan, empowering and enabling all taxpayers to meet their tax obligations is identified as one of six strategic goals.⁹⁴

Description of Proposal

The proposal requires the IRS to provide the following information over the telephone, while taxpayers are on hold with the IRS call center: information about common tax scams, direction to the taxpayer on where and how to report such activity, and tips on how to protect against identity theft and tax scams.

Effective Date

The proposal is effective on the date of enactment.

7. Misdirected tax refund deposits

Present Law

The Internal Revenue Manual (“IRM”) defines an erroneous refund as the receipt of any money from the IRS to which the recipient is not entitled. The IRM provides procedures for IRS

⁹³ Sec. 7803(a).

⁹⁴ See *Internal Revenue Service Strategic Plan FY2018 – 2022*, Publication 3744, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

employees to identify and recover such erroneous refunds.⁹⁵ In addition, the IRS website provides information to taxpayers who wish to return an erroneous refund that was issued to them, either by paper check or direct deposit.⁹⁶

The Code provides that any tax refunds which are erroneously made may be recovered by civil action brought in the name of the United States.⁹⁷ Recovery of an erroneous refund by civil action is allowed if the action is begun within two years after the refund is made, or five years if it appears that any part of the refund was induced by fraud or misrepresentation.⁹⁸

Description of Proposal

The proposal requires the Secretary to prescribe regulations within six months of the date of enactment of this Act to establish procedures to allow taxpayers to report instances in which a refund made by the Secretary by electronic funds transfer was not transferred to the account of the taxpayer, to coordinate with financial institutions to identify and recover these payments, and to deliver refunds to the correct accounts of taxpayers.

Effective Date

The proposal is effective on the date of enactment.

⁹⁵ Internal Revenue Service, Internal Revenue Manual, *Erroneous Refunds*, Ch. 21.4, sec. 21.4.5.2 (October 9, 2015).

⁹⁶ Internal Revenue Service, *Topic Number 161- Returning an Erroneous Refund- Paper Check or Direct Deposit*, last updated January 28, 2019, available at <https://www.irs.gov/taxtopics/tc161>.

⁹⁷ Sec. 7405.

⁹⁸ Sec. 6532(b).

TITLE II – 21ST CENTURY IRS

A. Cybersecurity and Identity Protection

1. Public-private partnership to address identity theft tax refund fraud

Present Law

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit group members identified and agreed to share more than 20 data components relating to Federal and State returns to improve fraud detection and prevention. For example, group members are sharing computer device identification data tied to the return’s origin, as well as the improper or repetitive use of the numbers that identify the internet address from where the return originates.⁹⁹ Tax software providers agreed to enhance identity requirements and strengthen validation procedures for new and returning customers to protect their accounts from theft. Along with the IRS, 40 State departments of revenue, and 21 tax industry members have signed onto a Memorandum of Understanding regarding roles, responsibilities and information sharing pathways among the IRS, States and industry.¹⁰⁰ In 2017, the IRS reported there was a 40 percent decline in the number of taxpayers reporting to the IRS that they are victims of identity theft, attributing the decline to the initiatives of the Security Summit.¹⁰¹

Description of Proposal

The proposal requires the Secretary (or the Secretary’s delegate) to work collaboratively with the public and private sectors to protect taxpayers from identity theft tax refund fraud.

Effective Date

The proposal is effective on the date of enactment.

2. Recommendations of Electronic Tax Administration Advisory Committee regarding identity theft refund fraud

Present Law

RRA98 authorized the Electronic Tax Administration Advisory Committee (“ETAAC”). ETAAC was intended to provide input to the IRS on electronic tax administration. ETAAC’s responsibilities involve researching, analyzing, and making recommendations on a variety of

⁹⁹ Internal Revenue Service, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud* (June 2016) at p. 3. https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf.

¹⁰⁰ *Ibid.*

¹⁰¹ Internal Revenue Service, IR- 2018-21, *Key IRS Identity Theft Indicators Continue Dramatic Decline in 2017; Security Summit Marks 2017 Progress Against Identity Theft* (February 8, 2018).

electronic tax administration issues. Pursuant to RRA98, ETAAC reports to Congress annually concerning:

- IRS progress on reaching its goal to electronically receive 80 percent of tax and information returns;
- Legislative changes assisting the IRS in meeting the 80 percent goal;
- Status of the IRS strategic plan for electronic tax administration; and
- Effects of e-filing tax and information returns on small businesses and the self-employed.

ETAAC members come from State departments of revenue, large tax preparation companies, solo tax practitioners, tax software companies, financial services industry and low income and consumer advocacy groups.¹⁰²

Description of Proposal

In addition to the requirements under present law, the proposal requires ETAAC to study (including through organized public forums) and make recommendations to the Secretary regarding methods to prevent identity theft and refund fraud.

Effective Date

The proposal is effective on the date of enactment.

3. Information sharing and analysis center

Present Law

Information Sharing and Analysis Center

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit created an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (“ISAC”).¹⁰³ The ISAC is a secure, web-based venue for States, industry and the IRS to share and exchange information. The ISAC enables the IRS and the States to work together with external third parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues. A third-party contractor hosts, maintains, and facilitates the web-based leads reporting and information sharing process for the ISAC.

¹⁰² Electronic Tax Administration Advisory Committee, Publication 3415, *Annual Report to Congress* (June 2018) at Appendix B. <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

¹⁰³ Internal Revenue Service, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud* (June 2016) https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf.sec.

Confidentiality and disclosure of return information

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.¹⁰⁴ The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, **or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . .** (emphasis added)¹⁰⁵

There are several exceptions to the general rule of confidentiality. Such exceptions include proposals to permit disclosures to State tax administration officials, for IRS employees and officers to make investigative disclosures, and rules to allow one authorized party to disclose to another authorized party with the permission of the Commissioner.¹⁰⁶

The IRS exchanges confidential information with State tax agencies under the authority of section 6103(d). The disclosures are made pursuant to written request from the head of the State tax agency, which designates the State tax officials who can receive the information. The information can only be used for State tax purposes, not for general State civil or criminal law enforcement. The State officials can redisclose the information to other officers and employees of the State tax agency, the agency’s legal representative, or the agency’s contractors (but only for State tax administration purposes). The IRS uses this authority to alert State tax administration officials to tax refund fraud schemes.

IRS officers and employees may disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other proposal of Title 26. Such disclosures are to be made only in such situations and under such conditions as the Secretary may prescribe by

¹⁰⁴ Sec. 6103(a).

¹⁰⁵ Sec. 6103(b)(2)(A).

¹⁰⁶ Sec. 6103(d) (disclosures to States), 6103(k)(6)(investigative disclosures) and the Treasury regulations under sec. 6103(p)(2)(B).

regulation.¹⁰⁷ This proposal generally cannot be used to provide confidential return information on an industry-wide basis to alert return preparers to potential fraud schemes.

Under the Treasury regulations, returns or return information that have been obtained by a Federal, State, or local agency, or its agents or contractors, in accordance with section 6103 (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the second recipient).¹⁰⁸ The disclosure must be approved by the Commissioner. The second recipient may receive only such returns or return information as authorized by the proposal of section 6103 applicable to such recipient and only for a purpose authorized by and subject to any conditions imposed by section 6103, including applicable safeguards.

Preparer disclosure penalties

The Code provides for a civil penalty for a tax return preparer who (i) discloses any information furnished to the preparer for, or in connection with, the preparation of such return or (ii) uses such information for any purpose other than to prepare or assist in preparing any such return.¹⁰⁹ There is a corresponding criminal penalty under section 7216 of the Code for knowing or reckless conduct. The same exceptions from the imposition of the criminal penalty apply for purposes of the civil penalty. In general, the penalty does not apply for disclosures permitted by the Code or pursuant to an order of a court. Further, the penalty does not apply to the use of information in the preparation of, or in connection with the preparation of State and local tax returns and declarations of estimated tax of the person to whom the information relates. The Code also permits the Secretary to provide additional exceptions through regulations. The Secretary has prescribed by regulation the circumstances not involving tax preparation in which disclosure and use of a taxpayer's information by a tax return preparer is permitted.¹¹⁰

Penalties for the unauthorized disclosure or inspection of return information

The unauthorized disclosure of a return or return information is a felony punishable by fine of up to \$5,000, five years imprisonment or both. Unauthorized inspection is a misdemeanor, punishable by a fine of up to \$1,000, one year imprisonment, or both.

Description of Proposal

ISAC participation and performance metrics

The proposal provides that the Secretary (or the Secretary's delegate) may participate in an information sharing and analysis center. The purpose of such participation is to centralize, standardize and enhance data compilation and analysis to facilitate sharing actionable data and

¹⁰⁷ Sec. 6103(k)(6); Treas. Reg. sec. 301.6103(k)(6)-1.

¹⁰⁸ Treas. Reg. sec. 301.6103(p)(2)(B)-1.

¹⁰⁹ Sec. 6713.

¹¹⁰ Treas. Reg. secs. 301.7216-1, 301.7216-2 and 301.7216-3.

information with respect to identity theft tax refund fraud. The proposal requires the Secretary (or the Secretary's delegate) to develop metrics for measuring the success of such center in detecting and preventing identity theft tax refund fraud.

Disclosure of return information to certain ISAC participants

In general

The proposal authorizes the disclosure of specified return information to ISAC participants who have entered into a written information sharing agreement with the Secretary. Under such procedures and subject to such conditions as the Secretary may prescribe, the Secretary may disclose specified return information to specified ISAC participants if such disclosure is in furtherance of effective Federal tax administration relating to the following: (1) the detection or prevention of identity theft tax refund fraud; (2) validation of taxpayer identity; (3) authentication of taxpayer returns; or (4) the detection or prevention of cybersecurity threats to the IRS.

Terminology

Specified ISAC participant

The term "specified ISAC participant" means any person designated by the Secretary as having primary responsibility for a function performed by the ISAC and any return preparer (or other person) subject to section 7216 and who is a participant in the ISAC. A person is only a specified ISAC participant if such person has entered into a written information sharing agreement with the Secretary. The information sharing agreement must set forth the terms and conditions for the disclosure of information to such person, including the requirements imposed on such person for the protection and safeguarding of such information. The information sharing agreement must require that recipients of return information under the proposal are required to affirmatively report to TIGTA any unauthorized access or disclosure of information and any breaches of any system holding the information.

Specified return information

For purposes of the proposal, the term "specified return information" means, in the case of a return filed electronically, which is in connection with a case of potential identity theft tax refund fraud, return information related to the electronic filing characteristics of such return. Such characteristics include: internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information relating to the electronic filing characteristics of such return as the Secretary may identify. In addition, with respect to a return prepared by a tax return preparer in connection with a case of potential identity theft refund fraud, "specified return information" also includes identifying information with respect to such tax return preparer, including the preparer taxpayer identification number ("PTIN") and electronic filer identification number ("EFIN") of such preparer.

With respect to a return for which identity theft refund fraud has been confirmed by the Secretary (pursuant to such procedures as the Secretary may provide), "specified return

information” also includes the name and taxpayer identification number of the taxpayer as it appears on the return, and any bank account and routing information provided for making a refund in connection with such return.

Finally, in the case of any cybersecurity threat to the IRS, information similar to that associated with cases of potential identity theft refund fraud (*e.g.*, electronic characteristics and preparer identifying information) are considered specified return information with respect to such threat.

Restriction on use of disclosed information

Any return information received by a specified ISAC participant under the proposal is to be used only for the purposes of and to the extent necessary in (1) performing the function the person is designated to perform with respect to the ISAC, (2) facilitating authorized disclosures to return preparers who are specified ISAC participants, and (3) facilitating disclosures authorized under section 6103(d) to State tax authorities who are participants in the ISAC. Return information received by specified ISAC participants who are return preparers is treated for purposes of section 7216 as information furnished to such person for, or in connection with, the preparation of a return of tax.

Data protection, safeguards, penalties

As noted above, to be a specified ISAC participant, the person must enter into an information sharing agreement that includes, among other responsibilities, requirements for the protection and safeguarding of information received under the proposal. The return information disclosed under the proposal is subject to such protections and safeguards as the Secretary may require by regulations, other guidance, or written information sharing agreement. Recipients of return information under the proposal are subject to civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information.

Effective Date

The proposal is generally effective on the date of enactment. The disclosure proposals are effective for disclosures made on or after the date of enactment.

4. Compliance by contractors with confidentiality safeguards

Present Law

Section 6103 permits the disclosure of returns and return information to State agencies, as well as to other Federal agencies for specified purposes. Section 6103(p)(4) requires, as a condition of receiving returns and return information, that State agencies (and others) provide safeguards as prescribed by the Secretary of the Treasury by regulation that are necessary or appropriate to protect the confidentiality of returns or return information.¹¹¹ It also requires that

¹¹¹ Sec. 6103(p)(4)(D).

a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary regarding the procedures established and utilized for ensuring the confidentiality of returns and return information.¹¹² After an administrative review, the Secretary may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.¹¹³

Under present law, employees of a State tax agency may disclose returns and return information to contractors for tax administration purposes.¹¹⁴ These disclosures can be made only to the extent necessary to procure contractually equipment, other property, or services, related to tax administration.¹¹⁵

The contractors can make redisclosures of returns and return information to their employees as necessary to accomplish the tax administration purposes of the contract, but only to contractor personnel whose duties require disclosure.¹¹⁶ Treasury regulations prohibit redisclosure to anyone other than contractor personnel without the written approval of the IRS.¹¹⁷

By regulation, all contracts must provide that the contractor will comply with all applicable restrictions and conditions for protecting confidentiality prescribed by regulation, published rules or procedures, or written communication to the contractor.¹¹⁸ Failure to comply with such restrictions or conditions may cause the IRS to terminate or suspend the duties under the contract or the disclosures of returns and return information to the contractor.¹¹⁹ In addition, the IRS can suspend disclosures to the State tax agency until the IRS determines that the

¹¹² Sec. 6103(p)(4)(E).

¹¹³ Sec. 6103(p)(4) (flush language) and (7); Treas. Reg. sec. 301.6103(p)(7)-1.

¹¹⁴ Sec. 6103(n) and Treas. Reg. sec. 301.6103(n)-1(a). “Tax administration” includes “the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws or related statutes (or equivalent laws and statutes of a State)...” Sec. 6103(b)(4).

¹¹⁵ Treas. Reg. sec. 301.6013(n)-1(a). Such services include the processing, storage, transmission or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services for purposes of tax administration.

¹¹⁶ Treas. Reg. sec. 301.6103(n)-1(a) and (b). A disclosure is necessary if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically accomplished without such disclosure. Treas. Reg. sec. 301.6103(n)-1(b). The regulations limit the quantity of information to that needed to perform the contract.

¹¹⁷ Treas. Reg. sec. 301.6103(n)-1(a).

¹¹⁸ Treas. Reg. sec. 301.6103(n)-1(e)(3).

¹¹⁹ Treas. Reg. sec. 301.6103(n)-1(e)(4).

conditions are or will be satisfied.¹²⁰ The IRS may take such other actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied.¹²¹

Description of Proposal

The proposal requires that a State, local, or Federal agency conduct on-site reviews every three years of all of its contractors or other agents receiving Federal returns and return information. If the duration of the contract or agreement is less than three years, a review is required at the mid-point of the contract. The purpose of the review is to assess the contractor's efforts to safeguard Federal returns and return information. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the proposal, the State, local, or Federal agency is required to submit a report of its findings to the IRS and certify annually that such contractors and other agents are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information. The certification is required to include the name and address of each contractor or other agent with the agency, the duration of the contract, and a description of the contract or agreement with the State, local, or Federal agency.

The proposal does not apply to contracts for purposes of Federal tax administration.

The proposal does not alter or affect in any way the right of the IRS to conduct safeguard reviews of State, local, or Federal agency contractors or other agents. It also does not affect the right of the IRS to initially approve the safeguard language in the contract or agreement and the safeguards in place prior to any disclosures made in connection with such contracts or agreements.

Effective Date

The proposal is effective for disclosures made after December 31, 2022.

5. Report on electronic payments

Present Law

The Secretary is not currently required by Congress to examine expansion of electronic fund transfers.

Description of Proposal

Not later than two years after the date of the enactment, the Secretary, or the Secretary's delegate, in coordination with the Bureau of Fiscal Service and the IRS, and in consultation with private sector financial institutions, is required to submit a written report to Congress describing how the IRS can utilize new payment platforms to increase the number of tax refunds paid by

¹²⁰ Treas. Reg. sec. 301.6103(n)-1(e)(4).

¹²¹ *Ibid.*

electronic funds transfer. The report is required to consider the interests of reducing identity theft tax refund fraud, reducing the IRS's costs in delivering tax refunds, the costs and any associated fees charged to taxpayers (including monthly and point-of-service fees) to access their tax refunds, the impact on individuals who do not have access to financial accounts or institutions, and ensuring payments are made to accounts that comply with the Bank Secrecy Act¹²² and the USA PATRIOT Act of 2001.¹²³ The report is required to include legislative recommendations necessary to accomplish these goals.

Effective Date

The proposal is effective on the date of enactment.

6. Identity protection personal identification numbers

Present Law

In 2011, the IRS launched a pilot program to test the Identity Protection Personal Identification Number (“IP PIN”). The IP PIN is a unique six-digit identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. The IP PIN allows taxpayers affected by identity theft to avoid delays in filing returns and receiving refunds. The IRS verifies the presence of the IP PIN at the time of filing, and rejects returns associated with a taxpayer's account where an IP PIN has been assigned but is missing. For the 2018 filing season, the IRS issued IP PINs to almost 3.5 million taxpayers who had identity theft markers on their tax accounts.¹²⁴

In January 2014, the IRS also started a limited pilot program under which taxpayers who obtained an electronic filing PIN through an IRS authentication website and live in the District of Columbia, Florida, or Georgia were provided an opportunity to obtain an IP PIN.¹²⁵ These locations were selected because they had the highest per capita rate of tax-related identity theft when the initiative was piloted. Residents in these places do not need to be identity theft victims to participate. Recently, the IRS expanded the program to allow taxpayer who filed their federal tax return last year as a resident of Michigan, California, Maryland, Nevada, Delaware, Illinois, or Rhode Island to be eligible for an IP PIN.

¹²² 31 U.S.C. secs. 5311-5332.

¹²³ Pub. L. No. 107-56.

¹²⁴ Inspector General for Tax Administration, Department of the Treasury, *Results of the 2018 Filing Season* (TIGTA 2019-40-013), December 19, 2018, available at <https://www.treasury.gov/tigta/auditreports/2019reports/201940013fr.pdf>.

¹²⁵ Internal Revenue Service, *FAQs about the Identity Protection Personal Identification Number (IP PIN)*, available at <https://www.irs.gov/identity-theft-fraud-scams/frequently-asked-questions-about-the-identity-protection-personal-identification-number-ip-pin#q2>.

Description of Proposal

Within five years of the date of enactment, the Secretary or the Secretary's delegate is required to establish a program to issue an IP PIN to any individual residing in the United States who requests one to assist the Secretary in verifying the individual's true identity. For each calendar year beginning after the date of enactment, the Secretary is required to expand the issuance of IP PINs to individuals residing in such States as the Secretary deems appropriate, provided that the total number of States served by the program continues to increase.

Effective Date

The proposal is effective on the date of enactment.

7. Single point of contact for tax-related identity theft victims

Present Law

Tax-related identity theft generally takes one of two forms: refund fraud or employment fraud. In refund fraud, a perpetrator may obtain a taxpayer's identifying information, submit an individual income tax return using a falsified Form W-2, Wage and Tax Statement, and fraudulently claim a refund. In employment fraud, the stolen identifying information is used in order to obtain employment. The returns then filed using the stolen identity may be based on the actual wages and withholding of the identity thief. Victims of the employment fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in the Internal Revenue Manual.¹²⁶ The IRS initially established the Identity Protection Specialized Unit ("IPSU") to assist victims of identity theft, but taxpayers were also referred to other operating units of the IRS to deal with various aspects of their cases.¹²⁷ Subsequently reorganized and renamed the Identity Theft Victim Assistance ("IDTVA") organization, the unit is staffed with specially trained employees who are able to assess each case, identify issues, and assist the taxpayer in getting the correct return filed, refunds issued, etc.¹²⁸ The IDTVA organization's work is coordinated by the IRS's Identity Protection Program through the auspices of an oversight office within the Wage and Investment Operating Division.¹²⁹

¹²⁶ Internal Revenue Service, Internal Revenue Manual, *Identity Protection and Victim Assistance*, Ch. 23, sec. 25.23.1 et seq. (October 2018).

¹²⁷ Inspector General for Tax Administration, Department of the Treasury, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (TIGTA 2012-40-050), May 2012.

¹²⁸ A description of the services provided by the IDTVA organization is available at <https://www.irs.gov/uac/Newsroom/IRS-Identity-Theft-Victim-Assistance-How-It-Works>.

¹²⁹ Internal Revenue Service, Internal Revenue Manual, *Identity Protection and Victim Assistance*, Ch. 23, sec. 25.23.1 et seq. (October 2018).

If a victim thinks he or she is not being properly served by the IRS or the IDTVA organization, the victim may be eligible for assistance from the Taxpayer Advocate Service (“TAS”). In such instances, the TAS will assign a case advocate to the taxpayer’s account.

Description of Proposal

The proposal requires the Secretary to establish procedures to implement a single point of contact for taxpayers adversely affected by identity theft. The single point of contact consists of a team of specially trained employees who can work across functions within the IRS to resolve problems for the victim and who are accountable for handling the case to completion. The makeup of the team may change as required to meet IRS needs, but the procedures must ensure continuity of records and case history and may require notice to the taxpayer in appropriate instances.

Effective Date

The proposal is effective on the date of enactment.

8. Notification of suspected identity theft

Present Law

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code.¹³⁰ The definition of “return information” is very broad and includes any information gathered by the IRS with respect to a person’s liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.¹³¹ Thus, information gathered by the IRS in connection with an investigation of a person for a Title 26 offense, such as fraud, is the return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

As an exception to section 6103’s general rule of confidentiality, the Code permits a taxpayer to receive his or her own tax return, and also can receive his or her return information if the Secretary determines that such disclosure would not seriously impair Federal tax administration.¹³² With respect to fraudulent tax returns, if the victim’s name and Social Security number (“SSN”) are listed as either the primary or secondary taxpayer on a fraudulent return, a victim of identity theft, or a person authorized to obtain the identity theft victim’s tax information, may request a redacted copy (one with some information blacked-out) of a

¹³⁰ Sec. 6103(a).

¹³¹ Sec. 6103(b)(2).

¹³² Sec. 6103(e)(1) and (7). The Code also permits the disclosure of returns and return information to such persons or persons the taxpayer may designate, if the request meets the requirements of the Treasury regulations and if it is determined that such disclosure would not seriously impair Federal tax administration. Sec. 6103(c).

fraudulent return that was filed and accepted by the IRS using the identity theft victim's name and SSN.¹³³

In cases not involving violations of Title 26, under a Privacy Act Notice, TIGTA is allowed to disclose information to complainants, victims, or their representatives (defined to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of an investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.¹³⁴

Description of Proposal

If the Secretary determines that there has been or may have been an unauthorized use of the identity of any individual, the proposal requires the Secretary to, without jeopardizing an investigation relating to tax administration, as soon as practicable, notify the individual of such determination, and: (1) provide instructions to the individual about filing a report with law enforcement; (2) identify any steps to be taken by the individual to allow investigating law enforcement officials to access the taxpayer's personal information; (3) provide information regarding actions the individual may take to protect themselves from harm relating to the unauthorized use; and (4) offer identity protection measures to the individual, such as the use of an identity protection personal identification number.

At the time this information is provided (or, if not available at such time, as soon as practicable thereafter), the Secretary shall issue additional notifications to such individual (or such individual's designee) regarding: (1) whether an investigation has been initiated in regards to such unauthorized use; (2) whether the investigation substantiated an unauthorized use of the taxpayer's identity; and (3) whether any action has been taken with respect to the individual who committed the substantiated violation, including whether any referral has been made for criminal prosecution of such individual, and, to the extent such information is available, whether such person has been criminally charged by indictment or information.

For purposes of this proposal, the unauthorized use of the identity of an individual includes the unauthorized use of the identity of the individual to obtain employment (herein "employment-related identity theft"). In making a determination as to whether there may have been an unauthorized use of the identity of an individual to obtain employment, the Secretary shall review certain information returns, as well as information provided to the IRS by the SSA, which indicates that the SSN used does not correspond with either the name on the information return or the name on

¹³³ See, Internal Revenue Service, Instructions for Requesting Copy of Fraudulent Returns (March 18, 2019), available at <https://www.irs.gov/individuals/instructions-for-requesting-copy-of-fraudulent-returns>.

¹³⁴ See 75 Fed. Reg. 20715 (April 20, 2010) (relating to TIGTA Office of Investigation files).

the tax return reporting the income. This proposal requires the Secretary to examine the statements, information returns, and tax returns described in the proposal for any evidence of employment-related identity theft, regardless of whether such statements or returns are submitted electronically or on paper. The proposal amends the Social Security Act to require the Commissioner of Social Security to request information described in the proposal not less than annually. The proposal also requires that the IRS establish procedures to ensure that income reported in connection with the unauthorized use of a taxpayer's identity is not taken into account in determining any penalty for underreporting of income by the victim of identity theft.

Effective Date

The proposal applies to determinations made after the date that is 6 months after the date of enactment.

9. Guidelines for stolen identity theft refund fraud cases

Present Law

Disparate elements in the tax laws and administration are implicated in identity theft. The tax aspects of identity theft can generally occur in one of two ways. In refund fraud, a perpetrator obtains someone else's identifying information and submits an individual income tax return using the name and Social Security number of the victim, with a falsified Form W-2, Wage and Tax Statement, and fraudulently claims a refund. In other cases, the stolen identifying information is used in order to obtain employment; the returns then filed by the persons employed using the stolen identity may be based on the actual wages and withholding. Victims of the fraud include the individuals whose identifying information was stolen as well as the businesses whose systems may have been breached to obtain that personal information.

The IRS describes its procedures for addressing both types of fraud in its manual. Its work is coordinated by the IRS's Identity Protection Program through the auspices of an oversight office.¹³⁵

In the 2014 Annual Report to Congress, the NTA included a review of fraudulent refund claims that included the theft of a taxpayer's identity.¹³⁶ The review found that such cases involved multiple issues requiring coordination among several business units of the IRS and took approximately six months to resolve. Identity theft victims were required to deal with multiple persons within the IRS to resolve the issues, either because a case involved multiple business units or was transferred among multiple employees within a business unit.

¹³⁵ Internal Revenue Service, Internal Revenue Manual, *Identity Protection and Victim Assistance*, Ch. 23, sec. 25.23.1 et seq. (October 2018).

¹³⁶ National Taxpayer Advocate, "*Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*," 2014 Annual Report to Congress, available at <http://www.taxpayeradvocate.irs.gov/reports-to-congress/2014-annual-report-to-congress/research-studies>.

Description of Proposal

The proposal requires the IRS in consultation with the NTA, to develop and implement publicly available casework guidelines for the handling of refund fraud cases that would have the effect of reducing the administrative burdens on victims of identity theft. The guidelines may address both procedures and metrics for determining whether the procedures are successfully implemented. Among the issues to be considered are the standards for opening, assigning, reassigning or closing a case; the average length of time in which a case with an identity theft issue should be resolved; the average length of time a victim entitled to a tax refund may have to wait to receive such refund; and the number of IRS offices and employees with whom a victim should interact to resolve a case.

Effective Date

The proposal is effective on the date of enactment, with guidelines to be implemented within one year of the date of enactment.

10. Increased penalty for improper disclosure or use of information by preparers of returns

Present Law

The Code provides both civil and criminal penalties for a tax return preparer who discloses any information furnished to the preparer for, or in connection with, the preparation of such return or uses such information for any purpose other than to prepare or assist in preparing, any such return. The civil penalty is \$250 for each unauthorized disclosure or use up to \$10,000 per calendar year.¹³⁷ The corresponding criminal penalty under section 7216 provides that knowing or reckless conduct is a misdemeanor, subject to a fine up to \$1,000, one year of imprisonment, or both, together with the costs of prosecution.

Section 6103(b)(6) defines “taxpayer identity” as the name of the person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number or a combination thereof.

Description of Proposal

The proposal increases the civil penalty for the unauthorized disclosure or use of information by tax return preparers from \$250 to \$1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person’s taxpayer identity (“taxpayer identity theft”). The proposal also increases the calendar year limitation from \$10,000 to \$50,000. The calendar year limitation is applied separately with respect to disclosures or uses made in connection with taxpayer identity theft.

The proposal also increases the criminal penalty for knowing or reckless conduct to \$100,000 in the case of disclosures or uses in connection with taxpayer identity theft.

¹³⁷ Sec. 6713.

Effective Date

The proposal applies to disclosures or uses on or after the date of enactment.

B. Development of Information Technology

1. Management of Internal Revenue Service information technology

Present Law

The Code describes duties and responsibilities for the Commissioner, the Chief Counsel, and the OTA of the IRS.¹³⁸ It does not presently enumerate duties and responsibilities of an IRS Chief Information Officer (“IRS CIO”).

Also, the Code does not explicitly provide for development and implementation of a multiyear strategic plan for the information technology needs of the IRS, and does not require verification and validation of major acquisitions of information technology by the IRS, including the Customer Account Data Engine 2 (“CADE 2”) and the Enterprise Case Management System (“ECM”).

Description of Proposal

Under the proposal, the Commissioner is required to appoint an IRS CIO. The Commissioner and the Secretary will act through the IRS CIO with respect to the development, implementation, and maintenance of information technology for the IRS. The IRS CIO will be responsible for the development, implementation, and maintenance of information technology for the IRS, for ensuring that the information technology of the IRS is secure and integrated, for maintaining operational control of all information technology for the IRS, for acting as the principal advocate for the information technology needs of the IRS, and for consulting with the Chief Procurement Officer of the IRS to ensure that the information technology acquired for the IRS is consistent with the strategic plan, described below.

The IRS CIO will also be responsible for developing and implementing a multiyear strategic plan for the information technology needs of the IRS. This plan should include performance measures of such technology and its implementation, and a plan for an integrated enterprise architecture of the information technology of the IRS. It should take into account the resources needed to accomplish such a plan, as well as planned major acquisitions of information technology by the IRS. The plan should also align with the needs and strategic plan of the IRS. The IRS CIO will review and update this plan at least once a year, taking into account the development of new information technology and the needs of the IRS.

Under the proposal, the Commissioner will develop plans for each phase of CADE 2, except phase one, and enter into a contract with an independent reviewer to verify and validate implementation plans developed for each phase, except phase one, and for the ECM. Furthermore, the Chief Procurement Officer of the IRS is directed to regularly consult with the IRS CIO and to identify all significant IRS information technology acquisitions in excess of \$1,000,000, providing written notification to the IRS CIO of each such acquisition in advance of acquisition.

¹³⁸ Sec. 7803.

The verification and validation of phase two of CADE 2 and the ECM are to be completed within one year after the date of enactment. The development of plans for all subsequent phases of CADE 2 should be completed within one year after the date of enactment and the verification and validation of each phase should be completed within one year after the date on which the plan for such phase is completed.

Effective Date

The proposal is generally effective on the date of enactment.

2. Internet platform for Form 1099 filings

Present Law

The Code does not presently require the IRS to make available an internet platform for the preparation or filing of information returns, such as the Form 1099 series.

Description of Proposal

The proposal requires the Secretary of the Treasury (or his or her delegate) to make available, by January 1, 2023, an internet website or other electronic medium (the “website”), with a user interface and functionality similar to the Business Services Online Suite of Services provided by the Social Security Administration.¹³⁹ The website will allow persons, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and maintain a record of completed, filed, and distributed Forms 1099. The Secretary is required to ensure that the services provided on the website are not a replacement for services currently provided by the IRS, and that the website comply with applicable security standards.

Effective Date

The proposal is effective on the date of enactment.

3. Streamlined critical pay authority for information technology positions

Present Law

The IRS is currently subject to the personnel rules and procedures set forth in Title 5 of the United States Code. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

¹³⁹ Available at <http://www.ssa.gov/bsowelcome.htm>.

The RRA98 provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay authority.¹⁴⁰ This authority was originally provided for 10 years; it was extended on two occasions and ultimately expired on September 30, 2013.¹⁴¹

Under RRA98, the Secretary of the Treasury, or his delegate, was authorized to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President of the United States.

These appointments would not be subject to the otherwise applicable requirements under Title 5. All such appointments would be excluded from the collective bargaining unit and the appointments would not be subject to approval of the OMB or the Office of Personnel Management.

Also, OMB was authorized to approve increases in the pay level for certain critical pay positions requested by the Secretary. These critical pay positions would be critical, technical and professional positions other than those designated under the streamlined authority described above. OMB was authorized to approve requests for critical position pay up to the highest total compensation that does not exceed the rate of pay of the Vice President of the United States.

According to TIGTA, during the years in which it had streamlined critical pay authority, the IRS exercised that authority to fill 168 positions, the majority of which were in the Information Technology function of the IRS.¹⁴²

Description of Proposal

The proposal reinstates streamlined critical pay authority at IRS for positions in its information technology operations that are necessary to ensure the functionality of such operations. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code, and ending on September 30, 2025, for appointees to such positions who were not IRS employees prior to the date of enactment of this Act.

¹⁴⁰ Pub. L. No. 105-206, 112 Stat. 712 (1998).

¹⁴¹ In December 2007, the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, (2008), extended the original deadline to July 23, 2013. Subsequently, the Consolidated and Further Continuing Appropriations Act 2013, Pub. L. No. 113-6, 127 Stat. 198 (2013), extended the deadline to September 30, 2013.

¹⁴² TIGTA, *The Internal Revenue Service's Use of its Streamlined Critical Pay Authority*, Ref. No. 2015-IE-R001, (December 5, 2014), available at <https://www.treasury.gov/tigta/iereports/2015reports/2015ier001fr.pdf>.

The proposal reinstates the ability to provide payment for recruitment, retention, relocation incentives, and relocation expenses for positions in information technology operations at the IRS. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code, and ending on September 30, 2025.

The proposal also reinstates the ability to pay performance bonuses for senior executives who have program management responsibility over the information technology operations at the IRS. Such authority is reinstated during the period beginning on the date of the enactment of section 7812 of the Code, and ending on September 30, 2025.

Effective Date

The proposal is effective for payments made on or after the date of enactment.

C. Modernization of Consent-Based Income Verification System

1. Disclosure of taxpayer information for third-party income verification

Present Law

Disclosure of return information with consent of the taxpayer

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26.¹⁴³ Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.¹⁴⁴ A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate: (1) the taxpayer's taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year(s) covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

Income Verification Express Service (IVES)

Mortgage lenders and others in the financial community use the IRS's Income Verification Express Service (IVES) to confirm the income of a borrower during the processing of a loan application.¹⁴⁵ Customers of IVES fax to a specified IRS office a signed Form 4506-T ("Request for Transcript of Tax Return") or Form 4506T-EZ ("Short Form Request for Individual Tax Return Transcript"). The IRS provides three types of transcript information as part of the IVES program: (1) a return transcript; (2) Form W-2 ("Wage and Tax Statement") transcript information; and (3) Form 1099¹⁴⁶ transcript information.

¹⁴³ Sec. 6103(a).

¹⁴⁴ Treas. Reg. sec. 301.6103(c)-1. The regulations also specify the requirements for a nonwritten request for information or consent to disclosure to allow a third party to provide information or assistance relating to the taxpayer's return or to a transaction or other contact between the taxpayer and the IRS.

¹⁴⁵ Internal Revenue Service, Income Verification Express Service, <https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service> (January 31, 2019).

¹⁴⁶ There are various Forms 1099: Form 1099-B, Proceeds From Broker or Barter Exchange Transactions; Form 1099-DIV, Dividends and Distributions; 1099-INT, Interest Income; 1099-MISC, Miscellaneous Income; 1099-OID, Original Issue Discount; or 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

The IRS imposes a \$2.00 fee for each transcript requested. The requested transcript information is delivered to a secure mailbox on the IRS's e-Services electronic platform, generally within two to three business days.

To participate in the IVES program, companies must register and identify employees to act as agents to receive transcripts on the company's behalf.¹⁴⁷ According to the Form 13803 ("Application to Participate in the Income Verification Express Services (IVES) Program"), the IRS conducts a suitability check on the applicant and all the principals listed on the application to determine the applicant's suitability to be an IVES participant. After an applicant passes the suitability check and the IRS completes processing the application, the IRS notifies the applicant of acceptance to participate in the program.

Description of Proposal

As noted above, the current IVES program requires that transcript information requests be submitted to the IRS by fax and then the transcripts are furnished electronically to a secure mailbox. After a specified time period, the proposal requires the Secretary (or his delegate) to implement a qualified disclosure program that is fully automated, accomplished through the Internet, and through which disclosures are accomplished in as close to real-time as is practicable. The program is to comply with applicable security standards and guidelines. The term "qualified disclosure" means a disclosure made pursuant to section 6103(c) to a person seeking to verify the income of a taxpayer who is a borrower in the process of a loan application. "Qualified disclosure" is intended as a reference to the types of disclosures made under the current IVES program. The proposal is not intended to exclude current uses of the IVES program.

To cover the costs of implementing such a program, for a two-year period beginning six months after the date of enactment, the Secretary is authorized to assess and collect a fee for qualified disclosures at such rates as the Secretary determines are sufficient to cover the costs related to implementing the program, including the costs of any necessary infrastructure or technology. Such fees are in addition to any other fee assessed and collected for such disclosures. The amounts received from the fees assessed and collected are to be deposited in and credited to an account solely for the purpose of carrying out the activities associated with implementing the qualified disclosure program. Not later than one year after the close of the two-year period, the Secretary is required to implement the program.

Effective Date

The proposal is effective on the date of enactment.

¹⁴⁷ Applicants also must choose one or more of the reasons listed on the form as the basis for using the IVES program: mortgage services, background check, credit check, banking service, licensing requirement, or other (must be specified).

2. Limit redisclosures and uses of consent-based disclosures of tax return information

Present Law

In general

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26.¹⁴⁸ Under section 6103(c), a taxpayer may designate in a request or consent to the disclosure by the IRS of his or her return or return information to a third party. Treasury regulations set forth the requirements for such consent.¹⁴⁹ The request or consent may be in written or non-written form. The Treasury regulations require that the taxpayer sign and date a written consent. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's identity information; (2) the identity of the person to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received. Under present law, the recipient is also free to use the information for purposes other than for which the information was solicited from the taxpayer.

Criminal penalties

Under section 7206, it is a felony to willfully make and subscribe any document that contains or is verified by a written declaration that it is made under penalties of perjury and which such person does not believe to be true and correct as to every material matter.¹⁵⁰ Upon conviction, such person may be fined up to \$100,000 (\$500,000 in the case of a corporation) or imprisoned up to three years, or both, together with the costs of prosecution.

Under section 7213, criminal penalties apply to: (1) willful unauthorized disclosures of returns and return information by Federal and State employees and other persons; (2) the offering of any item of material value in exchange for a return or return information and the receipt of such information pursuant to such an offer; and (3) the unauthorized disclosure of return information received by certain shareholders under the material interest proposal of section 6103. Under section 7213, a court can impose a fine up to \$5,000, up to five years imprisonment, or both, together with the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Under section 7213A, the willful and unauthorized inspection of returns and return information can subject Federal and State employees and others to a maximum fine of \$1,000, up to a year in prison, or both, in addition to the costs of prosecution. If the offense is committed by

¹⁴⁸ Sec. 6103(a).

¹⁴⁹ Treas. Reg. sec. 301.6103(c)-1.

¹⁵⁰ Sec. 7206(1).

a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Civil damage remedies for unauthorized disclosure or inspection

If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of \$1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

Description of Proposal

Under the proposal, persons designated by the taxpayer to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

Effective Date

The proposal is effective for disclosures made six months after the date of enactment.

D. Expanded Use of Electronic Systems

1. Electronic filing of returns

Present Law

RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.¹⁵¹ Section 2001(b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.¹⁵² The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,¹⁵³ and further requires that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006.¹⁵⁴ In determining whether the 250 returns threshold is met, income tax, excise tax, employment tax and information returns filed within one calendar year are counted.

The Code provides that failure to comply with information reporting requirements is subject to a failure to file correct information return penalty but provides a *de minimis* exception for failures that are attributable solely to noncompliance with the electronic filing requirements. Under the *de minimis* exception, failure to satisfy the electronic filing requirements results in

¹⁵¹ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal, projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

¹⁵² Sec. 6011(e). Sec. 6011(e) uses the term “magnetic media” and Treasury regulation section 301.6011-2 defines this term to include electronic filing.

¹⁵³ Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

¹⁵⁴ Treas. Reg. secs. 301.6011-5 and 301.6033-4.

imposition of a failure to file penalty¹⁵⁵ if a failure arises with respect to (1) more than 250 information returns; (2) more than 100 information returns in the case of a partnership having more than 100 partners; or (3) a return described in Section 6011(e)(4).¹⁵⁶ Accordingly, there is a penalty waiver on the electronic filing requirements on the first 250 information returns or in the case of the first 100 information returns in partnerships with more than 100 partners.

Description of Proposal

The proposal relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory mandate. That threshold is reduced from 250 to 100 in the case of calendar year 2021, and from 100 to 10 in the case of calendar years after 2021. Notwithstanding these thresholds, in the case of a partnership the applicable number is 200 in the case of calendar year 2018, 150 in the case of calendar year 2019, 100 in the case of calendar year 2020, and 50 in the case of calendar year 2021.¹⁵⁷

The proposal authorizes the Secretary to waive the requirement that a Federal income tax return prepared by a specified tax return preparer be filed electronically if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

The proposal modifies the special rule for failure to meet magnetic media requirements to conform with the changes made above.

Effective Date

The proposal is effective on the date of enactment.

¹⁵⁵ Sec. 6721.

¹⁵⁶ Sec. 6724.

¹⁵⁷ There is no change to the requirement that partnerships having more than 100 partners must file electronic returns notwithstanding these thresholds.

2. Uniform standards for the use of electronic signatures for disclosure authorizations to, and other authorizations of, practitioners

Present Law

Disclosure of return information by consent of the taxpayer

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.¹⁵⁸ Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.¹⁵⁹ A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; and (3) sufficient facts underlying the request for information or assistance to enable the IRS to determine the nature and extent of the information or assistance requested and the return or return information to be disclosed in order to comply with the taxpayer's request. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

Electronic signatures

The Secretary is required to develop procedures for the acceptance of signatures in digital and other electronic form.¹⁶⁰ Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for, or provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement or other document required or permitted to be made or written under the internal revenue laws and regulations. The Secretary is required to publish guidance as appropriate to define and implement any waiver of the signature requirements or alternative method of signing or subscribing. The IRS currently accepts electronic signatures for some applications, such as the Income Verification Express Services ("IVES") program.¹⁶¹

Section 12.101 of the Federal Acquisition Regulations require all Federal agencies to consider commercially available items in the acquisition process.¹⁶²

¹⁵⁸ Sec. 6103(a).

¹⁵⁹ Treas. Reg. sec. 301.6103(c)-1.

¹⁶⁰ Sec. 6061.

¹⁶¹ Internal Revenue Service, Income Verification Express Services (IVES) Electronic Signature Requirements, <https://www.irs.gov/individuals/international-taxpayers/income-verification-express-services-ives-electronic-signature-requirements> (August 2, 2018).

¹⁶² Specifically, section 12.101 provides that agencies: (1) conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements; (2) acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and (3)

IRS Forms

Form 2848 (Power of Attorney and Declaration of Representative) is used to authorize an individual to represent the taxpayer before the IRS. The individual must be eligible to practice before the IRS.

Form 8821 (Tax Information Authorization) authorizes an individual or organization to request and inspect a taxpayer's confidential tax return information. Form 4506-T (Request for Transcript of Tax Return) authorizes an individual or organization to request and inspect transcripts of a taxpayer's confidential return information. These forms do not authorize an individual to represent the taxpayer before the IRS.

Description of Proposal

For a request for disclosure to a practitioner with consent of the taxpayer, or for any power of attorney granted by a taxpayer to a practitioner, the proposal requires the Secretary to publish guidance to establish uniform standards and procedures for the acceptance of taxpayers' signatures appearing in electronic form with respect to such requests or power of attorney. Such guidance must be published within six months of the date of enactment. For purposes of the proposal, a "practitioner" means an individual in good standing who is regulated under 31 U.S.C. sec. 330 (relating to practice before the Department of the Treasury).

Effective Date

The proposal is effective on the date of enactment.

3. Payment of taxes by debit and credit cards

Present Law

The Code generally permits the payment of taxes by commercially acceptable means such as credit cards.¹⁶³ The Secretary may not pay any fee or provide any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes.¹⁶⁴

Description of Proposal

The proposal removes the prohibition on paying any fees or providing any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes to the extent taxpayers paying in this manner are fully responsible for any fees or

require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

¹⁶³ Sec. 6311.

¹⁶⁴ Sec. 6311(d)(2).

consideration incurred. The proposal requires the Secretary to seek to minimize the amount of any fee or other consideration that the Secretary pays under any contract.

Effective Date

The proposal is effective on the date of enactment.

4. Authentication of users of electronic services accounts

Present Law

The IRS has developed a suite of web-based products, called e-Services Online Tools for Tax Professionals, which provides multiple electronic products and services to tax professionals.

Description of Proposal

The proposal requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

Effective Date

The proposal is effective not later than 180 days after the date of enactment.

E. Other Provisions

1. Repeal of proposal regarding certain tax compliance procedures and reports

Present Law

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations. RRA98 requires the Secretary of the Treasury or his delegate (“Secretary”) to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007.¹⁶⁵ The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary was required to make the first report on the development of the return-free filing system to the tax-writing committees by June 30, 2000.

Description of Proposal

The proposal repeals section 2004 of RRA98.

Effective Date

The proposal is effective on the date of enactment.

2. Comprehensive training strategy

Present Law

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.¹⁶⁶ Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes. In executing these duties, the Commissioner depends upon strategic plans that prioritize goals and manage its resources. In the current strategic plan, cultivating a well-equipped, diverse, flexible and engaged workforce is identified as one of six strategic goals.¹⁶⁷

Within the IRS, the OTA is expected to represent taxpayer interests independently in disputes with the IRS. The OTA has four principal functions: (1) to assist taxpayers in resolving problems with the IRS; (2) to identify areas in which taxpayers have problems in dealing with the IRS; (3) to propose changes in the administrative practices of the IRS to mitigate problems in areas in which taxpayers have issues in dealing with the IRS; and (4) to identify potential

¹⁶⁵ Pub. L. No. 105-206, sec. 2004.

¹⁶⁶ Sec. 7803(a).

¹⁶⁷ See *Internal Revenue Service Strategic Plan FY2018 – 2022*, Publication 3744, available at <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

legislative changes which may be appropriate to mitigate such problems.¹⁶⁸ The NTA supervises the OTA. The NTA reports directly to the Commissioner.

Description of Proposal

The proposal requires that the Commissioner submit to Congress a written report providing a comprehensive training strategy for employees of the IRS. The report is to be submitted not later than one year after the date of enactment of this Act, and is to include: a plan to streamline current training processes, including an assessment of the utility of further consolidating internal training programs, technology, and funding; a plan to develop annual training regarding taxpayer rights, including the role of the OTA, for employees that interface with taxpayers and the direct managers of such employees; a plan to improve technology-based training; proposals to focus employee training on early, fair, and efficient resolution of taxpayer disputes for employees that interface with taxpayers and the direct managers of such employees, as well as ensure consistency of skill development and employee evaluation throughout the IRS; and a thorough assessment of the funding necessary to implement such a strategy.

Effective Date

The proposal is effective on the date of enactment.

¹⁶⁸ Sec. 7803(c).

TITLE III – MISCELLANEOUS PROVISIONS

A. Reform of Laws Governing Internal Revenue Service Employees

1. Prohibition on rehiring any employee of the Internal Revenue Service who was involuntarily separated from service for misconduct

Present Law

Employees of the IRS are subject to rules governing Federal employment generally, as well as rules of conduct specific to Department of the Treasury and the IRS.¹⁶⁹ Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.¹⁷⁰

The Code provides that the Commissioner has such duties and powers as prescribed by the Secretary.¹⁷¹ Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend any removal of the Chief Counsel). Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons,¹⁷² including determination and designation of posts of duty.

RRA98 requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties.¹⁷³ The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a

¹⁶⁹ Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

¹⁷⁰ Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635; Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, 5 C.F.R. Part 3101; Department of the Treasury Employee Rules of Conduct, 31 C.F.R. Part 0.

¹⁷¹ Sec. 7803(a).

¹⁷² Sec. 7804.

¹⁷³ Pub. L. No. 105-206, sec. 1203(b), July 22, 1998.

taxpayer or a taxpayer representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

RRA98 provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. TIGTA is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in TIGTA's annual report to Congress.

Description of Proposal

Under the proposal, a former employee of the IRS who was involuntarily separated due to misconduct under subchapter A of Chapter 80 of the Code, under chapters 43 or 75 of Title 5 of the United States Code, or whose employment was terminated under section 1203 of RRA98, cannot be reemployed by the IRS.

Effective Date

The proposal is effective with respect to the hiring of employees after the date of enactment.

2. Notification of unauthorized inspection or disclosure of returns and return information

Present Law

Section 7431 provides for civil damages resulting from an unauthorized disclosure of inspection of return information. If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of \$1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

Description of Proposal

The proposal requires the Secretary to notify a taxpayer if the IRS or a Federal or State agency (upon notice to the Secretary by such Federal or State agency) proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The proposal requires the notice to include the date of the unauthorized inspection or disclosure and the rights of the taxpayer as a result of such administrative determination.

Effective Date

The proposal is effective for determinations proposed after 180 days after the date of enactment.

B. Provisions Relating to Exempt Organizations

1. Mandatory e-filing by exempt organizations

Present Law

In general

RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.¹⁷⁴ Section 2001(b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.¹⁷⁵ The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,¹⁷⁶ and that all partnerships with more than 100 partners file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006.¹⁷⁷ In determining whether the 250 return threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

Tax-exempt organizations

Most tax-exempt organizations are required to file an annual information return or notice in the Form 990 series. Since 2007, the smallest organizations – generally, those with gross receipts of less than \$50,000 – may provide an abbreviated notice on Form 990-N, sometimes referred to as an “e-postcard.” Which form to file depends on the annual receipts, value of

¹⁷⁴ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

¹⁷⁵ Sec. 6011(e). Section 6011(e) uses the term “magnetic media,” which the Treasury regulation section 301.6011-2 defines to include electronic filing.

¹⁷⁶ Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

¹⁷⁷ Treas. Reg. secs. 301.6011-5 and 301.6033-4.

assets, and types of activities of the exempt organization. The public can view electronic images of Forms 990, 990-EZ, and 990-PF online, or purchase hard or soft copies from the IRS.¹⁷⁸

In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. First, as indicated above, tax-exempt corporations that have assets of \$10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990-PF information returns.¹⁷⁹ Finally, organizations that file Form 990-N (the e-postcard) also must electronically file.¹⁸⁰

Description of Proposal

The proposal extends the requirement to e-file to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872 (“Political Organization Report of Contributions and Expenditures”). The proposal also requires that the IRS make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104 of the Code) in a machine-readable format as soon as practicable.

Effective Date

The proposal generally is effective for taxable years beginning after the date of enactment. Transition relief is provided for certain organizations. First, for certain small organizations or other organizations for which the Secretary determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time, the requirement to file electronically must be implemented not later than taxable years beginning two years following the date of enactment. For this purpose, small organization means any organization: (1) the gross receipts of which for the taxable year are less than \$200,000; and (2) the aggregate gross assets of which at the end of the taxable year are less than \$500,000. In addition, the proposal grants IRS the discretion to delay the effective date not later than taxable years beginning two years after the date of enactment for the filing of Form 990-T (reports of unrelated business taxable income or the payment of proxy tax under section 6033(e)).

¹⁷⁸ See <https://www.irs.gov/charities-non-profits/copies-of-990-returns-available>, last updated August 16, 2018.

¹⁷⁹ Taxpayers can request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer. Treas. Sec. 301.6033-4.

¹⁸⁰ See Form 990-N, “Electronic Notice for Tax-exempt Organizations Not Required to File a Form 990 or 990-EZ.”

2. Notice required before revocation of tax-exempt status for failure to file return

Present Law

Applications for tax exemption

Section 501(c)(3) organizations

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023 (Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code) or Form 1023-EZ (Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code)).¹⁸¹ In response to the application, the IRS issues a determination letter or ruling either recognizing the applicant as tax-exempt or not. Certain organizations are not required to apply for recognition of tax-exempt status in order to qualify as tax-exempt under section 501(c)(3) but may do so. These organizations include churches, certain church-related organizations, organizations (other than private foundations) the gross receipts of which in each taxable year are normally not more than \$5,000, and organizations (other than private foundations) subordinate to another tax-exempt organization that are covered by a group exemption letter.

A favorable determination by the IRS on an application for recognition of tax-exempt status generally will be retroactive to the date that the section 501(c)(3) organization was created if it files a completed Form 1023 within 15 months of the end of the month in which it was formed.¹⁸² If the organization does not file Form 1023 or files a late application, it will not be treated as tax-exempt under section 501(c)(3) for any period prior to the filing of an application for recognition of tax exemption.¹⁸³ Contributions to section 501(c)(3) organizations that are subject to the requirement that the organization apply for recognition of tax-exempt status generally are not deductible from income, gift, or estate tax until the organization receives a determination letter from the IRS.¹⁸⁴

Other section 501(c) organizations

Most other types of section 501(c) organizations – including organizations described within sections 501(c)(4) (social welfare organizations, etc.), 501(c)(5) (labor organizations,

¹⁸¹ See sec. 508(a).

¹⁸² Pursuant to Treas. Reg. sec. 301.9100-2(a)(2)(iv), organizations are allowed an automatic 12-month extension as long as the application for recognition of tax exemption is filed within the extended, *i.e.*, 27-month, period. The IRS also may grant an extension beyond the 27-month period if the organization is able to establish that it acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Treas. Reg. secs. 301.9100-1 and 301.9100-3.

¹⁸³ Treas. Reg. sec. 1.508-1(a)(1).

¹⁸⁴ Sec. 508(d)(2)(B). Contributions made prior to receipt of a favorable determination letter may be deductible prior to the organization's receipt of such favorable determination letter if the organization has timely filed its application to be recognized as tax-exempt. Treas. Reg. secs. 1.508-1(a) and 1.508-2(b)(1)(i)(b).

etc.), or 501(c)(6) (business leagues, etc.) – are not required to apply for recognition of tax-exempt status. Rather, organizations are exempt under these subsections if they satisfy the requirements applicable to such organizations. However, an organization that intends to operate as a section 501(c)(4) organization must notify the Secretary no later than 60 days after its formation that it is operating as such by filing form 8976 (Notice of Intent to Operate Under Section 501(c)(4)). In addition, in order to obtain certain benefits such as public recognition of tax-exempt status, exemption from certain State taxes, and nonprofit mailing privileges, such organizations voluntarily may request a formal recognition of exempt status by filing a Form 1024 (Application for Recognition of Exemption under Section 501(a)) or Form 1024-A (Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code).

Annual information returns

Exempt organizations are required to file an annual information return, Form 990 (Return of Organization Exempt From Income Tax), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.¹⁸⁵ Exempt from the requirement are churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.¹⁸⁶

An organization that is required to file an information return, but that has gross receipts of less than \$200,000 during its taxable year, and total assets of less than \$500,000 at the end of its taxable year, may file Form 990-EZ. If an organization normally has gross receipts of \$50,000 or less, it must file Form 990-N (“e-postcard”), if it chooses not to file Form 990 or Form 990-EZ. Private foundations are required to file Form 990-PF rather than Form 990.

Revocation of exempt status

In general

An organization that has received a favorable tax-exemption determination from the IRS generally may continue to rely on the determination as long as “there are no substantial changes in the organization’s character, purposes, or methods of operation.”¹⁸⁷ A ruling or determination letter concluding that an organization is exempt from tax may, however, be revoked or modified:

¹⁸⁵ Sec. 6033(a). An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

¹⁸⁶ Sec. 6033(a)(3); Treas. Reg. secs. 1.6033-2(a)(2)(i) and (g)(1).

¹⁸⁷ Treas. Reg. sec. 1.501(a)-1(a)(2).

(1) by notice from the IRS to the organization to which the ruling or determination letter was originally issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the United States Supreme Court; (4) by issuance of temporary or final Regulations by the Treasury Department; (5) by issuance of a revenue ruling, a revenue procedure, or other statement in the Internal Revenue Bulletin; or (6) automatically, in the event the organization fails to file a required annual return or notice for three consecutive years (discussed in greater detail below).¹⁸⁸ A revocation or modification of a determination letter or ruling may be retroactive if, for example, there has been a change in the applicable law, the organization omitted or misstated a material fact, or the organization has operated in a manner materially different from that originally represented.¹⁸⁹ Upon revocation of tax-exemption or change in the classification of an organization (*e.g.*, from public charity to private foundation status), the IRS publishes an announcement of such revocation or change in the Internal Revenue Bulletin.

Automatic revocation for failure to file information returns

If an organization fails to file a required Form 990-series return or notice for three consecutive years, the organization's tax-exempt status is automatically revoked.¹⁹⁰ A revocation for failure to file is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.¹⁹¹

If, upon application for tax-exempt status after an automatic revocation for failure to file an information return or notice, the organization shows to the satisfaction of the Secretary reasonable cause for failing to file the required returns or notices, the organization's tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation.¹⁹² An organization may not challenge under the Code's declaratory judgment procedures (section 7428) a revocation of tax-exemption made for failure to file annual information returns.

The Secretary is authorized to publish a list of organizations whose exempt status is automatically revoked.

Description of Proposal

The proposal requires that the IRS provide notice to an organization that fails to file a Form 990-series return or notice for two consecutive years. The notice must state that the IRS

¹⁸⁸ Rev. Proc. 2019-5, sec. 12, 2019-1 I.R.B. 230, at p. 257 (January 2, 2019).

¹⁸⁹ *Ibid.* at p. 258.

¹⁹⁰ Sec. 6033(j)(1).

¹⁹¹ Sec. 6033(j)(2).

¹⁹² Sec. 6033(j)(3); Rev. Proc. 2014-11, 2014-3 I.R.B. 411 (January 13, 2014).

has no record of having received such a return or notice from the organization for two consecutive years and inform the organization about the revocation of the organization's tax-exempt status that will occur if the organization fails to file such a return or notice by the due date for the next such return or notice. The notice must also contain information about how to comply with the annual information return and notice requirements under sections 6033(a)(1) and 6033(i).

Effective Date

The proposal applies to failures to file returns or notices for two consecutive years if the return or notice for the second year is required to be filed after December 31, 2019.

3. Increase in penalty for failure to file

Present Law

The Federal tax system is one of "self-assessment," *i.e.*, taxpayers are required to declare their income, expenses, and ultimate tax due, while the IRS has the ability to propose subsequent changes. This voluntary system requires that taxpayers comply with deadlines and adhere to the filing requirements. While taxpayers may obtain extensions of time in which to file their returns, the Federal tax system consists of specific due dates of returns. In order to foster compliance in meeting these deadlines, Congress has enacted a penalty for the failure to timely file tax returns.¹⁹³

A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.¹⁹⁴ If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.¹⁹⁵ The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax that may be claimed on the return.¹⁹⁶ The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.¹⁹⁷

If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser

¹⁹³ See *United States v. Boyle*, 469 U.S. 241, 245 (1985).

¹⁹⁴ Sec. 6651(a)(1).

¹⁹⁵ Sec. 6651(f).

¹⁹⁶ Sec. 6651(b)(1).

¹⁹⁷ Sec. 6651(a)(1).

of \$205¹⁹⁸ or 100 percent of the amount required to be shown as tax on the return. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return.¹⁹⁹ If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of \$205 or 100 percent of the amount required to be shown on the return.²⁰⁰

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns, and estate and gift tax returns), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms).²⁰¹ The failure to file penalty is adjusted annually to account for inflation. The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by sections 6654 or 6655.²⁰²

Description of Proposal

Under the proposal, if a return is filed more than 60 days after its due date, then the failure to file penalty may not be less than the lesser of \$330 (adjusted for inflation) or 100 percent of the amount required to be shown as tax on the return.

Effective Date

The proposal applies to returns with filing due dates (including extensions) after December 31, 2019.

¹⁹⁸ The \$205 amount is adjusted for inflation.

¹⁹⁹ Sec. 6651(c)(1).

²⁰⁰ *Ibid.*

²⁰¹ Sec. 6651(a)(1).

²⁰² Sec. 6651(e).