

NO HIRES FOR THE DELINQUENT IRS ACT

APRIL 18, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1206]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1206) to prohibit the hiring of additional Internal Revenue Service employees until the Secretary of the Treasury certifies that no employee of the Internal Revenue Service has a seriously delinquent tax debt, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “No Hires for the Delinquent IRS Act”.

SEC. 2. PROHIBITION ON IRS HIRING OF NEW EMPLOYEES UNTIL CERTIFICATION THAT NO IRS EMPLOYEE HAS A SERIOUSLY DELINQUENT TAX DEBT.

(a) **IN GENERAL.**—No officer or employee of the United States may extend an offer of employment in the Internal Revenue Service to any individual until after the Secretary of the Treasury has submitted to Congress either the certification described in subsection (b) or the report described in subsection (c).

(b) **CERTIFICATION.**—

(1) **IN GENERAL.**—The certification referred to in subsection (a) is a written certification by the Secretary that the Internal Revenue Service does not employ any individual who has a seriously delinquent tax debt.

(2) **SERIOUSLY DELINQUENT TAX DEBT.**—For purposes of this section, the term “seriously delinquent tax debt” means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code, except that such term does not include—

(A) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code;

(B) a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsection (a), (b), or (f) of section 6015 of such Code, is requested or pending;

(C) a debt with respect to which a levy has been made under section 6331 of such Code (or a debt with respect to which the individual agrees to be subject to a levy made under such section); and

(D) a debt with respect to which relief under section 6343(a)(1)(D) of such Code is granted.

(c) **REPORT.**—The report referred to in subsection (a) is a report that—

(1) states that the certification described in subsection (b) cannot be made;

(2) provides an explanation of why such certification is not possible;

(3) outlines the remedial actions that would be required for the Secretary to be in a position to so certify; and

(4) provides an indication of the time that would be required for those actions to be completed.

(d) **EFFECTIVE DATE.**—This section shall apply to offers of employment extended after December 31, 2016.

SEC. 3. NO ADDITIONAL FUNDS AUTHORIZED.

No additional funds are authorized to carry out the requirements of this Act. Such requirements shall be carried out using amounts otherwise authorized.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 1206, as reported by the Committee on Ways and Means, prohibits the Internal Revenue Service (IRS) from hiring new employees after December 31, 2016 unless the Secretary of the Treasury (1) certifies that the IRS does not employ any individual with a seriously delinquent tax debt or (2) issues a report to Congress explaining why the certification cannot be made, the remedial actions necessary to permit the Secretary to make the certification, and the timeframe for completing such remedial actions. The bill defines “seriously delinquent tax debt” as any outstanding Federal

tax liability for which a notice of lien has been filed in public records, subject to certain exceptions.

B. BACKGROUND AND NEED FOR LEGISLATION

The Commissioner of the IRS is required under current law to terminate any IRS employee if the employee willfully fails to file a Federal tax return or willfully understates his Federal tax liability, unless noncompliance is due to reasonable cause. In April 2015, the Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS consistently reduced penalties for current employees found to have willfully violated the tax law, choosing a lesser penalty over termination.¹ Specifically, TIGTA reported that of the 1,580 employees found to be willfully noncompliant with tax laws between 2004 and 2013, only 39 percent were terminated, resigned, or retired.² TIGTA found that the basis for the Commissioner's decision to forgo the higher penalty in a majority of cases was not clearly identified in the case file, resulting in inconsistent penalties for similar violations. The IRS is the primary agency responsible for administering Federal tax laws. American taxpayers expect IRS employees to be fully compliant with our nation's tax law and that cases of willful noncompliance are handled by the IRS in an appropriate manner. H.R. 1206 ensures that the IRS addresses its employee compliance problems before hiring new employees who are charged with enforcing our nation's tax laws.

C. LEGISLATIVE HISTORY

Background

The "No Hires for the Delinquent IRS Act," H.R. 1206, was introduced on March 2, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 1206, the No Hires for the Delinquent IRS Act, on April 13, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for improved IRS hiring practices and employee conduct was discussed at an Oversight Subcommittee hearing on the 2015 Tax Filing Season (April 22, 2015).

¹ Review of the Internal Revenue Service's Process to Address Violations of Tax Law by Its Own Employees, Treasury Inspector General for Tax Administration, Final Report Issued on April 14, 2015, Ref. Num.: 2015-10-002 available at <https://www.treasury.gov/tigta/auditreports/2015reports/201510002fr.html>.

² *Ibid.*

II. EXPLANATION OF THE BILL

A. PROHIBITION ON HIRING OF ADDITIONAL INTERNAL REVENUE SERVICE EMPLOYEES UNTIL THE SECRETARY OF THE TREASURY CERTIFIES THAT NO EMPLOYEE OF THE INTERNAL REVENUE SERVICE HAS A SERIOUSLY DELINQUENT TAX DEBT

PRESENT LAW

The Internal Revenue Code³ (Code) provides that the Commissioner of the IRS has such duties and powers as prescribed by the Secretary. 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 the 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,⁴ including determination and designation of posts of duty.

Employees of the IRS are subject to rules governing Federal employment generally.⁵ As part of the basic obligation of public service, all Federal employees are required to comply with all legal and financial obligations, “especially those—such as Federal, State, or local taxes—that are imposed by law.”⁶ Failure to do so can result in disciplinary action. An employee of the IRS is subject to termination for willful failure to file any tax return required under the Code on or before the due date (including extensions), unless such failure is due to reasonable cause, and for willful understatement of Federal tax liability, unless such understatement is due to reasonable cause.⁷

Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.⁸ To enforce these standards, the IRS requires pre-employment audits of all employees and reviews employee compliance with filing requirements. Examinations of IRS employees are accorded high priority and are subject to mandatory review.⁹

REASONS FOR CHANGE

Despite the clear intent of the IRS Reform Act to require that IRS employees be dismissed if found to be willfully noncompliant in their Federal tax obligations, only 39 percent of IRS employees

³ Sec. 7803(a).

⁴ Sec. 7804.

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

⁶ 5 C.F.R. 2635.101(b)(12).

⁷ The IRS Restructuring and Reform Act of 1998, (“the IRS Reform Act”) Pub. L. No. 105-206, sec. 1203(b), July 22, 1998.

⁸ Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 735. 5 CFR Part 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; 31 CFR Part 0, Department of the Treasury Employee Rules of Conduct.

⁹ See, *Policy Statement 4-9, Highest Integrity Expected*, IRM 1.2.13.1.7; “Examination of Employee Returns,” IRM 4.2.6, available at https://www.irs.gov/irm/part4/irm_04-002-006.html#d0e550.

found to have violated the tax laws were terminated or forced to resign or retire, according to reports from the Treasury Inspector General for Tax Administration. The Committee believes that the public perception of the IRS workforce is undermined when the IRS tolerates such behavior. Only the IRS can provide the information needed to fully evaluate the problem presented in the report from the Treasury Inspector General for Tax Administration. In order to restore trust in the integrity of IRS employees and hold IRS officials accountable for their hiring practices, the Committee believes it is necessary to require that the IRS certify that IRS employees are current in their Federal tax obligations, or explain why it cannot do so. The requirement of such a certification or report will enable the Committee to evaluate whether additional measures are needed to achieve the level of accountability that the public has a right to expect from the IRS.

EXPLANATION OF PROVISION

The provision requires that the Secretary either certify to Congress that there are no IRS employees with seriously delinquent tax debt as defined in the provision, or submit a report to Congress explaining why it is unable to provide such certification. Failure to provide such certification or report results in a prohibition on extending offers of employment at the IRS.

“Seriously delinquent tax debt” is any outstanding Federal tax liability (including interest and penalties) for which a notice of lien has been filed. Even if a tax debt otherwise meets the statutory threshold, it may not be considered seriously delinquent if (1) the debt is being paid in a timely manner pursuant to an installment agreement or offer-in-compromise, (2) collection action with respect to the debt is suspended because a collection hearing or innocent spouse relief has been requested or is pending, (3) the debt is subject to a levy under section 6331 (or the individual has agreed to be subject to a levy under section 6331), or (4) the debt was released from levy under the authority of section 6343(a)(1)(D) based on a determination that levy on such debt was creating economic hardship.

No additional funds are authorized to enable the Secretary to comply with the requirements of this provision.

EFFECTIVE DATE

The provision is effective after the date of enactment for offers of employment made after December 31, 2016.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 1206, “No Hires for the Delinquent IRS Act,” on April 13, 2016.

The Chairman’s amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 1206, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 1206, as reported.

The bill, as reported, is estimated to have no effect on Federal fiscal year budget receipts for the period 2016–2026.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 18, 2016.

Hon. KEVIN BRADY,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1206, the No Hires for the Delinquent IRS Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1206—No Hires for the Delinquent IRS Act

H.R. 1206 would prohibit the Internal Revenue Service (IRS) from hiring new employees if any current IRS employees have seriously delinquent tax debt. Specifically, the IRS would have to certify that the agency does not have any employees with seriously delinquent tax debt or submit a report to the Congress explaining

why it is unable to provide such a certification before any new employees could be hired.

Based on information from the IRS and the staff of the Joint Committee on Taxation (JCT), CBO estimates that implementing H.R. 1206 would increase IRS administrative costs by less than \$500,000 annually to provide the report; such spending would be subject to the availability of appropriated funds. CBO and JCT estimate that enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, all federal employees are expected to satisfy their obligations as citizens of the United States, including financial obligations to federal, state, and local governments. IRS employees may be disciplined or terminated for violations of tax law. However, because the IRS has almost 80,000 employees, CBO does not expect the agency could easily certify that none of its employees have any seriously delinquent tax debt. Consequently, CBO expects that the IRS would opt to provide the required report to the Congress.

CBO and JCT estimate that enacting H.R. 1206 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

CBO and JCT have determined that H.R. 1206 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 1206 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill contains no unfunded mandate on the private sector, nor does it impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The

Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the bill, as reported, includes no provisions proposing to repeal or amend an existing statute or part thereof. Therefore, no additional materials otherwise required to be included in this report or an accompanying document under that clause are required to be included with respect to this bill.

VII. DISSENTING VIEWS

We oppose H.R. 1206, the No Hires for the Delinquent IRS Act, which would prohibit IRS from extending employment offers to new hires unless the Secretary of the Treasury can certify that no IRS employee has a seriously delinquent federal tax debt.

This bill is not necessary because section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 already provides for termination of IRS employees if they fail to file a federal tax return or understate their federal tax liability. According to a recent TIGTA report, over 600 IRS employees have been dismissed under section 1203 in the past 10 years.

In fact, out of the 18 executive departments, Treasury has the lowest employee tax delinquency rate—a rate of 1.19%. This is one-fourth of the tax delinquency rate for the U.S. House of Representatives—which is 5.04%.

Democrats offered an amendment during the markup to expand the hiring ban to Congress, which was ruled out of order on procedural grounds by the Majority. Democrats do not believe that the Majority should pass bills that apply a separate set of laws to the IRS than apply to the Congress (or, at a minimum, the Congressional tax-writing committees), especially given the noncompliance rate of the House of Representatives. Legislation that singles out the IRS does not advance tax administration in any meaningful way.

SANDER M. LEVIN,
Ranking Member.

