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TAXPAYER FIRST ACT

APRIL 13, 2018.—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

[To accompany H.R. 5444]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5444) to amend the Internal Revenue Code of 1986 to modernize and improve the Internal Revenue Service, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	14
A. Purpose and Summary	14
B. Background and Need for Legislation	14
C. Legislative History	15
II. EXPLANATION OF THE BILL	16
A. Independent Appeals Process	16
1. Establishment of Internal Revenue Service Independent Office of Appeals (sec. 101 of the bill and new sec. 7803(e) of the Code)	16
B. Improved Service	19
1. Comprehensive customer service strategy (sec. 201 of the bill)	19
2. IRS Free File Program (sec. 202 of the bill)	21
3. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise (sec. 203 of the bill and sec. 7122 of the Code)	22
C. Sensible Enforcement	23
1. Internal Revenue Service seizure requirements with respect to structuring transactions (sec. 301 of the bill)	23
2. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction (sec. 302 of the bill and new sec. 139G of the Code)	25
3. Clarification of equitable relief from joint liability (sec. 303 of the bill and sec. 6105 of the Code)	26

79–006

4. Modification of procedures for issuance of third-party summons (sec. 304 of the bill and sec. 7609 of the Code) 28
5. Establishment of income threshold for referral to private debt collection (sec. 305 of the bill and sec. 6306 of the Code) 30
6. Reform of notice of contact of third parties (sec. 306 of the bill and sec. 7602 of the Code) 31
7. Modification of authority to issue designated summons (sec. 307 of the bill and sec. 6503(j) of the Code) 32
8. Limitation on access of non-Internal Revenue Service employees to returns and return information (sec. 308 of the bill and sec. 7602 of the Code) 34
D. Organizational Modernization 36
1. Modification of title of Commissioner of Internal Revenue and related officials (sec. 401 of the bill and sec. 7803 of the Code) 36
2. Office of the National Taxpayer Advocate (sec. 402 of the bill and sec. 7803(c) of the Code) 37
3. Elimination of IRS Oversight Board (sec. 403 of the bill and sec. 7802 of the Code) 40
4. Modernization of Internal Revenue Service organizational structure (sec. 404 of the bill) 41
E. Tax Court 42
1. Disqualification of judge or magistrate judge of the Tax Court (sec. 501 of the bill and new sec. 7467 of the Code) 42
2. Opinions and judgments (sec. 502 of the bill and sec. 7459 of the Code) 43
3. Title of special trial judge changed to magistrate judge of the Tax Court (sec. 503 of the bill and sec. 7443A of the Code) 44
4. Repeal of deadwood related to Board of Tax Appeals (sec. 504 of the bill and secs. 7459 and 7447(a)(3) of the Code) 44
III. VOTES OF THE COMMITTEE 44
IV. BUDGET EFFECTS OF THE BILL 45
A. Committee Estimate of Budgetary Effects 45
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority 45
C. Cost Estimate Prepared by the Congressional Budget Office 45
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE 45
A. Committee Oversight Findings and Recommendations 45
B. Statement of General Performance Goals and Objectives 45
C. Information Relating to Unfunded Mandates 46
D. Applicability of House Rule XXI 5(b) 46
E. Tax Complexity Analysis 46
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits 46
G. Duplication of Federal Programs 46
H. Disclosure of Directed Rule Makings 47
VI. EXCHANGES OF LETTERS WITH ADDITIONAL COMMITTEES OF REFERRAL 48

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer First Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—INDEPENDENT APPEALS PROCESS

Sec. 101. Establishment of Internal Revenue Service Independent Office of Appeals.

TITLE II—IMPROVED SERVICE

Sec. 201. Comprehensive customer service strategy.
Sec. 202. IRS Free File Program.

Sec. 203. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise.

TITLE III—SENSIBLE ENFORCEMENT

Sec. 301. Internal Revenue Service seizure requirements with respect to structuring transactions.
Sec. 302. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.
Sec. 303. Clarification of equitable relief from joint liability.
Sec. 304. Modification of procedures for issuance of third-party summons.
Sec. 305. Establishment of income threshold for referral to private debt collection.
Sec. 306. Reform of notice of contact of third parties.
Sec. 307. Modification of authority to issue designated summons.
Sec. 308. Limitation on access of non-Internal Revenue Service employees to returns and return information.

TITLE IV—ORGANIZATIONAL MODERNIZATION

Sec. 401. Modification of title of Commissioner of Internal Revenue and related officials.
Sec. 402. Office of the National Taxpayer Advocate.
Sec. 403. Elimination of IRS Oversight Board.
Sec. 404. Modernization of Internal Revenue Service organizational structure.

TITLE V—TAX COURT

Sec. 501. Disqualification of judge or magistrate judge of the Tax Court.
Sec. 502. Opinions and judgments.
Sec. 503. Title of special trial judge changed to magistrate judge of the Tax Court.
Sec. 504. Repeal of deadwood related to Board of Tax Appeals.

TITLE I—INDEPENDENT APPEALS PROCESS

SEC. 101. ESTABLISHMENT OF INTERNAL REVENUE SERVICE INDEPENDENT OFFICE OF APPEALS.

(a) IN GENERAL.—Section 7803 is amended by adding at the end the following new subsection:

"(e) INDEPENDENT OFFICE OF APPEALS.—

"(1) ESTABLISHMENT.—There is established in the Internal Revenue Service an office to be known as the 'Internal Revenue Service Independent Office of Appeals'.

"(2) CHIEF OF APPEALS.—

"(A) IN GENERAL.—The Internal Revenue Service Independent Office of Appeals shall be under the supervision and direction of an official to be known as the 'Chief of Appeals'. The Chief of Appeals shall report directly to the Administrator of the Internal Revenue Service and shall be 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, United States Code.

"(B) APPOINTMENT.—The Chief of Appeals shall be appointed by the Administrator of the Internal Revenue Service without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

"(C) QUALIFICATIONS.—An individual appointed under subparagraph (B) shall have experience and expertise in—

"(i) administration of, and compliance with, Federal tax laws,

"(ii) a broad range of compliance cases, and

"(iii) management of large service organizations.

"(3) PURPOSES AND DUTIES OF OFFICE.—It shall be the function of the Internal Revenue Service Independent Office of Appeals to resolve Federal tax controversies without litigation on a basis which—

"(A) is fair and impartial to both the Government and the taxpayer,

"(B) promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and

"(C) enhances public confidence in the integrity and efficiency of the Internal Revenue Service.

"(4) RIGHT OF APPEAL.—The resolution process described in paragraph (3) shall be generally available to all taxpayers.

"(5) LIMITATION ON DESIGNATION OF CASES AS NOT ELIGIBLE FOR REFERRAL TO INDEPENDENT OFFICE OF APPEALS.—

"(A) IN GENERAL.—If any taxpayer which is in receipt of notice of deficiency authorized under section 6212 requests referral to the Internal Revenue Service Independent Office of Appeals and such request is denied, the Administrator of the Internal Revenue Service shall provide such taxpayer a written notice which—

"(i) provides a detailed description of the facts involved, the basis for the decision to deny the request, and a detailed explanation of how the basis of such decision applies to such facts, and

"(ii) describes the procedures proscribed under subparagraph (C) for protesting the decision to deny the request.

"(B) REPORT TO CONGRESS.—The Administrator of the Internal Revenue Service shall submit a written report to Congress on an annual basis which includes the number of requests described in subparagraph (A) which were denied and the reasons (described by category) that such requests were denied.

"(C) PROCEDURES FOR PROTESTING DENIAL OF REQUEST.—The Administrator of the Internal Revenue Service shall prescribe procedures for protesting to the Administrator of the Internal Revenue Service (personally and not through any delegate) a denial of a request described in subparagraph (A).

"(D) NOT APPLICABLE TO FRIVOLOUS POSITIONS.—This paragraph shall not apply to a request for referral to the Internal Revenue Service Independent Office of Appeals which is denied on the basis that the issue involved is a frivolous position (within the meaning of section 6702(c)).

"(6) STAFF.—

"(A) IN GENERAL.—All personnel in the Internal Revenue Service Independent Office of Appeals shall report to the Chief of Appeals.

"(B) ACCESS TO STAFF OF OFFICE OF THE CHIEF COUNSEL.—The Chief of Appeals shall have authority to obtain legal assistance and advice from the staff of the Office of the Chief Counsel. The Chief Counsel shall ensure that such assistance and advice is provided by staff of the Office of the Chief Counsel who were not involved in the case with respect to which such assistance and advice is sought and who are not involved in preparing such case for litigation.

"(7) ACCESS TO CASE FILES.—

"(A) IN GENERAL.—In the case of any specified taxpayer with respect to which a conference with the Internal Revenue Service Independent Office of Appeals has been scheduled, the Chief of Appeals shall ensure that such taxpayer is provided access to the nonprivileged portions of the case file on record regarding the disputed issues (other than documents provided by the taxpayer to the Internal Revenue Service) not later than 10 days before the date of such conference.

"(B) TAXPAYER ELECTION TO EXPEDITE CONFERENCE.—If the taxpayer so elects, subparagraph (A) shall be applied by substituting 'the date of such conference' for '10 days before the date of such conference'.

"(C) SPECIFIED TAXPAYER.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'specified taxpayer' means—

"(I) in the case of any taxpayer who is a natural person, a taxpayer whose adjusted gross income does not exceed $400,000, and

"(II) in the case of any other taxpayer, a taxpayer whose gross receipts do not exceed $5,000,000.

"(ii) AGGREGATION RULE.—Rules similar to the rules of section 448(c)(2) shall apply for purposes of clause (i)(II).".

(b) CONFORMING AMENDMENTS.—

(1) The following provisions are each amended by striking "Internal Revenue Service Office of Appeals" and inserting "Internal Revenue Service Independent Office of Appeals":

(A) Section 6015(c)(4)(B)(ii)(I).
(B) Section 6320(b)(1).
(C) Subsections (b)(1) and (d)(3) of section 6330.
(D) Section 6603(d)(3)(B).
(E) Section 6621(c)(2)(A)(i).
(F) Section 7122(e)(2).
(G) Subsections (a), (b)(1), (b)(2), and (c)(1) of section 7123.
(H) Subsections (c)(7)(B)(i, and (g)(2)(A) of section 7430.
(I) Section 7522(b)(3).
(J) Section 7612(c)(2)(A).

(2) Section 7430(c)(2) is amended by striking "Internal Revenue Service Office of Appeals" each place it appears and inserting "Internal Revenue Service Independent Office of Appeals".

(3) The heading of section 6330(d)(3) is amended by inserting "INDEPENDENT" after "IRS".

(c) OTHER REFERENCES.—Any reference in any provision of law, or regulation or other guidance, to the Internal Revenue Service Office of Appeals shall be treated as a reference to the Internal Revenue Service Independent Office of Appeals.

(d) SAVINGS PROVISIONS.—Rules similar to the rules of paragraphs (2) through (6) of section 1001(b) of the Internal Revenue Service Restructuring and Reform Act of

1998 shall apply for purposes of this section (and the amendments made by this section).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) ACCESS TO CASE FILES.—Section 7803(e)(7) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to conferences occurring after the date which is 1 year after the date of the enactment of this Act.

TITLE II—IMPROVED SERVICE

SEC. 201. COMPREHENSIVE CUSTOMER SERVICE STRATEGY.

(a) IN GENERAL.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury, after consultation with the National Taxpayer Advocate, shall submit to Congress a written comprehensive customer service strategy for the Internal Revenue Service. Such strategy shall include—

(1) a plan to provide assistance to taxpayers that is secure, designed to meet reasonable taxpayer expectations, and adopts appropriate best practices of customer service provided in the private sector, including online services, telephone call back services, and training of employees providing customer services,

(2) a thorough assessment of the services that the Internal Revenue Service can co-locate with other Federal services or offer as self-service options,

(3) proposals to improve Internal Revenue Service customer service in the short term (the current and following fiscal year), medium term (approximately 3 to 5 fiscal years), and long term (approximately 10 fiscal years),

(4) a plan to update guidance and training materials for customer service employees of the Internal Revenue Service, including the Internal Revenue Manual, to reflect such strategy, and

(5) identified metrics and benchmarks for quantitatively measuring the progress of the Internal Revenue Service in implementing such strategy.

(b) UPDATED GUIDANCE AND TRAINING MATERIALS.—Not later than 2 years after the date of the enactment of this Act, the Secretary of the Treasury shall make available the updated guidance and training materials described in subsection (a)(4) (including the Internal Revenue Manual). Such updated guidance and training materials (including the Internal Revenue Manual) shall be written in a manner so as to be easily understood by customer service employees of the Internal Revenue Service and shall provide clear instructions.

SEC. 202. IRS FREE FILE PROGRAM.

(a) IN GENERAL.—

(1) The Secretary of the Treasury, or the Secretary's delegate, shall continue to operate the IRS Free File Program as established by the Internal Revenue Service and published in the Federal Register on November 4, 2002 (67 Fed. Reg. 67247), including any subsequent agreements and governing rules established pursuant thereto.

(2) The IRS Free File Program shall continue to provide free commercial-type online individual income tax preparation and electronic filing services to the lowest 70 percent of taxpayers by adjusted gross income. The number of taxpayers eligible to receive such services each year shall be calculated by the Internal Revenue Service annually based on prior year aggregate taxpayer adjusted gross income data.

(3) In addition to the services described in paragraph (2), and in the same manner, the IRS Free File Program shall continue to make available to all taxpayers (without regard to income) a basic, online electronic fillable forms utility.

(4) The IRS Free File Program shall continue to work cooperatively with the private sector to provide the free individual income tax preparation and the electronic filing services described in paragraphs (2) and (3).

(5) The IRS Free File Program shall work cooperatively with State government agencies to enhance and expand the use of the program to provide needed benefits to the taxpayer while reducing the cost of processing returns.

(b) INNOVATIONS.—The Secretary of the Treasury, or the Secretary's delegate, shall work with the private sector through the IRS Free File Program to identify and implement, consistent with applicable law, innovative new program features to improve and simplify the taxpayer's experience with completing and filing individual income tax returns through voluntary compliance.

SEC. 203. LOW-INCOME EXCEPTION FOR PAYMENTS OTHERWISE REQUIRED IN CONNECTION WITH A SUBMISSION OF AN OFFER-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122(c) is amended by adding at the end the following new paragraph:

"(3) EXCEPTION FOR LOW-INCOME TAXPAYERS.—Paragraph (1), and any user fee otherwise required in connection with the submission of an offer-in-compromise, shall not apply to any offer-in-compromise with respect to a taxpayer who is an individual with adjusted gross income, as determined for the most recent taxable year for which such information is available, which does not exceed 250 percent of the applicable poverty level (as determined by the Secretary).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to offers-in-compromise submitted after the date of the enactment of this Act.

TITLE III—SENSIBLE ENFORCEMENT

SEC. 301. INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS.

Section 5317(c)(2) of title 31, United States Code, is amended—

(1) by striking "Any property" and inserting the following:

"(A) IN GENERAL.—Any property"; and

(2) by adding at the end the following:

"(B) INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS.—

"(i) PROPERTY DERIVED FROM AN ILLEGAL SOURCE.—Property may only be seized by the Internal Revenue Service pursuant to subparagraph (A) by reason of a claimed violation of section 5324 if 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 section 5324.

"(ii) NOTICE.—Not later than 30 days after property is seized by the Internal Revenue Service pursuant to subparagraph (A), the Internal Revenue Service shall—

"(I) make a good faith effort to find all persons with an ownership interest in such property; and

"(II) provide each such person with a notice of the seizure and of the person's rights under clause (iv).

"(iii) EXTENSION OF NOTICE UNDER CERTAIN CIRCUMSTANCES.—The Internal Revenue Service may apply to a court of competent jurisdiction for one 30-day extension of the notice requirement under clause (ii) if the Internal Revenue Service can establish probable cause of an imminent threat to national security or personal safety necessitating such extension.

"(iv) POST-SEIZURE HEARING.—If a person with a property interest in property seized pursuant to subparagraph (A) by the Internal Revenue Service requests a hearing by a court of competent jurisdiction within 30 days after the date on which notice is provided under subclause (ii), such property shall be returned unless the court holds an adversarial hearing and finds within 30 days of such request (or such longer period as the court may provide, but only on request of an interested party) that there is probable cause to believe that there is a violation of section 5324 involving such property and probable cause to believe that 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 section 5324.".

SEC. 302. EXCLUSION OF INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by inserting before section 140 the following new section:

"SEC. 139G. INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION.

"Gross income shall not include any interest received from the Federal Government in connection with an action to recover property seized by the Internal Revenue Service pursuant to section 5317(c)(2) of title 31, United States Code, by reason of a claimed violation of section 5324 of such title.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting before the item relating to section 140 the following new item:

"Sec. 139G. Interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received on or after the date of the enactment of this Act.

SEC. 303. CLARIFICATION OF EQUITABLE RELIEF FROM JOINT LIABILITY.

(a) IN GENERAL.—Section 6015 is amended—

(1) in subsection (e), by adding at the end the following new paragraph:

"(7) STANDARD AND SCOPE OF REVIEW.—Any review of a determination made under this section shall be reviewed de novo by the Tax Court and shall be based upon—

"(A) the administrative record established at the time of the determination, and

"(B) any additional newly discovered or previously unavailable evidence.", and

(2) by amending subsection (f) to read as follows:

"(f) EQUITABLE RELIEF.—

"(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

"(A) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and

"(B) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.

"(2) LIMITATION.—A request for equitable relief under this subsection may be made with respect to any portion of any liability that—

"(A) has not been paid, provided that such request is made before the expiration of the applicable period of limitation under section 6502, or

"(B) has been paid, provided that such request is made during the period in which the individual could submit a timely claim for refund or credit of such payment.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions or requests filed or pending on or after the date of the enactment of this Act.

SEC. 304. MODIFICATION OF PROCEDURES FOR ISSUANCE OF THIRD-PARTY SUMMONS.

(a) IN GENERAL.—Section 7609(f) is amended by adding at the end the following flush sentence:

"The Secretary shall not issue any summons described in the preceding sentence unless the information sought to be obtained is narrowly tailored to information that pertains to the failure (or potential failure) of the person or group or class of persons referred to in paragraph (2) to comply with one or more provisions of the internal revenue law which have been identified for purposes of such paragraph.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 305. ESTABLISHMENT OF INCOME THRESHOLD FOR REFERRAL TO PRIVATE DEBT COLLECTION.

(a) IN GENERAL.—Section 6306(d)(3) is amended by striking "or" at the end of subparagraph (C), by adding "or" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a tax receivable which is identified by the Secretary (or the Secretary's delegate) during the period beginning on the date which is 180 days after the date of the enactment of this Act and ending on December 31, 2019, a taxpayer who is an individual with adjusted gross income, as determined for the most recent taxable year for which such information is available, which does not exceed 250 percent of the applicable poverty level (as determined by the Secretary),".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to tax receivables identified by the Secretary (or the Secretary's delegate) after the date which is 180 days after the date of the enactment of this Act.

SEC. 306. REFORM OF NOTICE OF CONTACT OF THIRD PARTIES.

(a) IN GENERAL.—Section 7602(c)(1) is amended to read as follows:

"(1) GENERAL NOTICE.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which—

"(A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and

"(B) except as otherwise provided by the Secretary, is provided to the taxpayer not later than 45 days before the beginning of such period.

Nothing in the preceding sentence shall prevent the issuance of notices to the same taxpayer with respect to the same tax liability with periods specified therein that, in the aggregate, exceed 1 year. A notice shall not be issued under this paragraph unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. The preceding sentence shall not prevent the issuance of a notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to notices provided, and contacts of persons made, after the date which is 45 days after the date of the enactment of this Act.

SEC. 307. MODIFICATION OF AUTHORITY TO ISSUE DESIGNATED SUMMONS.

(a) IN GENERAL.—Clause (i) of section 6503(j)(2)(A) is amended to read as follows:

"(i) the issuance of such summons is preceded by a review and written approval of such issuance by the Administrator of the relevant operating division of the Internal Revenue Service and the Chief Counsel which—

"(I) states facts clearly establishing that the Secretary has made reasonable requests for the information that is the subject of the summons, and

"(II) is attached to such summons,".

(b) ESTABLISHMENT THAT REASONABLE REQUESTS FOR INFORMATION WERE MADE.—Subsection (j) of section 6503 is amended by adding at the end the following new paragraph:

"(4) ESTABLISHMENT THAT REASONABLE REQUESTS FOR INFORMATION WERE MADE.—In any court proceeding described in paragraph (3), the Secretary shall establish that reasonable requests were made for the information that is the subject of the summons.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

SEC. 308. LIMITATION ON ACCESS OF NON-INTERNAL REVENUE SERVICE EMPLOYEES TO RETURNS AND RETURN INFORMATION.

(a) IN GENERAL.—Section 7602 is amended by adding at the end the following new subsection:

"(f) LIMITATION ON ACCESS OF PERSONS OTHER THAN INTERNAL REVENUE SERVICE OFFICERS AND EMPLOYEES.—The Secretary shall not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to this section to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the Internal Revenue Service. No person other than an officer or employee of the Internal Revenue Service or the Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to this section.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall take effect on the date of the enactment of this Act.

(2) APPLICATION TO CONTRACTS IN EFFECT.—The amendment made by this section shall apply to any contract in effect under section 6103(n) of the Internal Revenue Code of 1986, pursuant to temporary Treasury Regulation section 301.7602–1T proposed in Internal Revenue Bulletin 2014–28, Treasury Regulation section 301.7602–1(b)(3), or any similar or successor regulation, that is in effect on the date of the enactment of this Act.

TITLE IV—ORGANIZATIONAL MODERNIZATION

SEC. 401. MODIFICATION OF TITLE OF COMMISSIONER OF INTERNAL REVENUE AND RELATED OFFICIALS.

(a) IN GENERAL.—Section 7803(a)(1)(A) is amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(b) CONFORMING AMENDMENTS RELATED TO SECTION 7803.—

(1) Subsections (a)(1)(B), (a)(1)(C), (b)(3), (c)(1)(B)(i), and (c)(1)(B)(ii) of section 7803 are each amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(2) Section 7803(b)(2)(A) is amended by striking "Commissioner's" and inserting "Administrator's".

(3) Subsections (a)(1)(D), (a)(1)(E), (a)(2), (a)(3), (a)(4), (b)(2)(A), (b)(2)(D), (b)(3), (c)(2)(B)(iii), (c)(2)(C)(iv), and (c)(3) of section 7803, as amended by the preceding paragraphs of this subsection, are amended by striking "Commissioner" each place it appears therein and inserting "Administrator".

(4) The heading of section 7803 is amended by striking "**COMMISSIONER OF INTERNAL REVENUE**" and inserting "**ADMINISTRATOR OF THE INTERNAL REVENUE SERVICE**".

(5) The heading of section 7803(a) is amended by striking "COMMISSIONER OF INTERNAL REVENUE" and inserting "ADMINISTRATOR OF THE INTERNAL REVENUE SERVICE".

(6) The heading of section 7803(c)(3) is amended by striking "COMMISSIONER" and inserting "ADMINISTRATOR".

(7) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7803 and inserting the following new item:

"Sec. 7803. Administrator of the Internal Revenue Service; other officials.".

(c) OTHER CONFORMING AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) Section 6307(c) is amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(2) Section 6673(a)(2)(B) is amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(3) Section 6707(c) is amended by striking "Commissioner" and inserting "Administrator".

(4) Section 6707A(d) is amended—

(A) in paragraph (1), by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service", and

(B) in paragraph (3), by striking "Commissioner" each place it appears and inserting "Administrator".

(5)(A) Subsections (a) and (g) of section 7345 are each amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(B) Section 7345(g) is amended—

(i) by striking "Deputy Commissioner for Services and Enforcement" and inserting "Deputy Administrator for Services and Enforcement", and

(ii) by striking "Commissioner of an operating division" and inserting "Administrator of an operating division".

(C) Subsections (c)(1), (d) and (e)(1) of section 7345 are each amended by striking "Commissioner" each place it appears therein and inserting "Administrator".

(6) Section 7435(e) is amended by striking "Commissioner" each place it appears therein and inserting "Administrator".

(7) Section 7409(a)(2)(B) is amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(8) Section 7608(c) is amended—

(A) in paragraph (1), by striking "the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue)" and inserting "the Administrator of the Internal Revenue Service (or, if designated by the Administrator, the Deputy Administrator or an Assistant Administrator of the Internal Revenue Service)", and

(B) in paragraph (2) by striking "Commissioner" and inserting "Administrator".

(9) Section 7611(b)(3)(C) is amended by striking "regional commissioner" and inserting "regional administrator".

(10) Section 7701(a)(13) is amended to read as follows:

"(13) ADMINISTRATOR.—The term 'Administrator', except where the context clearly indicates otherwise, means the Administrator of the Internal Revenue Service.".

(11)(A) Section 7804(a) is amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(B) Subsections (a), (b)(1), and (b)(2) of section 7804(a), as amended by subparagraph (A), are each amended by striking "Commissioner" each place it appears therein and inserting "Administrator".

(12) Section 7811(c)(1) is amended by striking "the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue" and inserting "the Administrator of the Internal Revenue Service, or the Deputy Commissioner of the Internal Revenue Service".

(d) AMENDMENTS TO SECTION 8D OF THE INSPECTOR GENERAL ACT OF 1978.—

(1) Subsections (g)(2), (k)(1)(C), (l)(1), and (l)(2)(A) of section 8D of the Inspector General Act of 1978 are each amended by striking "Commissioner of Internal Revenue" and inserting "Administrator of the Internal Revenue Service".

(2) Section 8D(l)(2)(B) of such Act is amended by striking "Commissioner" each place it appears therein and inserting "Administrator".

(e) OTHER REFERENCES.—Any reference in any provision of law, or regulation or other guidance, to the Commissioner of Internal Revenue, or to any Deputy or Assistant Commissioner of Internal Revenue, or to a Commissioner of any division or region of the Internal Revenue Service, shall be treated as a reference to the Administrator of the Internal Revenue Service, or to the appropriate Deputy or Assistant Administrator of the Internal Revenue Service, or to the appropriate Administrator of such division or region, respectively.

(f) CONTINUITY.—In the case of any individual appointed by the President, by and with the advice and consent of the Senate, as Commissioner of Internal Revenue under section 7803(a)(1)(A) of the Internal Revenue Code of 1986, and serving in such position immediately before the date of the enactment of this Act, the amendments made by this section shall be construed as changing the title of such individual and shall not be construed to—

(1) require the reappoint of such individual under such section, or

(2) alter the remaining term of such person under section 7803(a)(1)(B).

SEC. 402. OFFICE OF THE NATIONAL TAXPAYER ADVOCATE.

(a) TAXPAYER ADVOCATE DIRECTIVES.—

(1) IN GENERAL.—Section 7803(c) is amended by adding at the end the following new paragraph:

"(5) TAXPAYER ADVOCATE DIRECTIVES.—In the case of any Taxpayer Advocate Directive issued by the National Taxpayer Advocate pursuant to a delegation of authority from the Administrator of the Internal Revenue Service—

"(A) the Administrator or a Deputy Administrator shall modify, rescind, or ensure compliance with such directive not later than 90 days after the issuance of such directive, and

"(B) in the case of any directive which is modified or rescinded by a Deputy Administrator, the National Taxpayer Advocate may (not later than 90 days after such modification or rescission) appeal to the Administrator and the Administrator shall (not later than 90 days after such appeal is made) ensure compliance with such directive as issued by the National Taxpayer Advocate or provide the National Taxpayer Advocate with a detailed description of the reasons for any modification or rescission made or upheld by the Administrator pursuant to such appeal.".

(2) REPORT TO CERTAIN COMMITTEES OF CONGRESS REGARDING DIRECTIVES.—Section 7803(c)(2)(B)(ii) is amended by redesignating subclauses (VIII) through (XI) as subclauses (IX) through (XII), respectively, and by inserting after subclause (VII) the following new subclause:

"(VIII) identify any Taxpayer Advocate Directive which was not honored by the Internal Revenue Service in a timely manner, as specified under paragraph (5);".

(b) NATIONAL TAXPAYER ADVOCATE ANNUAL REPORTS TO CONGRESS.—

(1) INCLUSION OF MOST SERIOUS TAXPAYER PROBLEMS.—Section 7803(c)(2)(B)(ii)(III) is amended by striking "at least 20" and inserting "the 10".

(2) COORDINATION WITH TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 7803(c)(2) is amended by adding at the end the following new subparagraph: .

"(E) COORDINATION WITH TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Before beginning any research or study, the National Taxpayer Advocate shall coordinate with the Treasury Inspector General for Tax Administration to ensure that the National Taxpayer Advocate does not duplicate any action that the Treasury Inspector General for Tax Administration has already undertaken or has a plan to undertake.".

(3) STATISTICAL SUPPORT.—

(A) IN GENERAL.—Section 6108 is amended by adding at the end the following new subsection:

"(d) STATISTICAL SUPPORT FOR NATIONAL TAXPAYER ADVOCATE.—The Secretary shall, upon request of the National Taxpayer Advocate, provide the National Taxpayer Advocate with statistical support in connection with the preparation by the National Taxpayer Advocate of the annual report described in section 7803(c)(2)(B)(ii). Such statistical support shall include statistical studies, compilations, and the review of information provided by the National Taxpayer Advocate for statistical validity and sound statistical methodology.".

(B) DISCLOSURE OF REVIEW.—Section 7803(c)(2)(B)(ii), as amended by subsection (a), is amended by redesignating subclause (XII) as subclause (XIII) and by inserting after subclause (XI) the following new subclause:

"(XII) with respect to any statistical information included in such report, include a statement of whether such statistical information was reviewed or provided by the Secretary under section 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology.".

(C) CONFORMING AMENDMENT.—Section 7803(c)(2)(B)(iii) is amended by adding at the end the following: "The preceding sentence shall not apply with respect to statistical information provided to the Secretary for review, or received from the Secretary, under section 6108(d).".

(c) SALARY OF NATIONAL TAXPAYER ADVOCATE.—Section 7803(c)(1)(B)(i) is amended by striking ", or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) SALARY OF NATIONAL TAXPAYER ADVOCATE.—The amendment made by subsection (c) shall apply to compensation paid to individuals appointed as the National Taxpayer Advocate after the date of the enactment of this Act.

SEC. 403. ELIMINATION OF IRS OVERSIGHT BOARD.

(a) IN GENERAL.—Subchapter A of chapter 80 is amended by striking section 7802 (and by striking the item relating to such section in the table of sections of such subchapter).

(b) CONFORMING AMENDMENTS.—

(1) Section 4946(c) is amended by adding "or" at the end of paragraph (5), by striking ", or" at the end of paragraph (6) and inserting a period, and by striking paragraph (7).

(2) Section 6103(h) is amended by striking paragraph (6).

(3) Section 7803(a) is amended by striking paragraph (4).

(4) Section 7803(c)(1)(B)(ii) is amended by striking "and the Oversight Board".

(5) Section 7803(c)(2)(B)(iii) is amended by striking "the Oversight Board,".

(6) Section 8D of the Inspector General Act of 1978 is amended—

(A) in subsections (g)(2) and (h), by striking "the Internal Revenue Service Oversight Board and",

(B) in subsection (l)(1), by striking "or the Internal Revenue Service Oversight Board", and

(C) in subsection (l)(2), by striking "and the Internal Revenue Service Oversight Board".

SEC. 404. MODERNIZATION OF INTERNAL REVENUE SERVICE ORGANIZATIONAL STRUCTURE.

(a) IN GENERAL.—Not later than September 30, 2020, the Administrator of the Internal Revenue Service shall submit to Congress a comprehensive written plan to redesign the organization of the Internal Revenue Service. Such plan shall—

(1) ensure the successful implementation of the priorities specified by Congress in this Act,

(2) prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance that they need,

(3) streamline the structure of the agency including minimizing the duplication of services and responsibilities within the agency,

(4) best position the Internal Revenue Service to combat cybersecurity and other threats to the Internal Revenue Service, and

(5) address whether the Criminal Investigation Division of the Internal Revenue Service should report directly to the Administrator.

(b) REPEAL OF RESTRICTION ON ORGANIZATIONAL STRUCTURE OF INTERNAL REVENUE SERVICE.—Paragraph (3) of section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 shall cease to apply beginning 1 year after the date on which the Administrator of the Internal Revenue Service submits to Congress the plan described in subsection (a).

TITLE V—TAX COURT

SEC. 501. DISQUALIFICATION OF JUDGE OR MAGISTRATE JUDGE OF THE TAX COURT.

(a) IN GENERAL.—Part II of subchapter C of chapter 76 is amended by adding at the end the following new section:

"SEC. 7467. DISQUALIFICATION OF JUDGE OR MAGISTRATE JUDGE OF THE TAX COURT.

"Section 455 of title 28, United States Code, shall apply to judges and magistrate judges of the Tax Court and to proceedings of the Tax Court.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end the following new item:

"Sec. 7467. Disqualification of judge or magistrate judge of the Tax Court.".

SEC. 502. OPINIONS AND JUDGMENTS.

(a) IN GENERAL.—Section 7459 is amended by striking all the precedes subsection (c) and inserting the following:

"SEC. 7459. OPINIONS AND JUDGMENTS.

"(a) REQUIREMENT.—An opinion upon any proceeding instituted before the Tax Court and a judgment thereon shall be made as quickly as practicable. The judgment shall be made by a judge in accordance with the opinion of the Tax Court, and such judgment so made shall, when entered, be the judgment of the Tax Court.

"(b) INCLUSION OF FINDINGS OF FACT IN OPINION.—It shall be the duty of the Tax Court and of each division to include in its opinion or memorandum opinion upon any proceeding, its findings of fact. The Tax Court shall issue in writing all of its findings of fact, opinions, and memorandum opinions. Subject to such conditions as the Tax Court may by rule provide, the requirements of this subsection and of section 7460 are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings.".

(b) CONFORMING AMENDMENTS TO SECTION 7459.—

(1) Subsections (c), (d), (e), and (f) of section 7459 are each amended by striking "decision" each place it appears and inserting "judgment".

(2) The headings of subsections (c), (d), and (e) of section 7459 are each amended by striking "DECISION" and inserting "JUDGMENT".

(3) The item relating to section 7459 in the table of sections for part II of subchapter C of chapter 76 is amended to read as follows:

"Sec. 7459. Opinions and judgments.".

(c) OTHER CONFORMING AMENDMENTS.—

(1) The following provisions are each amended by striking "decision" and inserting "judgment":

(A) Section 1313(a)(1).
(B) Section 6213(a).
(C) Section 6214(d).
(D) Section 6225(a)(2).
(E) Section 6226(g).
(F) Section 6228(a)(6).
(G) Subsections (a)(3)(B) and (c)(1)(A)(ii) of section 6230.
(H) Section 6247(d).
(I) Section 6252(e).
(J) Section 6404(h)(2)(C).
(K) Section 6503(a)(1).
(L) Section 6673(a)(1)(C).
(M) Subsections (c), (f), and (g) of section 6861.
(N) Section 6863(b)(3)(C).
(O) Section 7428(a).
(P) Section 7428(c)(1)(C)(i).
(Q) Section 7430(f)(3).
(R) Section 7436(c)(2).
(S) Section 7461(b)(2).
(T) Subsections (a)(4), (b), and (d) of section 7463.
(U) Subsections (a)(2)(B) and (b)(4) of section 7476.
(V) Section 7477(a).
(W) Section 7478(a)(2).
(X) Subsections (a)(2) and (c) of section 7479.

(2) The following provisions are each amended by striking "decision" each place it appears and inserting "judgment":

(A) Subsections (a) and (b)(3) of section 6215.
(B) Section 6226(h).
(C) Section 6247(e).
(D) Subsections (d) and (e) of section 6861.
(E) Section 6863(b)(2).
(F) Section 7422.
(G) Subsections (a) and (b) of section 7460.
(H) Subsections (a), (b), (c), and (d) of section 7463.
(I) Section 7482.

(J) Section 7483.
(K) Section 7485(b).
(L) Section 7481.

(3) Sections 7422 and 7482 are each amended by striking "decisions" each place it appears and inserting "judgments".

(4) Section 7430(f)(1) is amended by striking "decision or" both places it appears.

(5) Subsections (a) and (b) of section 7460 are each amended by striking "report" each place it appears and inserting "opinion".

(6) Section 7461(a) is amended—
(A) by striking "reports" and inserting "opinions", and
(B) by striking "report" and inserting "opinion".

(7) Section 7462 is amended by striking "reports" each place it appears and inserting "opinions".

(8) Section 7487(1) is amended by striking "decisions" and inserting "judgments".

(9) The headings of sections 6214(b), 7463(b), 7481(a), 7481(b), 7481(d), and 7485(b) are each amended by striking "DECISIONS" and inserting "JUDGMENTS".

(10) The headings of sections 6226(h), 6247(e), 6861(c), 6861(d), 7443A(c), 7481(a)(2), and 7481(a)(3) are each amended by striking "DECISION" and inserting "JUDGMENT".

(11) The headings of sections 6863(b)(2), 6863(b)(3), 7430(f)(3), and 7482(a)(2)(B) are each amended by striking "DECISION" and inserting "JUDGMENT".

(12) The heading of section 7436(c)(2) is amended by striking "DECISIONS" and inserting "JUDGMENT".

(13) The heading of section 7460(a) is amended by striking "REPORTS" and inserting "OPINIONS".

(14) The heading of section 7462 is amended by striking "**REPORTS**" and inserting "**OPINIONS**".

(15) The heading of subchapter D of chapter 76 is amended by striking "**Decisions**" and inserting "**Judgments**".

(16) The heading of section 7481 is amended by striking "**DECISION**" and inserting "**JUDGMENT**".

(17) The item relating to section 7462 in the table of sections for part II of subchapter C of chapter 76 is amended to read as follows:

"Sec. 7462. Publication of opinions.".

(18) The item relating to subchapter D in the table of subchapters for chapter 76 is amended to read as follows:

"SUBCHAPTER D.—COURT REVIEW OF TAX COURT JUDGMENTS".

(19) The item relating to section 7481 in the table of sections for part III of subchapter D of chapter 76 is amended to read as follows:

"Sec. 7481. Date when Tax Court judgment becomes final.".

(d) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, decisions, reports, rules, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions, in connection with the Tax Court, which are in effect at the time this section takes effect, or were final before the effective date of this section and are to become effective on or after the effective date of this section, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Tax Court.

SEC. 503. TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.

(a) IN GENERAL.—Section 7443A is amended—
(1) by striking "special trial judges" in subsections (a) and (e) and inserting "magistrate judges of the Tax Court",
(2) by striking "special trial judges of the court" in subsection (b) and inserting "magistrate judges of the Tax Court", and
(3) by striking "special trial judge" in subsections (c) and (d) and inserting "magistrate judge of the Tax Court".

(b) CONFORMING AMENDMENTS.—
(1) The heading of section 7443A is amended by striking "**SPECIAL TRIAL JUDGES**" and inserting "**MAGISTRATE JUDGES OF THE TAX COURT**".
(2) The heading of section 7443A(b) is amended by striking "SPECIAL TRIAL JUDGES" and inserting "MAGISTRATE JUDGES OF THE TAX COURT".

(3) The item relating to section 7443A in the table of sections for part I of subchapter C of chapter 76 is amended to read as follows:

"Sec. 7443A. Magistrate judges of the Tax Court.".

(4) The heading of section 7448 is amended by striking "**SPECIAL TRIAL JUDGES**" and inserting "**MAGISTRATE JUDGES OF THE TAX COURT**".

(5) Section 7448 is amended—

(A) by striking "special trial judge's" each place it appears in subsections (a)(6), (c)(1), (d), and (m)(1) and inserting "magistrate judge of the Tax Court's", and

(B) by striking "special trial judge" each place it appears other than in subsection (n) and inserting "magistrate judge of the Tax Court".

(6) Section 7448(n) is amended—

(A) by striking "special trial judge which are allowable" and inserting "magistrate judge of the Tax Court which are allowable", and

(B) by striking "special trial judge of the Tax Court" both places it appears and inserting "magistrate judge of the Tax Court".

(7) The heading of section 7448(b)(2) is amended by striking "SPECIAL TRIAL JUDGES" and inserting "MAGISTRATE JUDGES OF THE TAX COURT".

(8) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended to read as follows:

"Sec. 7448. Annuities to surviving spouses and dependent children of judges and magistrate judges of the Tax Court.".

(9) Section 7456(a) is amended—

(A) by striking "special trial judge" each place it appears and inserting "magistrate judge", and

(B) by striking "(or by the clerk" and inserting "of the Tax Court (or by the clerk".

(10) Section 7466(a) is amended by striking "special trial judge" and inserting "magistrate judge".

(11) Section 7470A is amended by striking "special trial judges" both places it appears in subsections (a) and (b) and inserting "magistrate judges".

(12) Section 7471(a)(2)(A) is amended by striking "special trial judges" and inserting "magistrate judges".

(13) Section 7471(c) is amended—

(A) by striking "SPECIAL TRIAL JUDGES" in the heading and inserting "MAGISTRATE JUDGES OF THE TAX COURT", and

(B) by striking "special trial judges" and inserting "magistrate judges".

SEC. 504. REPEAL OF DEADWOOD RELATED TO BOARD OF TAX APPEALS.

(a) Section 7459 is amended by striking subsection (f) and redesignating subsection (g) as subsection (f).

(b) Section 7447(a)(3) is amended to read as follows:

"(3) In any determination of length of service as judge or as a judge of the Tax Court of the United States there shall be included all periods (whether or not consecutive) during which an individual served as judge.".

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The "Taxpayer First Act," H.R. 5444, as reported by the Committee on Ways and Means, would redesign the Internal Revenue Service by improving taxpayer rights, enhancing customer service, and redesigning the organizational structure of the agency.

B. BACKGROUND AND NEED FOR LEGISLATION

The last time Congress considered transformative revisions to the IRS was the Restructuring and Reform Act of 1998 (RRA 98). Two decades later, it is time to redesign the IRS and return the agency back to its "service first" mission.

In RRA 98, Congress directed the agency to create an independent process for taxpayers to appeal tax disputes. While the IRS initially established an independent process, over time the agency has exercised its discretion to prevent certain taxpayers

from accessing the review process. Currently, some taxpayers do not trust that the IRS's independent review process is truly independent or accessible. Taxpayers do not have access to the IRS case against them unless they request it under the Freedom of Information Act. This process takes time, and not all taxpayers are aware that it is an option.

Taxpayers frequently view the IRS as an enforcement-first agency, not simply the agency responsible for administering the Tax Code. The Subcommittee's oversight work revealed areas where the IRS's use of enforcement tools exceeded Congressional intent. For example, while the IRS has the ability to seize assets of taxpayers suspected to be involved in criminal activity, the IRS has used that authority to seize assets from small businesses without proving that the taxpayers engaged in criminal activity. Similarly, the agency used a different seizure authority to seize and sell on the same day, property such as bridal gowns, sports memorabilia, and workout equipment. These needlessly accelerated sales subverted routine notice requirements and have in some cases resulted in the devastation of small businesses.

The IRS currently lacks a satisfactory comprehensive customer service strategy with metrics and benchmarks for measuring success. Additionally, the organizational structure of the IRS is 20 years old and needs updating. RRA 98 directed the Commissioner of Internal Revenue 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. Given that 20 years has passed since RRA 98, the mandated organization according to particular taxpayer groups no longer allows the IRS to organize itself efficiently to best meet its mission and address the cyber security and efficiency challenges it faces.

C. Legislative History

BACKGROUND

H.R. 5444 was introduced on April 10, 2018 and was referred to the Committee on Financial Services and the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up H.R. 5444, the "Taxpayer First Act" on April 11, 2018, and ordered the bill, as amended, favorably reported (with a quorum being present).

COMMITTEE HEARINGS AND ROUNDTABLES

During the 114th and 115th Congresses, the Ways and Means Oversight Subcommittee has held seven hearings and two roundtables on reforming the IRS focusing on improving the taxpayer experience, enhancing customer service, and limiting civil asset forfeiture authority by the agency. Oversight Subcommittee hearings included:

- February 11, 2015: Protecting Small Businesses from IRS Abuse (Part I);

• May 25, 2016: Protecting Small Businesses from IRS Abuse (Part II);
• April 26, 2017: Examining the 2017 Tax Filing Season;
• May 19, 2017: IRS Reform: Lessons Learned from the National Taxpayer Advocate;
• September 13, 2017: IRS Reform: Resolving Taxpayer Disputes;
• December 13, 2017: IRS Reform: The Taxpayer Experience; and
• January 30, 2018: Member Day Hearing on Legislation to Improve Tax Administration.

Roundtables included:

• June 22, 2017: Reforming the IRS—Lessons Learned from 1998, Roundtable Part I; and
• July 12, 2017: Reforming the IRS—Lessons Learned from 1998, Roundtable Part II.

II. EXPLANATION OF THE BILL

A. Independent Appeals Process

1. ESTABLISHMENT OF INTERNAL REVENUE SERVICE INDEPENDENT OFFICE OF APPEALS (SEC. 101 OF THE BILL AND NEW SEC. 7803(E) OF THE CODE [1])

PRESENT LAW

The IRS Reform and Restructuring Act of 1998 ("RRA98") directed the Commissioner of Internal Revenue 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 provisions.[4]

Under the general authority of the 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 tra-

[1] All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.
[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.

ditionally 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, such as cases in which inadequate time remains on the limitations period for assessment and collection and the taxpayer refuses to extend the limitations period, or in which the only arguments raised by the taxpayer are frivolous positions [7] that were previously identified as such in published guidance.

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 detail 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]

REASONS FOR CHANGE

The Committee is aware that the Code does not currently require that all taxpayers be provided an opportunity to contest an administrative decision in the Appeals Office, although many taxpayers are afforded that opportunity. In order to foster confidence in the integrity of the IRS and the independence of its administrative proceedings, as well as to encourage voluntary compliance, the Committee believes it is advisable to codify the role of an independent administrative function within the IRS and establish a new Independent Office of Appeals. In doing so, the Committee seeks to reassure taxpayers of the independence of the persons providing the administrative review.

In addition, the Committee is aware of several instances in which a taxpayer's request for Appeals consideration was denied but the taxpayer was not clearly advised of the reasoning that resulted in the denial. Accordingly, the Committee believes it is advisable to provide guidelines for administrative procedures that the IRS must follow in denying requests for an independent administrative review. By restricting these procedures to those taxpayers who have received a notice of deficiency, the Committee intends to restrict and provide oversight of the current published guidance on this subject.[11] The Committee intends to exercise its oversight of the implementation of the new procedures by requiring that the

[7] Sec. 6702(c).
[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] Rev. Proc. 2016–22, *supra*.

IRS submit annual written reports on the number and type of cases that are denied independent administrative review.

EXPLANATION OF PROVISION

The provision codifies the requirement of an independent administrative appeals function by establishing within the Internal Revenue Service 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 provision grants authority to the Administrator of the IRS [12] 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.[13] 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 Administrator 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 provision also confirms that the Chief of Appeals and her employees are to have access to legal assistance and advice from attorneys within the Office of Chief Counsel about cases pending at Independent Appeals. Chief Counsel is responsible for ensuring that the attorneys are able to provide independent advice, *i.e.*, that the attorneys assigned to answer inquiries from Independent Appeals were not involved in advising the IRS employees working on the case prior to its referral to Independent Appeals, nor are they involved 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 provision 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.

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[12] "Administrator" is used in lieu of "Commissioner" to reflect the proposed change made at section 401 of H.R. 5444, as described *infra*.

[13] 5 U.S.C. sec. 5382.

Taxpayer access to case files

The provision requires that the administrative case file referred to Independent Appeals be available to certain individual and small business taxpayers. Eligible taxpayers are individuals with adjusted gross incomes below $400,000 and entities with gross receipts below $5 million. Under the provision, eligible taxpayers must be able to review the non-privileged portions of materials developed by the IRS for its administrative case file not later than ten days prior to the first 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 ten-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 provision requires that the Administrator prescribe notice and protest procedures for taxpayers whose request for 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.[14] The procedures must include a requirement that the Administrator 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 Administrator and include information about how to lodge such a protest.

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

B. IMPROVED SERVICE

1. COMPREHENSIVE CUSTOMER SERVICE STRATEGY (SEC. 201 OF THE BILL)

PRESENT LAW

The Code provides that the Commissioner of the Internal Revenue Service ("the Commissioner") has such duties and powers as prescribed by the Secretary.[15] Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and applica-

[14] Sec. 6702(c).
[15] Sec. 7803(a).

tion 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.[16]

Within the IRS, the Office of the Taxpayer Advocate ("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 legislative changes which may be appropriate to mitigate such problems.[17] The National Taxpayer Advocate ("NTA") supervises the OTA. The NTA reports directly to the Commissioner.

REASONS FOR CHANGE

The Committee believes that it is important for the IRS to set priorities, align activities with mission-related goals and objectives, assign accountability, and develop and use information to monitor progress and evaluate results. The Committee believes that this information will provide the IRS with tools the IRS can use to monitor and evaluate how efficiently and effectively programs are achieving their intended purposes. The Committee further believes this provision is necessary to help determine whether public resources have been used to achieve the purposes for which they were appropriated.

EXPLANATION OF PROVISION

The provision requires the Secretary, in consultation with the National Taxpayer Advocate ("NTA"), 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 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) provisions 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 in a user friendly fashion and within two years of the date of enactment, 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.

EFFECTIVE DATE

The provision is effective on the date of enactment.

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[16] See *Internal Revenue Service Strategic Plan FY2014–2017*, Publication 3744 (Rev. 6–2014), available at https://www.irs.gov/pub/irs-pdf/p3744.pdf.

[17] Sec. 7703(c).

2. IRS FREE FILE PROGRAM (SEC. 202 OF THE BILL)

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 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 2017 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.

REASONS FOR CHANGE

The Committee believes that the IRS Free File program should be maintained and enhanced because the program increases e-file participation, provides more free online options to taxpayers, eases tax preparation and filing, and provides greater access to taxpayers. The Committee also believes that identifying and implementing innovative new program features will be helpful in continuing to reduce the burden on taxpayers.

EXPLANATION OF PROVISION

The provision 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 as ranked by the prior year taxpayer adjusted gross income data. The provision 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 provision 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 provision 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 (SEC. 203 OF THE BILL AND SEC. 7122 OF THE CODE)

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.[18] 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.[19] 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 of assessed tax, penalties and interest, and the amounts actually paid pursuant to the offer-in-compromise.[20]

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").[21] 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").[22] 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.[23]

In general, a taxpayer is required to provide a user fee for processing the offer-in-compromise.[24] 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.[25]

REASONS FOR CHANGE

The Committee believes that the offer-in-compromise program has been successful in raising revenue both from the offers and by bringing taxpayers back into the system. The Committee believes that, without the low-income taxpayer exception, access to the program would be substantially reduced, making it more difficult and costly to obtain the collectable portion of existing tax liabilities. The Committee believes that codifying the exception helps ensure

[18] Sec. 7122.
[19] Treas. Reg. sec. 1.7122–1(b). For this purpose, economic hardship is defined under Treas. Reg. sec. 301.6343–1.
[20] 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.
[21] Sec. 7122(c)(1)(A).
[22] Notice 2006–68, 2006–31 I.R.B. 105, July 31, 2006.
[23] Sec. 7122(c)(1)(B).
[24] Treas. reg. sec. 300.3(b). The fee for processing an offer to compromise on or after January 1, 2014, is $186.
[25] Treas. reg. sec. 300.3(b)(i) and (ii).

that there will be no decrease in the number of legitimate offers submitted, the number of offers accepted, and the number of individuals reentering the tax system.

EXPLANATION OF PROVISION

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

C. SENSIBLE ENFORCEMENT

1. INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS (SEC. 301 OF THE BILL)

PRESENT LAW

The Bank Secrecy Act ("BSA") mandates a reporting and record-keeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.[26] The reporting requirements are imposed on individuals, financial institutions, and non-financial trades and businesses that act similar to financial institutions.[27] The requirements include reporting currency transactions exceeding $10,000.

To circumvent these reporting requirements, persons 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 record keeping requirements[28] is subject to both civil and criminal penalties.[29]

Present law authorizes forfeiture of property involved in transactions or attempted transactions[30] in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.[31]

The Secretary has delegated responsibility for implementing and enforcing the BSA to the Director, Financial Crimes Enforcement ("FinCEN"), who in turn re-delegated responsibility for civil compli-

[26] The Bank Secrecy Act, 31 U.S.C. secs. 5311–5332.
[27] 31 U.S.C. sec. 5312(a)(1).
[28] 31 U.S.C. sec. 5324(a); 31 U.S.C. sec 5322.
[29] 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.
[30] 31 U.S.C. sec. 5317(c)(2).
[31] See 18 U.S.C. sec. 981.

ance with the law to various Federal agencies including the IRS.[32] The scope of that delegation of authority was expanded by the USA PATRIOT Act of 2001,[33] and includes authority to determine and enforce civil penalties.[34] 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.[35]

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.[36] 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.

REASONS FOR CHANGE

The Committee has been informed that persons sometimes structure a series of cash transactions, each of which falls below $10,000, in order to circumvent the BSA reporting and record-

[32] Treasury Directive 15–41 (December 1, 1992). 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.

[33] Treasury Order 180–01, available at https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx, delegating authority to FinCEN. 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.

[34] 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).

[35] 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.

[36] 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.

keeping requirements (referred to as "structuring"). Structuring (or attempts to structure) for the purpose of evading the BSA reporting and record keeping requirements[37] is subject to both civil and criminal penalties because structuring may represent an attempt to conceal illegal activities such as the selling of narcotics or evasion of taxes, for example.

The Committee has learned of numerous instances in which the assets of taxpayers were seized by the IRS in civil asset forfeiture actions on the basis of suspected structuring in violation of BSA reporting and recordkeeping rules. The Committee believes it is necessary to limit the authority of the IRS by requiring that the IRS show probable cause that funds subject to forfeiture for structuring were derived from an illegal source or connected to other criminal activity before the IRS can seize funds. The Committee also believes it is necessary to implement new procedural protections for persons whose assets the IRS has seized in such forfeiture actions, including a post-seizure hearing.

EXPLANATION OF PROVISION

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 provision 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 the owner of the property seized and inform him or her of certain post-seizure hearing rights provided under the provision. This 30-day notice requirement may be extended if the IRS can establish 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 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 provisions of the BSA.

EFFECTIVE DATE

The provision 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 (SEC. 302 OF THE BILL AND NEW SEC. 139G OF THE CODE)

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

[37] 31 U.S.C. secs. 5313(a), 5324(a).

property seized by the IRS pursuant to the BSA. Accordingly, the interest received is includable in gross income under the Code.

REASONS FOR CHANGE

The Committee believes interest received from the Federal government on wrongly seized property should be exempt from income tax if a court determines the Government must return the funds and interest accrued to the victim of IRS abuse.

EXPLANATION OF PROVISION

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

3. CLARIFICATION OF EQUITABLE RELIEF FROM JOINT LIABILITY (SEC. 303 OF THE BILL AND SEC. 6105 OF THE CODE)

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.[38] A spouse may be entitled to relief from joint liability, in whole or in part, under the innocent spouse relief provisions 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.[39] 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

[38] Sec. 6103(d).
[39] Sec. 6015(b).

months ending with the date innocent spouse relief is elected.[40] 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 provisions for general relief or separation of liabilities relief.[41] 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.

Availability and scope of judicial review

If an individual elects to have the general relief provisions or the separation of liabilities relief provisions apply with respect to a deficiency, the individual may petition the United States Tax Court (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.[42]

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,[43] but other courts have permitted review of information beyond the administrative record while applying an abuse of discretion standard.[44] Still others have applied a *de novo* standard to both the scope of the review and the standard of review.[45]

REASONS FOR CHANGE

The Committee is aware that the extent to which a denial of a claim for equitable relief from joint liability is subject to judicial review by the Tax Court and the scope of any such review have been the subject of conflicting appellate decisions. As a result, persons residing in different states but whose circumstances are otherwise

[40] Sec. 6015(c).
[41] Sec. 6015(f).
[42] Sec. 6015(e)(1).
[43] *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).
[44] *Commissioner v. Neal*, 557 F.3d 1262 (11th Cir. 2009).
[45] *Wilson v. Commissioner*, 705 F.3d 980 (9th Cir. 2013); *Porter v. Commissioner*, 132 T.C. 203, 132 T.C. No. 11 (2009).

similar may be accorded different rights to judicial review under the Code. The Committee believes that such disparity of treatment can be avoided if the statute is clarified to confer a right to judicial review in all cases, and to specify the scope of such review.

EXPLANATION OF PROVISION

Under the provision, 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 provision also clarifies that the Tax Court has jurisdiction to review a denials of equitable claims for relief from joint liability, and is not limited to a review for abuse of discretion by the IRS.

The provision 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 time for claiming a refund or credit.

EFFECTIVE DATE

The provision 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 (SEC. 304 OF THE BILL AND SEC. 7609 OF THE CODE)

PRESENT LAW

The IRS has broad statutory authority to require production of information in the course of an examination.[46] 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.[47] 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,[48] 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,[49] but otherwise the same good faith elements are analyzed to determine whether the summons should be enforced. 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

[46] Sec. 7602.
[47] *United States v. Powell,* 379 U.S. 48 (1964).
[48] 437 U.S. 298 (1978); codified in section 7609(c).
[49] Sec. 7609.

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,[50] 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.[51] The 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.[52] Nevertheless, enforcement of a John Doe summons is likely to be subject to time-consuming challenges, possibly warranting an extension of the limitations period.

The limitations period for the tax year under investigation is suspended beginning six months after the service of a John Does summons, and ends with the final resolution of the response to the summons.[53]

REASONS FOR CHANGE

The Committee believes that the John Doe summons is a useful tool, but that it is important that the information sought in the summons be at least potentially relevant to the tax liability of an ascertainable group.

The Committee also believes that the use of this important tool has at times potentially exceeded its intended purpose. A John Doe summons is not intended to be an opening bid for information from the party being served nor is it intended to be used for the purposes of a fishing expedition. Given the IRS's past use of this authority, the Committee feels it is necessary to clarify its intended usage.

EXPLANATION OF PROVISION

The provision prevents the Secretary from issuing a John Doe summons unless the information sought to be obtained 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 provision is not intended to change the Powell standard or otherwise affect the IRS's burden of proof.

EFFECTIVE DATE

The provision applies to summonses served after the date of enactment.

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

[51] Sec. 7609(f).

[52] *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.

[53] Sec. 7609(e)(2).

5. ESTABLISHMENT OF INCOME THRESHOLD FOR REFERRAL TO PRIVATE DEBT COLLECTION (SEC. 305 OF THE BILL AND SEC. 6306 OF THE CODE)

PRESENT LAW

The Code permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type[54] and to arrange payment of those taxes by the taxpayers.[55] It requires the Secretary to enter into qualified tax collection contracts for the collection of inactive tax receivables. 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 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 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.

REASONS FOR CHANGE

The Committee believes that an exception from collection of tax receivables from low-income individual taxpayers is necessary to protect such taxpayers from entering into payment plans they cannot afford, which ultimately does not result in an increase in actual payments recovered. The Committee intends that by eliminating low-income taxpayers from the private debt collection program the IRS can focus its efforts on collecting debts from taxpayers with an ability to pay as well as taxpayers with higher dollar debts.

EXPLANATION OF PROVISION

The provision makes certain tax receivables of individual taxpayers ineligible for collection under qualified tax collection contracts through December 31, 2019. Such receivables are those of an individual taxpayer whose adjusted gross income does not exceed 250 percent of the applicable poverty level (as determined by the Secretary).

EFFECTIVE DATE

The provision applies to tax receivables identified by the Secretary (or the Secretary's delegate) six months after the date of enactment.

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

[55] Sec. 6306.

6. REFORM OF NOTICE OF CONTACT OF THIRD PARTIES (SEC. 306 OF THE BILL AND SEC. 7602 OF THE CODE)

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.

REASONS FOR CHANGE

The Committee believes that the current notification requirement before the IRS contacts third parties regarding examination or collection activities is insufficient.[56] Such contacts may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community. The Committee believes that the provision's notification requirements will provide taxpayers more of an opportunity to resolve issues and volunteer information before the IRS contacts third parties.

EXPLANATION OF PROVISION

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

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[56] Testimony of Kathy Petronchak, House Committee on Ways and Means, Subcommittee on Oversight Hearing on "Resolving Taxpayer Disputes," September 13, 2017, pg. 9, available at https://waysandmeans.house.gov/wp-content/uploads/2017/09/20170913-OS-Testimony-Petronchak.pdf ("Such notice is useless and does not effectively apprise taxpayers that such contact will be made, to whom it will be made, or that the taxpayer can request a third party contact report from the IRS.").

7. MODIFICATION OF AUTHORITY TO ISSUE DESIGNATED SUMMONS (SEC. 307 OF THE BILL AND SEC. 6503(J) OF THE CODE)

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.[57] 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.[58]

In United States v. Powell,[59] 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.[60] 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.[61]

Neither service of an administrative summons nor government-initiated action for judicial enforcement is sufficient to suspend the limitations period.[62] As a result, in the case of an examination of complicated issues of a large corporation, involving voluminous records, numerous witness interviews and possible expert reports, the general three year period for assessment may be inadequate to allow for completion of an examination.[63] In such cases, the limita-

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[57] Sec. 7602.

[58] Sec. 7609.

[59] *United States v. Powell, 379 U.S. 48,* (1964), at pages 57–58.

[60] *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.

[61] 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).

[62] 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.

[63] 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)(several circumstances under which the general three-year limitations period does not begin to run, include 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 tax-

tions 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,[64] 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 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." [65] 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.

Since enactment of the designated summons provision in 1990, few such summonses have been issued, resulting in several published opinions.[66] The IRS is now required to submit annual reports to Congress on the number of designated summonses issued

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able year); sec. 6503 (there are also circumstances under which the three-year limitations period is supended including the issuance of a designated summons).

[64] In describing the provision when it was first enacted, the Conference report for the Omnibus Reconciliation Act of 1990 explained, "This provision 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.

[65] 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.

[66] 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); but see *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).

each year.[67] Since 1995, three have been issued, most recently in 2014.[68]

REASONS FOR CHANGE

The Committee recognizes that issuance of a designated summons is a serious step in the examination of a tax return, given the fact that litigation over the summons would suspend the running of the period for assessing additional tax against the taxpayer under audit. The Committee also recognizes that the mere threat of the use of this tool can cause concern for taxpayers. The Committee is also cognizant of the need for such summonses due to the complexity of audits and lack of cooperation that the IRS sometimes, but rarely, faces in the largest and most complex cases. In recognition of these competing concerns, the Committee believes that tightening the administrative process for approval and review of such summons is warranted, without disturbing the good-faith standards of United States v. Powell.

EXPLANATION OF PROVISION

Under the provision, issuance of a designated summons must be preceded by review and written approval of the summons by both the head of the relevant operating division and its division counsel. 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 provision applies to summonses issued after the date of enactment.

8. LIMITATION ON ACCESS OF NON-INTERNAL REVENUE SERVICE EMPLOYEES TO RETURNS AND RETURN INFORMATION (SEC. 308 OF THE BILL AND SEC. 7602 OF THE CODE)

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.[69] 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:

[67] Sec. 1002(b) Taxpayers Bill of Rights Act 2, Pub. L. 104–168 (1996).
[68] *United States v. Microsoft,* Case No. C15–00102–RSM (W.D. Wash. May 5, 2017) (ruling on validity of privileges, orders 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)).
[69] Sec. 6103(a).

> 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 . . . [70]

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").[71]

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.[72]

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.[73] An exception to this general exclusion is provided with respect to non-government attorneys hired for their expertise

[70] Sec. 6103(b)(2)(A).
[71] Sec. 6103(n).
[72] Treas. Reg. sec. 301.7602–1(b)(3).
[73] Prop. Treas. Reg. sec. 3017602–1(b)(3), 83 Fed. Reg. 13208 (March 28, 2018).

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, 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 the date the proposed regulations were published in the Federal Register (March 28, 2018).

REASONS FOR CHANGE

The IRS's ability to hire outside attorneys as contractors and have them question witnesses during a summons interview has raised many concerns. While the Committee recognizes the IRS need for specialized expertise in certain substantive areas, the Committee is concerned that the statutorily prescribed roles of Chief Counsel and the Department of Justice may be circumvented when outside lawyers are permitted to conduct the questioning of summoned witnesses on behalf of the government. Such questioning is a government function that should be performed by government employees. The Committee believes that only IRS employees or employees of the Office of Chief Counsel should question summoned witnesses on behalf of the government and restricts the contractor authority accordingly. The Committee does not intend to restrict the Office of Chief Counsel's ability to use court reports, translators, photocopy services, and other similar ancillary contractors.

EXPLANATION OF PROVISION

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. 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.

EFFECTIVE DATE

The provision is generally effective on the date of enactment and applies to any tax administration contracts in effect on the date of enactment.

D. Organizational Modernization

1. Modification of title of Commissioner of Internal Revenue and related officials (sec. 401 of the bill and sec. 7803 of the code)

PRESENT LAW

The Code explicitly prescribes the position of two officials at the IRS requiring appointment by the President and confirmation by the Senate, i.e., the Commissioner of Internal Revenue and a Chief

Counsel to the IRS.[74] The duties and powers of the Commissioner 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). The Commissioner is also 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.

REASONS FOR CHANGE

The Committee believes that the title "Commissioner of Internal Revenue" reflects only the enforcement aspects of the duties of that official, and is not consistent with a position that involves responsibility for providing assistance and customer service to taxpayers.

EXPLANATION OF PROVISION

The provision replaces the title "Commissioner of Internal Revenue" with "Administrator of Internal Revenue," and makes necessary conforming changes to all references in the Code to the title of the head of the Internal Revenue Services or subordinate officials. It also specifies that the change in title is not to be construed to require reappointment of an incumbent Commissioner, nor would it shorten the term of office.

EFFECTIVE DATE

The provision is effective upon the date of enactment.

2. Office of the National Taxpayer Advocate (sec. 402 of the bill and sec. 7803(c) of the Code)

PRESENT LAW

In general

The Office of the Taxpayer Advocate is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate ("NTA") supervises the Office of the Taxpayer Advocate. The NTA reports directly to the Commissioner of Internal Revenue 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 of the Treasury so determines, at a rate fixed under section 9503 of such title.

The Office of the Taxpayer Advocate 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 which may be appropriate to mitigate such problems.

[74] Sec. 7803.

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.[75] 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 provisions.[76]

The Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue 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.[77]

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 Taxpayer Advocate Directives 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.[78] 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 National Taxpayer Advocate.

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.[79] One report, due June 30 of each year, covers the Office of the Taxpayer Advocate'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 Office of the Taxpayer Advocate. The content of this report is set by statute.[80] 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 twenty most serious problems experienced by taxpayers. The report also must identify the ten most litigated issues for each category of taxpayer and the areas of the tax law that impose significant compliance burdens on

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[75] 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).

[76] 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.

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

[78] Delegation Order 13–3, Internal Revenue Manual 1.2.50.4 (January 17, 2001).

[79] Sec. 7803(c)(2)(B).

[80] Sec. 7803(c)(2)(B)(ii)(I) through (XI).

taxpayers or the IRS. Recommendations received from individuals with the authority to issue Taxpayer Assistance Orders, and any Taxpayer Assistance Order 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.[81]

REASONS FOR CHANGE

The Committee appreciates the work of the Taxpayer Advocate Service, under the direction of the NTA, and its role in elevating both taxpayer-specific and systemic problems to the attention of the Commissioner. The Committee is aware that the NTA has raised concerns about the extent to which issues identified by the NTA are given adequate attention, especially in the case of Taxpayer Advocate Directives. In order to evaluate the responsiveness of the agency to such concerns, to help ensure that the research underlying some proposals and issues identified in the NTA annual report to Congress is supported by appropriate statistical methodology, and to ensure that oversight is not unnecessarily duplicative or burdensome, the Committee proposes several changes. First, it modifies the handling of Taxpayer Advocate Directives to require greater transparency and ensure timely responses to concerns raised by the Taxpayer Advocate. Next, the Committee believes that IRS Statistics of Income should assist the NTA in her work to provide meaningful statistics. Further, the Committee notes that there are several entities overseeing the IRS, namely Congress, the Government Accountability Office, and the Treasury Inspector General for Tax Administration ("TIGTA"). To avoid duplication of efforts, the Committee believes it is appropriate to require the NTA to coordinate with TIGTA. To further streamline and focus the NTA annual report, the Congress believes it is appropriate that the annual report discuss the 10 most serious problems encountered by taxpayers.

EXPLANATION OF PROVISION

Taxpayer Advocate Directives

In the case of any TAD issued by the NTA pursuant to a delegation of authority from the Administrator of the IRS, the Administrator or Deputy Administrator 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 Administrator, the NTA may (not later than 90 days after such modification or rescission) appeal to the Administrator and the Administrator 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 a description of the reasons for any modification or rescission made or upheld by the Administrator pursuant to such appeal.

[81] Sec. 7803(c)(2)(B)(iii).

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 provision modifies requirements of the annual report on NTA activities to require a summary of the 10 most serious problems encountered by taxpayers. To avoid duplication of efforts on the same subject matter, before beginning any research or study, the NTA is required to coordinate with TIGTA to ensure that the NTA does not duplicate any action that the TIGTA has already undertaken or has a detailed plan to undertake. The provision requires the IRS provide the NTA, upon request, 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 provision 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 provision is generally effective on the date of enactment. The provision as it relates to the salary of the NTA applies to appointments to the position of the National Taxpayer Advocate made after the date of enactment.

3. ELIMINATION OF IRS OVERSIGHT BOARD (SEC. 403 OF THE BILL AND SEC. 7802 OF THE CODE)

PRESENT LAW

The Code has established the IRS Oversight Board and has given that board general oversight responsibilities for the IRS, as well as specific oversight responsibilities with respect to the IRS strategic plans, operational plans, management, budget, and taxpayer protections.[82] Among these responsibilities, the Board is required to review the Commissioner's selection, evaluation, and compensation of IRS senior executives and to review and approve the IRS budget request (having ensured that the budget request supports the annual and long-range strategic plans of the IRS). The Board must

[82] Sec. 7802. Pub. L. No. 105–206, sec. 1101(a) (July 22, 1998).

report annually to the Congress with respect to the conduct of its responsibilities.

REASONS FOR CHANGE

Although well intended, the Committee believes that the Board does not provide the IRS with meaningful guidance and direction as the Board was intended to do upon its creation in RRA98. The Committee further believes that the Board's oversight role of the IRS overlaps greatly with the responsibilities of other oversight entities. Accordingly, the Committee is unable to find sufficient justification for its continued existence.

EXPLANATION OF PROVISION

The proposal repeals the Code section that provides for the establishment of the IRS Oversight Board.

EFFECTIVE DATE

The proposal is effective on the date of enactment.

4. Modernization of Internal Revenue Service Organizational Structure (sec. 404 of the bill)

PRESENT LAW

The RRA98 directed the Commissioner of Internal Revenue 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.[83]

REASONS FOR CHANGE

The Committee believes that the current IRS organizational structure is one of the factors contributing to the inability of the IRS to properly serve taxpayers. The Committee believes that the current structure needs to be modernized and streamlined to help enable the IRS to better serve taxpayers and provide the necessary level of services and accountability to taxpayers in an efficient manner. Accordingly, the Committee believes it appropriate to require the IRS to submit a comprehensive reorganization plan. The Committee believes that the revised structure should ensure taxpayers' rights are protected, information is kept secure, and that the IRS is approachable for taxpayers to ask questions and get assistance. Thus, the Committee seeks to provide flexibility to the IRS to reorganize its operations after the Administrator determines that another organizational structure, different from past structures, would better serve taxpayers.

EXPLANATION OF PROVISION

The Administrator of the IRS ("Administrator") is required to submit to Congress by September 30, 2020 a comprehensive written plan to redesign the organization of the IRS. The comprehensive will (1) ensure the successful implementation of the priorities

[83] Pub. L. No. 105–206, sec. 1001(a).

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 Administrator.

Beginning one year after the date on which the Administrator submits to Congress a comprehensive plan to modify the organization of the IRS, 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.

E. TAX COURT

1. DISQUALIFICATION OF JUDGE OR MAGISTRATE JUDGE OF THE TAX COURT (SEC. 501 OF THE BILL AND NEW SEC. 7467 OF THE CODE)

PRESENT LAW

Section 455 of Title 28 of the United States Code establishes grounds for disqualification of any justice, judge, or magistrate judge. It specifies that any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned, and also in the following circumstances: 1) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; 2) the judge served as a lawyer in private practice or as a material witness in the case in controversy; 3) the judge served in governmental employment and in a capacity as counsel, adviser, or material witness concerning the case in controversy; 4) the judge has a financial interest in the subject matter in controversy or in a party to the proceeding; or 5) the judge, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, acting as a lawyer in the proceeding, has a personal interest in the outcome, or is likely to be a material witness in the proceeding.

A judge should inform himself about his personal financial interests and those of his spouse and minor children residing in his household. A judge may not accept a waiver for disqualification from the parties to the proceeding, except in limited cases. If a judge to whom a matter has been assigned discovers that he, a spouse, or a minor child residing in his household has a financial interest in a party, disqualification is not required if the judge, spouse, or minor divests himself of the interest that provides the grounds for disqualification.

These grounds for disqualification do not expressly apply to judges or magistrate judges of the Tax Court.

REASONS FOR CHANGE

The Committee believes it will promote public confidence in the independence and impartiality of Tax Court judges to clarify that

judges or magistrate judges of the Tax Court are held to the same standards for disqualification as any justice, judge, or magistrate judge of the United States, as established under Section 455 of Title 28 of the United States Code.

EXPLANATION OF PROVISION

The proposal provides that Tax Court judges and magistrate judges are subject to the same statutory grounds for disqualification as other Federal judges.

EFFECTIVE DATE

This proposal is effective on the date of enactment.

2. OPINIONS AND JUDGMENTS (SEC. 502 OF THE BILL AND SEC. 7459 OF THE CODE)

PRESENT LAW

The Code requires that a report be issued on any proceeding instituted by the Tax Court, and that as quickly as practicable, a decision be made by a judge in accordance with such report, which will be the decision of the Tax Court.[84]

Any findings of fact, opinion, or memorandum opinion must be included in such report. The Tax Court must report in writing all of its findings of fact, opinions, and memorandum opinions, unless these findings of fact or opinion are stated orally and are recorded in the transcript of the proceedings.

REASONS FOR CHANGE

The Committee believes the use of the terms, "reports" and "decisions" in the Code, as they relate to Tax Court proceedings is confusing to taxpayers. Since Tax Court opinions are not agency "reports" but judicial opinions with precedential status, and Tax Court final decrees are not "decisions" on issues, but rather judicial judgments that carry the force of the law, the Committee believes the consistent use of "opinions" and "judgments" will resolve any confusion relating to the use of these terms.

EXPLANATION OF PROVISION

The proposal provides that the word "report" be replaced by "opinion," and "decision" be replaced by "judgment."

EFFECTIVE DATE

This proposal is effective on the date of enactment.

[84] Sec. 7459.

3. TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT (SEC. 503 OF THE BILL AND SEC. 7443A OF THE CODE)

PRESENT LAW

The chief judge of the Tax Court may appoint special trial judges to handle certain cases.[85] Special trial judges serve for an indefinite term. Special trial judges receive a salary of 90µpercent of the salary of a Tax Court judge. Special trial judges do not have authority to impose punishment in the case of contempt of the authority of the Tax Court.[86]

REASONS FOR CHANGE

The Committee believes that special trial judges have a role similar to magistrate judges of U.S. District Courts and their title should be changed to magistrate judges of the Tax Court.

EXPLANATION OF PROVISION

Under the provision, the position of special trial judge of the Tax Court is renamed as magistrate judge of the Tax Court.

EFFECTIVE DATE

The proposal is effective on the date of enactment.

4. REPEAL OF DEADWOOD RELATED TO BOARD OF TAX APPEALS (SEC. 504 OF THE BILL AND SECS. 7459 AND 7447(A)(3) OF THE CODE)

PRESENT LAW

Sections 7459(f) and 7447(a)(3) of the Code refer to the Board of Tax Appeals.

REASONS FOR CHANGE

The Committee believes it is appropriate to remove language from the Code that no longer has effect.

EXPLANATION OF PROVISION

The proposal repeals as deadwood section 7459(f) and deletes the reference to the Board of Tax Appeals in section 7447(a)(3).

EFFECTIVE DATE

This proposal is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 5444, the "Taxpayer First Act," on April 11, 2018.

The bill, H.R. 5444, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

[85] Sec. 7443A.
[86] Sec. 7456(c) deals with contempt authority.

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. 5444, as reported.

The bill, as reported, is estimated to reduce Federal fiscal year budget receipts by $52 million dollars for the period 2018 through 2028.

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 the revenue-reducing tax provision involves a new tax expenditure. See Part IV.A., above.

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, the Committee advises that the Congressional Budget Office did not provide a cost estimate for the resolution.

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

A. Committee Oversight Findings and Recommendations

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated into the description portions of this report.

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 does not contain Federal mandates on the private sector. The Committee has determined that the bill does not 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(c)(5) of rule XIII of the Rules of the House of Representatives, 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 section 6104 of title 31, United States Code.

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (115th Congress), the following statement is made concerning directed rule makings: The Committee advises that the bill requires no directed rule makings within the meaning of such section.

VI. EXCHANGES OF LETTERS WITH ADDITIONAL COMMITTEES OF REFERRAL

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CHAIRMAN

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JUDY CHU, CALIFORNIA

BRANDON CASEY,
MINORITY CHIEF OF STAFF

April 13, 2018

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling,

Thank you for your letter concerning H.R. 5444, the "Taxpayer First Act" on which the Financial Services Committee was granted an additional referral.

I am most appreciative of your decision to waive formal consideration of H.R. 5444 so that it may proceed expeditiously to the House floor. I acknowledge that although you waived formal consideration of the bill, the Financial Services Committee is in no way waiving its jurisdiction over the subject matter contained in those provisions of the bill that fall within your Rule X jurisdiction. I would support your effort to seek appointment of an appropriate number of conferees on any House-Senate conference involving this legislation.

I will include a copy of our letters in the *Congressional Record* during consideration of this legislation on the House floor.

Sincerely,

Kevin Brady
Chairman

cc: The Honorable Paul Ryan, Speaker
The Honorable Richard E. Neal
The Honorable Maxine Waters
Thomas J. Wickham, Jr., Parliamentarian

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

MAXINE WATERS, CA, RANKING MEMBER

April 12, 2018

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
1011 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Brady:

I am writing to you regarding H.R. 5444, the "Taxpayer First Act". There are certain provisions in the legislation which fall within the Rule X jurisdiction of the Committee on Financial Services.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this important bill, I am willing to waive this committee's right to sequential referral. I do so with the understanding that by waiving consideration of the bill the Committee on Financial Services does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its Rule X jurisdiction. I request that you urge the Speaker to name members of this committee to any conference committee which is named to consider such provisions.

Please place this letter into the committee report on H.R. 5444 and into the *Congressional Record* during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

JEB HENSARLING
Chairman

cc: The Honorable Paul Ryan, Speaker
The Honorable Maxine Waters, Ranking Member
The Honorable Richard Neal, Ranking Member, Committee on Ways and Means
Mr. Thomas Wickham Jr., Parliamentarian

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