

§ 7803. Commissioner of Internal Revenue; other officials

(a) Commissioner of Internal Revenue

(1) Appointment

(A) In general

There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from individuals who, among other qualifications, have a demonstrated ability in management.

(B) Term

The term of the Commissioner of Internal Revenue shall be a 5-year term, beginning with a term to commence on November 13, 1997. Each subsequent term shall begin on the day after the date on which the previous term expires.

(C) Vacancy

Any individual appointed as Commissioner of Internal Revenue during a term as defined in subparagraph (B) shall be appointed for the remainder of that term.

(D) Removal

The Commissioner may be removed at the will of the President.

(E) Reappointment

The Commissioner may be appointed to serve more than one term.

(2) Duties

The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

(A) 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

(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

(3) Consultation with Board

The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

(b) Chief Counsel for the Internal Revenue Service

(1) Appointment

There shall be in the Department of the Treasury a Chief Counsel for the Internal Revenue Service who shall be appointed by the President, by and with the consent of the Senate.

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(2) Duties

The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary, including the duty—

(A) to be legal advisor to the Commissioner and the Commissioner's officers and employees;

(B) to furnish legal opinions for the preparation and review of rulings and memoranda of technical advice;

(C) to prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Internal Revenue Service;

(D) to represent the Commissioner in cases before the Tax Court; and

(E) to determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

If the Secretary determines not to delegate a power specified in subparagraph (A), (B), (C), (D), or (E), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

(3) Persons to whom Chief Counsel reports

The Chief Counsel shall report directly to the Commissioner of Internal Revenue, except that—

(A) the Chief Counsel shall report to both the Commissioner and the General Counsel for the Department of the Treasury with respect to—

(i) legal advice or interpretation of the tax law not relating solely to tax policy;

(ii) tax litigation; and

(B) the Chief Counsel shall report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy.

If there is any disagreement between the Commissioner and the General Counsel with respect to any matter jointly referred to them under subparagraph (A), such matter shall be submitted to the Secretary or Deputy Secretary for resolution.

(4) Chief Counsel personnel

All personnel in the Office of Chief Counsel shall report to the Chief Counsel.

(c) Office of the Taxpayer Advocate

(1) Establishment

(A) In general

There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate".

(B) National Taxpayer Advocate**(i) In general**

The Office of the Taxpayer Advocate shall be under the supervision and direction of an official to be known as the “National Taxpayer Advocate”. The National Taxpayer Advocate shall report directly to the Commissioner of Internal Revenue 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, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

(ii) Appointment

The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

(iii) Qualifications

An individual appointed under clause (ii) shall have—

- (I) a background in customer service as well as tax law; and
- (II) experience in representing individual taxpayers.

(iv) Restriction on employment

An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

(2) Functions of office**(A) In general**

It shall be the function of the Office of the Taxpayer Advocate to—

- (i) assist taxpayers in resolving problems with the Internal Revenue Service;
- (ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- (iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and
- (iv) identify potential legislative changes which may be appropriate to mitigate such problems.

(B) Annual reports**(i) Objectives**

Not later than June 30 of each calendar year, the National Taxpayer Advocate

shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(ii) Activities

Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness;

(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811;

(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems;

(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action;

(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory;

(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction;

(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b);

(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;

(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems;

(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes; and

(XI) include such other information as the National Taxpayer Advocate may deem advisable.

(iii) Report to be submitted directly

Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

(iv) Coordination with report of Treasury Inspector General for Tax Administration

To the extent that information required to be reported under clause (i) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

(C) Other responsibilities

The National Taxpayer Advocate shall—

(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates;

(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;

(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office; and

(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

(D) Personnel actions**(i) In general**

The National Taxpayer Advocate shall have the responsibility and authority to—

(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State; and

(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

(ii) Consultation

The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities under this subparagraph.

(3) Responsibilities of Commissioner

The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner.

(4) Operation of local offices**(A) In general**

Each local taxpayer advocate—

(i) shall report to the National Taxpayer Advocate or delegate thereof;

(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding the daily operation of the local office of the taxpayer advocate;

(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate; and

(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

(B) Maintenance of independent communications

Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

(d) Additional duties of the Treasury Inspector General for Tax Administration**(1) Annual reporting**

The Treasury Inspector General for Tax Administration shall include in one of the semi-annual reports under section 5 of the Inspector General Act of 1978—

(A) an evaluation of the compliance of the Internal Revenue Service with—

(i) restrictions under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 on the use of enforcement statistics to evaluate Internal Revenue Service employees;

(ii) restrictions under section 7521 on directly contacting taxpayers who have indicated that they prefer their representatives be contacted;

(iii) required procedures under section 6320 upon the filing of a notice of a lien;

(iv) required procedures under subchapter D of chapter 64 for seizure of property for collection of taxes, including required procedures under section 6330 regarding levies; and

(v) restrictions under section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 on designation of taxpayers;

(B) a review and a certification of whether or not the Secretary is complying with the requirements of section 6103(e)(8) to disclose information to an individual filing a joint return on collection activity involving the other individual filing the return;

(C) information regarding extensions of the statute of limitations for assessment and collection of tax under section 6501 and the provision of notice to taxpayers regarding requests for such extension;

(D) an evaluation of the adequacy and security of the technology of the Internal Revenue Service;

(E) any termination or mitigation under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998;

(F) information regarding improper denial of requests for information from the Internal Revenue Service identified under paragraph (3)(A); and

(G) information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304, including—

(i) a summary of such actions initiated since the date of the last report; and

(ii) a summary of any judgments or awards granted as a result of such actions.

(2) Semiannual reports

(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

(i) the number of taxpayer complaints during the reporting period;

(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources;

(iii) a summary of the status of such complaints and allegations; and

(iv) a summary of the disposition of such complaints and allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such complaints and allegations.

(B) Clauses (iii) and (iv) of subparagraph (A) shall only apply to complaints and allegations of serious employee misconduct.

(3) Other responsibilities

The Treasury Inspector General for Tax Administration shall—

(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code;

(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1); and

(C) not later than December 31, 2010, submit a written report to Congress on the implementation of section 6103(k)(10).

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Pub. L. 92-310, title II, §230(e), June 6, 1972, 86 Stat. 209; Pub. L. 94-455, title XIX, §1906(a)(58), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1833, 1834; Pub. L. 105-206, title I, §1102(a), July 22, 1998, 112 Stat. 697; Pub. L. 110-176, §1(a), Jan. 4, 2008, 121 Stat. 2532; Pub. L. 110-428, §2(c), Oct. 15, 2008, 122 Stat. 4840.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointments in the competitive service and the Senior Executive Service, referred to in subsec. (c)(1)(B)(ii), are classified

generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 5 of the Inspector General Act of 1978, referred to in subsec. (d)(1), (2)(A), is section 5 of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

Sections 1203, 1204, and 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998, referred to in subsec. (d)(1)(A)(i), (v), (E), are sections 1203, 1204, and 3707 of Pub. L. 105-206, which are set out as notes under sections 7804, 7804, and 6651, respectively, of this title.

Section 6227 of the Omnibus Taxpayer Bill of Rights, referred to in subsec. (d)(3)(B), is section 6227 of Pub. L. 100-647, which is set out as a note under section 7801 of this title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-176 amended par. (1) generally, substituting provisions relating to appointment, consisting of subpars. (A) to (E), for similar provisions, consisting of subpars. (A) to (D).

Subsec. (d)(3)(C). Pub. L. 110-428 added subpar. (C).

1998—Pub. L. 105-206 amended section catchline and text generally, substituting present provisions for provisions which: in subsec. (a), authorized appointment of persons for administration and enforcement of internal revenue laws; in subsec. (b), directed Secretary to determine and designate posts of duty of employees in field service, and authorized Secretary to order such employees to duty within and outside District of Columbia; and in subsec. (c), directed Secretary to issue notice and demand for failure to account for and pay over money or property collected in connection with internal revenue laws, and deemed amount so demanded to be imposed and assessed upon the officer or employee upon the date of such notice and demand. See section 7804 of this title.

1976—Subsecs. (a), (b), (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsecs. (c), (d). Pub. L. 94-455, §1906(a)(58), redesignated subsec. (d) as (c).

1972—Subsec. (c). Pub. L. 92-310 repealed subsec. (c) which related to bonds of officers and employees.

CHANGE OF NAME

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-428 applicable to disclosures made after Dec. 31, 2008, see section 2(d) of Pub. L. 110-428, set out as a note under section 6103 of this title.

Pub. L. 110-176, §1(b), Jan. 4, 2008, 121 Stat. 2532, provided that: “The amendment made by this section [amending this section] shall apply as if included in the amendment made by section 1102(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105-206].”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title I, §1102(f), July 22, 1998, 112 Stat. 705, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this

section, sections 6212, 6323, 6343, 7611, and 7811 of this title, and section 5109 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [July 22, 1998].

“(2) CHIEF COUNSEL.—Section 7803(b)(3) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date that is 90 days after the date of the enactment of this Act.

“(3) NATIONAL TAXPAYER ADVOCATE.—Notwithstanding section 7803(c)(1)(B)(iv) of such Code, as added by this section, in appointing the first National Taxpayer Advocate after the date of the enactment of this Act, the Secretary of the Treasury—

“(A) shall not appoint any individual who was an officer or employee of the Internal Revenue Service at any time during the 2-year period ending on the date of appointment; and

“(B) need not consult with the Internal Revenue Service Oversight Board if the Oversight Board has not been appointed.

“(4) CURRENT OFFICERS.—

“(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of such Code, as added by this section, shall begin as of the date of such appointment.

“(B) Clauses (ii), (iii), and (iv) of section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act.”

§ 7804. Other personnel

(a) Appointment and supervision

Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) Posts of duty of employees in field service or traveling

Unless otherwise prescribed by the Secretary—

(1) Designation of post of duty

The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) Detail of personnel from field service

The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) Delinquent Internal Revenue officers and employees

If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be

deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

(Aug. 16, 1954, ch. 736, 68A Stat. 916; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-206, title I, §1104(a), July 22, 1998, 112 Stat. 710.)

AMENDMENTS

1998—Pub. L. 105-206 amended section catchline and text generally, substituting present provisions for provisions which had declared: in subsec. (a), that provisions of Reorganization Plans No. 26 of 1950 and No. 1 of 1952 should apply to all functions vested by this title, or by any act amending this title in any officer, employee, or agency of the Department; and in subsec. (b), that nothing in such Reorganization Plans should be considered to impair existing rights and remedies, that for the purpose of any action to recover tax all statutes, rules, and regulations referring to collector of internal revenue, principal officer for internal revenue district, or Secretary, should be deemed to refer to officer whose acts gave rise to such action, and that venue of any such action should be the same as under existing law.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title I, §1104(c), July 22, 1998, 112 Stat. 710, provided that: “The amendments made by this section [amending this section and section 6344 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].”

TERMINATION OF EMPLOYMENT FOR MISCONDUCT

Pub. L. 105-206, title I, §1203, July 22, 1998, 112 Stat. 720, as amended by Pub. L. 108-357, title VIII, §881(d), Oct. 22, 2004, 118 Stat. 1627, provided that:

“(a) IN GENERAL.—Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee’s official duties. Such termination shall be a removal for cause on charges of misconduct.

“(b) ACTS OR OMISSIONS.—The acts or omissions referred to under subsection (a) are—

“(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets;

“(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

“(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

“(A) any right under the Constitution of the United States; or

“(B) any civil right established under—

“(i) title VI or VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq., 2000e et seq.];

“(ii) title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.];

“(iii) the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.];

“(iv) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];

“(v) section 501 or 504 of the Rehabilitation Act of 1973 [29 U.S.C. 791, 794]; or

“(vi) title I of the Americans with Disabilities Act of 1990 [42 U.S.C. 12111 et seq.];