

105TH CONGRESS
1ST SESSION

H. R. 2838

To amend the Internal Revenue Code of 1986 to provide additional protections for taxpayers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 1997

Mr. FOX of Pennsylvania introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide additional protections for taxpayers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Taxpayer Bill of
5 Rights III”.

6 **SEC. 2. BURDEN OF PROOF.**

7 (a) IN GENERAL.—Chapter 76 of the Internal Reve-
8 nue Code of 1986 (relating to judicial proceedings) is
9 amended by adding at the end the following new sub-
10 chapter:

1 **“Subchapter E—Burden of Proof**

“Sec. 7491. Burden of proof.

2 **“SEC. 7491. BURDEN OF PROOF.**

3 “The Secretary shall have the burden of proof in any
4 court proceeding with respect to any factual issue relevant
5 to ascertaining the tax liability of a taxpayer and the as-
6 sessment and collection of any such tax.”

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 6201 is amended by striking sub-
9 section (d) and redesignating subsection (e) as sub-
10 section (d).

11 (2) The table of subchapters for chapter 76 is
12 amended by adding at the end the following new
13 item:

“Subchapter E. Burden of proof.”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to court proceedings arising in con-
16 nection with examinations commencing after the date of
17 the enactment of this Act.

18 **SEC. 3. TAXPAYER RELIANCE ON ORAL ADVICE PROVIDED** 19 **BY THE INTERNAL REVENUE SERVICE.**

20 (a) IN GENERAL.—Subsection (f) of section 6404 of
21 the Internal Revenue Code of 1986 is amended—

22 (1) in the heading, by striking “WRITTEN”,

23 (2) in paragraph (2)(A), by striking “specific
24 written request” and inserting “specific request”,

1 (3) by redesignating paragraph (3) as para-
2 graph (4) and by inserting after paragraph (2) the
3 following new paragraph:

4 “(3) ORAL REQUESTS FOR ADVICE.—Upon re-
5 quest by a taxpayer, any officer or employee of the
6 Internal Revenue Service who provides advice orally
7 in response to a specific request of the taxpayer
8 shall provide such taxpayer with a transcript or
9 other written evidence of such advice.”

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall apply to advice provided after 180
12 days after the date of the enactment of this Act.

13 **SEC. 4. JEOPARDY.**

14 (a) IN GENERAL.—Section 6861 of the Internal Rev-
15 enue Code of 1986 is amended by redesignating subsection
16 (h) as subsection (i) and by inserting after subsection (g)
17 the following new subsection:

18 “(h) AFFIDAVIT REQUIREMENT.—No assessment
19 may be made under this section unless such assessment
20 is based on affidavits of not less than 2 officers or employ-
21 ees of the Internal Revenue Service. Each such officer or
22 employee shall make an independent evaluation of the sit-
23 uation giving rise to assessment under this section.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to assessments made after the
3 date of the enactment of this Act.

4 **SEC. 5. TAXPAYER SUGGESTIONS AND COMPLAINTS WITH-**
5 **OUT RETRIBUTION.**

6 (a) ESTABLISHMENT OF OFFICE.—Not later than
7 180 days after the date of the enactment of this Act, the
8 Secretary of the Treasury or the Secretary’s delegate shall
9 establish an office within the Internal Revenue Service to
10 receive taxpayer suggestions and complaints.

11 (b) CONFIDENTIALITY OF INFORMATION.—No infor-
12 mation identifying a problem within the Internal Revenue
13 Service provided by a taxpayer to the office established
14 under subsection (a) may be used by the Internal Revenue
15 Service, including selecting such taxpayer for audit.

16 **SEC. 6. MEDIATION OF TAX DISPUTES.**

17 Not later than 180 days after the date of the enact-
18 ment of this Act, the Secretary of the Treasury or the
19 Secretary’s delegate shall establish a mediation service
20 within the Internal Revenue Service. Such service shall,
21 upon request of a taxpayer, provide an individual to medi-
22 ate disputes between the taxpayer and the Internal Reve-
23 nue Service regarding tax liability of the taxpayer and the
24 assessment and collection of such tax.

1 **SEC. 7. STRICT LIABILITY FOR ERRORS BY THE INTERNAL**
2 **REVENUE SERVICE.**

3 (a) FAILURE TO RELEASE LIEN.—Section 7432(a)
4 of the Internal Revenue Code of 1986 (relating to civil
5 damages for failure to release lien) is amended by striking
6 “knowingly, or by reason of negligence,”.

7 (b) UNAUTHORIZED COLLECTION ACTIONS.—

8 (1) IN GENERAL.—Section 7433 of such Code
9 (relating to civil damages for certain unauthorized
10 collection actions) is amended to read as follows:

11 **“SEC. 7433. CIVIL DAMAGES FOR UNAUTHORIZED ACTIONS.**

12 “(a) IN GENERAL.—If, in connection with any collec-
13 tion of Federal tax with respect to a taxpayer, any officer
14 or employee of the Internal Revenue Service disregards
15 any provision of this title, or any regulation promulgated
16 under this title, such taxpayer may bring a civil action
17 for damages against the United States in a district court
18 of the United States. Except as provided in section 7432,
19 such civil action shall be the exclusive remedy for recover-
20 ing damages resulting from such actions.

21 “(b) DAMAGES.—In any action brought under sub-
22 section (a), upon a finding of liability on the part of the
23 defendant, the defendant shall be liable to the plaintiff in
24 an amount equal to the lesser of \$1,000,000 or the sum
25 of—

1 “(1) actual, direct economic damages sustained
2 by the plaintiff as a proximate result of the reckless
3 or intentional actions of the officer or employee, and
4 “(2) the costs of the action.

5 “(c) PAYMENT AUTHORITY.—Claims pursuant to
6 this section shall be payable out of funds appropriated
7 under section 1304 of title 31, United States Code.

8 “(d) LIMITATIONS.—

9 “(1) AWARD FOR DAMAGES MAY BE REDUCED
10 IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—
11 The amount of damages awarded under subsection
12 (b) may be reduced if the court determines that the
13 plaintiff has not exhausted the administrative rem-
14 edies available to such plaintiff within the Internal
15 Revenue Service.

16 “(2) MITIGATION OF DAMAGES.—The amount
17 of damages awarded under subsection (b)(1) shall be
18 reduced by the amount of such damages which could
19 have reasonably been mitigated by the plaintiff.

20 “(3) PERIOD FOR BRINGING ACTION.—Notwith-
21 standing any other provision of law, an action to en-
22 force liability created under this section may be
23 brought without regard to the amount in controversy
24 and may be brought only within 2 years after the
25 date the right of action accrues.”

1 (2) CLERICAL AMENDMENT.—The item in the
 2 table of sections for subchapter B of chapter 76 of
 3 such Code relating to section 7433 is amended to
 4 read as follows:

 “Sec. 7433. Civil damages for unauthorized actions.”

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to actions of officers or employees
 7 of the Internal Revenue Service after the date of the en-
 8 actment of this Act.

9 **SEC. 8. PROHIBITION ON USE OF RANDOM AUDITS.**

10 Section 7602 of the Internal Revenue Code of 1986
 11 is amended by adding at the end the following new sub-
 12 section:

13 “(e) PROHIBITION ON USE OF RANDOM AUDITS.—
 14 The Secretary shall not use random examination tech-
 15 niques to determine the existence of unreported income of
 16 any taxpayer.”

17 **SEC. 9. PERSONAL LIABILITY OF INTERNAL REVENUE**
 18 **SERVICE EMPLOYEES.**

19 (a) IN GENERAL.—Subchapter B of chapter 76 of the
 20 Internal Revenue Code of 1986 (relating to proceedings
 21 by taxpayers and third parties) is amended by redesignat-
 22 ing section 7437 as section 7438 and inserting after sec-
 23 tion 7436 the following new section:

1 **“SEC. 7437. PERSONAL LIABILITY OF INTERNAL REVENUE**
 2 **SERVICE EMPLOYEES.**

3 “In any proceeding under this title in which the pre-
 4 vailing party (as defined in section 7430) is awarded a
 5 judgment for reasonable litigation costs under such sec-
 6 tion, the court may assess a portion of such costs against
 7 any Internal Revenue Service officer or employee, who
 8 shall not be reimbursed by the United States for the costs
 9 so assessed, if the court determines that such proceeding
 10 resulted from actions of such officer or employee outside
 11 established Internal Revenue Service protocol.”

12 (b) CLERICAL AMENDMENT.—The table of sections
 13 for subchapter B of chapter 76 of such Code is amended
 14 by striking the item relating to section 7437 and inserting
 15 the following:

“Sec. 7437. Personal liability of Internal Revenue Service em-
 ployees.
 “Sec. 7438. Cross References.”

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to actions of officers and employees
 18 of the Internal Revenue Service after the date of the en-
 19 actment of this Act.

20 **SEC. 10. PROHIBITION ON USE OF QUOTAS.**

21 Officers and employees of the Internal Revenue Serv-
 22 ice may not establish, and shall not be subject to, any
 23 quota regarding the initiation of investigations or other-

- 1 wise determining the taxpayers found to be delinquent in
- 2 filing their returns of tax or in remitting their taxes.

