

105TH CONGRESS
1ST SESSION

S. 365

To amend the Internal Revenue Code of 1986 to provide for increased accountability by Internal Revenue Service agents and other Federal Government officials in tax collection practices and procedures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1997

Mr. COVERDELL introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for increased accountability by Internal Revenue Service agents and other Federal Government officials in tax collection practices and procedures, 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 “Internal Revenue Serv-
5 ice Accountability Act”.

1 **SEC. 2. CRIMINAL PENALTY FOR CERTAIN UNAUTHORIZED**
2 **ACTIONS.**

3 (a) IN GENERAL.—Section 7214 of the Internal Rev-
4 enue Code of 1986 (relating to offenses by officers and
5 employees of the United States) is amended—

6 (1) by striking “or” at the end of paragraph
7 (8),

8 (2) by adding “or” at the end of paragraph (9),

9 (3) by inserting after paragraph (9) the follow-
10 ing new paragraph:

11 “(10) who willfully and maliciously disregards
12 such law, or any regulation promulgated under such
13 law, relating to any proceeding against any tax-
14 payer;”, and

15 (4) by striking “\$10,000, or imprisoned not
16 more than 5 years, or both” and inserting “\$10,000
17 (\$1,000, in the case of an offense under paragraph
18 (10)), or imprisoned not more than 5 years (1 year,
19 in the case of an offense under paragraph (10), or
20 both”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to actions by officers or employees
23 after the date of the enactment of this Act.

1 **SEC. 3. INTERNAL REVENUE SERVICE EMPLOYEES PER-**
 2 **SONALLY LIABLE FOR DAMAGES AND LITIGA-**
 3 **TION COSTS IN CERTAIN CASES.**

4 (a) LITIGATION COSTS.—Section 7430 of the Inter-
 5 nal Revenue Code of 1986 (relating to awarding of costs
 6 and certain fees) is amended by adding at the end the
 7 following new subsection:

8 “(g) PERSONAL LIABILITY OF INTERNAL REVENUE
 9 SERVICE OFFICERS AND EMPLOYEES IN CERTAIN
 10 CASES.—

11 “(1) IN GENERAL.—In any proceeding in which
 12 the prevailing party is awarded a judgment for rea-
 13 sonable litigation costs under this section, the court
 14 may assess a portion of such costs against any In-
 15 ternal Revenue Service officer or employee (and such
 16 officer or employee shall not be reimbursed by the
 17 United States for the costs so assessed) if the court
 18 determines that such proceeding resulted from any
 19 arbitrary, capricious, or malicious act of such officer
 20 or employee. For purposes of this section, the term
 21 ‘officer or employee’ includes a former officer or em-
 22 ployee.

23 “(2) REPRESENTATION OF OFFICER OR EM-
 24 PLOYEE.—Upon the request of any Internal Revenue
 25 Service officer or employee, such officer or employee

1 may be represented by the United States in any pro-
 2 ceeding with respect to the issue of whether there is
 3 to be an assessment against such officer or employee
 4 under paragraph (1). If, in any case in which such
 5 an officer or employee is so represented by the Unit-
 6 ed States, it is finally determined that such officer
 7 or employee is liable for an assessment under para-
 8 graph (1), such officer or employee shall also be lia-
 9 ble to repay the United States for the costs of its
 10 representation under this paragraph.”.

11 (b) CIVIL DAMAGES AND COURT COSTS FOR FAIL-
 12 URE TO RELEASE LIEN.—Section 7432 of the Internal
 13 Revenue Code of 1986 (relating to civil damages for fail-
 14 ure to release lien) is amended by adding at the end the
 15 following new subsection:

16 “(f) PERSONAL LIABILITY OF INTERNAL REVENUE
 17 SERVICE OFFICERS AND EMPLOYEES IN CERTAIN
 18 CASES.—

19 “(1) IN GENERAL.—In any proceeding in which
 20 the prevailing plaintiff is awarded a judgment under
 21 this section for damages described in subsection (b),
 22 the court may assess a portion of such damages
 23 against any Internal Revenue Service officer or em-
 24 ployee (and such officer or employee shall not be re-
 25 imbursed by the United States for the damages so

1 assessed) if the court determines that such proceed-
 2 ing resulted from any arbitrary, capricious, or mali-
 3 cious act of such officer or employee. For purposes
 4 of this section, the term ‘officer or employee’ in-
 5 cludes a former officer or employee.

6 “(2) REPRESENTATION OF OFFICER OR EM-
 7 PLOYEE.—Upon the request of any Internal Revenue
 8 Service officer or employee, such officer or employee
 9 may be represented by the United States in any pro-
 10 ceeding with respect to the issue of whether there is
 11 to be an assessment against such officer or employee
 12 under paragraph (1). If, in any case in which such
 13 an officer or employee is so represented by the Unit-
 14 ed States, it is finally determined that such officer
 15 or employee is liable for an assessment under para-
 16 graph (1), such officer or employee shall also be lia-
 17 ble to repay the United States for the costs of its
 18 representation under this paragraph.”.

19 (c) CIVIL DAMAGES AND COURT COSTS FOR CERTAIN
 20 UNAUTHORIZED COLLECTION ACTIONS.—Section 7433 of
 21 the Internal Revenue Code of 1986 (relating to civil dam-
 22 ages for certain unauthorized collection actions) is amend-
 23 ed by adding at the end the following new subsection:

1 “(e) PERSONAL LIABILITY OF INTERNAL REVENUE
 2 SERVICE OFFICERS AND EMPLOYEES IN CERTAIN
 3 CASES.—

4 “(1) IN GENERAL.—In any proceeding in which
 5 the prevailing plaintiff is awarded a judgment for
 6 damages described in subsection (b), the court may
 7 assess a portion of such damages against any Inter-
 8 nal Revenue Service officer or employee (and such
 9 officer or employee shall not be reimbursed by the
 10 United States for the damages so assessed) if the
 11 court determines that such proceeding resulted from
 12 any arbitrary, capricious, or malicious act of such
 13 officer or employee. For purposes of this section, the
 14 term ‘officer or employee’ includes a former officer
 15 or employee.

16 “(2) REPRESENTATION OF OFFICER OR EM-
 17 PLOYEE.—Upon the request of any Internal Revenue
 18 Service officer or employee, such officer or employee
 19 may be represented by the United States in any pro-
 20 ceeding with respect to the issue of whether there is
 21 to be an assessment against such officer or employee
 22 under paragraph (1). If, in any case in which such
 23 an officer or employee is so represented by the Unit-
 24 ed States, it is finally determined that such officer

1 or employee is liable for an assessment under para-
 2 graph (1), such officer or employee shall also be lia-
 3 ble to repay the United States for the costs of its
 4 representation under this paragraph.”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply in the case of proceedings com-
 7 menced after the date of the enactment of this Act.

8 **SEC. 4. PROTECTING THE PRIVACY OF TAXPAYERS.**

9 (a) CIVIL PENALTY FOR UNAUTHORIZED ACCESS OF
 10 RETURNS AND RETURN INFORMATION.—Section 7431 of
 11 the Internal Revenue Code of 1986 (relating to civil dam-
 12 ages for unauthorized disclosure of returns and return in-
 13 formation) is amended—

14 (1) by inserting “or accesses” after “discloses”
 15 in subsection (a)(1),

16 (2) by inserting “OR ACCESS” after “DISCLO-
 17 SURE” in the heading for subsection (a)(1),

18 (3) by inserting “(or former officer or em-
 19 ployee)” after “officer or employee” both places it
 20 appears in subsection (a),

21 (4) by inserting “or access” after “disclosure”
 22 each place it appears in subsections (b), (c)(1), and
 23 (d),

24 (5) by inserting “the earlier of notification to
 25 or” after “after the date of” in subsection (d), and

1 (6) by inserting “**or access**” after “**disclo-**
 2 **sure**” in the heading.

3 (b) CRIMINAL PENALTY FOR UNAUTHORIZED AC-
 4 CESS OF RETURNS AND RETURN INFORMATION.—Section
 5 7213(a)(1) of the Internal Revenue Code of 1986 (relating
 6 to Federal employees and other persons) is amended—

7 (1) by striking “this paragraph” and inserting
 8 “this subparagraph”,

9 (2) by striking “It shall be unlawful” and in-
 10 serting the following:

11 “(A) DISCLOSURE.—It shall be unlawful”,
 12 and

13 (3) by adding at the end the following new sub-
 14 paragraph:

15 “(B) ACCESS.—It shall be unlawful for
 16 any officer, employee, or other person described
 17 in subparagraph (A) willfully to access without
 18 authorization any return or return information
 19 (as defined in section 6103(b)). Any violation of
 20 this subparagraph shall be punishable by dis-
 21 missal from office or discharge from employ-
 22 ment and, further, shall be a misdemeanor pun-
 23 ishable upon conviction by a fine in any amount
 24 not exceeding \$1,000, or imprisonment of not
 25 more than 1 year, or both, together with costs

1 of prosecution, and, if necessary, by dismissal
 2 from office or discharge from employment.”.

3 (c) NOTIFICATION OF UNAUTHORIZED ACCESS.—

4 Section 6103 of the Internal Revenue Code of 1986 (relat-
 5 ing to confidentiality and disclosure of returns and return
 6 information) is amended by redesignating subsection (q)
 7 as subsection (r) and by inserting after subsection (p) the
 8 following new subsection:

9 “(q) UNAUTHORIZED ACCESS PROHIBITED.—

10 “(1) IN GENERAL.—Except as authorized by
 11 this title, no officer or employee (or former officer
 12 or employee) of the United States shall access any
 13 return or return information.

14 “(2) NOTIFICATION.—Upon discovery that a
 15 taxpayer’s return or return information has been
 16 accessed in violation of paragraph (1), the taxpayer
 17 shall be notified immediately.”.

18 (d) CONFORMING AMENDMENT.—The table of sec-
 19 tions for subchapter B of chapter 76 of the Internal Reve-
 20 nue Code of 1986 is amended by inserting “or access”
 21 after “disclosure” in the item relating to section 7431.

22 (e) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to actions by officers or employees
 24 after the date of the enactment of this Act.

1 **SEC. 5. LIMITATIONS ON EXAMINATIONS.**

2 (a) IN GENERAL.—Section 7602 of the Internal Rev-
 3 enue Code of 1986 (relating to examination of books and
 4 witnesses) is amended by adding at the end the following
 5 new subsection:

6 “(d) LIMITATIONS ON AUTHORITY TO EXAMINE.—

7 In taking any action under subsection (a), the Secretary—

8 “(1) shall demonstrate, upon demand of any
 9 person described in subsection (a), reasonable jus-
 10 tification (and not random selection) for initiating
 11 an examination of a return, and

12 “(2) shall not—

13 “(A) initiate an examination of a return or
 14 issue of a return if such return or issue of a re-
 15 turn has previously been examined, or

16 “(B) extend back an examination under
 17 subsection (a), once initiated, beyond a 3-tax-
 18 able-year period ending on the day before the
 19 beginning of the taxable year which includes the
 20 date of initiation,

21 except upon court approval if in the course of an in-
 22 vestigation into possible criminal activity.”.

23 (b) EFFECTIVE DATE.—The amendment made by
 24 this section shall apply to examinations initiated after the
 25 date of the enactment of this Act.

1 **SEC. 6. EXTENSION OF TIME TO PAY TAX AFTER NOTICE**
2 **AND DEMAND.**

3 (a) IN GENERAL.—Section 6651(a)(3) of the Internal
4 Revenue Code of 1986 (relating to addition to the tax)
5 is amended by striking “21 calendar days” and inserting
6 “90 calendar days”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to notices and demands given after
9 the date of the enactment of this Act.

10 **SEC. 7. ENSURING THE INTEGRITY OF JUDICIAL PROCEED-**
11 **INGS.**

12 (a) IN GENERAL.—Subchapter B of chapter 76 of the
13 Internal Revenue Code of 1986 (relating to proceedings
14 by taxpayers and third parties) is amended by redesignat-
15 ing section 7436 as section 7437 and by inserting after
16 section 7435 the following new section:

17 **“SEC. 7436. DECLARATORY JUDGMENTS RELATING TO SEC-**
18 **RETARIAL NONACQUIESCENCE.**

19 “In a case of actual controversy involving the Sec-
20 retary’s decision to not acquiesce with respect to conclu-
21 sions of law in identical or similar cases to a case or cases
22 previously decided within the same court jurisdiction or
23 appellate circuit, upon the filing of an appropriate plead-
24 ing and the exhaustion of administrative remedies avail-
25 able to the petitioner within the Internal Revenue Service,

1 the district court for such jurisdiction may make a dec-
 2 laration with respect to the Secretary's decision. Any such
 3 declaration shall have the force and effect of a final judg-
 4 ment or decree of the district court and shall be reviewable
 5 as such.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tions for such subchapter B is amended by striking the
 8 item relating to section 7436 and inserting the following
 9 new items:

“Sec. 7436. Declaratory judgments relating to secretarial non-
 acquiescence.

“Sec. 7437. Cross references.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to court proceedings initiated after
 12 the date of the enactment of this Act.

13 **SEC. 8. LIMITATIONS ON ASSET SEIZURES AND LEVIES.**

14 (a) IN GENERAL.—Section 6331(a) of the Internal
 15 Revenue Code of 1986 (relating to levy and distraint) is
 16 amended by inserting “, upon the consent of an appro-
 17 priate court,” after “it shall be lawful for the Secretary”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to levies initiated after the date
 20 of the enactment of this Act.

1 **SEC. 9. NO INTEREST ON PENALTIES, ADDITIONAL**
2 **AMOUNTS, AND ADDITIONS TO TAX.**

3 (a) IN GENERAL.—Section 6601(e)(2) of the Internal
4 Revenue Code of 1986 (relating to applicable rules) is
5 amended to read as follows:

6 “(2) NO INTEREST ON PENALTIES, ADDITIONAL
7 AMOUNTS, AND ADDITIONS TO TAX.—Interest shall
8 not be imposed under subsection (a) in respect of
9 any assessable penalty, additional amount, or addi-
10 tion to tax.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to notices and demands given after
13 the date of the enactment of this Act.

14 **SEC. 10. INTEREST RATE FOR OVERPAYMENTS TO EQUAL**
15 **RATE FOR UNDERPAYMENTS.**

16 (a) IN GENERAL.—Section 6621(a) of the Internal
17 Revenue Code of 1986 (relating to determination of rate
18 of interest) is amended to read as follows:

19 “(a) GENERAL RULE.—The overpayment rate and
20 the underpayment rate established under this section shall
21 be the Federal short-term rate determined under sub-
22 section (b).”.

23 (b) CONFORMING AMENDMENT.—Section 6621 of the
24 Internal Revenue Code of 1986 (relating to determination
25 of rate of interest) is amended by striking subsection (c).

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply for purposes of determining inter-
 3 est to periods after the date of the enactment of this Act.

4 **SEC. 11. FAIRNESS WHEN COLLECTING A TAX DUE TO**
 5 **MATHEMATICAL AND CLERICAL ERRORS.**

6 (a) IN GENERAL.—Section 6404(d) of the Internal
 7 Revenue Code of 1986 (relating to abatements) is amend-
 8 ed to read as follows:

9 “(d) ABATEMENT OF INTEREST, PENALTY, ADDI-
 10 TIONAL AMOUNT, AND ADDITION TO TAX ATTRIBUTABLE
 11 TO CERTAIN MATHEMATICAL OR CLERICAL ERRORS.—In
 12 the case of an assessment of additional tax attributable
 13 to a mathematical or clerical error (as defined in section
 14 6213(g)(2)), the Secretary shall abate any interest, pen-
 15 alty, additional amount, and addition to tax with respect
 16 to such assessment if, within 60 days after notice of such
 17 assessment is sent under section 6213(b)(1) by certified
 18 mail or registered mail, the taxpayer pays, or files a re-
 19 quest for an abatement of, such assessment.”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall apply to notices filed after the date of
 22 the enactment of this Act.

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