114TH CONGRESS
2D SESSION

S. 2809

To amend the Internal Revenue Code of 1986 to preserve taxpayers' rights to administrative appeal of deficiency determinations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2016

Mr. PORTMAN 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 preserve taxpayers' rights to administrative appeal of deficiency determinations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENSURING TAXPAYER RIGHT TO APPEAL.

(a) IN GENERAL.—Subsection (a) of section 6212 of the Internal Revenue Code of 1986 is amended—

(1) by striking "IN GENERAL.—If the Secretary" and inserting "IN GENERAL.—

"(1) AUTHORIZATION.—If—

"(A) the Secretary",

(2) by striking "44, he is authorized" and inserting "44, and

"(B) the requirements of paragraph (2) have been met with respect to such deficiency, the Secretary is authorized", and

(3) by adding at the end the following new paragraph:

"(2) OPPORTUNITY FOR ADMINISTRATIVE REVIEW IN THE OFFICE OF APPEALS.—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to a deficiency if, prior to the issuance of the notice of deficiency under paragraph (1)—

"(i) the taxpayer has been issued a letter of proposed deficiency that explains the basis for the determination of deficiency and allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals, and

"(ii) either—

"(I) the time provided in such letter for contacting the Office of Appeals has expired and the taxpayer has not so contacted such Office, or

"(II) the Office of Appeals has issued a decision with respect to such deficiency.

"(B) FRIVOLOUS TAX POSITIONS.—The Secretary is authorized to issue regulations limiting the application of subparagraph (A) in cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds, or for other positions listed as frivolous under section 6702(c).

"(C) CASES DESIGNATED FOR LITIGATION.—Subparagraph (A) shall not apply in the case of issues designated for litigation in accordance with section 7124.".

(b) OPPORTUNITY FOR APPEAL IF FEWER THAN 60 DAYS REMAIN ON STATUTE OF LIMITATIONS.—Section 6212 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(e) OPPORTUNITY FOR APPEAL IF FEWER THAN 60 DAYS REMAIN ON STATUTE OF LIMITATIONS.—In the case of any issues relating to a potential deficiency with respect to which 60 days or fewer remain in the period applicable under section 6501, if the taxpayer agrees to the extension of such period by 12 months, the Secretary shall issue a letter of proposed deficiency described in subsection (a)(2)(A)(i) allowing the taxpayer an opportunity for administrative review of such issues in the Internal Revenue Service Office of Appeals before a notice of deficiency is issued under this section. Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices of deficiency issued after April 20, 2016.

SEC. 2. APPEALS DISPUTE RESOLUTION PROCEDURES.

Subsection (a) of section 7123 of the Internal Revenue Code of 1986 is amended to read as follows:

``(a) REFERRAL TO APPEALS PROCEDURES.—The Secretary shall prescribe procedures by which any taxpayer may request—

``(1) early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals, or

``(2) consideration by such Office of Appeals of issues included in—

``(A) a letter of proposed deficiency described in section 6212(a)(2)(A), or

``(B) a notice of deficiency pursuant to section 6212, whether or not the taxpayer has filed a petition with the Tax Court pursuant to section 6213(a), a claim for refund, or a suit in a district court or the United States Court of Federal Claims with respect to such issues.

Such regulations may limit such procedures in cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds, or for other positions listed as frivolous under section 6702(c). Such procedures shall not be available in the case of issues designated for litigation in accordance with section 7124.''.

SEC. 3. RESTRICTION ON SECRETARIAL AUTHORITY TO DESIGNATE CASES FOR LITIGATION.

(a) IN GENERAL.—Chapter 74 of the Internal Revenue Code of 1986 is amended by redesignating section 7124 as section 7125 and by inserting after section 7123 the following new section:

''SEC. 7124. RESTRICTION ON SECRETARIAL AUTHORITY TO DESIGNATE CASES FOR LITIGATION.

''(a) IN GENERAL.—The Secretary may designate issues arising from the examination or collection division for litigation, and not permit the taxpayer to request consideration of such issues by the Internal Revenue Service Office of Appeals under section 7123(a), only to the extent such issues relate to listed transactions (as defined in section 6707A(c)(2)).

"(b) SETTLEMENT.—In offering terms under a settlement agreement for purposes of the resolution of any issues arising from the examination or collection division, the Secretary may offer terms that preclude the taxpayer from requesting consideration of such issues by the Office of Appeals under section 7123(a) only to the extent such issues relate to listed transactions (as defined in section 6707A(c)(2)).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 74 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 7124 and inserting the following new items:

"Sec. 7124. Restriction on Secretarial authority to designate cases for litigation.
"Sec. 7125. Cross references.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the designation of issues for litigation, and offers of settlement terms, after April 20, 2016.

SEC. 4. MODIFICATION OF AUTHORITY TO ISSUE DESIGNATED SUMMONS.

(a) IN GENERAL.—Paragraph (1) of section 6503(j) of the Internal Revenue Code of 1986 is amended by striking "coordinated examination program" and inserting "coordinated industry case program".

(b) DESIGNATED SUMMONS.—Clause (i) of section 6503(j)(2)(A) of the Internal Revenue Code of 1986 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 Large Business and International Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors)—

"(I) which clearly establishes that the taxpayer did not reasonably cooperate with reasonable requests by the Secretary for witnesses, documents, meetings, and interviews, and

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

(c) BURDEN OF PROOF.—Subsection (j) of section 6503 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(4) BURDEN OF PROOF.—In any court proceeding described in paragraph (3), the Secretary shall bear the burden of proving that the corporation described in paragraph (1) did not reasonably cooperate with reasonable requests by the Secretary for witnesses, documents, meetings, and interviews.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued after April 20, 2016.

SEC. 5. LIMITATION ON ACCESS OF NON-IRS EMPLOYEES TO RETURNS AND RETURN INFORMATION ACQUIRED BY SUMMONS.

(a) IN GENERAL.—Section 7602 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) LIMITATION ON ACCESS OF PERSONS OTHER THAN IRS OFFICERS AND EMPLOYEES.—The authority granted under this section may not be delegated, directly or indirectly, to any person authorized to receive returns and return information under section 6103(n).''.

(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 or any similar or successor regulation, that is in effect on the date of the enactment of this Act.

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