

## Taxpayer Bill of Rights Enhancement (TBORE) Act of 2015

### **I. Taxpayer Bill of Rights and IRS Accountability**

#### **Sec. 101: Duty to ensure that IRS employees are familiar with and act in accord with certain taxpayer rights. (IRC 7803)**

**Purpose:** To ensure IRS employees treat taxpayers fairly by adhering to the rights afforded to them under the internal revenue laws.

**Summary:** On June 9, 2014, the IRS announced the adoption of a “Taxpayer Bill of Rights.” This provision makes it an official duty of the commissioner to ensure that IRS employees are familiar with and act in accordance with taxpayer rights under the tax laws, including the right to be informed, the right to quality service, the right to pay no more than the correct amount of tax, the right to be heard, the right of appeal, the right to finality, the right to privacy, the right to confidentiality, the right to retain representation, and the right to a fair and just tax system.

#### **Sec. 102: Revisions relating to the termination of employment of IRS employees for misconduct.**

**Purpose:** To update the 10 deadly sins to require the termination of IRS employees who take official actions against a taxpayer to extract personal gain or for political purposes and to ensure congressional committees of jurisdiction are made aware of any instances where the commissioner exercises his/her discretion not to terminate an employee violating any of the 10 deadly sins.

**Summary:** The Internal Revenue Service Restructuring and Reform Act of 1998 established 10 enumerated acts or omissions (“10 deadly sins”) that if committed by an IRS employee require mandatory termination of the employee. Among the 10 enumerated acts is “Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.” This provision would be expanded to include performing, delaying, or failing to perform (or threatening to perform, delay, or fail to perform) any official action or audit with respect to a taxpayer for the purpose of extracting personal gain or benefit or for political purposes. Furthermore, the provision requires the commissioner to inform the chair and ranking member of the Finance Committee and the Ways and Means Committee whenever the commissioner uses his discretion not to terminate an employee for any of the violations of the “deadly sins.”

#### **Sec. 103: Electronic record retention**

**Purpose:** To ensure the IRS has in place adequate safeguards to ensure electronic records (e-mails) are properly saved and readily retrievable.

**Summary:** In August of 2012 the Office of Management and Budget and the National Archives issued a joint directive to heads of agencies of executive departments and agencies to “manage both permanent *and* temporary email records in an accessible electronic format” by December 31, 2016. The National Archives has recommended all government departments and agencies to adopt the “Capstone” approach for the electronic management of email records. This provision imposes a statutory deadline of December 31, 2016, on the IRS to meet and exceed Capstone requirements. Specifically, the provision requires that the IRS maintain email records of all principals, officers and certain senior executives for no less than 15 years. At the end of the 15 year period, the IRS is required to transfer all the email records for principal officers to the National Archives for permanent storage. To incentivize the IRS to meet this deadline, the IRS is required to retain the email records of all personnel indefinitely until the Treasury Inspector General for Tax Administration certifies the agency is in compliance with the requirements imposed by this provision.

## **II. The Rights to Privacy and Confidentiality**

### **Sec. 201: Criminal penalty for unauthorized disclosure or inspection (IRC 7213 and 7213A):**

**Purpose:** To deter unauthorized disclosure or inspection of taxpayer information by updating the maximum fine for unauthorized disclosure or inspection to correspond more closely with the seriousness of the offense.

**Summary:** Under current law, willfully making an unauthorized disclosure of confidential taxpayer information is a felony punishable by a fine of up to \$5,000 and/or imprisonment for up to 5 years. A lower penalty exists for willful unauthorized inspection of taxpayer information of up to a \$1,000 fine and/or imprisonment for up to 1 year. The maximum \$5,000 fine for unauthorized disclosure was set in 1976 and would be greater than \$20,000 today based on inflation. This provision increases the maximum fine for unauthorized disclosure to \$20,000. It further increases the maximum fine for unauthorized inspection to \$5,000.

### **Sec. 202: Modification and increase in civil damages for unauthorized disclosure or inspection. (IRC 7431)**

**Purpose:** To enhance civil damages available to taxpayers where their tax information is either disclosed or inspected without authorization and expand when taxpayers must be notified that their information has been improperly disclosed or inspected.

**Summary:** Under current law, a taxpayer may bring a civil action against the United States for damages related to the unauthorized inspection or disclosure of taxpayer information by a federal employee. Statutory damages of \$1,000 or actual damages may be awarded for both unauthorized inspection and disclosure. This proposal increases statutory damages in cases of unauthorized inspection to \$5,000. Additionally, in recognition of the greater invasion of privacy that results from public disclosure of taxpayer information rather than mere inspection, this provision raises the available statutory damages of unauthorized disclosure to \$10,000. The provision also allows for the award of punitive damages in addition to statutory damages in instances of willful or gross negligence with respect to either unauthorized inspection or disclosure. This provision further requires the Treasury secretary to provide notice to taxpayers if any disciplinary or adverse action against an IRS employee or employee of any other federal or state agency is taken for unauthorized inspection or disclosure with respect to the taxpayer's information.

### **Sec. 203: Prohibition on IRS officers and employees using personal email accounts to conduct official business.**

**Purpose:** To prevent sensitive taxpayer information from being compromised through the use of personal non-secured email accounts.

**Summary:** The provision prohibits IRS officers and employees from using personal email accounts to conduct official business.

### **Sec. 204: Compliance by contractors with confidentiality safeguards. (IRC 6103)**

**Purpose:** To better protect sensitive taxpayer information in the hands of state, local, or federal contractors while conserving IRS resources.

**Summary:** Taxpayer information is generally protected from disclosure by Section 6103 of the tax code. In certain circumstances, the IRS may share protected information with state, local, or federal agencies

that may share this information with government contractors subject to certain confidentiality safeguards. To ensure government contractors are in compliance with confidentiality safeguards, this provision requires that a state, local, or federal agency conduct on-site reviews every three years of all of its contractors or other agents receiving federal returns and return information. If the duration of the contract or agreement is less than one year, a review is required at the mid-point of the contract. The state, local, or federal agency must report its findings to the IRS and certify all contractors are in compliance with confidentiality safeguards.

### **III. The Rights to Appeal and to Challenge the IRS' Position and Be Heard**

#### **Sec. 301: Civil damages for unauthorized collection actions. (IRC 7433)**

**Purpose:** To better deter improper IRS collection activities by changing the statute of limitations to increase court access and boosting the maximum allowable civil damages.

**Summary:** Under current law, taxpayers may bring a civil damages suit against the IRS for unauthorized collection actions. One prominent tax publication has referred to this provision as the “toothless tiger” because often times a taxpayer may not discover the unauthorized nature of collection prior to the statute of limitations for bringing a claim having run out. This provision seeks to remedy this concern by clarifying that the 2 year statute of limitations only begins to run once the taxpayer reasonably could have discovered the collection was unauthorized and tolling the statute of limitations while the taxpayer exhausts his/her administrative remedies. The provision also increases the maximum recoverable damages from \$100,000 to \$150,000 for negligent actions and \$1 million to \$1.5 million for willful actions and would allow for punitive damages.

#### **Sec. 302: Extension of time limit for contesting IRS levy. (IRC 6343 and 6532)**

**Purpose:** To increase the time period taxpayers may seek to have proceeds from the sale of wrongfully levied property returned to them.

**Summary:** The IRS is authorized to levy property to satisfy a tax debt in certain instances. While the IRS is authorized to return property at any time, it is only authorized to return the monetary proceeds from a sale for up to 9 months from the date of the levy. Similarly, if a third party believes the property levied or seized belongs to him/her and not the person against whom the tax is assessed, the third party generally only has 9 months from the time of the levy to bring an administrative wrongful levy action to seek the return of monetary proceeds. In many cases the 9 month period is insufficient for individuals and third parties to discover a wrongful or mistaken levy and seek to remedy it. As such, this provision would extend from nine months to two years the time period individuals and third parties have to seek the return of proceeds on the sale of wrongfully levied property.

#### **Sec. 303: Expansion of declaratory judgment remedy to non-501(c)(3) tax-exempt organizations. (IRC 7428)**

**Purpose:** To prevent the IRS from unduly delaying or unfairly denying the application for tax-exempt status of a social welfare organizations, or other tax-exempt organization, by allowing these organizations to seek declaratory relief if their application has not been acted on within a reasonable time, or has been denied.

**Summary:** Under current law, organizations applying for 501(c)(3) status may seek declaratory relief if their application is denied or if the IRS fails to act on the application. If the IRS fails to act, the organization must first exhaust its administrative remedies and may not seek declaratory relief prior to 270 days after

the date on which the request for a determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination. This provision would extend these procedures to other 501(c) and 501(d) organizations, including 501(c)(4) social welfare organizations.

#### **IV. The Right to a Fair and Just Tax System**

##### **Sec. 401: Waiver of user fee for installment agreements using automated withdrawals. (IRC 6159)**

**Purpose:** To provide relief to taxpayers who voluntarily work toward paying off their tax debts through the use of automated installment payments.

**Summary:** Taxpayers who are unable to pay their taxes in full may be eligible to enter into an agreement with the IRS to pay their tax bill through installment payments. However, taxpayers who enter into installment agreements are generally charged a user fee by the IRS in addition to interest and penalties that may continue to accrue during the payment period. To encourage the use of automated installment payments and to increase the efficiency and timely payment of taxes, this provision waives the user fee for installment agreements in which the parties agree to the use of automated installment payments (such as automated debits from a bank account).

##### **Sec. 402: Individual held harmless on improper levy on individual retirement plan. (IRC 6343)**

**Purpose:** To protect a taxpayer's retirement nest egg where the IRS improperly levied a taxpayer's IRA.

**Summary:** Under present law, if the IRS improperly levies on an IRA, the individual owning the IRA may not be made whole, even if the IRS returns the amount levied, with interest, because the individual may lose the opportunity to have those funds accumulate on a tax-favored basis until retirement. This provision seeks to hold the taxpayer harmless by permitting an individual to recontribute wrongfully levied amounts to an IRA without regard to IRA contribution limits; abating any tax that may have been owed on the distribution made as a result of the wrongful levy if recontributed to an IRA; and expanding the instances where the IRS must pay interest on amounts returned as a result of a wrongful levy.

##### **Sec. 403: Office of chief counsel review of offers-in-compromise. (IRC 7122)**

**Purpose:** To eliminate red tape that may act as a barrier to taxpayers facing financial hardship to settle their tax debt for less through an offer-in-compromise.

**Summary:** Taxpayers who are unable to pay a federal tax debt due to financial hardship may be eligible to settle their tax debt for less through an offer-in-compromise. Under present law, offers to compromise liabilities of \$50,000 or more must be supported by a written opinion from the IRS chief counsel. This requirement can unduly delay an acceptance of a compromise and unnecessarily diverts IRS resources from the most important cases. This provision repeals the written opinion requirements except in cases where the Treasury secretary determines that an opinion is required with respect to a compromise.

##### **Sec. 404: Authority of the Office of the Taxpayer Advocate to comment on regulations. (IRC 7805)**

**Purpose:** To ensure that the rights of taxpayers are considered and protected as part of any regulations issued by the IRS.

**Summary:** This proposal requires the IRS to submit proposed or temporary regulations pre-publication to the National Taxpayer Advocate for comment within a reasonable time, and address those comments in the preamble to final regulations.

**Sec. 405: Individual estimated tax. (IRC 6654)**

**Purpose:** To provide penalty relief to taxpayers by raising the threshold at which a penalty is imposed for the underpayment of estimated taxes.

**Summary:** Under current law, a penalty tax is imposed on a taxpayer for the underpayment of estimated tax if tax owed at end of year is \$1,000 or more. It was last increased in 1998 from \$500 to \$1,000. This provision would increase the amount to \$2,000. The provision would also make several modifications intended to simplify the calculation of the underpayment penalty.

**Sec. 406: Corporate estimated tax. (IRC 6655)**

**Purpose:** To provide penalty relief to businesses by raising the threshold at which a penalty is imposed for the underpayment of estimated taxes.

**Summary:** Under current law, corporations are required to make quarterly estimated tax payments unless the amount of tax owed for the taxable year is less than \$500. This has not been increased since 1996. This provision increases the amount to \$1,000.

**Sec. 407: Increase in large corporation threshold for estimated tax payments. (IRC 6655)**

**Purpose:** To update the taxable income threshold to increase the number of small businesses able to use a simplified method for determining estimated tax payments.

**Summary:** Under current law, companies with taxable income under \$1 million may base their estimated tax payments on the previous year's tax while corporations with taxable income of \$1 million or more may not. The threshold has been \$1 million since 1996. This provision would increase the threshold over a period of time to \$1.5 million.

**Sec. 408: Expansion of interest netting. (IRC 6621)**

**Purpose:** To better equalize the treatment of interest on underpayments and overpayments of tax between taxpayers and the IRS.

**Summary:** While taxpayers generally begin to accrue interest charges from the IRS for any amount of tax unpaid by the due date, the IRS generally has 45 days (the 45 day rule) to refund an overpayment to a taxpayer without having to pay interest. In instances where the taxpayer owes interest on an underpayment and the IRS owes interest to the taxpayer, interest netting rules apply that zero out the accrual of interest to either party. However, a taxpayer does not presently receive the benefit of interest netting during the 45 day period in which the IRS has to refund an overpayment. This provision seeks to better equalize the treatment of interest between taxpayers and the IRS by applying interest netting rules with respect to tax underpayments and overpayments without regard to the 45 day rule.

**Sec. 409: Clarification of application of federal tax deposit penalty. (IRC 6656)**

**Purpose:** To provide penalty relief to taxpayers who make a timely tax deposit but fail to do so in the required manner.

**Summary:** Currently there are penalties for taxpayers failing to make required deposits of federal taxes. The penalty is 2 percent of the under-payment if the failure to deposit is for not more than five days, 5 percent for six through 15 days, and 10 percent for more than 15 days. The IRS applies the 10 percent penalty rate automatically if a deposit is not made in the manner required even if made in a timely manner. This can result in individuals who make the correct deposit being penalized at a higher rate than those that do not make a deposit at all until several days after the due date. The provision clarifies that the 10 percent penalty is to be applied only in cases where a payment is 15 days or more late. Thus, a taxpayer who makes a deposit on time but not in the manner required is subject to a penalty of 2 percent.

## **V. The Right to Be Informed:**

### **Sec. 501: Collection activities with respect to joint return disclosable to either spouse based on oral request. (IRC 6103)**

**Purpose:** To provide former spouses greater access to information about collection activities related to joint returns filed during their marriage.

**Summary:** In response to concerns that former spouses were not able to obtain information regarding collection activities relating to a joint return, the Taxpayer Bill of Rights 2 permitted former spouses to make a written request for information on collection activity on a filed joint return. This provision would do away with the written request requirement to allow for the disclosure upon an oral request.

### **Sec. 502: Disclosure of taxpayer identity for tax refund purposes. (IRC 6103)**

**Purpose:** To provide additional authority concerning the use of taxpayer information to the IRS for the purpose of locating taxpayers due a tax refund.

**Summary:** Provision provides IRS with greater authority to help them find taxpayers due a tax refund. It does so by allowing the IRS to use any means of “mass communication,” including the Internet, to notify the taxpayer of an undelivered refund. It limits the amount of return information that may be disclosed to a taxpayer’s name, and the city and state of the taxpayer’s mailing address.

### **Sec. 503: TIGTA audit/investigation notifications to alleged victim. (IRC 6103)**

**Purpose:** To increase transparency of wrongdoing by the IRS by allowing certain information to be shared with a taxpayer who is the alleged victim of IRS abuses.

**Summary:** TIGTA frequently engages in audits or investigations about allegations of violations of taxpayer rights by IRS employees and in some instances third parties, such as in cases of identity theft. Often the alleged victim is prohibited from receiving any information about the existence of such an investigation and its conclusions due to taxpayer privacy rules under Section 6103 of the Internal Revenue Code. This provision would authorized the Treasury secretary to provide status updates, and in certain instances require status updates, regarding the investigation, the violation being investigated, and conclusion of the investigation.

### **Sec. 504: Mandatory electronic filing for annual returns of exempt organizations. (IRC 6033)**

**Purpose:** To increase transparency of, and enhance public access to information about, public charities.

**Summary:** The proposal would require all tax-exempt organizations that must file Form 990 series returns or Forms 8872 to file them electronically. The proposal would also require the IRS to make the

electronically filed Form 990 series returns and Forms 8872 publicly available in a machine-readable format in a timely manner.

## **VI. The Right to Quality Service**

### **Sec. 601: Free electronic filing.**

**Purpose:** To ensure low-income and elderly taxpayers continue to have access to free services to file their annual tax return.

**Summary:** This proposal would require the IRS to continue its current free file program that works with private-sector industry to provide free tax prep for low-income and elderly taxpayers. The proposal would also require the IRS to establish regulations pertaining to qualifications of businesses to participate in the program, periodic review of businesses participating, and procedure to remove those that no longer qualify.

### **Sec. 602: Access to appeals office.**

**Purpose:** To ensure all taxpayers have convenient access to appeals by requiring the Internal Revenue Service to locate at least one appeals officer and settlement officer in each state.

**Summary:** Currently the IRS lacks a permanent appeals presence in 12 states (Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont and Wyoming) and Puerto Rico. An additional four states (Hawaii, Iowa, Maine, and West Virginia) have a permanent appeals officer, but lack a permanent settlement officer. Presently, the IRS uses circuit riding to service states that lack either an appeals officer or settlement officer or both. This is in conflict with the Internal Revenue Service Restructuring and Reform Act of 1998, which recognized that “all taxpayers should enjoy convenient access to Appeals, regardless of their locality. Moreover, the National Taxpayer Advocate has documented that circuit riding often results in poorer results for affected taxpayers, such as adding an additional 6-12 months to the time for resolving a dispute. To address this, this proposal mandates that the IRS locate at least one appeals officer and settlement officer in each state, including the District of Columbia and Puerto Rico.