TAXPAYER RIGHTS ACT OF 2015: SECTION-BY-SECTION SUMMARY

TAXPAYER RIGHTS

Section 101. Statement of Taxpayer Rights. Section 101 requires the Secretary of the Treasury to publish a Taxpayer Bill of Rights that sets out a taxpayer's rights under the tax code in a clear and easy to understand manner. This section also requires Treasury and the Commissioner of the IRS to ensure that IRS employees are familiar with and act in accordance with these rights. The statement of rights is consistent with the fundamental taxpayer rights adopted by the IRS in 2014.

PREPARATION OF TAX RETURNS

Section 201. Programs for the Benefit of Low Income Taxpayers. Section 201 codifies and authorizes $30 million in funding for the Volunteer Income Tax Assistance Matching Grant program (VITA grant program). The VITA grant program provides IRS matching grants for return preparation programs that assist low-income taxpayers or members of underserved populations, including the elderly, persons with disabilities, and individuals living in rural areas.

Section 201 also creates a National Center to Promote Quality, Excellence, and Evaluation in Volunteer Income Tax Assistance and authorizes $5 million in funding for the Center. The Center is required to promote the adoption of a universally accessible volunteer training platform for the preparation of federal income tax returns, provide technical assistance to VITA programs, develop best practices, support outreach efforts, and provide evaluations of the activities funded under the VITA grant program, including by identifying gaps in services for targeted populations.

Finally, Section 201 increases the existing authorization for Low-Income Taxpayer Clinics grants, currently codified in IRC section 7526, from $6 million to $20 million, and allows Treasury and the IRS to promote and refer taxpayers to Low-Income Taxpayer Clinics.

Section 202. Regulation of Tax Return Preparers. This section provides Treasury and the IRS with the authority to regulate all aspects of Federal tax practice, including paid return preparers.

Section 203. Preparer Penalties with Respect to Preparation of Returns and Other Submissions. Some tax return preparers have been known to alter a tax return after the return has been signed by the taxpayer in order to fraudulently increase the amount of the tax refund. Under IRC section 6694, a tax return preparer may owe a cash penalty for understating the tax liability on any tax "return or claim of refund." However, a tax return that is fraudulently altered after the taxpayer signs the return is no longer a valid "return or claim of refund." Section 203 clarifies that the penalty may be owed for understatements of tax liability on tax returns, claims of refunds, "or other submissions" made by the return preparer.

In addition, in these cases of fraud, the tax return preparer may not provide a copy of the final return to the taxpayer, sign the return, or provide an identification number. Section 203 increases the minimum penalty from $50 to $1,000 for not providing the taxpayer with a copy of his final return, not signing the return, or not providing an identification number. The $25,000 annual cap on penalties for these violations is also eliminated.

Section 204. Clarification of Enrolled Agent Credentials. This section clarifies that enrolled agents may use the designation “enrolled agent” or “EA”. An enrolled agent is a person who has earned the privilege of representing taxpayers before the IRS by either passing a comprehensive IRS test covering individual and business tax returns, or through experience as a former IRS employee.

Enrolled agent status is the highest credential the IRS awards. Despite being an exclusively federal credential, some states prohibit Enrolled Agents from using their credential when representing taxpayers or advertising for potential clients. Section 204 would clarify that Enrolled Agents may use and display their credential when advertising their services and representing their clients.

Section 205. Limit Redisclosures and Uses of Consent-Based Disclosures of Tax Return Information. In certain transactions (when closing on a mortgage, for example), borrowers often must consent to disclose certain tax information to verify their income. In practice, this consent often involves signing a blank copy of Form 4506-T, Request for Transcript of Tax Return, which gives the lender access to four years of tax information for 120 days from the date on the form. However, the information is not subject to the same protection and limits on use as other taxpayer information, which raises numerous privacy concerns. This section amends section 6103 to limit the redisclosure or use of tax returns and tax return information requested through taxpayer consent solely to the extent necessary to achieve the purpose for which the consent was given by the taxpayer.

IMPROVING IRS PROCEDURES

Section 301. Modifications to Lien Notice Filing Procedures. Unlike with most other creditors, the IRS does not need a court judgment to file a Notice of Federal Tax lien (NFTL). However, the filing of an NFTL has the potential to harm the taxpayer’s credit and thus negatively affect his or her ability to obtain financing, find or retain a job, secure affordable housing or insurance, and ultimately pay the outstanding tax debt. Consequently, the mistaken or imprudent filing of an NFTL has the potential to badly damage the financial welfare of the taxpayer and the taxpayer’s family and simultaneously reduce federal revenue.

Section 301 requires additional protections for taxpayers before the IRS can file an NFTL. In particular, Section 301 requires that prior to filing an NFTL, the IRS must review the taxpayer’s information (including IRS and available third party information) concerning the taxpayer’s assets, income, and the value of the equity in the assets and make a determination, weighing all facts and circumstances, that the benefit to the government of the NFTL filing outweighs the harm to the taxpayer and that the NFTL filing will not jeopardize the taxpayer's ability to comply with the tax laws in the future. A taxpayer must receive notice and be given an opportunity to appeal the NFTL filing. Finally, Section 301 requires that NFTL filings must be reviewed by a supervisor if the collection of the liability would create an economic hardship, the taxpayer has no equity in the relevant assets, or there has been no contact with the taxpayer to discuss collection alternatives.

Section 302. Modification of Requirements Relating to Tax Lien Information Contained in Consumer Credit Reports. Under current law, tax liens can appear on a consumer credit report for up to seven years after the tax owed has been paid. This section reduces the period to at most two years. It also prohibits credit reports from including information about erroneously filed tax liens and tax liens that are withdrawn.

Section 303. De Novo Tax Court Review of Innocent Spouse Relief Determinations. Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. Spouses who live in community property states and file separate returns are generally required to report half of the community income on their separate returns. IRC sections 6015 and 66, sometimes referred to as the "innocent spouse" rules, provide relief (including "traditional," "allocated," and "equitable" relief) from joint and several liability and from the operation of community property rules.

Under section 6015, both traditional and allocated relief claims must be made within two years after the IRS initiates collection activity with respect to the taxpayer. However, neither section 6015 nor 66 requires taxpayers to request equitable relief within a specified time. Nevertheless, a Treasury regulation imposes the two-year deadline for traditional and allocated relief on taxpayers claiming equitable relief. Taxpayers who seek equitable relief after the two-year period and otherwise qualify for such relief (including those who meet the requirements of traditional or allocated relief but for missing the statutory two–year deadline specifically stated in those provisions) are harmed because relief is foreclosed in situations for which IRC section 6015(f) was intended to provide a "safety valve," e.g., where the delay was due to deceit or intimidation by a joint filer.

This provision amends the IRC to specify that taxpayers may request equitable relief under IRC section 6015(f) and 66(c) at any time before the expiration of the period of limitations on collection and that taxpayers may request innocent spouse relief as a defense in collection actions. The provision is consistent with current IRS practice, adopted in July 2011, pursuant to which the IRS no longer applies the two-year limit described above.

Section 304. Release of Federal Tax Levies Which Cause Business Hardship. Longstanding regulations allow the IRS to relieve individuals, but not businesses, from levies on the grounds of economic hardship. This section would allow the IRS to provide relief from federal tax levies to businesses that meet certain criteria for business hardship, including by taking into consideration the economic viability of the business, the nature or extent of the hardship, whether the taxpayer has exercised ordinary business care and prudence, and any hardships that would be caused by the liquidation of the business.

Section 305. Removal of Nonpayment Period from List of Triggering Events for Returns Relating to Cancellation of Indebtedness. Creditors are generally required to report cancelled debts to the IRS, and a taxpayer must generally include cancelled debt in his or her income. Current Treasury regulations create a presumption that a 36-month period in which a debtor does not make a payment is an event which requires a creditor to report an outstanding debt, even if it is not actually cancelled. Thus, a creditor can continue to try to collect a debt even as the IRS may at the same time act to collect additional taxes on the debt as if it had been cancelled. This provision would remove the 36 month period from a list of triggering events for returns relating to cancellation of indebtedness.

Section 306. Special rules for continuing levies. Currently, the IRS will not levy on accumulated funds in retirement assets absent “flagrant” conduct. However, the “flagrant” standard is not applied to the stream of payments from retirement assets or Social Security income payments—the IRS instead uses “discretion” in these instances. Section 306 provides that the IRS may not place a levy upon a taxpayer’s fixed and determinable right to future retirement and disability benefits unless the taxpayer has exhibited “flagrant” conduct—subjecting the IRS’s evaluation of potential levies on retirement assets and retirement benefits to the same conduct standard.

Furthermore, under current law, an IRS levy served prior to the collection statute expiration date (CSED) may be updated post-CSED to reflect the full amounts of tax, penalty, and interest due as of the date of the final payment, as though the CSED had not expired, for any period listed on the levy. Section 306 allows the IRS to levy against a taxpayer’s account only up to the dollar amount of taxes, penalties, and interest assessed as of the CSED.

Section 307. Rules for levies on retirement accounts. Currently, the IRS’s power to levy extends to assets in retirement accounts, including TSP accounts. Given the long-term importance of retirement assets to individuals’ future welfare, the IRS already regards retirement levies as “special cases” that require additional scrutiny and managerial approval.

In particular, the IRS has established three required steps in the Internal Revenue Manual (IRM) before a Revenue Officer can issue a notice of levy on a taxpayer’s retirement account: (1) determine what property (both retirement and non-retirement) is available to collect on the liability; (2) determine whether the taxpayer’s conduct has been “flagrant”; and (3) determine whether the taxpayer depends on money in the retirement account (or will in the future) for necessary living expenses.

However, the IRM does not define what constitutes “flagrant” conduct. Rather, the IRS must make this determination based on examples in the IRM guidance. IRS employees are instructed to consider extenuating circumstances that mitigate otherwise flagrant behavior and to review each situation on a case-by-case basis, but examples of extenuating circumstances are not included in the IRM. Without clear guidance, the IRS's assessment of what constitutes flagrant conduct is subjective and susceptible to personal judgment. This could lead to inconsistent treatment of similarly situated taxpayers.

Section 307 addresses this problem by providing, in statute, requirements the IRS must meet before levying on a retirement account. In particular, the bill sets forth three requirements to levy: (1) the amount of tax owed by the taxpayer exceeds $10,000; (2) the Secretary has determined the taxpayer has committed a "flagrant act"; and (3) the levy will not create an economic hardship due to the financial condition of the taxpayer. "Flagrant act" means the filing of a fraudulent return by the taxpayer, or that the taxpayer acted with the intent to evade or defeat tax collection or payment.

In addition, under current law, if the IRS improperly levies on a retirement account, the individual owning the account 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. Section 307 seeks to hold the taxpayer harmless by permitting an individual to recontribute wrongfully levied amounts to a retirement account, including TSP accounts.

Section 308. Taxpayer rights training. Section 308 requires the IRS to develop annual training for all IRS officers and employees regarding taxpayer rights, the Office of the Taxpayer Advocate's case criteria and mission, and Taxpayer Assistance Order procedures, and requires the Commissioner to establish procedures to provide the training annually.

Section 309. Notice, Opportunity for Hearing by, and Access to the Office of Appeals. The IRS Office of Appeals serves as the tribunal of last resort within the IRS. The Office of Appeals is generally instructed to consider hazards of litigation in determining a settlement that is fair to both taxpayers and the IRS. The IRS Restructuring and Reform Act of 1998 specifically directed the Commissioner to "ensure an independent appeals function within the Internal Revenue Service." Although detailed procedures governing the referral of cases to Appeals are provided in the Statement of Procedural Rules at Treas. Reg. Sec. 601.106(a) et seq., most courts consider such procedural regulations to be directory, rather than mandatory, and thus have concluded that a taxpayer generally does not have a legal right to insist upon an Appeals conference.

Section 309 provides a statutory right to a hearing held by the Office of Appeals. The Secretary is authorized to prescribe regulations relating to procedures and exceptions. Finally, to ensure adequate access to the Office of Appeals for all taxpayers, Section 309 requires the IRS to assign one Appeals officer and one settlement officer in each state.

NATIONAL TAXPAYER ADVOCATE

Section 401. Clarification of Taxpayer Assistance Order Authority. IRC section 7811 gives the National Taxpayer Advocate the authority to issue a Taxpayer Assistance Order if the Taxpayer Advocate determines a taxpayer "is suffering or about to suffer significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary." A Taxpayer Assistance Order can compel the Secretary to cease certain actions, including action taken under chapter 64 (relating to collections) and subchapter B of chapter 70 (relating to bankruptcy and receiverships). Section 401 expands the covered actions to those actions taken under chapter 74 (relating to closing agreements and compromises).

Section 402. Taxpayer Advocate Directives. As noted above, the National Taxpayer Advocate may issue a Taxpayer Assistance Order (TAO) to provide relief to a specific taxpayer when the manner in which the tax laws are being administered causes significant hardship to the taxpayer. TAO's are specific to a single taxpayer. Thus, if the Taxpayer Advocate identifies a widespread problem, the Taxpayer Advocate cannot issue a TAO to address the problem. To fill this gap, this section authorizes the Taxpayer Advocate to issue new Taxpayer Advocate Directives "to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers)" to "protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." A Taxpayer Advocate Directive may be modified or rescinded by the IRS Commissioner, the Deputy Commissioner, or the Taxpayer Advocate.

Section 403. Office of Taxpayer Advocate Access to Administrative Files. Section 403 ensures that the Office of the Taxpayer Advocate will have access to taxpayer case files should the Office's officers and employees need such access in furtherance of their responsibilities and duties. It would also ensure that Taxpayer Advocate employees are permitted to attend meetings with taxpayers and the IRS at the taxpayer's request.

Section 404. Office of Taxpayer Advocate Operations during a Lapse in Appropriations. Section 404 allows the Office of the Taxpayer Advocate to provide assistance to taxpayers relating to enforcement actions even when appropriations for the IRS have lapsed.