



U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS

Subcommittee on Oversight
Chairman Lynn Jenkins and Ranking Member John Lewis

DISCUSSION DRAFT: THE TAXPAYER FIRST ACT
March 26, 2018

Overview

Ways and Means Oversight Subcommittee Chairman Jenkins and Ranking Member Lewis are releasing today's discussion draft of proposed legislation to improve Internal Revenue Service (IRS) operations and our system of tax administration.

This proposed legislation will transform taxpayer interactions with the IRS for the first time since 1998. Two decades later, it is time to modernize the agency's information technology, infrastructure, and services. It is time to return the IRS back to its "service first" mission.

Ways and Means Oversight Subcommittee Chairman Jenkins and Ranking Member Lewis have approached these proposals with a great deal of care and thoughtfulness. This discussion draft is the culmination of more than eleven Oversight Subcommittee events, including hearings and roundtable discussions over the last three years. Dozens of witnesses testified before Subcommittee on different topics and with varying viewpoints on how to improve and modernize the IRS. This discussion draft addresses issues raised by these witnesses and incorporates provisions from at least 18 different bills, most of them bipartisan and bicameral.

The Ways and Means Oversight Subcommittee welcomes comments on the draft and would appreciate any specific suggestions for including additional metrics in order to measure the success of the proposed legislation.

Comments would be most helpful if received by April 6, 2018. Please submit your comments electronically to irsreform@mail.house.gov.

Summary

Title I – Independent Appeals Process

Sec. 101. Establishment of the Internal Revenue Service Independent Office of Appeals.

The Internal Revenue Service (IRS) currently has broad discretion to establish an administrative review process for tax disputes and to determine taxpayer access to that review process. In the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress directed the agency to create an independent process for taxpayers to appeal tax disputes. While the IRS initially established an independent process, over time the agency increasingly exercised its discretion to withhold certain taxpayers from accessing the review process. The provisions in this section seek to ensure that generally all taxpayers are able to access the administrative review process, allowing for their cases to be heard by an independent decision maker. For the first time, this provision codifies the IRS Independent Office of Appeals and provides for additional Congressional oversight over decisions to withhold taxpayers from the administrative review process.

Another provision in this section provides taxpayers access to “the case against them.” Under current law, taxpayers only have access to their case file if they make a request under the Freedom of Information Act (FOIA)—which is not the simplest of processes and is often an option that is not known to taxpayers. This provision would require the IRS to provide the taxpayer with their case file prior to the start of any dispute resolution process.

Title II – Improved Service

Sec. 201. Comprehensive customer service strategy.

Under this provision, within one year of enactment, the IRS is required to develop and submit to Congress a comprehensive customer service strategy. The strategy must address how the IRS intends to provide assistance to taxpayers, in part by ensuring adequate customer service training for its own employees and taking into account best practices from the private sector. The strategy must also establish metrics and benchmarks for measuring the IRS’s success in implementing this strategy.

Sec. 202. Return preparation programs for low-income taxpayers.

The IRS, through its Volunteer Income Tax Assistance (VITA) Program, currently partners with IRS-certified volunteer organizations to provide free tax return filing assistance to low-income populations, persons with disabilities, taxpayers with limited English proficiency, and other underserved communities. Since 2008, the IRS has provided matching grants to some of these organizations to help maintain and expand VITA programs. This provision provides certainty for these organizations by permanently authorizing matching grants to support VITA programs.

Sec. 203. IRS Free File Program.

The IRS currently works with electronic tax preparation services to provide free tax preparation software and electronically fillable forms. This provision codifies the existing Free File Program and work with stakeholders to improve and promote the program.

Sec. 204. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise.

An offer-in-compromise (OIC) is an agreement between the taxpayer and the IRS to settle a tax debt at a lower amount than what the taxpayer owes. In general, when proposing an OIC to the IRS, the taxpayer must pay an application fee and provide an initial non-refundable payment. This provision requires the IRS to eliminate the application fee and initial payment requirement for taxpayers with incomes below 250 percent of the federal poverty level.

Sec. 205. Notice from IRS regarding closure of Taxpayer Assistance Centers.

This provision requires the IRS to provide public notice, including by non-electronic means, to affected taxpayers 90 days prior to the closure of a Taxpayer Assistance Center. The notice must include information on alternative forms of assistance available for impacted taxpayers. The IRS must also notify Congress of the closure and provide the reasons for doing so.

Sec. 206. Provision of information regarding low income taxpayer clinics.

Low Income Taxpayer Clinics (LITC) assist low-income taxpayers with representation in controversies with the IRS. This provision clarifies that IRS employees are able to provide taxpayers in need of such assistance with information about the availability of and eligibility requirements for LITCs. IRS employees also are allowed to provide location and contact information for LITCs.

Title III – Sensible Enforcement

Sec. 301. Internal Revenue Service seizure requirements with respect to structuring transactions.

The Bank Secrecy Act (BSA) mandates reporting and recordkeeping requirements, including the reporting of currency transactions exceeding \$10,000, to assist federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. To circumvent these reporting requirements, individuals may structure cash transactions to fall below the \$10,000 reporting threshold (also known as “structuring”). A Committee investigation of this issue found that the IRS was seizing funds that appeared to have been structured; however, numerous small business owners had legitimate reasons for keeping their transactions under \$10,000, such as insurance policies that only protected cash-on-hand up to \$10,000.

Under this provision, the IRS must now show probable cause that funds believed to have been structured to avoid BSA reporting requirements are derived from an illegal source or connected to other criminal activity. This provision also provides important procedural protections for individuals, including a post-seizure hearing within 30 days of the seizure.

Sec. 302. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.

Related to Section 301, under this provision, if a court determines the government should return funds and interest to an individual whose funds were seized by the IRS based on allegations of structuring, the interest will be exempt from income tax.

Sec. 303. Clarification of equitable relief from joint liability.

The Tax Court can provide relief for certain spouses from an understatement or underpayment of taxes on a jointly filed return. This provision clarifies the standard of review for such relief by the Tax Court. Such a review will be conducted on a de novo basis, meaning that the Tax Court would take a fresh look at the case without taking previous decisions into account. The review would be based on the administrative record and any newly discovered or previously unavailable evidence.

Sec. 304. Rules for seizure of perishable goods restricted to only perishable goods.

Under current law, the IRS may seize and sell a taxpayer's property on the same day if the IRS deems it to be "perishable." Perishable goods are defined as those that (1) are liable to perish, (2) become greatly reduced in price or value by keeping, or (3) cannot be kept without great expense to the IRS. Deeming property as "perishable" also allows the IRS to forgo minimum bid requirements, which can lead to seized property being sold for significantly less than a normal auction would allow. This provision seeks to modify the definition of "perishable" by limiting the IRS's ability to deem seized property as "perishable" to only those that are liable to perish.

Sec. 305. Modification of procedures for issuance of third-party summons.

A John Doe summons is one that does not identify the person with respect to whose liability the summons is issued. Under current law, the IRS is authorized to issue a John Doe summons as part of an investigation of a specific, unidentified person or ascertainable group or class of persons. This provision seeks to clarify the IRS's authority to issue John Doe summons by emphasizing that the IRS must narrowly tailor such a summons to seek only information that pertains to the failure (or potential failure) of the person or group of persons to comply with federal tax law. This provision is consistent with the current IRS manual, which states that a John Doe summons may not be used for the purposes of a "fishing expedition."

Sec. 306. Establishment of income threshold for referral to private debt collection.

Congress mandated that the IRS established a program that refers certain outstanding tax debts currently not in collection to private collection agencies. Certain types of cases are not eligible for referral to private collection agencies, including deceased taxpayers, taxpayers under the age of 18, and those with pending installment or offer-in-compromise agreements. Currently, the IRS does not have a filter in place to prevent low-income individuals with incomes below 250 percent of the federal poverty level from being referred for collection. This provision creates a low-income exemption to prevent such referrals to private collection agencies.

Sec. 307. Reform of notice to contact third parties.

During the course of an audit, current law requires an IRS employee to notify a taxpayer prior to initiating third party contacts. Testimony before the Ways and Means Oversight Subcommittee revealed that this notice has become routine at the beginning of any given audit and no longer serves to provide actual notice of impending contact with third parties. This provision seeks to ensure that taxpayers are aware that the IRS intends to contact third parties, including friends, neighbors, and clients, closer in time to such contacts being made.

Sec. 308. Modification of authority to issue designated summons.

The IRS may issue designated or related summonses to examine the tax liability of certain corporations. This provision requires that prior to issuing a designated summons, the highest-level IRS employee in the relevant operating division and the relevant division counsel in the Office of Chief Counsel must review and provide written approval of the summons. The provision also requires that the IRS certify that it made a reasonable request for the information that is the subject of the summons.

Sec. 309. Limitation on access of non-Internal Revenue Service employees to returns and return information.

This provision prohibits a person, other than an officer or employee of the IRS, from examining books, records, and witness testimony as part of an examination other than for the sole purpose of serving as an expert. This provision also ensures that only IRS employees or the Office of Chief Counsel are able to question a witness under oath.

Title IV – Cyber Security and Identity Protection

Sec. 401. Public-private partnership to address identity theft refund fraud.

This provision codifies recent efforts of the IRS, through its Security Summit, to foster a partnership aimed at combatting identity theft tax refund fraud (IDTTRF) with public and private stakeholders. Congress would like to ensure that these proactive efforts to protect taxpayers and combat IDTTRF continue to be a priority of the IRS.

Sec. 402. Recommendations of Electronic Tax Administration Advisory Committee regarding identity theft refund fraud.

RRA 98 established the Electronic Tax Administration Advisory Committee (ETAAC) to provide input to the IRS on improving electronic tax administration. ETAAC's charter has since been amended to address the growing threat of IDTTRF, allowing it to work more closely with the Security Summit to address this issue. ETAAC's more recent annual reports to Congress also have provided meaningful recommendations on how to combat IDTTRF. This provision seeks to codify the changes made to ETAAC's charter to reflect its new focus on IDTTRF.

Sec. 403. Information sharing and analysis center.

Under this provision, the IRS is directed to participate in an IDTTRF information sharing and analysis center (ISAC) with state and private sector partners. The IRS has participated in the IDTTRF ISAC pilot, which tested the idea of more aggressively and efficiently sharing information between ISAC members to quickly identify and prevent tax fraud schemes. However, there are current statutory limits to the IRS's ability to share tax return information with its partners that is critical to combating these threats. This provision provides for the limited sharing of specified return information, such as IP address and the speed at which the return was filed, with paid return preparers who are members of the ISAC.

Sec. 404. Single point of contact for identity theft victims.

This provision establishes a single point of contact within the IRS for any taxpayer who is a victim of identity theft. The single point of contact will be responsible for tracking the taxpayer's case to completion and coordinating with other units to resolve the taxpayer's issues as quickly as possible. This provision addresses concerns over the lack of continuity of assistance when taxpayers are victims of identity theft.

Sec. 405. Identity protection personal identification numbers.

The IRS provides an Identity Protection Personal Identification Number (IP PIN) to taxpayers if the agency determines a taxpayer to be at risk for having his or her identity stolen, often when the identity previously has been stolen and used to file a fraudulent return. An IP PIN is a six-digit number that is included with the taxpayer's return to help authenticate the taxpayer's return. Currently, IP PINs are only available to taxpayers who meet specific requirements. This provision would require the IRS to set up a program where any concerned taxpayer can request an IP PIN to use in filing his or her return.

Sec. 406. Compliance by contractors with confidentiality safeguards.

This provision puts in place additional confidentiality safeguards on return information provided to contractors. Under this provision, the IRS will not be able to provide taxpayer information to any contractors or other agents of a federal, state, or local agency unless the contractor has safeguards in place to protect the confidentiality of return information and agrees to conduct on-site compliance reviews every three years.

Title V – Modernization

Subtitle A – Development of Information Technology

Sec. 501. Management of Internal Revenue Service information technology.

This provision seeks to strengthen IRS accountability for the billions of taxpayer dollars annually spent on developing and maintaining IRS information technology (IT) systems. This provision codifies the position of the IRS's Chief Information Officer (CIO) and establishes clear roles and responsibilities for the CIO. The provision also mandates that the IRS develop and implement an IT strategic plan, in alignment with the overall goals of the IRS, to ensure adequate consideration and planning for the IRS's long-term IT needs. The IRS also must have a third party independently verify and validate its plans for the completion of the Customer Account Data Engine 2 and Enterprise Case Management system(s) within a year of enactment.

Sec. 502. Development of online accounts and portals.

Similar to the goal of increasing electronic filing established in RRA 98, this provision establishes a new goal for the IRS to develop robust and secure online accounts for taxpayers and their preparers by 2023. While the IRS currently provides limited online assistance through its web applications, it continues to lag behind in developing online options for those taxpayers who wish to use them. This provision is intended to supplement, not replace, other taxpayer services provided by phone or in person by the IRS. It also mandates that the IRS develop a process for the secure acceptance of tax forms and supporting documentation in an electronic format.

Sec. 503. Internet platform for Form 1099 filings.

This provision requires the IRS to develop an internet portal that would facilitate taxpayers filing Forms 1099 with the IRS. The internet portal is to be modeled after a Social Security Administration (SSA) system that allows individuals to file Forms W-2 with SSA.

Subtitle B – Modernization of Consent-Based Income Verification System

Sec. 511. Disclosure of taxpayer information for third-party income verification.

The Income Verification Express Service (IVES) is a program run by the IRS, which is used to verify a taxpayer's income. The program is most often used when a taxpayer is applying for a mortgage and the mortgage lender is seeking to verify the taxpayer's income. This provision authorizes the IRS to develop an automated system to receive these forms in lieu of the current system, which relies on the forms to be sent to the IRS via secure fax. Additionally, beginning six months after enactment, the provision authorizes IRS to charge a separate user fee over a two-year period on all IVES requests to fund the development of the new system.

Sec. 512. Limit redisclosures and uses of consent-based disclosures of tax return information.

This provision limits tax return information redisclosures by the taxpayer’s designee to only those redisclosures to which the taxpayer has expressly consented.

Subtitle C – Expanded Use of Electronic Systems

Sec. 521. Electronic filing of returns.

Currently, the IRS can only require individuals filing more than 250 returns with the IRS to file them electronically. This provision eventually would lower that threshold to 10 or more returns. This requirement would be phased in between the years 2021 and 2024. The provision also provides an exception to this requirement for tax preparers located in geographic areas with limited or no internet access.

Sec. 522. Mandatory electronic filing for annual returns of exempt organizations.

Currently, only tax-exempt organizations that have assets greater than \$10 million and those that file more than 250 returns with the IRS are required to file Forms 990 electronically. Under this provision, all tax-exempt organizations required to file annual returns with the IRS would have to submit their returns electronically. This provision also provides transitional relief for small organizations by allowing the IRS to delay this requirement for up to two years.

Sec. 523. Uniform standards for the use of electronic signatures for disclosure authorizations to, and other authorizations of, practitioners.

This provision requires the IRS to develop standards and other guidelines that would allow for electronic signatures to be used to request taxpayer return information for the purposes of disclosures to a practitioner or to execute a power of attorney.

Sec. 524. Payment of taxes by debit and credit cards.

Under current law, the IRS cannot accept credit and debit card payments for taxes directly due to a restriction on the payment of fees charged by the card issuer. As a result, the IRS must use a third-party processor to accept credit and debit card payments. This provision allows the IRS to directly accept credit and debit card payments for taxes, provided that the fee is paid by the taxpayer.

Subtitle D – Organizational Modernization

Sec. 531. Modification of title of Commissioner of Internal Revenue and related officials.

The title of “Commissioner of Internal Revenue” will be changed to “Administrator of the Internal Revenue Service.” Similarly, the Deputy Commissioner titles will be changed to

Deputy Administrator. This change emphasizes the primary responsibility of the person leading the IRS—to administer the tax code.

Sec. 532. Office of the National Taxpayer Advocate.

Taxpayer Advocate Directives (TADs) allows the National Taxpayer Advocate (NTA) to identify systemic problems and issue directives mandating changes to IRS tax administration or other processes unless the IRS Commissioner or Deputy Commissioner modifies or rescinds the order. The NTA’s authority to issue TADs is pursuant to a delegation of authority from the Commissioner. This provision strengthens TADs by requiring a response from the Commissioner or Deputy Commissioner and clarifying the time period for that response. It also provides timeframes for the NTA to appeal a response by the Deputy Commissioner to the Commissioner. This provision also requires the NTA to report to Congress any TADs not honored by the IRS.

This provision also makes other changes to the NTA’s responsibilities. It reduces the number of “most serious problems” included in the NTA Annual Report to Congress from “more than 20” to ten. The provision requires the IRS to provide statistical support to the NTA upon request and requires the NTA to coordinate research efforts with the Treasury Inspector General for Tax Administration (TIGTA). The provision clarifies the salary for the NTA.

Sec. 534. Elimination of IRS Oversight Board.

The IRS Oversight Board was created as part of RRA 98. The Oversight Board was intended to be a nine-person panel to oversee the IRS’s administration of the federal tax laws. However, the Oversight Board has been ineffective given the lack of a quorum over the past few years. This provision permanently eliminates the IRS Oversight Board.

Sec. 535. Authority to modernize the organization of the Internal Revenue Service.

RRA 98 mandated that the IRS establish organizational units serving particular groups of taxpayers with similar needs in lieu of its previous geographic organizational structure. Given that 20 years has passed since RRA 98, the mandated organization according to taxpayer types no longer allows the IRS to organize itself efficiently to best meet its mission and the challenges it faces. This provision allows the IRS to thoughtfully consider what a modern structure for the agency might look like, to develop a plan for its implementation, and to submit such a plan to Congress prior to making any organizational changes.

Title VI – Tax Court

Sec. 601. Disqualification of judge or magistrate judge of the Tax Court.

This provision makes Tax Court judges subject to the same grounds for disqualification as judges of other federal courts in order to ensure public confidence in the independence and impartiality of Tax Court judges.

Sec. 602. Opinions and judgments.

This provision applies the judicial terminology of “opinion” and “judgment” used by federal courts to the Tax Court. The provision replaces the non-judicial terms of “report” and “decision” with “opinion” and “judgment,” respectively. This provision does so in order to provide consistent use of terms within the Code and clarity for taxpayers.

Sec. 603. Title of special trial judge changed to magistrate judge of the Tax Court.

This provision renames “special trial judges” to “magistrate judges.” The provision provides clarity for taxpayers and brings the Tax Court terminology in line with other federal courts.

Sec. 604. Repeal of deadwood related to Board of Tax Appeals.

Congress established the United States Tax Court under Article I of the Constitution. Therefore, references to the Tax Court’s predecessor, the Board of Tax Appeals, are obsolete. This provision deletes the references to the Board of Tax Appeals.