

## Taxpayer Bill of Rights Enhancement (TBORE) Act of 2017

### I. The Right to Privacy

#### **Sec. 101: 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 instances in which 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. 102: 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.

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

#### **Sec. 201: 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 remedies this concern by clarifying that the two-year statute of limitations only begins to run once the taxpayer reasonably could have discovered the collection was unauthorized and by 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. 202: Extension of time limit for contesting IRS levy. (IRC § 6343 and 6532)**

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

**Summary:** The IRS is authorized to levy on 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 nine 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 nine 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 nine-month period is insufficient for individuals and third parties to discover a wrongful or mistaken levy and seek to remedy it. Accordingly, this provision would extend from nine months to two years the time period that individuals and third parties have to seek the return of proceeds on the sale of wrongfully levied property.

**III. The Right to a Fair and Just Tax System**

**Sec. 301: 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. 302: 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 on a taxpayer's IRA or employer sponsored retirement plan.

**Summary:** Under present law, if the IRS improperly levies on an IRA employer sponsored plan, the individual owning the retirement 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. This provision (1) holds the taxpayer harmless by permitting an individual to recontribute wrongfully levied amounts to an IRA or employer sponsored plan without regard to contribution limits, (2) abates any tax that may have been applied with respect to the distribution made as a result of the wrongful

levy if recontributed to the IRA or employer sponsored plan, (3) and expands the instances where the IRS must pay interest on amounts returned as a result of a wrongful levy.

**Sec. 303: 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 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 than the full tax liability 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. 304: 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 and expanding its application.

**Summary:** Under current law, a penalty is imposed on a taxpayer for the underpayment of estimated tax if tax owed at end of year is \$1,000 or more. The threshold was last increased in 1998 from \$500 to \$1,000. This provision increases the threshold amount to \$2,000. Moreover, the application of this current safe harbor only provides credit for withholding from wages. This provision expands the application of the safe harbor to provide taxpayers with credit for estimated tax payments provided an estimated tax payment is made in any quarter in which an estimated tax payment is required and the payment is at least 90 percent of the full payment due.

**Section 305: Modification and simplification of individual estimated tax calculation. (IRC § 6654)**

**Purpose:** To simplify individual estimated tax calculations related to the calculation of interest for underpayments.

**Summary:** Under current law, calculating interest on underpayments can be complicated and confusing, often requiring multiple calculations that require varying interest rates across payment periods. This provision simplifies the underpayment calculation by (1) applying only one interest rate per estimated tax underpayment period, (2) providing that underpayment balances are cumulative, and (3) allowing for a 365-day year for all estimated tax interest calculations.

**Sec. 306: 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. The threshold has not been increased since 1996. This provision increases the threshold amount to \$2,000.

**Sec. 307: Increase in large corporation threshold for estimated tax payments. (IRC § 6655)**

**Purpose:** To update the taxable income threshold and 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 increases the threshold to \$1.5 million.

#### **Sec. 308: 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 its 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 better equalizes 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. 309: 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, penalties apply when taxpayers fail to make required deposits of federal taxes. The penalty is 2 percent of the underpayment if the failure to deposit is for not more than five days, 5 percent if it is for six through 15 days, and 10 percent if it is 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 it is made in a timely manner. This can result in individuals who make the correct deposit being penalized at a higher rate than those who fail to make a deposit until several days after the due date. The provision clarifies that the 10-percent penalty applies only in cases where a payment is late by 15 days or more. Thus, a taxpayer who makes a deposit on time but not in the manner required is subject only to a penalty of 2 percent.

### **IV. The Right to Be Informed**

#### **Sec. 401: Collection activities with respect to a 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 II permitted former spouses to make a written request for information on collection activity on a jointly filed return. This provision eliminates the written request requirement and allows for the disclosure upon an oral request.

#### **Sec. 402: 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 requires all tax-exempt organizations that must file Form 990 series returns or Forms 8872 to file them electronically. The proposal also requires 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.

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

### **Sec. 501: 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. 502: Access to appeals office.**

**Purpose:** To ensure all taxpayers have convenient access to appeals by requiring the IRS 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 situation, 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.