105TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 105–364
Part 1

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1997

OCTOBER 31, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 2676]

[Including cost estimate of the Congressional Budget Office]

together with

ADDITIONAL AND DISSENTING VIEWS

The Committee on Ways and Means, to whom was referred the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

59–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Internal Revenue Service Restructuring and Reform Act of 1997".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

TITLE I—EXECUTIVE BRANCH GOVERNANCE AND SENIOR MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Executive Branch Governance and Senior Management

SEC. 101. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

(a) IN GENERAL.—Section 7802 (relating to the Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Internal Revenue Service Oversight Board (hereafter in this subchapter referred to as the 'Oversight Board').

"(b) MEMBERSHIP.—

"(1) COMPOSITION.—The Oversight Board shall be composed of 11 members, as follows:

"(A) 8 members shall be individuals who are not Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

"(B) 1 member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

"(C) 1 member shall be the Commissioner of Internal Revenue.

"(D) 1 member shall be an individual who is a representative of an organization that represents a substantial number of Internal Revenue Service employees and who is appointed by the President, by and with the advice and consent of the Senate.

"(2) QUALIFICATIONS AND TERMS.—

"(A) QUALIFICATIONS.—Members of the Oversight Board described in paragraph (1) (A) shall be appointed solely on the basis of their professional experience and expertise in 1 or more of the following areas:

"(i) Management of large service organizations.

"(ii) Customer service.

"(iii) Federal tax laws, including tax administration and compliance.

"(iv) Information technology.

"(v) Organization development.

"(vi) The needs and concerns of taxpayers.

In the aggregate, the members of the Oversight Board described in paragraph (1) (A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

"(B) TERMS.—Each member who is described in paragraph (1) (A) or (D) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1) (A)—

"(i) 1 member shall be appointed for a term of 1 year,

"(ii) 1 member shall be appointed for a term of 2 years,

"(iii) 2 members shall be appointed for a term of 3 years, and

"(iv) 2 members shall be appointed for a term of 4 years.

Such terms shall begin on the date of appointment.

"(C) REAPPOINTMENT.—An individual who is described in paragraph (1) (A) may be appointed to no more than two 5-year terms on the Oversight Board.

"(D) VACANCY.—Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(E) SPECIAL GOVERNMENT EMPLOYEES.—During the entire period that an individual appointed under paragraph (1) (A) is a member of the Oversight Board, such individual shall be treated as—

"(i) serving as a special government employee (as defined in section 202 of title 18, United States Code) and as described in section 207(c)(2) of such title 18, and

"(ii) serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act.

"(3) QUORUM.—6 members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

"(4) REMOVAL.—

"(A) IN GENERAL.—Any member of the Oversight Board may be removed at the will of the President.

"(B) SECRETARY AND COMMISSIONER.—An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of employment.

"(C) REPRESENTATIVE OF INTERNAL REVENUE SERVICE EMPLOYEES.—The member described in paragraph (1)(D) shall be removed upon termination of employment, membership, or other affiliation with the organization described in such paragraph.

"(5) CLAIMS.—

"(A) IN GENERAL.—Members of the Oversight Board who are described in paragraph (1) (A) or (D) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member. The preceding sentence shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious conduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the Oversight Board.

"(B) EFFECT ON OTHER LAW.—This paragraph shall not be construed—

"(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions,

"(ii) to affect any other right or remedy against the United States under applicable law, or

"(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

"(c) GENERAL RESPONSIBILITIES.—

"(1) IN GENERAL.—The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

"(2) EXCEPTIONS.—The Oversight Board shall have no responsibilities or authority with respect to—

"(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

"(B) law enforcement activities of the Internal Revenue Service, including compliance activities such as criminal investigations, examinations, and collection activities, or

"(C) specific procurement activities of the Internal Revenue Service.

"(3) RESTRICTION ON DISCLOSURE OF RETURN INFORMATION TO OVERSIGHT BOARD MEMBERS.—No return, return information, or taxpayer return information (as defined in section 6103(b)) may be disclosed to any member of the Oversight Board described in subsection (b)(1) (A) or (D). Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by a member of the Oversight Board so described to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary and the Joint Committee on Taxation.

"(d) SPECIFIC RESPONSIBILITIES.—The Oversight Board shall have the following specific responsibilities:

"(1) STRATEGIC PLANS.—To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

"(A) mission and objectives, and standards of performance relative to either, and

"(B) annual and long-range strategic plans.

"(2) OPERATIONAL PLANS.—To review the operational functions of the Internal Revenue Service, including—

"(A) plans for modernization of the tax system,

"(B) plans for outsourcing or managed competition, and

"(C) plans for training and education.

"(3) MANAGEMENT.—To—

"(A) recommend to the President candidates for appointment as the Commissioner of Internal Revenue and recommend to the President the removal of the Commissioner,

"(B) review the Commissioner's selection, evaluation, and compensation of senior managers, and

"(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

"(4) BUDGET.—To—

"(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner,

"(B) submit such budget request to the Secretary of the Treasury, and

"(C) ensure that the budget request supports the annual and long-range strategic plans.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to

Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

"(e) BOARD PERSONNEL MATTERS.—

"(1) COMPENSATION OF MEMBERS.—

"(A) IN GENERAL.—Each member of the Oversight Board who is described in subsection (b)(1)(A) shall be compensated at a rate of $30,000 per year. All other members of the Oversight Board shall serve without compensation for such service.

"(B) CHAIRPERSON.—In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of $50,000.

"(2) TRAVEL EXPENSES.—The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business for purposes of attending meetings of the Oversight Board.

"(3) STAFF.—At the request of the Chairperson of the Oversight Board, the Commissioner shall detail to the Oversight Board such personnel as may be necessary to enable the Oversight Board to perform its duties. Such detail shall be without interruption or loss of civil service status or privilege.

"(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(f) ADMINISTRATIVE MATTERS.—

"(1) CHAIR.—The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

"(2) COMMITTEES.—The Oversight Board may establish such committees as the Oversight Board determines appropriate.

"(3) MEETINGS.—The Oversight Board shall meet at least once each month and at such other times as the Oversight Board determines appropriate.

"(4) REPORTS.—The Oversight Board shall each year report to the President and the Congress with respect to the conduct of its responsibilities under this title.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4946(c) (relating to definitions and special rules for chapter 42) is amended—

(A) by striking "or" at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting ", or", and

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

"(7) a member of the Internal Revenue Service Oversight Board.".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Internal Revenue Service Oversight Board."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) NOMINATIONS TO INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—The President shall submit nominations under section 7802 of the Internal Revenue Code of 1986, as added by this section, to the Senate not later than 6 months after the date of the enactment of this Act.

SEC. 102. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) IN GENERAL.—Section 7803 (relating to other personnel) is amended to read as follows:

"SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

"(a) COMMISSIONER OF INTERNAL REVENUE.—

"(1) APPOINTMENT.—

"(A) IN GENERAL.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate, to a 5-year term. The appointment shall be made without regard to political affiliation or activity.

"(B) VACANCY.—Any individual appointed to fill a vacancy in the position of Commissioner occurring before the expiration of the term for which such individual's predecessor was appointed shall be appointed only for the remainder of that term.

"(C) REMOVAL.—The Commissioner may be removed at the will of the President.

"(2) DUTIES.—The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

"(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party; and

"(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives, the Committees on Finance, Government Operations, and Appropriations of the Senate, and the Joint Committee on Taxation.

"(3) CONSULTATION WITH BOARD.—The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies) and other nonqualified deferred compensation arrangements. The Assistant Commissioner shall report annually to the Commissioner with respect to the Assistant Commissioner's responsibilities under this section.

"(c) OFFICE OF TAXPAYER ADVOCATE.—

"(1) IN GENERAL.—

"(A) ESTABLISHMENT.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed with the approval of the Oversight Board by the Commissioner of Internal Revenue and shall report directly to the Commissioner. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Commissioner of Internal Revenue.

"(B) RESTRICTION ON SUBSEQUENT EMPLOYMENT.—An individual who is an officer or employee of the Internal Revenue Service may be appointed as Taxpayer Advocate only if such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the Taxpayer Advocate.

"(2) FUNCTIONS OF OFFICE.—

"(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

"(i) assist taxpayers in resolving problems with the Internal Revenue Service,

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than June 30 of each calendar year, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance

of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

"(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems,

"(X) in conjunction with the National Director of Appeals, identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes, and

"(XI) include such other information as the Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the committees described in clauses (i) and (ii) without any prior review or comment from the Oversight Board, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(C) OTHER RESPONSIBILITIES.—The Taxpayer Advocate shall—

"(i) monitor the coverage and geographic allocation of problem resolution officers, and

"(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to problem resolution officers.

"(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner.".

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7803 and inserting the following new item:

"Sec. 7803. Commissioner of Internal Revenue; other officials."

(2) Subsection (b) of section 5109 of title 5, United States Code, is amended by striking "7802(b)" and inserting "7803(b)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) CURRENT OFFICERS.—

(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of

the Internal Revenue Code of 1986, as added by this section, shall begin as of the date of such appointment.

(B) Section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act.

SEC. 103. OTHER PERSONNEL.

(a) IN GENERAL.—Section 7804 (relating to the effect of reorganization plans) is amended to read as follows:

"SEC. 7804. OTHER PERSONNEL.

"(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

"(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

"(1) DESIGNATION OF POST OF DUTY.—The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

"(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

"(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 6344 is amended by striking "section 7803(d)" and inserting "section 7804(c)".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7804 and inserting the following new item:

"Sec. 7804. Other personnel."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 104. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

(a) IN GENERAL.—Part I of subchapter A of chapter 75 (relating to crimes, other offenses, and forfeitures) is amended by adding after section 7216 the following new section:

"SEC. 7217. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

"(a) PROHIBITION.—It shall be unlawful for any applicable person to request any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

"(b) REPORTING REQUIREMENT.—Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Chief Inspector of the Internal Revenue Service.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any request made to an applicable person by the taxpayer or a representative of the taxpayer and forwarded by such applicable person to the Internal Revenue Service,

"(2) any request by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section, or

"(3) any request by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

"(d) PENALTY.—Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

"(e) APPLICABLE PERSON.—For purposes of this section, the term 'applicable person' means—

"(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President, and

"(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 75 is amended by adding after the item relating to section 7216 the following new item:

"Sec. 7217. Prohibition on executive branch influence over taxpayer audits and other investigations."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

Subtitle B—Personnel Flexibilities

SEC. 111. PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

"Subpart I—Miscellaneous

"CHAPTER 93—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

"Sec.
"9301. General requirements.
"9302. Flexibilities relating to performance management.
"9303. Staffing flexibilities.
"9304. Flexibilities relating to demonstration projects.

"§ 9301. General requirements

"(a) CONFORMANCE WITH MERIT SYSTEM PRINCIPLES, ETC.—Any flexibilities under this chapter shall be exercised in a manner consistent with—

"(1) chapter 23, relating to merit system principles and prohibited personnel practices; and

"(2) provisions of this title (outside of this subpart) relating to preference eligibles.

"(b) REQUIREMENT RELATING TO UNITS REPRESENTED BY LABOR ORGANIZATIONS.—

"(1) WRITTEN AGREEMENT REQUIRED.—Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to the exercise of any flexibility under section 9302, 9303, or 9304, unless there is a written agreement between the Internal Revenue Service and the organization permitting such exercise.

"(2) DEFINITION OF A WRITTEN AGREEMENT.—In order to satisfy paragraph (1), a written agreement—

"(A) need not be a collective bargaining agreement within the meaning of section 7103(8); and

"(B) may not be an agreement imposed by the Federal Service Impasses Panel under section 7119.

"§ 9302. Flexibilities relating to performance management

"(a) IN GENERAL.—The Commissioner of Internal Revenue shall, within a year after the date of the enactment of this chapter, establish a performance management system which—

"(1) subject to section 9301(b), shall cover all employees of the Internal Revenue Service other than—

"(A) the members of the Internal Revenue Service Oversight Board;

"(B) the Commissioner of Internal Revenue; and

"(C) the Chief Counsel for the Internal Revenue Service;

"(2) shall maintain individual accountability by—

"(A) establishing standards of performance which—

"(i) shall permit the accurate evaluation of each employee's performance on the basis of the individual and organizational performance requirements applicable with respect to the evaluation period involved, taking into account individual contributions toward the attainment of any goals or objectives under paragraph (3);

"(ii) shall be communicated to an employee before the start of any period with respect to which the performance of such employee is to be evaluated using such standards; and

"(iii) shall include at least 2 standards of performance, the lowest of which shall denote the retention standard and shall be equivalent to fully successful performance;

"(B) providing for periodic performance evaluations to determine whether employees are meeting all applicable retention standards; and

"(C) using the results of such employee's performance evaluation as a basis for adjustments in pay and other appropriate personnel actions; and

"(3) shall provide for (A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with Internal Revenue Service performance planning procedures, including those established under the Government Performance and Results Act of 1993, the Information Technology Management Reform Act of 1996, Revenue Procedure 64–22 (as in effect on July 30, 1997), and taxpayer service surveys, (B) communicating such goals or objectives to employees, and (C) using such goals or objectives to make performance distinctions among employees or groups of employees.

For purposes of this title, performance of an employee during any period in which such employee is subject to standards of performance under paragraph (2) shall be considered to be 'unacceptable' if the performance of such employee during such period fails to meet any retention standard.

"(b) AWARDS.—

"(1) FOR SUPERIOR ACCOMPLISHMENTS.—In the case of a proposed award based on the efforts of an employee or former employee of the Internal Revenue Service, any approval required under the provisions of section 4502(b) shall be considered to have been granted if the Office of Personnel Management does not disapprove the proposed award within 60 days after receiving the appropriate certification described in such provisions.

"(2) FOR EMPLOYEES WHO REPORT DIRECTLY TO THE COMMISSIONER.—

"(A) IN GENERAL.—In the case of an employee of the Internal Revenue Service who reports directly to the Commissioner of Internal Revenue, a cash award in an amount up to 50 percent of such employee's annual rate of basic pay may be made if the Commissioner finds such an award to be warranted based on such employee's performance.

"(B) NATURE OF AN AWARD.—A cash award under this paragraph shall not be considered to be part of basic pay.

"(C) TAX ENFORCEMENT RESULTS.—A cash award under this paragraph may not be based solely on tax enforcement results.

"(D) ELIGIBLE EMPLOYEES.—Whether or not an employee is an employee who reports directly to the Commissioner of Internal Revenue shall, for purposes of this paragraph, be determined under regulations which the Commissioner shall prescribe, except that in no event shall more than 8 employees be eligible for a cash award under this paragraph in any calendar year.

"(E) LIMITATION ON COMPENSATION.—For purposes of applying section 5307 to an employee in connection with any calendar year to which an award made under this paragraph to such employee is attributable, subsection (a)(1) of such section shall be applied by substituting 'to equal or exceed the annual rate of compensation for the Vice President for such calendar year' for 'to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year'.

"(F) APPROVAL REQUIRED.—An award under this paragraph may not be made unless—

"(i) the Commissioner of Internal Revenue certifies to the Office of Personnel Management that such award is warranted; and

"(ii) the Office approves, or does not disapprove, the proposed award within 60 days after the date on which it is so certified.

"(3) BASED ON SAVINGS.—

"(A) IN GENERAL.—The Commissioner of Internal Revenue may authorize the payment of cash awards to employees based on documented financial savings achieved by a group or organization which such employees comprise, if such payments are made pursuant to a plan which—

"(i) specifies minimum levels of service and quality to be maintained while achieving such financial savings; and

"(ii) is in conformance with criteria prescribed by the Office of Personnel Management.

"(B) FUNDING.—A cash award under this paragraph may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting.

"(C) TAX ENFORCEMENT RESULTS.—A cash award under this paragraph may not be based solely on tax enforcement results.

"(c) OTHER PROVISIONS.—

"(1) NOTICE PROVISIONS.—In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, '15 days' shall be substituted for '30 days'.

"(2) APPEALS.—Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

"§ 9303. Staffing flexibilities

"(a) ELIGIBILITY TO COMPETE FOR A PERMANENT APPOINTMENT IN THE COMPETITIVE SERVICE.—

"(1) ELIGIBILITY OF QUALIFIED VETERANS.—

"(A) IN GENERAL.—No veteran described in subparagraph (B) shall be denied the opportunity to compete for an announced vacant competitive service position within the Internal Revenue Service by reason of—

"(i) not having acquired competitive status; or

"(ii) not being an employee of that agency.

"(B) DESCRIPTION.—An individual shall, for purposes of a position for which such individual is applying, be considered a veteran described in this subparagraph if such individual—

"(i) is either a preference eligible, or an individual (other than a preference eligible) who has been separated from the armed forces under honorable conditions after at least 3 years of active service; and

"(ii) meets the minimum qualification requirements for the position sought.

"(2) ELIGIBILITY OF CERTAIN TEMPORARY EMPLOYEES.—

"(A) IN GENERAL.—No temporary employee described in subparagraph (B) shall be denied the opportunity to compete for an announced vacant competitive service position within the Internal Revenue Service by reason of not having acquired competitive status.

"(B) DESCRIPTION.—An individual shall, for purposes of a position for which such individual is applying, be considered a temporary employee described in this subparagraph if—

"(i) such individual is then currently serving as a temporary employee in the Internal Revenue Service;

"(ii) such individual has completed at least 2 years of current continuous service in the competitive service under 1 or more term appointments, each of which was made under competitive procedures prescribed for permanent appointments;

"(iii) such individual's performance under each term appointment referred to in clause (ii) met all applicable retention standards; and

"(iv) such individual meets the minimum qualification requirements for the position sought.

"(b) RATING SYSTEMS.—

"(1) IN GENERAL.—Notwithstanding subchapter I of chapter 33, the Commissioner of Internal Revenue may establish category rating systems for evaluating job applicants for positions in the competitive service, under which qualified candidates are divided into 2 or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the job to be filled.

"(2) TREATMENT OF PREFERENCE ELIGIBLES.—Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS–9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who

meet the minimum qualification standards, shall be listed in the highest quality category.

"(3) SELECTION PROCESS.—An appointing authority may select any applicant from the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories. Notwithstanding the preceding sentence, the appointing authority may not pass over a preference eligible in the same or a higher category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied, except that in no event may certification of a preference eligible under this subsection be discontinued by the Internal Revenue Service under section 3317(b) before the end of the 6-month period beginning on the date of such employee's first certification.

"(c) INVOLUNTARY REASSIGNMENTS AND REMOVALS OF CAREER APPOINTEES IN THE SENIOR EXECUTIVE SERVICE.—Neither section 3395(e)(1) nor section 3592(b)(1) shall apply with respect to the Internal Revenue Service.

"(d) PROBATIONARY PERIODS.—Notwithstanding any other provision of law or regulation, the Commissioner of Internal Revenue may establish a period of probation under section 3321 of up to 3 years for any position if, as determined by the Commissioner, a shorter period would be insufficient for the incumbent to demonstrate complete proficiency in such position.

"(e) PROVISIONS THAT REMAIN APPLICABLE.—No provision of this section exempts the Internal Revenue Service from—

"(1) any employment priorities established under direction of the President for the placement of surplus or displaced employees; or

"(2) its obligations under any court order or decree relating to the employment practices of the Internal Revenue Service.

"§ 9304. Flexibilities relating to demonstration projects

"(a) AUTHORITY TO CONDUCT.—The Commissioner of Internal Revenue may, in accordance with this section, conduct 1 or more demonstration projects to improve personnel management; provide increased individual accountability; eliminate obstacles to the removal of or imposing any disciplinary action with respect to poor performers, subject to the requirements of due process; expedite appeals from adverse actions or performance-based actions; and promote pay based on performance.

"(b) GENERAL REQUIREMENTS.—Except as provided in subsection (c), each demonstration project under this section shall comply with the provisions of section 4703.

"(c) SPECIAL RULES.—For purposes of any demonstration project under this section—

"(1) AUTHORITY OF COMMISSIONER.—The Commissioner of Internal Revenue shall exercise the authority provided to the Office of Personnel Management under section 4703.

"(2) PROVISIONS NOT APPLICABLE.—The following provisions of section 4703 shall not apply:

"(A) Paragraphs (3) through (6) of subsection (b).

"(B) Paragraphs (1), (2)(B)(ii), and (4) of subsection (c).

"(C) Subsections (d) through (g).

"(d) NOTIFICATION REQUIRED TO BE GIVEN.—

"(1) TO EMPLOYEES.—The Commissioner of Internal Revenue shall notify employees likely to be affected by a project proposed under this section at least 90 days in advance of the date such project is to take effect.

"(2) TO CONGRESS AND OPM.—The Commissioner of Internal Revenue shall, with respect to each demonstration project under this section, provide each House of Congress and the Office of Personnel Management with a report, at least 30 days in advance of the date such project is to take effect, setting forth the final version of the plan for such project. Such report shall, with respect to the project to which it relates, include the information specified in section 4703(b)(1).

"(e) LIMITATIONS.—No demonstration project under this section may—

"(1) provide for a waiver of any regulation prescribed under any provision of law referred to in paragraph (2)(B)(i) or (3) of section 4703(c);

"(2) provide for a waiver of subchapter V of chapter 63 or subpart G of part III (or any regulations prescribed under such subchapter or subpart);

"(3) provide for a waiver of any law or regulation relating to preference eligibles as defined in section 2108 or subchapter II or III of chapter 73 (or any regulations prescribed thereunder);

"(4) permit collective bargaining over pay or benefits, or require collective bargaining over any matter which would not be required under section 7106; or

"(5) include a system for measuring performance that provides for only 1 level of performance at or above the level of fully successful or better.

"(f) PERMISSIBLE PROJECTS.—Notwithstanding any other provision of law, a demonstration project under this section—

"(1) may establish alternative means of resolving any dispute within the jurisdiction of the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Federal Service Impasses Panel; and

"(2) may permit the Internal Revenue Service to adopt any alternative dispute resolution procedure that a private entity may lawfully adopt.

"(g) CONSULTATION AND COORDINATION.—The Commissioner of Internal Revenue shall consult with the Director of the Office of Personnel Management in the development and implementation of each demonstration project under this section and shall submit such reports to the Director as the Director may require. The Director or the Commissioner of Internal Revenue may terminate a demonstration project under this section if either of them determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or qualified applicants for employment with the Internal Revenue Service.

"(h) TERMINATION.—Each demonstration project under this section shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that any such project may continue beyond the end of such period, for not to exceed 2 years, if the Commissioner of Internal Revenue, with the concurrence of the Director, determines such extension is necessary to validate the results of the project. Not later than 6 months before the end of the 5-year period and any extension under the preceding sentence, the Commissioner of Internal Revenue shall, with respect to the demonstration project involved, submit a legislative proposal to the Congress if the Commissioner determines that such project should be made permanent, in whole or in part."

(b) CLERICAL AMENDMENT.—The analysis for part III of title 5, United States Code, is amended by adding at the end the following:

"Subpart I—Miscellaneous

"93. Personnel Flexibilities Relating to the Internal Revenue Service ..... 9301".

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

TITLE II—ELECTRONIC FILING

SEC. 201. ELECTRONIC FILING OF TAX AND INFORMATION RETURNS.

(a) IN GENERAL.—It is the policy of the Congress that paperless filing should be the preferred and most convenient means of filing tax and information returns, and that by the year 2007, no more than 20 percent of all such returns should be filed on paper.

(b) STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next 10 years while maintaining processing times for paper returns at 40 days. To the extent practicable, such plan shall provide that all returns prepared electronically for taxable years beginning after 2001 shall be filed electronically.

(2) ELECTRONIC COMMERCE ADVISORY GROUP.—To ensure that the Secretary receives input from the private sector in the development and implementation of the plan required by paragraph (1), the Secretary shall convene an electronic commerce advisory group to include representatives from the small business community and from the tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry.

(c) PROMOTION OF ELECTRONIC FILING AND INCENTIVES.—Section 6011 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) PROMOTION OF ELECTRONIC FILING.—

"(1) IN GENERAL.—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

"(2) INCENTIVES.—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns."

(d) ANNUAL REPORTS.—Not later than June 30 of each calendar year after 1997, the Chairperson of the Internal Revenue Service Oversight Board, the Secretary, and the Chairperson of the electronic commerce advisory group established under subsection (b)(2) shall report to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, the Committees on Finance, Appropriations, and Government Affairs of the Senate, and the Joint Committee on Taxation, on—

(1) the progress of the Internal Revenue Service in meeting the goal of receiving electronically 80 percent of tax and information returns by 2007;

(2) the status of the plan required by subsection (b); and

(3) the legislative changes necessary to assist the Internal Revenue Service in meeting such goal.

SEC. 202. DUE DATE FOR CERTAIN INFORMATION RETURNS FILED ELECTRONICALLY.

(a) IN GENERAL.—Section 6071 (relating to time for filing returns and other documents) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) ELECTRONICALLY FILED INFORMATION RETURNS.—Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns required to be filed after December 31, 1999.

SEC. 203. PAPERLESS ELECTRONIC FILING.

(a) IN GENERAL.—Section 6061 (relating to signing of returns and other documents) is amended—

(1) by striking "Except as otherwise provided by" and inserting the following:

"(a) GENERAL RULE.—Except as otherwise provided by subsection (b) and", and

(2) by adding at the end the following new subsection:

"(b) ELECTRONIC SIGNATURES.—

"(1) IN GENERAL.—The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for all returns or classes of returns, or may provide for alternative methods of subscribing all returns, declarations, statements, or other documents required or permitted to be made or written under internal revenue laws and regulations.

"(2) TREATMENT OF ALTERNATIVE METHODS.—Notwithstanding any other provision of law, any return, declaration, statement or other document filed without signature under the authority of this subsection or verified, signed or subscribed under any method adopted under paragraph (1) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed and subscribed. Any such return, declaration, statement or other document shall be presumed to have been actually submitted and subscribed by the person on whose behalf it was submitted.

"(3) PUBLISHED GUIDANCE.—The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements."

(b) ACKNOWLEDGMENT OF ELECTRONIC FILING.—Section 7502(c) is amended to read as follows:

"(c) REGISTERED AND CERTIFIED MAILING; ELECTRONIC FILING.—

"(1) REGISTERED MAIL.—For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

"(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

"(B) the date of registration shall be deemed the postmark date.

"(2) CERTIFIED MAIL; ELECTRONIC FILING.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.".

(c) ESTABLISHMENT OF PROCEDURES FOR OTHER INFORMATION.—In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to ac-

cept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper.

(d) PROCEDURES FOR COMMUNICATIONS BETWEEN IRS AND PREPARER OF ELECTRONICALLY-FILED RETURNS.—The Secretary shall establish procedures for taxpayers to authorize, on electronically filed returns, the preparer of such returns to communicate with the Internal Revenue Service on matters included on such returns.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 204. RETURN-FREE TAX SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

(b) REPORT.—Not later than June 30 of each calendar year after 1999, such Secretary shall report to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on—

(1) what additional resources the Internal Revenue Service would need to implement such a system,

(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system,

(3) the procedures developed pursuant to subsection (a), and

(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a).

SEC. 205. ACCESS TO ACCOUNT INFORMATION.

Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

SEC. 300. SHORT TITLE.

This title may be cited as the "Taxpayer Bill of Rights 3".

Subtitle A—Burden of Proof

SEC. 301. BURDEN OF PROOF.

(a) IN GENERAL.—Chapter 76 (relating to judicial proceedings) is amended by adding at the end the following new subchapter:

"Subchapter E—Burden of Proof

"Sec. 7491. Burden of proof.

"SEC. 7491. BURDEN OF PROOF.

"(a) GENERAL RULE.—The Secretary shall have the burden of proof in any court proceeding with respect to any factual issue relevant to ascertaining the income tax liability of a taxpayer.

"(b) LIMITATIONS.—Subsection (a) shall only apply with respect to an issue if—

"(1) the taxpayer asserts a reasonable dispute with respect to such issue,

"(2) the taxpayer has fully cooperated with the Secretary with respect to such issue, including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary, and

"(3) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

"(c) SUBSTANTIATION.—Nothing in this section shall be construed to override any requirement of this title to substantiate any item."

(b) CONFORMING AMENDMENTS.—

(1) Section 6201 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(2) The table of subchapters for chapter 76 is amended by adding at the end the following new item:

"Subchapter E. Burden of proof."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act.

Subtitle B—Proceedings by Taxpayers

SEC. 311. EXPANSION OF AUTHORITY TO AWARD COSTS AND CERTAIN FEES.

(a) AWARD OF HIGHER ATTORNEY'S FEES BASED ON COMPLEXITY OF ISSUES.—Clause (iii) of section 7430(c)(1)(B) (relating to the award of costs and certain fees) is amended by inserting "the difficulty of the issues presented in the case, or the local availability of tax expertise," before "justifies a higher rate".

(b) AWARD OF ADMINISTRATIVE COSTS INCURRED AFTER 30-DAY LETTER.—Paragraph (2) of section 7430(c) is amended by striking the last sentence and inserting the following:

"Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, (ii) the date of the notice of deficiency, or (iii) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.".

(c) AWARD OF FEES FOR CERTAIN ADDITIONAL SERVICES.—Paragraph (3) of section 7430(c) is amended to read as follows:

"(3) ATTORNEY'S FEES.—

"(A) IN GENERAL.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(B) PRO BONO SERVICES.—In any case in which the court could have awarded attorney's fees under subsection (a) but for the fact that an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee, the court may also award a judgment or settlement for such amounts as the court determines to be appropriate (based on hours worked and costs expended) for services of such individual but only if such award is paid to such individual or such individual's employer."

(d) DETERMINATION OF WHETHER POSITION OF UNITED STATES IS SUBSTANTIALLY JUSTIFIED.—Subparagraph (B) of section 7430(c)(4) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

"(iii) EFFECT OF LOSING ON SUBSTANTIALLY SIMILAR ISSUES.—In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred (and, in the case of the amendment made by subsection (c), services performed) more than 180 days after the date of the enactment of this Act.

SEC. 312. CIVIL DAMAGES FOR NEGLIGENCE IN COLLECTION ACTIONS.

(a) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended—

(1) in subsection (a), by inserting ", or by reason of negligence," after "recklessly or intentionally", and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting "($100,000, in the case of negligence)" after "$1,000,000", and

(B) in paragraph (1), by inserting "or negligent" after "reckless or intentional".

(b) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—Paragraph (1) of section 7433(d) is amended to read as follows:

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 313. INCREASE IN SIZE OF CASES PERMITTED ON SMALL CASE CALENDAR.

(a) IN GENERAL.—Subsection (a) of section 7463 (relating to disputes involving $10,000 or less) is amended by striking "$10,000" each place it appears and inserting "$25,000".

(b) CONFORMING AMENDMENTS.—

(1) The section heading for section 7463 is amended by striking "**$10,000**" and inserting "**$25,000**".

(2) The item relating to section 7463 in the table of sections for part II of subchapter C of chapter 76 is amended by striking "$10,000" and inserting "$25,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

SEC. 321. SPOUSE RELIEVED IN WHOLE OR IN PART OF LIABILITY IN CERTAIN CASES.

(a) IN GENERAL.—Subpart B of part II of subchapter A of chapter 61 is amended by inserting after section 6014 the following new section:

"SEC. 6015. INNOCENT SPOUSE RELIEF; PETITION TO TAX COURT.

"(a) SPOUSE RELIEVED OF LIABILITY IN CERTAIN CASES.—

"(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

"(A) a joint return has been made under section 6013 for a taxable year,

"(B) on such return there is an understatement of tax attributable to erroneous items of 1 spouse,

"(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement,

"(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such understatement, and

"(E) the other spouse claims (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date of the assessment of such deficiency,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

"(2) APPORTIONMENT OF RELIEF.—If a spouse who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such spouse did not know, and had no reason to know, the extent of such understatement, then such spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such spouse did not know and had no reason to know.

"(3) UNDERSTATEMENT.—For purposes of this subsection, the term 'understatement' has the meaning given to such term by section 6662(d)(2)(A).

"(4) SPECIAL RULE FOR COMMUNITY PROPERTY INCOME.—For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws.

"(b) PETITION FOR REVIEW BY TAX COURT.—In the case of an individual who has filed a claim under subsection (a) within the period specified in subsection (a)(1)(E)—

"(1) IN GENERAL.—Such individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine such claim if such petition is filed during the 90-day period beginning on the earlier of—

"(A) the date which is 6 months after the date such claim is filed with the Secretary, or

"(B) the date on which the Secretary mails by certified or registered mail a notice to such individual denying such claim.

Such 90-day period shall be determined by not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day of such period.

"(2) RESTRICTIONS APPLICABLE TO COLLECTION OF ASSESSMENT.—

"(A) IN GENERAL.—Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court for collection of any assessment to which such claim relates shall be made, begun, or prosecuted, until the expiration of the 90-day period described in paragraph (1), nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

"(B) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time the prohibition under subparagraph (A) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely petition for a determination of such claim has been filed and then only in respect of the amount of the assessment to which such claim relates.

"(C) JEOPARDY COLLECTION.—If the Secretary makes a finding that the collection of the tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

"(c) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under subsection (b) relates shall be suspended for the period during which the Secretary is prohibited by subsection (b) from collecting by levy or a proceeding in court and for 60 days thereafter.

"(d) APPLICABLE RULES.—

"(1) ALLOWANCE OF APPLICATION.—Except as provided in paragraph (2), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

"(2) RES JUDICATA.—In the case of any claim under subsection (a), the determination of the Tax Court in any prior proceeding for the same taxable periods in which the decision has become final, shall be conclusive except with respect to the qualification of the spouse for relief which was not an issue in such proceeding. The preceding sentence shall not apply if the Tax Court determines that the spouse participated meaningfully in such prior proceeding.

"(3) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either spouse pursuant to section 6532, the Tax Court shall lose jurisdiction of the spouse's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund."

(b) SEPARATE FORM FOR APPLYING FOR SPOUSAL RELIEF.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall develop a separate form with instructions for use by taxpayers in applying for relief under section 6015(a) of the Internal Revenue Code of 1986, as added by this section.

(c) CONFORMING AMENDMENTS.—

(1) Section 6013 is amended by striking subsection (e).

(2) Subparagraph (A) of section 6230(c)(5) is amended by striking "section 6013(e)" and inserting "section 6015".

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by inserting after the item relating to section 6014 the following new item:

"Sec. 6015. Innocent spouse relief; petition to Tax Court."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to understatements for taxable years beginning after the date of the enactment of this Act.

SEC. 322. SUSPENSION OF STATUTE OF LIMITATIONS ON FILING REFUND CLAIMS DURING PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 6511 (relating to limitations on credit or refund) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) RUNNING OF PERIODS OF LIMITATION SUSPENDED WHILE TAXPAYER IS UNABLE TO MANAGE FINANCIAL AFFAIRS DUE TO DISABILITY.—

"(1) IN GENERAL.—In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

"(2) FINANCIALLY DISABLED.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of his medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

"(B) EXCEPTION WHERE INDIVIDUAL HAS GUARDIAN, ETC.—An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to periods of disability before, on, or after the date of the enactment of this Act but shall not apply to any claim for credit or refund which (without regard to such amendment) is barred by the operation of any law or rule of law (including res judicata) as of January 1, 1998.

Subtitle D—Provisions Relating to Interest

SEC. 331. ELIMINATION OF INTEREST RATE DIFFERENTIAL ON OVERLAPPING PERIODS OF INTEREST ON INCOME TAX OVERPAYMENTS AND UNDERPAYMENTS.

(a) IN GENERAL.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end the following new subsection:

"(d) ELIMINATION OF INTEREST ON OVERLAPPING PERIODS OF INCOME TAX OVERPAYMENTS AND UNDERPAYMENTS.—To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by chapters 1 and 2, the net rate of interest under this section on such amounts shall be zero for such period."

(b) CONFORMING AMENDMENT.—Subsection (f) of section 6601 (relating to satisfaction by credits) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to the extent that section 6621(d) applies."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest for calendar quarters beginning after the date of the enactment of this Act.

SEC. 332. INCREASE IN OVERPAYMENT RATE PAYABLE TO TAXPAYERS OTHER THAN CORPORATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 6621(a)(1) (defining overpayment rate) is amended to read as follows:

"(B) 3 percentage points (2 percentage points in the case of a corporation)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest for calendar quarters beginning after the date of the enactment of this Act.

Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

SEC. 341. PRIVILEGE OF CONFIDENTIALITY EXTENDED TO TAXPAYER'S DEALINGS WITH NON-ATTORNEYS AUTHORIZED TO PRACTICE BEFORE INTERNAL REVENUE SERVICE.

Section 7602 (relating to examination of books and witnesses) is amended by adding at the end the following new subsection:

"(d) PRIVILEGE OF CONFIDENTIALITY EXTENDED TO TAXPAYER'S DEALINGS WITH NON-ATTORNEYS AUTHORIZED TO PRACTICE BEFORE INTERNAL REVENUE SERVICE.—

"(1) IN GENERAL.—In any noncriminal proceeding before the Internal Revenue Service, the taxpayer shall be entitled to the same common law protections of confidentiality with respect to tax advice furnished by any qualified individual (in a manner consistent with State law for such individual's profession) as the taxpayer would have if such individual were an attorney.

"(2) QUALIFIED INDIVIDUAL.—For purposes of paragraph (1), the term 'qualified individual' means any individual (other than an attorney) who is authorized to practice before the Internal Revenue Service."

SEC. 342. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

Section 7811(a) (relating to taxpayer assistance orders) is amended—

(1) by striking "Upon application" and inserting the following:

"(1) IN GENERAL.—Upon application",

(2) by moving the text 2 ems to the right, and

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

"(2) ISSUANCE OF TAXPAYER ASSISTANCE ORDERS.—For purposes of determining whether to issue a taxpayer assistance order, the Taxpayer Advocate shall consider the following factors, among others:

"(A) Whether there is an immediate threat of adverse action.

"(B) Whether there has been an unreasonable delay in resolving taxpayer account problems.

"(C) Whether the taxpayer will have to pay significant costs (including fees for professional representation) if relief is not granted.

"(D) Whether the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted.

"(3) STANDARD WHERE ADMINISTRATIVE GUIDANCE NOT FOLLOWED.—In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a taxpayer assistance order in the manner most favorable to the taxpayer."

SEC. 343. LIMITATION ON FINANCIAL STATUS AUDIT TECHNIQUES.

Section 7602 is amended by adding at the end the following new subsection:

"(e) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income."

SEC. 344. LIMITATION ON AUTHORITY TO REQUIRE PRODUCTION OF COMPUTER SOURCE CODE.

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

"(f) LIMITATION ON AUTHORITY TO REQUIRE PRODUCTION OF COMPUTER SOURCE CODE.—

"(1) IN GENERAL.—No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, to produce or examine any tax-related computer source code.

"(2) EXCEPTION WHERE INFORMATION NOT OTHERWISE AVAILABLE TO VERIFY CORRECTNESS OF ITEM ON RETURN.—Paragraph (1) shall not apply to any portion of a tax-related computer source code if—

"(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

"(i) the taxpayer's books, papers, records, or other data, or

"(ii) the computer software program and the associated data which, when executed, produces the output to prepare the return for the period involved, and

"(B) the Secretary identifies with reasonable specificity such portion as to be used to verify the correctness of such item.

The Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) after the 90th day after the Secretary makes a formal request to the taxpayer and the owner or developer of the computer software program for the material described in subparagraph (A)(ii) if such material is not provided before the close of such 90th day.

"(3) OTHER EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws, and

"(B) any tax-related computer source code developed by (or primarily for the benefit of) the taxpayer or a related person (within the meaning of section 267 or 707(b)) for internal use by the taxpayer or such person and not for commercial distribution.

"(4) TAX-RELATED COMPUTER SOURCE CODE.—For purposes of this subsection, the term 'tax-related computer source code' means—

"(A) the computer source code for any computer software program for accounting, tax return preparation or compliance, or tax planning, or

"(B) design and development materials related to such a software program (including program notes and memoranda).

"(5) RIGHT TO CONTEST SUMMONS.—The determination of whether the requirements of subparagraphs (A) and (B) of paragraph (2) are met or whether any exception under paragraph (3) applies may be contested in any proceeding under section 7604.

"(6) PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.—In any court proceeding to enforce a summons for any portion of a tax-related computer source code, the court may issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such source code, including providing that any information be placed under seal to be opened only as directed by the court."

(b) APPLICATION OF SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—Paragraph (3) of section 7609(a) (defining third-party recordkeeper) is amended by striking "and" at the end of subparagraph (H), by striking a period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following:

"(J) any owner or developer of a tax-related computer source code (as defined in section 7602(f)(4)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7602(f)(2)(A)(ii) to which such source code relates."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued more than 90 days after the date of the enactment of this Act.

SEC. 345. PROCEDURES RELATING TO EXTENSIONS OF STATUTE OF LIMITATIONS BY AGREEMENT.

(a) IN GENERAL.—Paragraph (4) of section 6501(c) (relating to the period for limitations on assessment and collection) is amended—

(1) by striking "Where" and inserting the following:

"(A) IN GENERAL.—Where",

(2) by moving the text 2 ems to the right, and

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

"(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues, on each occasion when the taxpayer is requested to provide such consent."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to requests to extend the period of limitations made after the date of the enactment of this Act.

SEC. 346. OFFERS-IN-COMPROMISE.

(a) ALLOWANCES FOR BASIC LIVING EXPENSES.—Section 7122 (relating to offers-in-compromise) is amended by adding at the end the following new subsection:

"(c) ALLOWANCES FOR BASIC LIVING EXPENSES.—The Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses."

(b) PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE.—The Secretary of the Treasury shall prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

(1) advise taxpayers who have entered into a compromise agreement of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status, and

(2) provide notice to taxpayers that in the case of a compromise agreement terminated due to the actions of 1 spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such agreement with the spouse or former spouse who remains in compliance with such agreement.

SEC. 347. NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court.

(b) LATER FILING DEADLINES SPECIFIED ON NOTICE OF DEFICIENCY TO BE BINDING.—Subsection (a) of section 6213 (relating to restrictions applicable to defi-

ciencies; petition to Tax Court) is amended by adding at the end the following new sentence: "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed."

(c) EFFECTIVE DATE.—Subsection (a) and the amendment made by subsection (b) shall apply to notices mailed after December 31, 1998.

SEC. 348. REFUND OR CREDIT OF OVERPAYMENTS BEFORE FINAL DETERMINATION.

(a) TAX COURT PROCEEDINGS.—Subsection (a) of section 6213 is amended—

(1) by striking ", including the Tax Court." and inserting ", including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection.", and

(2) by striking "to enjoin any action or proceeding" and inserting "to enjoin any action or proceeding or order any refund".

(b) OTHER PROCEEDINGS.—Subsection (a) of section 6512 is amended by striking the period at the end of paragraph (4) and inserting ", and", and by inserting after paragraph (4) the following new paragraphs:

"(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

"(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b)."

(c) REFUND OR CREDIT PENDING APPEAL.—Paragraph (1) of section 6512(b) is amended by adding at the end the following new sentence: "If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 349. THREAT OF AUDIT PROHIBITED TO COERCE TIP REPORTING ALTERNATIVE COMMITMENT AGREEMENTS.

The Secretary of the Treasury or the Secretary's delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement.

Subtitle F—Disclosures to Taxpayers

SEC. 351. EXPLANATION OF JOINT AND SEVERAL LIABILITY.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, establish procedures to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions.

SEC. 352. EXPLANATION OF TAXPAYERS' RIGHTS IN INTERVIEWS WITH THE INTERNAL REVENUE SERVICE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) to more clearly inform taxpayers of their rights—

(1) to be represented at interviews with the Internal Revenue Service by any person authorized to practice before the Internal Revenue Service, and

(2) to suspend an interview pursuant to section 7521(b)(2) of the Internal Revenue Code of 1986.

SEC. 353. DISCLOSURE OF CRITERIA FOR EXAMINATION SELECTION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, incorporate into the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. Such statement shall not include any information the disclosure of which would be detrimental to law enforcement, but shall specify the general procedures used by the Internal Revenue Service, including whether taxpayers are selected for examination on the basis of information available

in the media or on the basis of information provided to the Internal Revenue Service by informants.

(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary shall transmit drafts of the statement required under subsection (a) (or proposed revisions to any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day.

SEC. 354. EXPLANATIONS OF APPEALS AND COLLECTION PROCESS.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, include with any 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the appeals process and the collection process with respect to such proposed deficiency.

Subtitle G—Low Income Taxpayer Clinics

SEC. 361. LOW INCOME TAXPAYER CLINICS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7525. LOW INCOME TAXPAYER CLINICS.

"(a) IN GENERAL.—The Secretary shall make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED LOW INCOME TAXPAYER CLINIC.—

"(A) IN GENERAL.—The term 'qualified low income taxpayer clinic' means a clinic that—

"(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

"(ii)(I) represents low income taxpayers in controversies with the Internal Revenue Service, or

"(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

"(B) REPRESENTATION OF LOW INCOME TAXPAYERS.—A clinic meets the requirements of subparagraph (A)(ii)(I) if—

"(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget, and

"(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

"(2) CLINIC.—The term 'clinic' includes—

"(A) a clinical program at an accredited law school in which students represent low income taxpayers in controversies arising under this title, and

"(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

"(3) QUALIFIED REPRESENTATIVE.—The term 'qualified representative' means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

"(c) SPECIAL RULES AND LIMITATIONS.—

"(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $3,000,000 per year (exclusive of costs of administering the program) to grants under this section.

"(2) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed $100,000.

"(3) MULTI-YEAR GRANTS.—Upon application of a qualified low income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

"(4) CRITERIA FOR AWARDS.—In determining whether to make a grant under this section, the Secretary shall consider—

"(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language,

"(B) the existence of other low income taxpayer clinics serving the same population,

"(C) the quality of the program offered by the low income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low income taxpayers, and

"(D) alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

"(5) REQUIREMENT OF MATCHING FUNDS.—A low income taxpayer clinic must provide matching funds on a dollar for dollar basis for all grants provided under this section. Matching funds may include—

"(A) the salary (including fringe benefits) of individuals performing services for the clinic, and

"(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new section:

"Sec. 7525. Low income taxpayer clinics."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Other Matters

SEC. 371. ACTIONS FOR REFUND WITH RESPECT TO CERTAIN ESTATES WHICH HAVE ELECTED THE INSTALLMENT METHOD OF PAYMENT.

(a) IN GENERAL.—Section 7422 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE.—

"(1) IN GENERAL.—The district courts of the United States and the United States Court of Federal Claims shall have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) even if the full amount of such liability has not been paid.

"(2) ESTATES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any estate if, as of the date the action is filed—

"(A) an election under section 6166 is in effect with respect to such estate,

"(B) no portion of the installments payable under such section have been accelerated, and

"(C) all installments the due date for which is on or before the date the action is filed have been paid.

"(3) PROHIBITION ON COLLECTION OF DISALLOWED LIABILITY.—If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded."

(b) EXTENSION OF TIME TO FILE REFUND SUIT.—Section 7479 (relating to declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166) is amended by adding at the end the following new subsection:

"(c) EXTENSION OF TIME TO FILE REFUND SUIT.—The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for refund filed after the date of the enactment of this Act.

SEC. 372. CATALOGING COMPLAINTS.

In collecting data for the report required under section 1211 of Taxpayer Bill of Rights 2 (Public Law 104–168), the Secretary of the Treasury or the Secretary's del-

egate shall maintain records of taxpayer complaints of misconduct by Internal Revenue Service employees on an individual employee basis.

SEC. 373. ARCHIVE OF RECORDS OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsections (f), (i)(7), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal."

(b) CONFORMING AMENDMENTS.—Section 6103(p) is amended—

(1) in paragraph (3)(A), by striking "or (16)" and inserting "(16), or (17)",

(2) in paragraph (4), by striking "or (14)" and inserting ", (14), or (17)" in the matter preceding subparagraph (A), and

(3) in paragraph (4)(F)(ii), by striking "or (15)" and inserting ", (15), or (17)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made by the Archivist of the United States after the date of the enactment of this Act.

SEC. 374. PAYMENT OF TAXES.

The Secretary of the Treasury or the Secretary's delegate shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury.

SEC. 375. CLARIFICATION OF AUTHORITY OF SECRETARY RELATING TO THE MAKING OF ELECTIONS.

Subsection (d) of section 7805 is amended by striking "by regulations or forms".

SEC. 376. LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—No addition to the tax shall be imposed under paragraph (2) or (3) of subsection (a) with respect to the tax liability of an individual for any month during which an installment agreement under section 6159 is in effect for the payment of such tax to the extent that imposing an addition to the tax under such paragraph for such month would result in the aggregate number of percentage points of such addition to the tax exceeding 9.5."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply for purposes of determining additions to the tax for months beginning after the date of the enactment of this Act.

Subtitle I—Studies

SEC. 381. PENALTY ADMINISTRATION.

The Joint Committee on Taxation shall conduct a study—

(1) reviewing the administration and implementation by the Internal Revenue Service of the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989, and

(2) making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

Such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 9 months after the date of enactment of this Act.

SEC. 382. CONFIDENTIALITY OF TAX RETURN INFORMATION.

The Joint Committee on Taxation shall conduct a study of the scope and use of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as it deems appropriate, to the Congress

not later than one year after the date of the enactment of this Act. Such study shall examine the present protections for taxpayer privacy, the need for third parties to use tax return information, and the ability to achieve greater levels of voluntary compliance by allowing the public to know who is legally required to file tax returns, but does not file tax returns.

TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE

Subtitle A—Oversight

SEC. 401. EXPANSION OF DUTIES OF THE JOINT COMMITTEE ON TAXATION.

(a) IN GENERAL.—Section 8021 (relating to the powers of the Joint Committee on Taxation) is amended by adding at the end the following new subsections:

"(e) INVESTIGATIONS.—The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a Committee or Subcommittee) for investigations of the Internal Revenue Service by the General Accounting Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the General Accounting Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

"(f) RELATING TO JOINT HEARINGS.—

"(1) IN GENERAL.—The Chief of Staff, and such other staff as are appointed pursuant to section 8004, shall provide such assistance as is required for joint hearings described in paragraph (2).

"(2) JOINT HEARINGS.—On or before April 1 of each calendar year after 1997, there shall be a joint hearing of two members of the majority and one member of the minority from each of the Committees on Finance, Appropriations, and Government Affairs of the Senate, and the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, to review the strategic plans and budget for the Internal Revenue Service. After the conclusion of the annual filing season, there shall be a second annual joint hearing to review the other matters outlined in section 8022(3)(C)."

(b) EFFECTIVE DATES.—

(1) Subsection (e) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section, shall apply to requests made after the date of enactment of this Act.

(2) Subsection (f) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section, shall take effect on the date of the enactment of this Act.

SEC. 402. COORDINATED OVERSIGHT REPORTS.

(a) IN GENERAL.—Paragraph (3) of section 8022 (relating to the duties of the Joint Committee on Taxation) is amended to read as follows:

"(3) REPORTS.—

"(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

"(B) To report, annually, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

"(C) To report, annually, to the Committees on Finance, Appropriations, and Government Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to—

"(i) strategic and business plans for the Internal Revenue Service;

"(ii) progress of the Internal Revenue Service in meeting its objectives;

"(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

"(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

"(v) progress of the Internal Revenue Service on technology modernization; and

"(vi) the annual filing season."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Budget

SEC. 411. FUNDING FOR CENTURY DATE CHANGE.

It is the sense of Congress that the Internal Revenue Service efforts to resolve the century date change computing problems should be funded fully to provide for certain resolution of such problems.

SEC. 412. FINANCIAL MANAGEMENT ADVISORY GROUP.

The Commissioner shall convene a financial management advisory group consisting of individuals with expertise in governmental accounting and auditing from both the private sector and the Government to advise the Commissioner on financial management issues, including—

(1) the continued partnership between the Internal Revenue Service and the General Accounting Office;

(2) the financial accounting aspects of the Internal Revenue Service's system modernization;

(3) the necessity and utility of year-round auditing; and

(4) the Commissioner's plans for improving its financial management system.

Subtitle C—Tax Law Complexity

SEC. 421. ROLE OF THE INTERNAL REVENUE SERVICE.

It is the sense of Congress that the Internal Revenue Service should provide the Congress with an independent view of tax administration, and that during the legislative process, the tax writing committees of the Congress should hear from frontline technical experts at the Internal Revenue Service with respect to the administrability of pending amendments to the Internal Revenue Code of 1986.

SEC. 422. TAX COMPLEXITY ANALYSIS.

(a) IN GENERAL.—Chapter 92 (relating to powers and duties of the Joint Committee on Taxation) is amended by adding at the end the following new section:

"SEC. 8024. TAX COMPLEXITY ANALYSIS.

"(a) IN GENERAL.—If—

"(1) legislation is reported by the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference, and

"(2) such legislation includes any provision amending the Internal Revenue Code of 1986,

the report or statement accompanying such legislation shall contain a Tax Complexity Analysis prepared by the staff of the Joint Committee on Taxation.

"(b) CONTENT OF COMPLEXITY ANALYSIS.—Each Tax Complexity Analysis shall identify the provisions, if any, adding significant complexity or providing significant simplification, as determined by the staff of the Joint Committee on Taxation, and shall include the basis for such determination.

"(c) LEGISLATION SUBJECT TO POINT OF ORDER.—It shall not be in order in the Senate or the House of Representatives to consider any legislation described in subsection (a) required to be accompanied by a Tax Complexity Analysis that does not contain a Tax Complexity Analysis.

"(d) RESPONSIBILITIES OF THE COMMISSIONER.—The Commissioner shall provide the Joint Committee on Taxation with such information as is necessary to prepare Tax Complexity Analyses."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 92 is amended by adding at the end the following new item:

"Sec. 8024. Tax complexity analysis."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to legislation considered on or after January 1, 1998.

TITLE V—CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION

SEC. 501. CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION.

(a) IN GENERAL.—Subsection (a) of section 404 is amended by adding at the end the following new paragraph:

"(11) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—

"(A) IN GENERAL.—For purposes of determining under this section—

"(i) whether compensation of an employee is deferred compensation, and

"(ii) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to severance pay."

(b) SICK LEAVE PAY TREATED LIKE VACATION PAY.—Paragraph (5) of section 404(a) is amended by inserting "or sick leave pay" after "vacation pay".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after October 8, 1997.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for its first taxable year ending after October 8, 1997—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first taxable year.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 2676, as amended, modifies the structure and procedures of the Internal Revenue Service ("IRS"), provides IRS personnel flexibilities, encourages electronic filing, provides additional taxpayer rights and protections, modifies Congressional oversight of the IRS, and provides a revenue offset relating to the treatment of the employer deduction for vacation pay.

Title I—Executive branch governance

The bill establishes within the Treasury Department the Internal Revenue Service Oversight Board (the "Board"). The general responsibility of the Board is to oversee the IRS in the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. The Board is to have the following specific responsibilities: to review and approve strategic plans of the IRS; to review the operational functions of the IRS; to provide for the review of the Commissioner's selection, evaluation and compensation of senior managers; to review and approve plans for major reorganizations; and to review and approve the budget of the IRS prepared by the Commissioner. The Board is to be composed of 8 private-life members appointed by the President with the advice and consent of the Senate, plus the Secretary of the Treasury (or the Deputy Secretary), the IRS Commissioner, and a representative of a union representing a significant number of IRS employees (who would be appointed by the President, with the advice and consent of the Senate).

The bill provides that the IRS Commissioner is appointed as under present law by the President, with the advice and consent of the Senate. However, the Board has the authority to recommend candidates for Commissioner to the President, and to recommend removal of the Commissioner. The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise prescribed by the Secretary, such duties include certain statutorily enumerated duties. The Secretary must notify the Congress of any changes in the duties delegated to the Commissioner.

The bill deletes the present-law funding mechanism for the employee plans and exempt organizations division of the IRS in Code section 7802(b)(2). Such funding mechanism has never been utilized under present law.

The bill makes changes relating to the Taxpayer Advocate designed to strengthen the office, and prohibits Executive Branch influence over taxpayer audits and collection activity.

The bill also makes certain changes to facilitate IRS personnel flexibilities.

Title II. Electronic filing

The bill provides rules designed to facilitate and encourage electronic filing of tax returns, whenever feasible. Under the bill, electronic filing is encouraged by the use of advertising, development of incentives, and setting a goal of 80 percent of returns to be electronically filed by the year 2007. With respect to information returns, submitters are encouraged to use electronic filing by extending the due date for filing from February 28 to March 31. The bill requires development of procedures to facilitate electronic filing, including those that would permit the Secretary to accept returns without a manual signature. The bill also requires the IRS to study and develop procedures to implement a return free system. The IRS also must develop procedures that would permit, to the extent feasible, taxpayers who use electronic filing to review their account information electronically.

Title III. Taxpayer bill of rights 3

The bill contains a number of provisions designed to strengthen the rights of taxpayers in their dealings with the Internal Revenue Service. Among the more significant of these provisions are modifying the burden of proof, providing more generous innocent spouse relief, protecting the confidentiality of tax advice, expanding the conditions under which taxpayers can receive awards of attorney's fees in disputes with the IRS, permitting taxpayers to receive civil damages for negligence by the IRS in collection actions, and suspending the statute of limitations on filing refund claims during periods of disability.

Title IV. Congressional accountability for the Internal Revenue Service

The bill provides that all requests for studies of the IRS by the General Accounting Office (other than requests by the Chair or ranking member of a committee or subcommittee) must be approved by the Joint Committee on Taxation. The bill provides for two joint hearings a year of the 6 Congressional Committees with

oversight jurisdiction over the IRS. The Joint Committee on Taxation is required to report annually to the tax-writing committees on the state of the Federal tax system, and at the joint hearings.

The bill provides that a committee report or conference report on tax legislation is to include a Tax Complexity Analysis prepared by the staff of the Joint Committee on Taxation.

Title V. Clarification of deduction for vacation pay

The bill overrules a Tax Court decision by providing that vacation pay that is actually received by employees more than 2½ months after the end of the year is not deductible until paid by the employer. Under the bill, amounts are not considered received by employees or paid unless they are actually received. Letters of credit, trusts, and similar mechanisms will not constitute payment or receipt.

B. Background and Need for Legislation

The National Commission on Restructuring the Internal Revenue Service (the "Commission") was established to review the present practices of the Internal Revenue Service ("IRS") and to make recommendations for modernizing and improving its efficiency and taxpayer services. The Commission's report, issued June 25, 1997 [1] contains recommendations relating to executive branch governance and management of the IRS, Congressional oversight of the IRS, personnel flexibilities, customer service and compliance, technology modernization, electronic filing, tax law simplification, taxpayer rights, and financial accountability. H.R. 2292, introduced on July 30, 1997, by Mr. Portman and Mr. Cardin, generally mirrors the recommendations of the Commission.

H.R. 2676 builds on the Commission's report and recommendations and the provisions of H.R. 2292 to provide for a more effective IRS in its administration of the tax laws and in improving the IRS's service and responsiveness to taxpayers.

C. Legislative History

Committee bill

H.R. 2676 [2] was introduced by Chairman Archer and Messrs. Portman and Cardin on October 21, 1997, and was amended by the Committee in a markup on October 22, 1997. An amendment in the nature of a substitute (offered by Chairman Archer) was adopted by a voice vote, with a quorum present. The bill, as amended, was ordered favorably reported by a roll call of 33 yeas and 4 nays on October 22, 1997, with a quorum present.

Committee hearings

Full Committee.—The Committee held public hearings on September 16–17, 1997, on the recommendations of the National Commission on Restructuring the Internal Revenue Service.

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[1] Report of the National Commission on Restructuring the Internal Revenue Service, "A Vision For a New IRS," June 25, 1997.

[2] An earlier, related proposal was introduced by Messrs. Portman and Cardin on July 30, 1997, as H.R. 2292.

Subcommittee on Oversight.—The Subcommittee on Oversight held public hearings on IRS-related topics in 1997 as follows:

Annual Report of the Internal Revenue Service Taxpayer Advocate (February 25, 1997).

"High-Risk" Programs Within the Jurisdiction of the Committee on Ways and Means (March 4, 1997).

IRS Budget for Fiscal Year 1998 and the 1997 Tax Return Filing Season (March 18, 1997).

Electronic Federal Tax Payment System (April 16, 1997).

Report of the National Commission on Restructuring the Internal Revenue Service (July 24, 1997).

Recommendations of the National Commission on Restructuring the Internal Revenue Service to Expand Electronic Filing of Tax Returns (September 9, 1997).

Recommendations of the National Commission on Restructuring the Internal Revenue Service on Taxpayer Protections and Rights (September 26, 1997).

In addition, the Subcommittee on Oversight submitted recommendations on October 20, 1997, to the Full Committee relating to (1) electronic filing and (2) taxpayer rights and protections. These Subcommittee recommendations are the basis for the provisions in Title II and Title III, respectively, of the Committee bill. Chairman Archer had directed the Subcommittee on Oversight to review these two areas of the Commission's report and to make recommendations to the Full Committee.

II. EXPLANATION OF THE BILL

TITLE I. EXECUTIVE BRANCH GOVERNANCE

A. Creation of IRS Oversight Board

(sec. 101 of the bill and sec. 7802 of the Code)

PRESENT LAW

Under present law, the administration and enforcement of the internal revenue laws are performed by or under the supervision of the Secretary of the Treasury.[3]

Present law imposes standards of ethical conduct on Federal employees in order to avoid conflicts of interest. Criminal penalties are imposed on violations of these standards. In some cases, less strict standards apply to special government employees than to regular, full-time Federal government employees. In general, a special government employee is an individual who is expected to serve no more than 130 days during any 365-day period.

In general, the ethical conduct rules (1) prohibit a Federal employee from accepting compensation for representing clients before the agency in which the employee serves or against the United States;[4] (2) prohibit a Federal employee from acting as agent or attorney for anyone in a claim against the United States;[5] (3) impose post-employment restrictions on senior employees in order to pro-

[3] Code sec. 780(a).
[4] 18 U.S.C. sec. 203.
[5] 18 U.S.C. sec. 205.

hibit the unfair use of prior Government employment;[6] and (4) prohibit a Federal employee from participating personally and substantially in matters that affect his or her own financial interest or that of persons with certain relationships to the employee.[7]

In the case of a special government employee who serves less than 60 days in the preceding 365 days, the restrictions in (1) and (2) above only apply with respect to matters in which the special government employee personally and substantially participated in his or her official capacity.

One of the post-employment restrictions prohibits senior government employees from representing parties other than the United States before their former department or agency for one year after employment. This restriction does not apply to special government employees who serve less than 60 days in the final 1-year period of service.

Federal government employees compensated at certain pay grades are subject to public financial disclosure requirements. Special government employees who serve less than 60 days in a year are not subject to the public financial disclosure requirements, but are subject to confidential financial disclosure requirements.

REASONS FOR CHANGE

The Committee believes that a well-run IRS is critical to the operation of our tax system. Public confidence in the IRS must be restored so that our system of voluntary compliance will not be compromised. The Committee believes that most Americans are willing to pay their fair share of taxes, and that public faith in the IRS is key to maintaining that willingness.

The National Commission on Restructuring the IRS (the "Restructuring Commission"), which conducted a year-long study of the IRS, found that a number of factors contribute to current IRS management problems, including the following. While the Treasury is responsible for IRS oversight, it has generally provided little consistent strategic oversight or guidance to the IRS. The Secretary and Deputy Secretary have many other broad responsibilities, and generally leave the IRS largely independent. The average tenure of an IRS Commissioner is under 3 years, as is the average tenure of senior Treasury officials responsible for IRS oversight. Many of the issues that need to be addressed by the IRS will require expertise in various areas, particularly management and technology.

The Restructuring Commission concluded that "problems throughout the IRS cannot be solved without focus, consistency and direction from the top. The current structure, which includes Congress, the President, the Department of the Treasury, and the IRS itself, does not allow the IRS to set and maintain consistent long-term strategy and priorities, nor to develop and execute focused plans for improvement. Additionally, the structure does not ensure that the IRS budget, staffing and technology are targeted toward achieving organizational success."

The Committee shares the concerns of the Commission, and agrees that fundamental change in IRS management and oversight

[6] 18 U.S.C. sec. 207.
[7] 18 U.S.C. sec. 208.

is essential. The Committee believes that a new management structure that will bring greater expertise in more areas, focus, and continuity will help the IRS on the path toward becoming an efficient, responsive, and respected agency that always acts appropriately in carrying out its functions.

The Committee believes that private sector input is a necessary part of any new management structure. The Committee believes that the ethics rules applicable to special government employees (without regard to exceptions for length of service or pay grade) should be applied to the private sector members of the new IRS management. These rules will enhance the ability of such members to demonstrate impartiality in the performance of their duties, while not unduly restricting the available pool of potential candidates.

The Committee is aware that the taxpaying public may never relish contacts with the agency responsible for collecting taxes. Nevertheless, by establishing a new management structure that will better enable the IRS to develop and fulfill long-term goals, the Committee believes that the IRS will be able to gain public support, and will make contacts with the IRS as infrequent and as pleasant as possible. The Committee is also aware that changes being made to IRS management structure are not the final step, and that continued oversight of the IRS, by Congress as well as the Administration, is necessary in order to ensure long-term progress.

EXPLANATION OF PROVISION

Duties, responsibilities, and powers of the IRS Oversight Board

The bill provides for the establishment within the Treasury Department of the Internal Revenue Service Oversight Board (referred to as the "Board"). The general responsibilities of the Board are to oversee the Internal Revenue Service (the "IRS") in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. The Board has no responsibilities or authority with respect to (1) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, (2) law enforcement activities of the IRS, including compliance activities such as criminal investigations, examinations, and collection activities,[8] and (3) specific procurement activities of the IRS (e.g., selecting vendors or awarding contracts). As discussed more fully in Part B., below, the Board also has the authority to recommend candidates for IRS Commissioner to the President, and to recommend removal of the Commissioner. The members of the Board do not have authority to receive confidential taxpayer return information.[9]

The Board has the following specific responsibilities: (1) to review and approve strategic plans of the IRS, including the establishment

[8] This provision is not intended to limit the Board's authority with respect to the review and approval of strategic plans and the budget of the Commissioner or to preclude the Board from review of IRS operations generally.

[9] The bill does not affect the extent to which the Secretary of the Treasury (or the Deputy Secretary) and the IRS Commissioner have authority to receive confidential taxpayer return information under present law by virtue of such positions. Any request for information that cannot be disclosed to Board members and any contact relating to a specific tax payer made by a private-life Board member or the union representative to an employee of the IRS must be reported by such employee to the Secretary and Joint Committee on Taxation.

of mission and objectives (and standards of performance) and annual and long-range strategic plans; (2) to review the operational functions of the IRS, including plans for modernization of the tax system, out sourcing or managed competition, and training and education; (3) to provide for the review of the Commissioner's selection, evaluation and compensation of senior managers; and (4) to review and approve the Commissioner's plans for major reorganization of the IRS. It is intended that major reorganizations subject to the Board's review and approval are limited to major changes in organizational structure, such as the 1995 IRS reorganization that combined 7 regions into 4 and 63 districts into 33. In addition, the Board will review and approve the budget request of the IRS prepared by the Commissioner, submit such budget request to the Secretary, and ensure that the budget request supports the annual and long-range strategic plans of the IRS. The Secretary is required to submit the budget request approved by the Board to the President, who is required to submit such request, without revision, to the Congress together with the President's annual budget request for the IRS. The bill does not affect the ability of the President to include, in addition, his own budget request relating to the IRS.

It is intended that the Board will reach a formal decision on all matters subject to its review. With respect to those matters over which the Board has approval authority, the Board's decisions are determinative. It is fully expected that, with respect to those matters over which the Board has approval authority (other than as relates to the development of the budget), the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.[10]

The Board is required to report each year to the President and the Congress regarding the conduct of its responsibilities.

It is expected that the Treasury Department will no longer utilize the IRS Management Board once the new Board created by the bill is in place, as the functions of the IRS Management Board would be taken over by the new Board.

Composition of the Board

The Board is composed of 11 members. Eight of the members are so-called "private-life" members who are not Federal officers or employees. These private-life members will be appointed by the President, with the advice and consent of the Senate. The remaining members are (1) the Secretary of the Treasury (or, if the Secretary so designates, the Deputy Secretary of the Treasury), (2) a representative from a union representing a substantial number of IRS employees, who will be appointed by the President with the advice and consent of the Senate, and[11] (3) the Commissioner of the IRS.

The private-life members of the Board are to be appointed based on their expertise in the following areas: management of large service organizations; customer service; the Federal tax laws, in-

[10] The budget is excepted from this expectation because the bill provides a separate mechanism through which the Secretary may act. The procedures relating to the Board permit the President to submit his own budget in addition to that approved by the Board.

[11] In appointing the union representative, the President is not constrained to choose an individual recommended by a union covering IRS employees, but may choose whoever the President determines to be an appropriate representative of the union.

cluding administration and compliance; information technology; organization development; and the needs and concerns of taxpayers. In the aggregate, the members of the Board should collectively bring to bear expertise in all these enumerated areas.

The private-life members are considered special government employees during the entire period of their appointment. That is, they will be considered to be performing services as a special government employee on each day during their appointment, not just on those days on which they actually perform services. Thus, they will be subject to the ethical conduct rules applicable to special government employees who serve more than 60 days during any 365-day period. Thus, for example, private-life Board members would not be able to represent clients before the IRS on matters during their term as a Board member. Private-life Board members would also be subject to the 1-year post-employment restriction applicable to senior-level employees. Finally, private-life members would be subject to the public financial disclosure rules generally applicable to special government employees above certain pay grades.

Compensation of Board members

The private-life members of the Board will be compensated at a rate of $30,000 per year, except that the Chair will be compensated at a rate of $50,000 a year. Other members of the Board will receive no compensation for their services as Board members. The members of the Board will be entitled to travel expenses for purposes of attending meetings of the Board.

Administrative matters

The 8 private-life Board members and the union representative generally will be appointed for 5-year terms. The private-life members may serve no more than two 5-year terms. Each 5-year term begins upon appointment. Board member terms are staggered, as a result of a special rule providing that some private-life members first appointed to the Board will serve initial terms of less than 5 years. The members of the Board are to elect a chairperson from among the private-life Board members for a 2-year term. Any member of the Board can be removed at the will of the President. In addition, the Secretary of the Treasury (or, if so delegated, the Deputy Secretary) and the IRS Commissioner are removed from the Board upon termination of employment in such positions and the representative of IRS employees is removed from the Board upon termination of their employment, membership, or other affiliation with the organization representing IRS employees.

The Board is required to meet at least once a month, and can meet at such other times as the Board determines appropriate.

A quorum of 6 members is required in order for the Board to conduct business. Actions of the Board are taken by a majority vote of those members present and voting.

The Board will not have its own permanent staff, but will have such staff as detailed by the Commissioner at the request of the Chair of the Board. The Chair can procure temporary and intermittent services under section 3109(b) of title 5 of the U.S. Code.

Claims against Board members

The private-life members of the Board and the union representative have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such Board member within the scope of service as a Board member. The bill does not limit personal liability for criminal acts or omissions, wilful or malicious conduct, acts or omissions for private gain, or any other act or omission outside the scope of service of the Board member.

The bill does not affect any other immunities and protections that may be available under applicable law or any other right or remedy against the United States under applicable law, or limit or alter the immunities that are available under applicable law for Federal officers and employees.

EFFECTIVE DATE

The provisions of the bill relating to the Board are effective on the date of enactment. The President is directed to submit nominations for Board members to the Senate within 6 months of the date of enactment.

B. Appointment and Duties of IRS Commissioner

(secs. 102 and 103 of the bill and secs. 7803 and 7804 of the Code)

PRESENT LAW

Within the Department of the Treasury is a Commissioner of Internal Revenue, who is appointed by the President, with the advice and consent of the Senate. The Commissioner has such duties and powers as may be prescribed by the Secretary.[12] The Secretary has delegated to the Commissioner the administration and enforcement of the internal revenue laws.[13] The Commissioner generally does not have authority with respect to policy matters.[14]

The Secretary is authorized to employ such persons as the Secretary deems appropriate for the administration and enforcement of the internal revenue laws and to assign posts of duty.

REASONS FOR CHANGE

The Committee believes that the duties and responsibilities of the Commissioner are of such significance that the Commissioner should continue to be appointed by the President.[15] However, the frequency with which the Commissioner changes—the average tenure in office is under 3 years—is one of the factors contributing to lack of IRS management continuity. The Committee believes (as did the National Commission on Restructuring the IRS) that pro-

[12] Code sec. 7802(a).

[13] Treasury Order 150–10 (April 22, 1982).

[14] See, e.g., Treasury Order 111–2 (March 16, 1981), which delegates to the Assistant Secretary (Tax Policy) the exclusive authority to make the final determination of the Treasury Department's position with respect to issues of tax policy arising in connection with regulations, published Revenue Rulings and Revenue Procedures, and tax return forms and to determine the time, form and manner for the public communication of such position.

[15] Retaining present law also eliminates any constitutional issues that may arise if the Commissioner is appointed by someone other than the President, such as by the Board, as suggested by the National Commission on Restructuring the IRS.

viding a statutory term for the Commissioner to serve would help ensure greater continuity of IRS management.

The Committee believes that it is appropriate to preserve the present-law structure under which the duties of the Commissioner are delegated by the Secretary of the Treasury. Modifying this structure may unnecessarily interfere with the operations of the IRS and other agencies withing the Treasury. In order to enable the Congress to properly fulfill its oversight responsibilities with respect to the IRS, the Committee believes that the Congress should be notified of changes in the delegation of authority to the Commissioner.

EXPLANATION OF PROVISION

As under present law, the Commissioner will be appointed by the President, with the advice and consent of the Senate, and can be removed at will by the President. The Commissioner will be appointed to a 5-year term, beginning with the date of appointment. The Board has the power to recommend candidates to the President for Commissioner. The Board has the authority to recommend the removal of the Commissioner. Although the President is not required to nominate for Commissioner a candidate recommended by the Board (or to remove a Commissioner when the Board so recommends), it is expected that the President will generally give deference to the Board's expertise and familiarity with the needs and functions of the IRS and will act in accordance with the Board's recommendations.

The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). It is intended that the listed duties codify present delegations. However, if the Secretary changes such orders, they may be subject to the notice requirement of the bill, described below.

If the Secretary determines not to delegate the specified duties to the Commissioner, such determination will not take effect until 30 days after the Secretary notifies the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations, the Senate Committees on Finance, Government Operations, and Appropriations, and the Joint Committee on Taxation.

This provision is not intended to alter the Secretary's existing authority to delegate to agencies other than the IRS the authority to administer and enforce certain portions of the internal revenue laws. For example, the Secretary currently has delegated to the Bureau of Alcohol, Tobacco and Firearms the authority to administer and enforce the taxes under section 4181 and chapters 51, 52, and 53 of the Internal Revenue Code (regarding excise and other taxes on alcohol, tobacco, firearms, and destructive devices).

The Commissioner is to consult with the Board on all matters within the Board's authority (other than the recommendation of candidates for Commissioner and the recommendation to remove

the Commissioner). With respect to those matters within the Board's approval authority (other than with respect to the development of the budget), it is fully expected that the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.[16]

Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and would be required to issue all necessary directions, instructions, orders, and rules applicable to such persons. Unless otherwise provided by the Secretary, the Commissioner will determine and designate the posts of duty.

The Commissioner is compensated as under present law.

EFFECTIVE DATE

The provisions of the bill relating to the Commissioner generally are effective on the date of enactment. The provision relating to the 5-year term of office applies to the Commissioner in office on the date of enactment. This 5-year term runs from the date of appointment.

C. Structure and Funding of the Employee Plans and Exempt Organizations ("EP/EO") Division

(sec. 102 of the bill and sec. 7802(b) of the Code)

PRESENT LAW

Prior to 1974, no one specific office in the IRS had primary responsibility for employee plans and tax-exempt organizations. As part of the reforms contained in the Employee Retirement Income Security Act of 1974 ("ERISA"), Congress statutorily created the Office of Employee Plans and Exempt Organizations ("EP/EO") under the direction of an Assistant Commissioner.[17] EP/EO was created to oversee deferred compensation plans governed by sections 401–414 of the Code and organizations exempt from tax under Code section 501(a).

In general, EP/EO was established in response to concern about the level of IRS resources devoted to oversight of employee plans and exempt organizations. The legislative history of Code section 7802(b) states that, with respect to administration of laws relating to employee plans and exempt organizations, "the natural tendency is for the Service to emphasize those areas that produce revenue rather than those areas primarily concerned with maintaining the integrity and carrying out the purposes of exemption provisions."[18]

To provide funding for the new EP/EO office, ERISA authorized the appropriation of an amount equal to the sum of the section 4940 excise tax on investment income of private foundations (assuming a rate of 2 percent) as would have been collected during the second preceding year plus the greater of the same amount or $30

[16] The budget is excepted from this expectation because the bill provides a separate mechanism through which the Secretary may act.

[17] Code section 7802(b).

[18] S. Rept. 93–383, 108 (1973). See also H. Rept. 93–807, 104 (1974).

million.[19] However, amounts raised by the section 4940 excise tax have never been dedicated to the administration of EP/EO, but are transferred instead to general revenues. Thus, the level of EP/EO funding, like that of the rest of the IRS, is dependent on annual Congressional appropriations to the Treasury Department.

REASONS FOR CHANGE

The Committee believes that it is important to retain the Office of Employee Plans and Exempt Organizations under the supervision and direction of an Assistant Commissioner of the Internal Revenue. Because of EP/EO's expertise in the area of retirement benefits, the Committee believes that its responsibilities should be expanded to include nonqualified deferred compensation arrangements. In addition, the inclusion of an annual reporting mechanism in the bill is designed to ensure that the Commissioner is adequately informed regarding the activities of EP/EO.

The funding formula for EP/EO set forth in section 7802(b)(2) would, if utilized, result in an unstable level of funding that may bear little or no relation to the amount of financial resources actually required by the EP/EO division. In repealing the funding mechanism, however, the Committee notes that, given the magnitude of the sectors EP/EO is charged with regulating, as well as the unique nature of its mandate, an adequately funded EP/EO is extremely important to the efficient and fair administration of the Federal tax system. Accordingly, financial resources for EP/EO should not be constrained on the basis that EP/EO is a "non-core" IRS function; rather, EP/EO, like all functions of the IRS, should be funded so as to promote the efficient and fair administration of the Federal tax system.

EXPLANATION OF PROVISION

The bill retains the Office of Employee Plans and Exempt Organizations under the supervision and direction of an Assistant Commissioner of the Internal Revenue. As under present law, EP/EO is responsible for carrying out functions and duties associated with organizations designed to be exempt from tax under section 501(a) of the Code and with respect to plans designed to be qualified under section 401(a). In addition, however, EP/EO's responsibilities are expanded to include nonqualified deferred compensation arrangements. The bill also provides that the Assistant Commissioner shall report annually to the Commissioner on EP/EO operations.

In addition, the bill repeals the funding mechanism for EP/EO set forth in section 7802(b). Thus, the appropriate level of funding for EP/EO is, consistent with current practice, subject to annual Congressional appropriations, as are other functions within the IRS.

EFFECTIVE DATE

The provision is effective on the date of enactment.

[19] Code section 7802(b)(2).

D. TAXPAYER ADVOCATE

(sec. 102 of the bill and sec. 7803 of the Code)

PRESENT LAW

In 1996, the Taxpayer Bill of Rights 2 ("TBOR 2")[20] established the position of Taxpayer Advocate, which replaced the position of Taxpayer Ombudsman, created in 1979 by the IRS. Before the creation of the Taxpayer Advocate, the Taxpayer Ombudsman was a career civil servant selected by and serving at the pleasure of the IRS Commissioner. The Taxpayer Advocate is appointed by and reports directly to the IRS Commissioner.

TBOR 2 also created the office of the Taxpayer Advocate. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

The Taxpayer Advocate is required to submit two annual reports to the tax-writing committees, one, due by June 30, that describes the objectives of the Taxpayer Advocate for the next fiscal year and another, due by December 31, that describes the activities of the Taxpayer Advocate for the previous fiscal year. The December 31 report must identify what the Taxpayer Advocate has done to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order, describe in detail the progress made in implementing those recommendations, contain a summary of at least 20 of the most serious problems encountered by taxpayers in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and include other such information as the Taxpayer Advocate may deem advisable. The reports are submitted without review by the Commissioner, the Secretary of the Treasury, or any other officer or employee of the Department of Treasury or the Office of Management and Budget.

REASONS FOR CHANGE

The Committee believes that the Taxpayer Advocate serves an important role within the IRS in terms of preserving taxpayer rights and solving problems that taxpayers encounter in their dealings with the IRS. To that end, it is appropriate that the IRS Oversight Board have input in the selection of the Taxpayer Advocate. In addition, the Committee believes that the Taxpayer Advocate should have experience appropriate to the position and that the Taxpayer Advocate's objectivity would be best preserved by limiting future employment with the IRS. The Committee also believes that the reporting requirements of the Taxpayer Advocate should be tar-

[20] Public Law 104–168 (July 30, 1996).

geted not only towards solving problems with the IRS but also towards preventing problems before they arise.

EXPLANATION OF PROVISION

The bill requires the Commissioner to obtain the approval of the IRS Oversight Board on the selection of the Taxpayer Advocate. A candidate for the Taxpayer Advocate must have either substantial experience representing taxpayers before the IRS or have substantial experience within the IRS. If the prospective Taxpayer Advocate was an officer or an employee of the IRS before being appointed as the Taxpayer Advocate, the individual is required to agree not to accept any employment with the IRS for at least 5 years after ceasing to be the Taxpayer Advocate.

The bill modifies the information to be included in the December 31 report to the tax-writing committees. The report no longer needs to include information about the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers. The report identifies areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for solving these problems. The Taxpayer Advocate also is required to work in conjunction with the National Director of Appeals to identify the 10 most litigated issues for each category of taxpayers, and include the list of issues and recommendations for mitigating such disputes in the report. Categories of taxpayers include, for example, individuals, self-employed individuals, small businesses, etc.

As under present law, the reports are submitted directly to the tax-writing committees, without review by the IRS Oversight Board, the Secretary of the Treasury, or any other officer or employee of the Department of the Treasury or the Office of Management and Budget.

In addition, the bill imposes new responsibilities on the Taxpayer Advocate. The Taxpayer Advocate is requested to monitor the coverage and geographical allocation of problem resolution officers and develop guidance that outlines criteria to be used by IRS employees in referring taxpayer inquiries to problem resolution officers. In connection with these responsibilities, it is anticipated that the Taxpayer Advocate will work with the IRS District Offices to ensure convenient taxpayer access to the local problem resolution officer. For example, the local telephone number for the problem resolution officer in each district should be published and available to taxpayers.

It is intended that the Taxpayer Advocate will work with the Commissioner in developing career paths for local problem resolution officers, so that individuals can progress through the General Schedule in the same manner as examination employees, without having to leave the problem resolution system. In that regard, it is contemplated that the compensation levels of local and regional problem resolution officers should be the same as those of IRS personnel operating in other functional units. Under the current system, local problem resolution officers generally must return to an audit or collection function to achieve promotion. This lack of a career path within the problem resolution system reduces the independence of the system. It is contemplated that, to the extent fea-

sible, regional problem resolution officers should be selected from the available pool of local problem resolution officers.

EFFECTIVE DATE

This provision is effective on the date of enactment, except that the post-employment restrictions on the Taxpayer Advocate do not apply to an individual holding that position on the date of enactment.

E. Prohibition on Executive Branch Influence Over Taxpayer Audits

(sec. 104 of the bill and new sec. 7217 of the Code)

PRESENT LAW

There is no explicit prohibition in the Code on high-level Executive Branch influence over taxpayer audits and collection activity.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

REASONS FOR CHANGE

The Committee believes that the perception that it is possible that high-level Executive Branch influence over taxpayer audits and collection activity could occur has a negative influence on taxpayers' views of the tax system. Accordingly, the Committee believes that it is appropriate to prohibit such influence.

EXPLANATION OF PROVISION

The bill makes it unlawful for a specified person to request that any officer or employee of the IRS conduct or terminate an audit or otherwise investigate or terminate the investigation of any particular taxpayer with respect to the tax liability of that taxpayer. The prohibition applies to the President, the Vice President, and employees of the executive offices of either the President or Vice President, as well as any individual (except the Attorney General) serving in a position specified in section 5312 of Title 5 of the United States Code (these are generally Cabinet-level positions). The prohibition applies to both direct requests and requests made through an intermediary.

Any request made in violation of this rule must be reported by the IRS employee to whom the request was made to the Chief Inspector of the IRS. The Chief Inspector has the authority to investigate such violations and to refer any violations to the Department of Justice for possible prosecution, as appropriate. Anyone convicted of violating this provision will be punished by imprisonment of not more than 5 years or a fine not exceeding $5,000 (or both).

Three exceptions to the general prohibition apply. First, the prohibition does not apply to a request made to a specified person by a taxpayer or a taxpayer's representative that is forwarded by the

specified person to the IRS. This exception is intended to cover two types of situations. The first situation is where a taxpayer (or a taxpayer's representative) writes to a specified person seeking assistance in resolving a difficulty with the IRS. This exception permits the specified person who receives such a request to forward it to the IRS for resolution without violating the general prohibition. The second situation that this first exception is intended to cover is an audit or investigation by the IRS of a Presidential nominee. Under present law (sec. 6103(c)), nominees for Presidentially appointed positions consent to disclosure of their tax returns and return information so that background checks may be conducted. Sometimes an audit or other investigation is initiated as part of that background check. The Committee anticipates that any such audit or investigation that is part of such a background check will be encompassed within this first exception.

The second exception to the general prohibition applies to requests for disclosure of returns or return information under section 6103 if the request is made in accordance with the requirements of section 6103.

The third exception to the general prohibition applies to requests made by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

EFFECTIVE DATE

The provision applies to violations occurring after the date of enactment.

F. IRS Personnel Flexibilities

(sec. 111 of the bill and new secs. 9301–9304 of title 5, U.S.C.)

PRESENT LAW

The Internal Revenue Service, like almost all other federal agencies, is subject to the personnel rules and procedures set forth in title 5, United States Code. As such, its employees generally are classified under the General Schedule or the Senior Executive Service.

REASONS FOR CHANGE

Under the existing personnel rules and procedures set forth in title 5, hiring, evaluating, promoting, and firing employees is subject to extensive regulation. Given the role of the IRS in the federal government, its unique needs in terms of skilled tax, technology, and service personnel, and its present needs to motivate its managers and employees to embrace continuous improvements and cost savings while maintaining adequate levels of service for taxpayers, the Committee finds that certain flexibilities are appropriate and will facilitate the efforts of the IRS to better manage its workforce.

The Committee finds that the vast majority of IRS employees are competent professionals who perform their jobs as well as can be expected under existing organizational constraints. However, over the past decade, the quality of IRS interaction with taxpayers and the public has deteriorated, in part due to lower personnel qualifications, pay levels, and training quality. In addition, the stove-

pipe nature of IRS operations, in which functional units such as taxpayer services, exam, collection, and appeals set and implement their own priorities and objectives, which often are disconnected from the other functions and the organization as a whole, adds to the problem of decreased taxpayer service. Moreover, the risk averse nature of the IRS, which provides minimal incentive for managers or front-line employees for achieving mission, stifles creativity, innovation, and quick problem resolution.

Consistent with the rest of this bill, the Committee intends section 111 to lead to increased accountability on the part of IRS managers and employees and increased focus on the IRS mission, goals, and objectives. At the core of this accountability and focus lies increased attention on providing adequate levels of service to taxpayers. The Committee believes that taxpayers should deal only with IRS employees who are trained adequately and possess the skills and tools necessary to do their jobs well. To provide such service to taxpayers, the Committee expects the IRS to use the flexibilities provided by this section to hire and promote qualified professionals, to provide incentives for employees to treat taxpayers with the service and respect that they deserve, and to discipline employees who cannot or will not treat taxpayers fairly. In short, the Committee expects the IRS to hold all workers—from senior managers to front-line employees—accountable for carrying out the IRS mission.

EXPLANATION OF PROVISION

In general

Section 111 of the bill would amend title 5, United States Code, by inserting a new chapter 93 providing certain personnel flexibilities to the IRS. By providing these flexibilities in this manner, the Committee intends for the IRS to remain subject to all of the rules and procedures of title 5, except to the extent that the exercise of flexibilities provided under this new chapter 93 is inconsistent with prior law.

The bill clarifies that the personnel flexibilities for the IRS are intended to be exercised consistently with existing rules relating to merit system principles, prohibited personnel practices, and preference eligibles. Moreover, the Committee believes that the employees of the IRS should be involved in the reinvention of the bureaucracies in which they work. Accordingly, the bill provides that the flexibilities provided to the IRS must be negotiated between the IRS and the employees' union. Such negotiations need not address all of the flexibilities provided under this provision. The written agreement should be a consensus document, but is not a contract that can be appealed to the federal services impasse panel, or otherwise create additional appeal rights. To the extent that the exercise of any flexibility, such as that provided by new section 9303(c), would not affect members of the employees' union, then no written agreement is required.

Performance management

The bill would require the IRS to establish a new performance management system within one year from the date of enactment.

The Committee expects that this system will refocus the IRS's personnel system on the overall mission of the IRS and how each employee's performance relates to that mission. The new performance standards are premised on the notion of retention—performance at the retention standard indicates that an employee has performed fully successfully, no better or worse. Failure to meet this standard indicates that the employee has not performed adequately, and managers should use the tools available to encourage the employee to improve performance, or if such efforts do not lead to improved performance, to remove the employee. The performance standard above the retention standard is intended to encourage employees to perform at a higher level, and to allow managers to make performance distinctions among employees.

The Committee encourages the IRS to redesign its performance measures to more appropriately align employee behavior with organizational goals. One of the most significant efforts that the IRS must undertake in this regard is to design internal measures that will encourage behavior which makes it easier for taxpayers to interact with the IRS. While this will involve significant effort, the Committee expects that these measures will bring the organizational goals and objectives, including those established under the Government Performance and Results Act of 1993 and Revenue Procedure 64-22, down to the individual employee level. In addition, the Committee expects the IRS to develop taxpayer service surveys that will gauge the level of service that taxpayers actually receive, for use in evaluating organizational and group performance. In no case should measures be used which rank employees or groups of employees based solely on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers. While any system of measures must reflect the efficiency and productivity of employees, the Committee expects that the IRS will establish a balanced system of measures that will ensure that taxpayer satisfaction is paramount throughout all IRS functions.

Awards

There are three types of awards specifically referenced in the bill. First, certain awards for superior accomplishments will continue to require certification to the Office of Personnel Management (OPM), but absent objection from OPM within 60 days, the Commissioner's recommendations for such awards will take effect. As with all awards, these awards should be made based on performance under the new performance management system, and in no case should awards be made (or performance measured) based solely or principally on tax enforcement results.

The second category of awards relates to the most senior managers in the IRS. The Commissioner will have discretion, upon consultation with the IRS Oversight Board established under section 101 of this bill, to make awards of up to 50 percent of salary to such managers, so long as the total compensation for an employee as a result of such an award does not equal or exceed the annual rate of compensation for the Vice President for such calendar year. As with awards for superior accomplishments, OPM will have 60 days to object. The Commissioner will be required to prescribe reg-

ulations defining how determinations will be made as to whether an employee is eligible for such awards. In no case, however, will more than 8 employees be eligible to receive such awards in any calendar year. Moreover, it is not expected that all of the eligible pool will receive such awards each year, or that the full 50 percent would be appropriate, except in cases of extraordinary performance.

Finally, the third category of awards—based on savings—is intended to encourage the practice of rewarding employees for developing more efficient methods of administration. The Committee encourages the IRS to establish programs that encourage employee input into reorganizing business processes leading to efficiency gains, and sharing resultant savings with employees. Provided that taxpayers receive adequate levels of service, the Committee expects that such gainsharing awards will help to improve the efficiency of the IRS.

Streamlined procedures

The bill provides two tools to streamline the process of taking certain adverse actions for poor performance. First, the notice period for taking adverse actions is reduced from 30 days to 15 days. At the discretion of the IRS, and in accordance with regulations issued by OPM, this period can be extended.

Second, the bill prohibits appeals of the denial of a step increase to the Merit Systems Protections Board. Aggrieved employees nonetheless can appeal such actions pursuant to internal agency procedures, including any procedures agreed to pursuant to collective bargaining agreements or pursuant to the written agreement under section 9301(b) authorizing the use of this flexibility.

Staffing flexibilities

The bill provides the IRS with flexibility in filling certain permanent appointments in the competitive service by authorizing the IRS to fill such vacancies with either qualified veterans or qualified temporary employees. For purposes of this provision, a qualified veteran is an individual who is either a preference eligible or has been separated from the armed forces under honorable conditions after at least three years of active service, and who meets the minimum qualifications for the vacant position. A qualified temporary employee is defined under the bill as a temporary employee of the IRS with at least two years of continuous service, who has met all applicable retention standards and who meets the minimum qualifications for the vacant position.

The bill also authorizes the IRS to establish category rating systems for evaluating job applicants, under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Managers would be authorized to select any candidate from the highest quality category, and would not be limited to the three highest ranked candidates, as is the case under existing law. In administering these category rating systems, the IRS generally will be required to list preference eligibles ahead of other individuals within each quality category. Nonetheless, the appointing authority can select any candidate from the highest quality category,

as long as existing requirements relating to passing over preference eligibles are satisfied.

The bill authorizes the Commissioner to reassign or remove career appointees in the Senior Executive Service immediately upon taking office. While the Committee does not intend for any Commissioner to make wholesale management changes without thorough evaluations, the Committee believes that if the Commissioner is to be held accountable, then the Commissioner must have the flexibility to recruit his own management team.

The bill authorizes the Commissioner to establish probation periods for IRS employees of up to 3 years, when the Commissioner determines that a shorter period is not sufficient for an employee to demonstrate proficiency in a position.

Demonstration projects

The bill makes it easier for the IRS to establish demonstration projects under title 5. The Committee expects that the IRS will use this flexibility to establish demonstration projects to improve personnel management, particularly to the extent that such projects lead to increased individual accountability. For example, the IRS might use this flexibility to establish demonstration projects involving broad-banded pay systems or alternative classification systems, to provide for variations in the existing rules regarding grade and pay retention, or to provide for variations from existing provisions relating to payment of recruitment, relocation, and retention bonuses. In addition, the Committee expects that the IRS will use this flexibility to develop more efficient means of handling employee appeals of personnel actions. No flexibility can be exercised under this provision that does not preserve due process for employees, however.

To allow the IRS the flexibility to establish these and other demonstration projects, as appropriate, the bill authorizes any number of projects, and exempts the IRS from many of the requirements applicable to demonstration projects under section 4703 of title 5, United States Code. Specifically, the bill eliminates the requirement that the IRS submit plans to establish demonstration projects to a public hearing, and streamlines the advance notice requirements of section 4703. In addition, the bill allows the IRS to establish demonstration projects for any number of its employees, and gives the Commissioner greater latitude in working with OPM to develop and implement demonstration projects. The bill maintains a number of the existing prohibitions on demonstration projects, including the prohibition on using demonstration projects to waive any requirement of title 5 relating to family and medical leave. As with the other personnel flexibilities provided under this section, the bill requires the IRS to negotiate a written agreement with the employees' union to the extent that the implementation of a demonstration project affects such employees.

The bill establishes a general time limitation of 5 years on the duration of any demonstration project established under this section. However, if the Commissioner and the Director of OPM concur, a demonstration project may be extended for an additional 2 years if necessary to validate the results of the project. Not later than 6 months prior to the termination of a project, the bill re-

quires the Commissioner to submit a legislative proposal to the Congress if the Commissioner determines that such project should be made permanent.

EFFECTIVE DATE

The provisions shall take effect on the date of the enactment of this Act.

TITLE II. ELECTRONIC FILING

A. Electronic Filing of Tax and Information Returns

(sec. 201 of the bill and sec. 6011 of the Code)

PRESENT LAW

Treas. Reg. section 1.6012–5 provides that the Commissioner may authorize, at the option of a person required to make a return, the use of a composite return in lieu of a paper return. An electronically filed return is a composite return consisting of electronically transmitted data and certain paper documents that cannot be electronically transmitted. Form 8453 is a paper form that must be received by the IRS before any electronically filed return is complete. Form 8453 provides signature information to the IRS.

The IRS conducted the first test of electronic filing in 1986, for a limited number of tax year 1985 returns.[21] In 1990, the IRS permitted nationwide electronic filing of returns that had refunds owing.[22] In 1991, the IRS accepted electronically filed returns that had balances due.[23] In 1993, the IRS established an electronic filing goal of 80 million tax returns by 2001. During the 1997 tax filing season, the IRS received approximately 20 million individual tax returns electronically.

REASONS FOR CHANGE

The Committee believes that the implementation of a comprehensive strategy to encourage electronic filing of tax and information returns holds significant potential to benefit taxpayers and make the IRS returns processing function more efficient. For excample, the error rate associated with processing paper tax returns is approximately 20 percent, half of which is attributable to the IRS and half to error in taxpayer data. Because electronically-filed returns usually are prepared using computer software programs with built-in accuracy checks, undergo pre-screening by the IRS, and experience no key punch errors, electronic returns have an error rate of less than one percent. Thus, the Committee believes that an expansion of electronic filing will significantly reduce errors (and the resulting notices that are triggered by such errors). In addition, taxpayers who file their returns electronically receive confirmation from the IRS that their return was received.

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[21] Rev. Proc. 86–4, 1986–1 C.B. 423.
[22] Rev. Proc. 90–62, 1990–2 C.B. 659.
[23] Rev. Proc. 91–69, 1991–2 C.B. 893.

EXPLANATION OF PROVISION

The bill states that the policy of Congress is to promote paperless filing, with a long-range goal of providing for the filing of at least 80 percent of all tax returns in electronic form by the year 2007. The bill requires the Secretary of the Treasury to establish a strategic plan to eliminate barriers, provide incentives, and use competitive market forces to increase taxpayer use of electronic filing. The strategic plan initially targets returns prepared in electronic form but filed in paper form, such as a return prepared by the taxpayer using return preparation software, which the taxpayer then printed and filed in paper form. The bill requires all such returns to be filed electronically, to the extent feasible, by the year 2002.

The bill requires the Secretary to create an electronic commerce advisory group comprised of representatives from the small business, tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry. Under the bill, the Chair of the IRS Oversight Board, together with the Secretary and the Chair of the electronic commerce advisory group, are required to report annually to the tax-writing committees on the IRS's progress in implementing its plan to meet the goal of 80 percent electronic filing by 2007.

To promote electronic filing, the bill authorizes the Secretary to publicize the benefits of electronic filing by using mass communications and other means. In addition, the bill authorizes the Secretary to implement procedures for paying appropriate incentives for electronically filed returns. This provision is not intended to override section 1205 of the Taxpayer Relief Act of 1997,[24] which prohibits the IRS from paying fees to credit card companies in connection with receiving tax payments by credit card.

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. Time for Filing Certain Information Returns With the IRS

(sec. 202 of the bill and sec. 6071 of the Code)

PRESENT LAW

Information such as the amount of dividends, partnership distributions, and interest paid during the tax year must be supplied to taxpayers by the payors by January 31 of the year following the calendar year for which the return must be filed. The payors must file an information return with the IRS with the information by February 28 of the year following the calendar year for which the return must be filed. Under present law, the due date for information returns is the same whether such returns are filed on paper, on magnetic media, or electronically. Most information returns are filed on magnetic media (such as computer tapes) which must be physically shipped to the IRS.

[24] Public Law 105–34 (August 5, 1997).

REASONS FOR CHANGE

The Committee believes that encouraging information return filers to file electronically will substantially increase the efficiency of the tax system by avoiding the need to convert the information from magnetic media or paper to electronic form before return matching.

EXPLANATION OF PROVISION

The bill provides an incentive to filers of information returns to use electronic filing by extending the due date for filing such returns from February 28 (under present law) to March 31 of the year following the calendar year to which the return relates. The bill does not change the requirement that payors must supply taxpayers with the applicable information by January 31. The Committee anticipates that the IRS will cooperate with interested private sector filers of information returns in facilitating to the maximum extent feasible the utilization of electronic filing for such forms.

EFFECTIVE DATE

The provision applies to information returns required to be filed after December 31, 1999.

C. Paperless Electronic Filing

(sec. 203 of the bill and sec. 6061 of the Code)

PRESENT LAW

Code section 6061 requires that tax forms be signed as required by the Secretary. The IRS will not accept an electronically filed return unless it has received a Form 8453 providing signature information on the filer.

Generally, a return is considered timely filed when it is received by the IRS on or before the due date of the return. If the requirements of Code section 7502 are met, timely mailing is treated as timely filing. If the return if mailed by registered mail, the dated registration statement is prima facie evidence of delivery. As an electronically filed return is not mailed, section 7502 does not apply.

The IRS periodically publishes a list of the forms and schedules that may be electronically transmitted, as well as a list of forms, schedules, and other information that cannot be electronically filed.

REASONS FOR CHANGE

Electronically filed returns cannot provide the maximum efficiency for taxpayers and the IRS under current rules that require signature information to be filed on paper. Also, taxpayers need to know how the IRS will determine the filing date of a return filed electronically. The Committee believes that more types of returns could be filed electronically if proper procedures were in place.

EXPLANATION OF PROVISION

The bill requires the Secretary to develop procedures that would eliminate the need to file a paper form relating to signature information. The Secretary is required to develop procedures for the acceptance of signatures in digital or other electronic form. Until the procedures are in place, the bill authorizes the Secretary to waive the requirement of a signature or to provide for alternative methods of subscribing all returns, declarations, statements, or other documents. The bill treats documents subscribed under such alternative methods as signed for all purposes, both civil and criminal, and provides a rebuttable presumption that any such return, declaration, statement or other document was actually submitted and subscribed by the person on whose behalf it was submitted. It is contemplated that the IRS will establish procedures for rebuttal of the presumption.

The bill also provides rules for determining when electronic returns are deemed filed, and for authorization for return preparers to communicate with the IRS on matters included on electronically filed returns.

The bill also requires that the Secretary establish procedures, to the extent practicable, to receive all tax forms electronically by December 31, 1998.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. Return-Free Tax System

(sec. 204 of the bill)

PRESENT LAW

Under present law, taxpayers are required to calculate their own tax liabilities and submit returns showing their calculations.

REASONS FOR CHANGE

The Committee believes that it would benefit taxpayers to be relieved, to the extent feasible, from the burden of determining tax liability and filing returns.

EXPLANATION OF PROVISION

The bill requires the Secretary or his delegate to study the feasibility of and develop procedures for the implementation of a return-free tax system for taxable years beginning after 2007. The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system, including what additional resources the IRS would need to implement the system, the changes to the Internal Revenue Code that would facilitate the system, the procedures developed to date, and the number and classes of taxpayers who would be permitted to use such a system. The Secretary is required to make the first report on the development of the return-free filing system to the tax-writing committees on June 30, 1999. It is contemplated that the return-free filing system would initially be targeted at taxpayers who had tax-

able income from wages, interest, dividends, pensions, and unemployment compensation; did not itemize deductions; and did not take any tax credits other than the earned income tax credit.[25]

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. Access to Account Information

(sec. 205 of the bill)

PRESENT LAW

Taxpayers who file their returns electronically cannot review their accounts electronically.

REASONS FOR CHANGE

The Committee believes, to the extent feasible, that taxpayers should have access to their account information held by the IRS. If taxpayers file electronically, they should be able to review the information electronically, to the extent feasible.

EXPLANATION OF PROVISION

The bill requires the Secretary to develop procedures under which a taxpayer filing returns electronically could review the taxpayer's account electronically not later than December 31, 2006, but only if all necessary privacy safeguards are in place by that date.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE III. TAXPAYER BILL OF RIGHTS 3

A. Burden of Proof

(sec. 301 of the bill and new sec. 7491 of the Code)

PRESENT LAW

Under present law, a rebuttable presumption exists that the Commissioner's determination of tax liability is correct.[26] "This presumption in favor of the Commissioner is a procedural device that requires the plaintiff to go forward with prima facie evidence to support a finding contrary to the Commissioner's determination. Once this procedural burden is satisfied, the taxpayer must still carry the ultimate burden of proof or persuasion on the merits. Thus, the plaintiff not only has the burden of proof of establishing that the Commissioner's determination was incorrect, but also of

[25] See "The President's Tax Proposals to Congress for Fairness, Growth, and Simplicity," at 115 (May 1985) and The GAO Report on Tax Administration Alternative Filing Systems (October 1996).

[26] *Welch* v. *Helvering,* 290 U.S. 111, 115 (1933).

establishing the merit of its claims by a preponderance of the evidence".[27]

The general rebuttable presumption that the Commissioner's determination of tax liability is correct is a fundamental element of the structure of the Internal Revenue Code. Although this presumption is judicially based, rather than legislatively based, there is considerable evidence that the presumption has been repeatedly considered and approved by the Congress. This is the case because the Internal Revenue Code contains a number of civil provisions that explicitly place the burden of proof on the Commissioner in specifically designated circumstances. The Congress would have enacted these provisions only if it recognized and approved of the general rule of presumptive correctness of the Commissioner's determination. A list of these civil provisions follows.

(1) *Fraud.*—Any proceeding involving the issue of whether the taxpayer has been guilty of fraud with intent to evade tax (secs. 7454(a) and 7422(e)).

(2) *Required reasonable verification of information returns.*—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information returned filed with the Secretary by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary has the burden of producing reasonable and probative information concerning such deficiency in addition to such information return (sec. 6201(d)).

(3) *Foundation managers.*—Any proceeding involving the issue of whether a foundation manager has knowingly participated in prohibited transactions (sec. 7454(b)).

(4) *Transferee liability.*—Any proceeding in the Tax Court to show that a petitioner is liable as a transferee of property of a taxpayer (sec. 6902(a)).

(5) *Review of jeopardy levy or assessment procedures.*—Any proceeding to review the reasonableness of a jeopardy levy or jeopardy assessment (sec. 7429(g)(1)).

(6) *Property transferred in connection with performance of services.*—In the case of property subject to a restriction that by its terms will never lapse and that allows the transferee to sell only at a price determined under a formula, the price is deemed to be fair market value unless established to the contrary by the Secretary (sec. 83(d)(1)).

(7) *Illegal bribes, kickbacks, and other payments.*—As to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment (sec. 162(c)(1) and (2)).

(8) *Golden parachute payments.*—As to whether a payment is a parachute payment on account of a violation of any generally enforced securities laws or regulations (sec. 280G(b)(2)(B)).

(9) *Unreasonable accumulation of earnings and profits.*—In any Tax Court proceeding as to whether earnings and profits have been

[27] *Danville Plywood Corp.* v. *U.S.,* U.S. Cl. Ct., 63 AFTR 2d 89–1036, 1043 (1989); citations omitted.

permitted to accumulate beyond the reasonable needs of the business, provided that the Commissioner has not fulfilled specified procedural requirements (sec. 534).

(10) *Expatriation.*—As to whether it is reasonable to believe that an individual's loss of citizenship would result in a substantial reduction in the individual's income taxes or transfer taxes (secs. 877(e), 2107(e), 2501(a)(4)).

(11) *Public inspection of written determinations.*—In any proceeding seeking additional disclosure of information (sec. 6110(f)(4)(A)).

(12) *Penalties for promoting abusive tax shelters, aiding and abetting the understatement of tax liability, and filing a frivolous income return.*—As to whether the person is liable for the penalty (sec. 6703(a)).

(13) *Income tax return preparers' penalty.*—As to whether a preparer has willfully attempted to understate tax liability (sec. 7427).

(14) *Status as employees.*—As to whether individuals are employees for purposes of employment taxes (pursuant to the safe harbor provisions of section 530 of the Revenue Act of 1978).[28]

REASONS FOR CHANGE

The Committee is concerned that individual and small business taxpayers frequently are at a disadvantage when forced to litigate with the Internal Revenue Service. The Committee believes that the present burden of proof rules contribute to that disadvantage. The Committee believes that, all other things being equal, facts asserted by individual and small business taxpayers who fully cooperate with the IRS and satisfy all relevant substantiation requirements should be accepted. The Committee believes that shifting the burden of proof to the Secretary in such circumstances will create a better balance between the IRS and such taxpayers, without encouraging tax avoidance.

EXPLANATION OF PROVISION

The bill provides that the Secretary shall have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer asserts a reasonable dispute with respect to any such issue relevant to ascertaining the taxpayer's income tax liability. Two conditions apply. First, the taxpayer must fully cooperate at all times with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary).[29] Full cooperation also includes providing reasonable assistance to the Secretary in obtaining access to and inspection of witnesses, information, or documents not within the control of the taxpayer (including any witnesses, information, or documents located in foreign countries[30]). A necessary element of fully cooperating with the Secretary is that the taxpayer must exhaust his or her administrative remedies (in-

[28] Public Law 95–600 (November 6, 1978), as amended by section 1122 of the Small Business Job Protection Act of 1996 (Public Law 104–188; August 20, 1996).

[29] This requirement parallels the present-law provision relating to reasonable verification of information returns (sec. 6201(d)).

[30] Full cooperation also includes providing English translations, as reasonably requested by the Secretary.

cluding any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have fully cooperated with the Secretary. Second, certain taxpayers must meet the net worth limitations that apply for awarding attorney's fees. In general, corporations, trusts, and partnerships whose net worth exceeds $7 million are not eligible for the benefits of the provision. The taxpayer has the burden of proving that it meets each of these conditions, because they are necessary prerequisites to establishing that the burden of proof is on the Secretary.

The provision explicitly states that nothing in the provision shall be construed to override any requirement under the Code or regulations to substantiate any item. Accordingly, taxpayers must meet all applicable substantiation requirements, whether generally imposed[31] or imposed with respect to specific items, such as charitable contributions[32] or meals, entertainment, travel, and certain other expenses.[33] Substantiation requirements include any requirement of the Code or regulations that the taxpayer establish an item to the satisfaction of the Secretary.[34] Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied all of the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of this provision regarding the burden of proof. Thus, if a taxpayer required to substantiate an item fails to do so in the manner required (or destroys the substantiation), this burden of proof provision is inapplicable.[35]

EFFECTIVE DATE

The provision applies to court proceedings arising in connection with examinations commencing after the date of enactment.

B. PROCEEDINGS BY TAXPAYERS

1. Expansion of Authority to Award Costs and Certain Fees (sec. 311 of the bill and sec. 7430 of the Code)

PRESENT LAW

Any person who substantially prevails in any action by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. In general, only an individual whose net worth does not exceed $2 million is eligible for an award, and only a corporation

[31] See e.g., Sec. 6001 and Treas. Reg. sec. 1.6001–1 requiring every person liable for any tax imposed by this Title to keep such records as the Secretary may from time to time prescribe, and secs. 6038 and 6038A requiring United States persons to furnish certain information the Secretary may prescribe with respect to foreign businesses controlled by the U.S. person.

[32] Sec. 170(a)(1) and (f)(8) and Treas. Reg. sec. 1.170A–13.

[33] Sec. 274(d) and Treas. Reg. sec. 1.274(d)–1, 1.274–5T, and 1.274–5A.

[34] For example, sec. 905(b) of the Code provides that foreign tax credits shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary all information necessary for the verification and computation of the credit. Instructions for meeting that requirement are set forth in Treas. Reg. sec. 1.905–2.

[35] If, however, the taxpayer can demonstrate that he had maintained the required substantiation but that it was destroyed or lost through no fault of the taxpayer, such as by fire or flood, existing tax rules regarding reconstruction of those records would continue to apply.

or partnership whose net worth does not exceed $7 million is eligible for an award.

Reasonable litigation costs include reasonable fees paid or incurred for the services of attorneys, except that the attorney's fees will not be reimbursed at a rate in excess of $110 per hour (indexed for inflation) unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate. Awards of reasonable litigation costs and reasonable administrative costs cannot exceed amounts paid or incurred.

Once a taxpayer has substantially prevailed over the IRS in a tax dispute, the IRS has the burden of proof to establish that it was substantially justified in maintaining its position against the taxpayer. A rebuttable presumption exists that provides that the position of the United States is not considered to be substantially justified if the IRS did not follow in the administrative proceeding (1) its published regulations, revenue rulings, revenue procedures, information releases, notices, or announcements, or (2) a private letter ruling, determination letter, or technical advice memorandum issued to the taxpayer.

REASONS FOR CHANGE

The Committee believes that taxpayers should be allowed to recover the reasonable administrative costs they incur where the IRS takes a position against the taxpayer that is not substantially justified, beginning at the time that the IRS establishes its initial position by issuing a letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals. In determining what constitutes reasonable costs, the Committee believes that either the difficulty of issues or the limited local availability of tax expertise may justify the payment of higher hourly rates.

The Committee believes that the pro bono publicum representation of taxpayers should be encouraged and the value of the legal services rendered in these situations should be recognized. Where the IRS takes positions that are not substantially justified, it should not be relieved of its obligation to bear reasonable administrative and litigation costs because representation was provided the taxpayer on a pro bono basis.

The Committee is concerned that the IRS may continue to litigate issues that have previously been decided in favor of taxpayers in other circuits. The Committee believes that this places an undue burden on taxpayers that are required to litigate such issues. Accordingly, the Committee believes it is important that the court take into account whether the IRS has lost in the courts of appeals of other circuits on similar issues in determining whether the IRS has taken a position that is not substantially justified and thus liable for reasonable administrative and litigation costs.

EXPLANATION OF PROVISION

The bill: (1) provides that the difficulty of the issues presented or the unavailability of local tax expertise can be used to justify an award of attorney's fees of more than the statutory limit of $110 per hour; (2) moves the point in time after which reasonable ad-

ministrative costs can be awarded to the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals is sent; (3) permits the award of attorney's fees (in amounts up to the statutory limit determined to be appropriate) to specified persons who represent for no more than a nominal fee a taxpayer who is a prevailing party; and (4) provides that in determining whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues. The court may also take into account whether the United States has won in courts of appeal for other circuits on substantially similar issues.

EFFECTIVE DATE

The provision applies to costs incurred and services performed more than 180 days after the date of enactment.

2. Civil Damages for Negligence in Collection Actions (sec. 312 of the bill and sec. 7433 of the Code)

PRESENT LAW

A taxpayer may sue the United States for up to $1 million of civil damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer.

REASONS FOR CHANGE

The Committee believes that taxpayers should also be able to recover economic damages they incur as a result of the negligent disregard of the Code or regulations by an officer or employee of the IRS in connection with a collection matter.

EXPLANATION OF PROVISION

The bill provides for up to $100,000 in civil damages caused by an officer or employee of the IRS who negligently disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer. Inadvertent errors in IRS functions, such as in computer programming, do not trigger the application of this provision. No person is entitled to seek civil damages for negligent, reckless, or intentional disregard of the Code or regulations in a court of law unless he first exhausts his administrative remedies.

EFFECTIVE DATE

The provision is effective with respect to actions of officers or employees of the IRS occurring after the date of enactment.

3. Increase in Size of Cases Permitted on Small Case Calendar (sec. 313 of the bill and sec. 7463 of the Code)

PRESENT LAW

Taxpayers may choose to contest many tax disputes in the Tax Court. Special small case procedures apply to disputes involving $10,000 or less, if the taxpayer chooses to utilize these procedures (and the Tax Court concurs).

REASONS FOR CHANGE

The Committee believes that use of the small case procedures should be expanded.

EXPLANATION OF PROVISION

The bill increases the cap for small case treatment from $10,000 to $25,000.

EFFECTIVE DATE

The provision applies to proceedings commenced after the date of enactment.

C. Relief for Innocent Spouses and Persons With Disabilities

1. Innocent Spouse Relief (sec. 321 of the bill and new sec. 6015 of the Code)

PRESENT LAW

Spouses who file a joint tax return are each fully responsible for the accuracy of the return and for the full tax liability. This is true even though only one spouse may have earned the wages or income which is shown on the return. This is "joint and several" liability. A spouse who wishes to avoid joint liability may file as a "married person filing separately."

Relief from liability for tax, interest and penalties is available for "innocent spouses" in certain limited circumstances. To qualify for such relief, the innocent spouse must establish: (1) that a joint return was made; (2) that an understatement of tax, which exceeds the greater of $500 or a specified percentage of the innocent spouse's adjusted gross income for the preadjustment (most recent) year, is attributable to a grossly erroneous item[36] of the other spouse; (3) that in signing the return, the innocent spouse did not know, and had no reason to know, that there was an understatement of tax; and (4) that taking into account all the facts and circumstances, it is inequitable to hold the innocent spouse liable for the deficiency in tax. The specified percentage of adjusted gross income is 10 percent if adjusted gross income is $20,000 or less. Otherwise, the specified percentage is 25 percent.

It is unclear under present law whether a court may grant partial innocent spouse relief. The Ninth Circuit Court of Appeals in *Wiksell* v. *Commissioner*[37] *has allowed partial innocent spouse re-*

[36] Grossly erroneous items include items of gross income that are omitted from reported income and claims of deductions, credits, or basis in an amount for which there is no basis in fact of law (code sec. 6013(e)(2)).

[37] 90 F.3d 1459 (9th Cir. 1997).

lief where the spouse did not know, and had no reason to know, the magnitude of the understatement of tax, even though the spouse knew that the return may have included some understatement.

The proper forum for contesting a denial by the Secretary of innocent spouse relief is determined by whether an underpayment is asserted or the taxpayer is seeking a refund of overpaid taxes. Accordingly, the Tax Court may not have jurisdiction to review all denials of innocent spouse relief.

No form is currently provided to assist taxpayers in applying for innocent spouse relief.

REASONS FOR CHANGE

The Committee is concerned that the innocent spouse provisions of present law are inadequate. The Committee believes it is inappropriate to limit innocent spouse relief only to the most egregious cases where the understatement is large and the tax position taken is grossly erroneous. The Committee also believes that partial innocent spouse relief should be considered in appropriate circumstances, and that all taxpayers should have access to the Tax Court in resolving disputes concerning their status as an innocent spouse. Finally, the Committee believes that taxpayers need to be better informed of their right to apply for innocent spouse relief in appropriate cases and that the IRS is the best source of that information.

EXPLANATION OF PROVISION

The bill generally makes innocent spouse status easier to obtain. The bill eliminates all of the understatement thresholds and requires only that the understatement of tax be attributable to an erroneous (and not just a grossly erroneous) item of the other spouse.

The bill provides that innocent spouse relief may be provided on an apportioned basis. That is, the spouse may be relieved of liability as an innocent spouse to the extent the liability is attributable to the portion of an understatement of tax which such spouse did not know of and had no reason to know of.

The bill specifically provides that the Tax Court has jurisdiction to review any denial (or failure to rule) by the Secretary regarding an application for innocent spouse relief. The Tax Court may order refunds as appropriate where it determines the spouse qualifies for relief and an overpayment exists as a result of the innocent spouse qualifying for such relief. The taxpayer must file his or her petition for review with the Tax Court during the 90-day period that begins on the earlier of (1) 6 months after the date the taxpayer filed his or her claim for innocent spouse relief with the Secretary or (2) the date a notice denying innocent spouse relief was mailed by the Secretary. Except for termination and jeopardy assessments (secs. 6851, 6861), the Secretary may not levy or proceed in court to collect any tax from a taxpayer claiming innocent spouse status with regard to such tax until the expiration of the 90-day period in which such taxpayer may petition the Tax Court or, if the Tax Court considers such petition, before the decision of the Tax Court has become final. The running of the statute of limitations is suspended in such situations with respect to the spouse claiming innocent spouse status.

The bill also requires the Secretary of the Treasury to develop a separate form with instructions for taxpayers to use in applying for innocent spouse relief within 180 days from the date of enactment. An innocent spouse seeking relief under this provision must claim innocent spouse status with regard to any assessment not later than two years after the date of such assessment.

EFFECTIVE DATE

The provision is effective for understatements with respect to taxable years beginning after the date of enactment.

2. Suspension of Statute of Limitations on Filing Refund Claims During Periods of Disability (sec. 322 of the bill and sec. 6511 of the Code)

PRESENT LAW

In general, a taxpayer must file a refund claim within three years of the filing of the return or within two years of the payment of the tax, whichever period expires later (if no return is filed, the two-year limit applies) (sec. 6511(a)). A refund claim that is not filed within these time periods is rejected as untimely.

There is no explicit statutory rule providing for equitable tolling of the statute of limitations. Several courts have considered whether equitable tolling implicitly exists. The First, Third, Fourth, and Eleventh Circuits have rejected equitable tolling with respect to tax refund claims. The Ninth Circuit has permitted equitable tolling. However, the U.S. Supreme Court has reversed the Ninth Circuit in *U.S.* v. *Brockamp,*[38] holding that Congress did not intend the equitable tolling doctrine to apply to the statutory limitations of section 6511 on the filing of tax refund claims.

REASONS FOR CHANGE

The Committee believes that, in cases of severe disability, equitable tolling should be considered in the application of the statutory limitations on the filing of tax refund claims.

EXPLANATION OF PROVISION

The bill permits equitable tolling of the statute of limitations for refund claims of an individual taxpayer during any period of the individual's life in which he or she is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Proof of the existence of the impairment must be furnished in the form and manner required by the Secretary. It is anticipated that, in applying the medically determinable test, the Secretary will evaluate whether a medical opinion that a physical or mental impairment exists has been offered by a person qualified to do so with respect to that particular type of impairment. Tolling does not apply during periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf in financial matters.

[38] 117 S. Ct. 849 (1997), reversing 67 F. 3d 260 and 70 F. 3d 120.

EFFECTIVE DATE

The provision applies to periods of disability before, on, or after the date of enactment but would not apply to any claim for refund or credit which (without regard to the provision) is barred by the statute of limitations as of January 1, 1998.

D. Provisions Relating to Interest

1. Elimination of Interest Differential on Overlapping Periods of Interest on Income Tax Overpayments and Underpayments (sec. 331 of the bill and sec. 6621 of the Code)

PRESENT LAW

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short term interest rate plus three percentage points. A special "hot interest" rate equal to the Federal short term interest rate plus five percentage points applies in the case of certain large corporate underpayments.

A taxpayer that overpays its taxes receives interest on the overpayment at a rate equal to the Federal short term interest rate plus two percentage points. In the case of corporate overpayments in excess of $10,000, this is reduced to the Federal short term interest rate plus one-half of a percentage point.

If a taxpayer has an underpayment of tax from one year and an overpayment of tax from a different year that are outstanding at the same time, the IRS will typically offset the overpayment against the underpayment and apply the appropriate interest to the resulting net underpayment or overpayment. However, if either the underpayment or overpayment have been satisfied, the IRS will not typically offset the two amounts, but rather will assess or credit interest on the full underpayment or overpayment at the underpayment or overpayment rate. This has the effect of assessing the underpayment at the higher underpayment rate and crediting the overpayment at the lower overpayment rate. This results in the taxpayer being assessed a net interest charge, even if the amounts of the overpayment and underpayment are the same.

The Secretary has the authority to credit the amount of any overpayment against any liability under the Code.[39] Congress has previously directed the Internal Revenue Service to consider procedures for "netting" overpayments and underpayments and, to the extent a portion of tax due is satisfied by a credit of an overpayment, not impose interest.[40]

REASONS FOR CHANGE

The Committee believes that taxpayers should be charged interest only on the amount they actually owe, taking into account over-

[39] Code sec. 6402

[40] Pursuant to TBOR2 (1996), the Secretary conducted a study of the manner in which the IRS has implemented the netting of interest on overpayments and underpayments and the policy and administrative implications of global netting. The legislative history to the General Agreement on Trade and Tariffs (GATT) (1994) stated that the Secretary should implement the most comprehensive crediting procedures that are consistent with sound administrative practice, and should do so as rapidly as is practicable. A similar statement was included in the Conference Report to the Omnibus Budget Reconciliation Act of 1990.

payments and underpayments from all open years. The Committee does not believe that the different interest rates provided for overpayments and underpayments were ever intended to result in the charging of the differential on periods of mutual indebtedness.

The Committee is also concerned that current practices provide an incentive to taxpayers to delay the payment of underpayments they do not contest, so that the underpayments will be available to offset any overpayments that are later determined. The Committee believes that this is contrary to sound tax administrative practice and that taxpayers should not be disadvantaged solely because they promptly pay their tax bills.

EXPLANATION OF PROVISION

The bill establishes a net interest rate of zero on equivalent amounts of overpayment and underpayment that exist for any period. Each overpayment and underpayment is to be considered only once in determining whether equivalent amounts of overpayment and underpayment exist. The special rules that increase the interest rate paid on large corporate underpayments and decrease the interest rate received on corporate underpayments in excess of $10,000 do not prevent the application of the net zero rate. The bill applies to income taxes and self-employment taxes.

For example, following an examination of his 1998 return, a corporate taxpayer is determined to have overpaid its 1998 taxes by $5,000. Previously, the taxpayer established by an amended return that it had underpaid its 1999 taxes by $7,000. The taxpayer has paid the 1999 underpayment, plus interest determined at the underpayment rate. The statute of limitations has not run with respect to either 1998 or 1999. In determining the amount of the refund owed the taxpayer with regard to the 1998 overpayment, the period for which the 1999 underpayment was outstanding must be taken into account. For all periods in which the underpayment and overpayment run concurrently (i.e., from the due date of the 1999 return until the underpayment was paid), the interest rate on the $5,000 overpayment and $5,000 of the underpayment must be the same so that the net interest rate of zero applies.[41] The interest rate on the remaining $2,000 of the underpayment that was originally calculated at the short term Federal rate plus three percent would not be affected.

EFFECTIVE DATE

The provision applies to interest for calendar quarters beginning after the date of enactment. Until such time as procedures are implemented that allow for the automatic application of this provision by the IRS, the Committee expects that the Secretary will promptly and carefully consider any taxpayer's request to have interest charges recalculated in accordance with this provision. It is expected that the Secretary will extend the statute of limitations where necessary to allow for the consideration of such requests.

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[41] In this case, it is assumed that the interest rate on $5,000 of overpayment will be set equal to the underpayment rate for the period that both the underpayment and overpayment are outstanding in order to achieve the required net interest rate of zero. However, the Secretary may use other procedures or methodologies that he deems appropriate, so long as a zero net interest rate is achieved.

In light of past Congressional statements urging the Secretary to eliminate interest rate differentials in these circumstances, and taking into consideration Congress' belief that the Secretary may do so, the Committee continues to expect that the Secretary will implement the most comprehensive crediting procedures that are consistent with sound administrative practice, and not only those affected by this provision.

2. Increase in Overpayment Rate Payable to Taxpayers Other than Corporations (sec. 332 of the bill and sec. 6621 of the Code)

PRESENT LAW

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short-term interest rate (AFR) plus three percentage points. A taxpayer that overpays its taxes receives interest on the overpayment at a rate equal to the Federal short-term interest rate (AFR) plus two percentage points.

REASONS FOR CHANGE

The Committee believes that the interest differential for noncorporate taxpayers should be eliminated.

EXPLANATION OF PROVISION

The bill provides that the overpayment interest rate will be AFR plus three percentage points, except that for corporations, the rate will remain at AFR plus two percentage points.

EFFECTIVE DATE

The provision applies to interest for calendar quarters beginning after the date of enactment.

E. Protections for Taxpayers Subject to Audit or Collection

1. Privilege of Confidentiality Extended to Taxpayer's Dealings with Non-attorneys Authorized to Practice Before IRS (sec. 341 of the bill and sec. 7602 of the Code)

PRESENT LAW

A common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. Communications protected by the attorney-client privilege must be based on facts of which the attorney is informed by the taxpayer, without the presence of strangers, for the purpose of securing the advice of the attorney. The privilege may not be claimed where the purpose of the communication is the commission of a crime or tort. The taxpayer must be, or be seeking to become, a client of the attorney.

The privilege of confidentiality applies only where the attorney is advising the client on legal matters. It does not apply in situations where the attorney is acting in other capacities. Thus, a taxpayer may not claim the benefits of the attorney-client privilege simply by hiring an attorney to perform some other function. For example, if an attorney is retained to prepare a tax return, the at-

torney-client privilege will not automatically apply to communications and documents generated in the course of preparing the return. The privilege of confidentiality also does not apply where an attorney that is licensed to practice another profession is performing such other profession. For example, if a taxpayer retains an attorney who is also licensed as a certified public accountant (CPA), the taxpayer may not assert the attorney-client privilege with regard to communications made and documents prepared by the attorney in his role as a CPA.

The attorney-client privilege is limited to communications between taxpayers and attorneys. No equivalent privilege is provided for communications between taxpayers and other professionals authorized to practice before the Internal Revenue Service, such as accountants or enrolled agents.

REASONS FOR CHANGE

The Committee believes that a right to privileged communications between a taxpayer and his or her advisor should be available in noncriminal proceedings before the Internal Revenue Service, so long as the advisor is authorized to practice before the Internal Revenue Service. A right to privileged communications in such situations should not depend upon whether the advisor is also licensed to practice law. The Committee believes that it is appropriate to provide for this right within the Committee's jurisdiction, by applying it to noncriminal proceedings before the IRS.

EXPLANATION OF PROVISION

The bill extends the present law attorney-client privilege of confidentiality to tax advice that is furnished by any individual who is authorized to practice before the Internal Revenue Service, acting in a manner consistent with State law for such individual's profession, to a client-taxpayer (or potential client-taxpayer) in any noncriminal proceeding before the Internal Revenue Service.

The provision will allow taxpayers to consult with other qualified tax advisors in the same manner they currently may consult with tax advisors that are licensed to practice law. The provision does not modify the attorney-client privilege. Accordingly, except for criminal proceedings, the privilege of confidentiality under this provision applies in the same manner and with the same limitations as the attorney-client privilege of present law. The provision does not extend the privilege of confidentiality to communications that would not be eligible for the privilege if prepared by an attorney.

The provision applies to individuals authorized to practice before the Internal Revenue Service, regardless of the method pursuant to which they are so authorized. Some, such as accountants, are authorized to practice by fulfilling State licensing requirements. Others, such as enrolled agents and enrolled actuaries, are authorized to practice by passing a Treasury Department examination.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Expansion of Authority to Issue Taxpayer Assistance Orders (sec. 342 of the bill and sec. 7811 of the Code)

PRESENT LAW

Taxpayers can request that the Taxpayer Advocate in the Internal Revenue Service ("IRS") issue a taxpayer assistance order ("TAO") if they are suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered (sec. 7811). A TAO may require the IRS to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer.

REASONS FOR CHANGE

The Committee believes that certain factors should generally be considered by the Taxpayer Advocate in determining whether a taxpayer assistance order should be issued.

EXPLANATION OF PROVISION

The bill provides that in determining whether to issue a TAO, the Taxpayer Advocate shall consider, among others, the following four factors: (1) whether there is an immediate threat of adverse action; (2) whether there has been an unreasonable delay in resolving the taxpayer's account problems; (3) whether the taxpayer will have to pay significant costs (including fees for professional representation) if relief is not granted; and (4) whether the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted. In addition, in cases where an IRS employee to whom the order would be issued is not following applicable published administrative guidance, including the Internal Revenue Manual ("IRM"), the Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Limitation on Financial Status Audit Techniques (sec. 343 of the bill and sec. 7602 of the Code)

PRESENT LAW

The IRS examines Federal tax returns to determine the correct liability of taxpayers. The IRS selects returns to be audited in a number of ways, such as through a computerized classification system (the discriminant function ("DIF") system).

REASONS FOR CHANGE

The Committee believes that financial status audit techniques are intrusive, and that their use should be limited to situations where the IRS already has indications of unreported income.

EXPLANATION OF PROVISION

The bill prohibits IRS from using financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the IRS has a reasonable indication that there is a likelihood of unreported income.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. Limitation on Authority to Require Production of Computer Source Code (sec. 344 of the bill and sec. 7602 of the Code)

PRESENT LAW

The Secretary of the Treasury is authorized to examine any books, papers, records, or other data that may be relevant or material to an inquiry into the correctness of any Federal tax return. The Secretary may issue and serve summonses necessary to obtain such data, including summonses on certain third-party record keepers. There are no specific statutory restrictions on the ability of the Secretary to demand the production of computer records, programs, code or similar materials.

REASONS FOR CHANGE

The Committee believes that the intellectual property rights of the developers and owners of computer programs should be respected and is concerned that the examination of third-party tax-related computer source code by the IRS could lead to the diminution of those rights through the inadvertent disclosure of trade secrets. The Committee also believes that the indiscriminate examination of computer source code by the IRS to identify issues on a taxpayer's return would be inappropriate. Accordingly, the Committee believes that a summons for the production of third-party tax-related computer source code should only be issued where the IRS has not otherwise been able to ascertain through reasonable efforts the manner in which a taxpayer has arrived at the entry on a return and has identified with specificity the portion of the computer source code it seeks to examine.

EXPLANATION OF PROVISION

The Secretary is generally prohibited from issuing (or beginning an action to enforce) a summons in a civil action for any portion of any third-party tax-related computer source code unless (1) the Secretary is unable to otherwise reasonably ascertain the correctness of an item on a return from the taxpayer's other books, papers, records, other data, or the computer software program and associated data itself and (2) the Secretary first identifies with reasonable specificity the portion of the computer source code to be used to verify the correctness of the item.

The Secretary would be considered to have satisfied these requirements with regard to the identified portion of the source code if the Secretary makes a formal request for such materials to both the taxpayer and the owner or developer of the software that is not satisfied within 90 days. Such formal request must clearly state

that one of the consequences of failure to respond to the request will be the waiver of any prohibition on the summons of tax-related computer source code that might otherwise apply.

The Secretary's determination that the identified portion of the third-party tax-related computer source code may be summoned may be contested in any proceeding to enforce the summons, by any person to whom the summons is addressed. For this purpose, the special procedures for third-party summonses[42] will apply. In any such proceeding, the court may issue any order that is necessary to prevent the disclosure of trade secrets or other confidential information.

For these purposes, tax-related computer source code includes the human readable instructions for any computer software program that is used for accounting, tax return preparation, tax compliance or tax planning, along with the design and development materials related to such software program, including any relevant program notes and memoranda.

The prohibition on issuing summons for tax-related computer source code does not apply in connection with any inquiry into any offense connected with the administration or enforcement of the internal revenue laws. A computer software program will not be treated as tax advice for the purpose of the professional-client privilege contained in section 341 of this bill.

The prohibition applies only in the case of tax-related computer software that is intended for commercial distribution. Source code related to computer software that was developed by, or primarily for the benefit of, the taxpayer or a related person (within the meaning of section 267 or 707(b)) for the internal use of the taxpayer or such related person may continue to be summonsed by the Secretary to the extent allowed under present law.

EFFECTIVE DATE

The provision is effective for summonses issued more than 90 days after the date of enactment. It is expected that the Secretary will not use the 90 day period between the date of enactment and the effective date in a manner that would circumvent the intent of the provision.

5. Procedures Relating to Extensions of Statute of Limitations by Agreement (sec. 345 of the bill and sec. 6501 of the Code)

PRESENT LAW

The statute of limitations within which the IRS may assess additional taxes is generally three years from the date a return is filed (sec. 6501).[43] Prior to the expiration of the statute of limitations, both the taxpayer and the IRS may agree in writing to extend the statute, using Form 872 or 872-A. An extension may be for either a specified period or an indefinite period. The statute of limitations within which a tax may be collected after assessment is 10 years after assessment (sec. 6502). Prior to the expiration of the statute

[42] Sec. 7609

[43] For this purpose, a return filed before the due date is considered to be filed on the due date.

of limitations, both the taxpayer and the IRS may agree in writing to extend the statute, using Form 900.

REASONS FOR CHANGE

The Committee believes that taxpayers should be fully informed of their rights with respect to the statute of limitations.

EXPLANATION OF PROVISION

The bill requires that, on each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues.

EFFECTIVE DATE

The provision applies to requests to extend the statute of limitations made after the date of enactment.

6. Offers-in-Compromise (sec. 346 of the bill and sec. 7122 of the Code)

PRESENT LAW

Section 7122 of the Code permits the IRS to compromise a taxpayer's tax liability. In general, this occurs when a taxpayer submits an offer-in-compromise to the IRS. An offer-in-compromise is a proposal to settle unpaid tax accounts for less than the full amount of the assessed balance due. An offer-in-compromise may be submitted for all types of taxes, as well as interest and penalties, arising under the Internal Revenue Code.

Taxpayers submit an offer-in-compromise on Form 656. There are two bases on which an offer can be made. The first is doubt as to the liability for the amount owed. The second is doubt as to the taxpayer's ability fully to pay the amount owed. An application can be made on either or both of these grounds. Taxpayers are required to submit background information to the IRS substantiating their application. If they are applying on the basis of doubt as to the taxpayer's ability fully to pay the amount owed, the taxpayer must complete a financial disclosure form enumerating assets and liabilities.

As part of an offer-in-compromise made on the basis of doubt as to ability fully to pay, taxpayers must agree to comply with all provisions of the Internal Revenue Code relating to filing returns and paying taxes for five years from the date the IRS accepts the offer. Failure to observe this requirement permits the IRS to begin immediate collection actions for the original amount of the liability.

REASONS FOR CHANGE

The Committee believes that taxpayers should be fully informed of the offer-in-compromise procedures, including the responsibilities created by those procedures. In determining whether there is doubt as to the taxpayer's ability fully to pay the amount owed, the Committee believes that the Secretary should take into consideration a

taxpayer's need to provide for the basic living expenses of his or her family, based on the cost of living in the taxpayer's locality.

EXPLANATION OF PROVISION

The bill requires the IRS to develop and publish schedules of national and local allowances designed to provide taxpayers entering into an offer-in-compromise with adequate means to provide for basic living expenses. The bill also provides that, in the case of a compromise agreement that is terminated due to the actions of one spouse or former spouse, the spouse or former spouse remaining in compliance with the agreement may obtain reinstatement of such agreement on application. All payments required under the offer-in-compromise must be current for either spouse or former spouse to be in compliance with the agreement. Finally, the bill requires the IRS to prepare a publication or statement providing guidance to taxpayers on the rights and obligations of taxpayers and the IRS relating to offers in compromise. This statement will include materials explaining to married taxpayers their responsibilities should their marital status change and instructions for applying to have an offer-in-compromise reinstated under the circumstances discussed above. It is expected that this publication or statement will be provided to taxpayers considering an offer in compromise at appropriate times.

EFFECTIVE DATE

The provision is effective on the date of enactment. It is expected that the materials required by this provision will be published as soon as practicable, but no later than 180 days after the date of enactment. It is expected that offers-in-compromise based on this provision will be available as of the date of enactment.

7. Notice of Deficiency to Specify Deadlines for Filing Tax Court Petition (sec. 347 of the bill and sec. 6213 of the Code)

PRESENT LAW

Taxpayers must file a petition with the Tax Court within 90 days after the deficiency notice is mailed (150 days if the person is outside the United States) (sec. 6213). If the petition is not filed within that time period, the Tax Court does not have jurisdiction to consider the petition.

REASONS FOR CHANGE

The Committee believes that taxpayers should receive assistance in determining the time period within which they must file a petition in the Tax Court and that taxpayers should be able to rely on the computation of that period by the IRS.

EXPLANATION OF PROVISION

The bill requires that the IRS include on each deficiency notice the date determined by the IRS as the last day on which the taxpayer may file a petition with the Tax Court. It is expected that the last day on which a taxpayer who is outside the United States may file a petition with the Tax Court will be shown as an alter-

native. The bill provides that a petition filed with the Tax Court by this date shall be treated as timely filed.

EFFECTIVE DATE

The provision would apply to notices mailed after December 31, 1998.

8. Refund or Credit of Overpayments Before Final Determination (sec. 348 of the bill and sec. 6213 of the Code)

PRESENT LAW

A taxpayer may petition the Tax Court for a redetermination of a deficiency within 90 days (150 days if the notice is addressed to a person outside the United States) from the date the notice of deficiency is mailed by the IRS. Generally, the Secretary may not make any assessment or commence any levy or other proceeding to collect the deficiency during such period or, if the taxpayer petitions the Tax Court, until the decision of the Tax Court has become final. The making of any such assessment, or the commencing of any proceeding or levy, during the prohibited period may be enjoined by a proceeding in the proper court (including the Tax Court). However, no authority is provided for ordering the refund of any amount collected within the prohibited period.

If a taxpayer contests a deficiency in the Tax Court, no credit or refund of income tax for the contested taxable year generally may be made, except in accordance with a decision of the Tax Court that has become final. Where the Tax Court determines that an overpayment has been made and a refund is due the taxpayer, and a party appeals a portion of the decision of the Tax Court, no provision exists for the refund of any portion of any overpayment that is not contested in the appeal.

REASONS FOR CHANGE

The Committee believes that the Secretary should be allowed to refund the uncontested portion of an overpayment of taxes, without regard to whether other portions of the overpayment are contested.

EXPLANATION OF PROVISION

The bill provides that where a timely petition in respect of a deficiency is filed in the Tax Court, the proper court (including the Tax Court) may order a refund of any amount that was collected within the period during which the Secretary is prohibited from collecting the deficiency by levy or other proceeding.

The bill also allows the refund of that portion of any overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

EFFECTIVE DATE

The provision applies on the date of enactment.

9. Threat of Audit Prohibited to Coerce Tip Reporting Alternative Commitment Agreements (sec. 349 of the bill)

PRESENT LAW

Restaurants may enter into Tip Reporting Alternative Commitment (TRAC) agreements. A restaurant entering into a TRAC agreement is obligated to educate its employees on their tip reporting obligations, to institute formal tip reporting procedures, to fulfill all filing and record keeping requirements, and to pay and deposit taxes. In return, the IRS agrees to base the restaurant's liability for employment taxes solely on reported tips and any unreported tips discovered during an IRS audit of an employee.

REASONS FOR CHANGE

The Committee believes that it is inappropriate for the Secretary to use the threat of an Internal Revenue Service audit to induce participation in voluntary programs.

EXPLANATION OF PROVISION

The bill requires the IRS to instruct its employees that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer to enter into a TRAC agreement.

EFFECTIVE DATE

The provision is effective on the date of enactment.

F. DISCLOSURES TO TAXPAYERS

1. Explanation of Joint and Several Liability (sec. 351 of the bill)

PRESENT LAW

In general, spouses who file a joint tax return are each fully responsible for the accuracy of the tax return and for the full liability. This is true even though only one spouse may have earned the wages or income which is shown on the return. This is "joint and several" liability. Spouses who wish to avoid joint and several liability may file as a married person filing separately. Special rules apply in the case of innocent spouses pursuant to section 6013(e).

REASONS FOR CHANGE

The Committee believes that married taxpayers need to clearly understand the legal implications of signing a joint return and that it is appropriate for the IRS to provide the information necessary for that understanding.

EXPLANATION OF PROVISION

The bill requires that, no later than 180 days after the date of enactment, the IRS must establish procedures clearly to alert married taxpayers of their joint and several liability on all appropriate tax publications and instructions. It is anticipated that the IRS will make an appropriate cross-reference to these statements near the signature line on appropriate tax forms.

EFFECTIVE DATE

The bill requires that the procedures be established as soon as practicable, but no later than 180 days after the date of enactment.

2. Explanation of Taxpayers' Rights in Interviews With the IRS (sec. 352 of the bill)

PRESENT LAW

Prior to or at initial in-person audit interviews, the IRS must explain to taxpayers the audit process and taxpayers' rights under that process (sec. 7521). In addition, prior to or at initial in-person collection interviews, the IRS must explain the collection process and taxpayers' rights under that process. If a taxpayer clearly states during an interview with the IRS that the taxpayer wishes to consult with the taxpayers' representative, the interview must be suspended to afford the taxpayer a reasonable opportunity to consult with the representative.

REASONS FOR CHANGE

The Committee believes that taxpayers should be more fully informed of their rights to representation in dealings with the IRS and that those rights should be respected.

EXPLANATION OF PROVISION

The bill requires that the IRS rewrite Publication 1 ("Your Rights as a Taxpayer") to more clearly inform taxpayers of their rights (1) to be represented by a representative and (2) if the taxpayer is so represented, that the interview may not proceed without the presence of the representative unless the taxpayer consents.

EFFECTIVE DATE

The addition to Publication 1 must be made not later than 180 days after the date of enactment.

3. Disclosure of Criteria for Examination Selection (sec. 353 of the bill)

PRESENT LAW

The IRS examines Federal tax returns to determine the correct liability of taxpayers. The IRS selects returns to be audited in a number of ways, such as through a computerized classification system (the discriminant function ("DIF") system).

REASONS FOR CHANGE

The Committee believes it is important that taxpayers understand the reasons they may be selected for examination.

EXPLANATION OF PROVISION

The bill requires that IRS add to Publication 1 ("Your Rights as a Taxpayer") a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. The statement must not include any information the

disclosure of which would be detrimental to law enforcement. The statement must specify the general procedures used by the IRS, including whether taxpayers are selected for examination on the basis of information in the media or from informants. Drafts of the statement or proposed revisions to the statement are required to be submitted to the House Committee on Ways and Means, the Senate Committee on Finance, and the Joint Committee on Taxation.

EFFECTIVE DATE

The addition to Publication 1 must be made not later than 180 days after the date of enactment.

4. Explanations of Appeals and Collection Process (sec. 354 of the bill)

PRESENT LAW

There is no statutory requirement that specific notices be given to taxpayers along with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

REASONS FOR CHANGE

The Committee believes it is important that taxpayers understand they have a right to have any assessment reviewed by the IRS Office of Appeals, as well as be informed of the steps they must take to obtain that review.

EXPLANATION OF PROVISION

The bill requires that, no later than 180 days after the date of enactment, an explanation of the appeals process and the collection process be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

EFFECTIVE DATE

The bill requires that the explanation be included as soon as practicable, but no later than 180 days after the date of enactment.

G. Low-Income Taxpayer Clinics

(sec. 361 of the bill and new sec. 7525 of the Code)

PRESENT LAW

There are no provisions in present law providing for assistance to clinics that assist low-income taxpayers.

REASONS FOR CHANGE

The Committee believes that the provision of tax services by accredited nominal fee clinics to low-income individuals and those for whom English is a second language will improve compliance with the Federal tax laws and should be encouraged.

EXPLANATION OF PROVISION

The Secretary shall make matching grants for the development, expansion, or continuation of certain low-income taxpayer clinics. Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language. The term "clinic" includes (1) a clinical program at an accredited law school in which students represent low-income taxpayers, and (2) an organization exempt from tax under Code section 501(c) which either represents low-income taxpayers or provides referral to qualified representatives.

A clinic is treated as representing low-income taxpayers if at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level and amounts in controversy of $25,000 or less.

The aggregate amount of grants to be awarded each year is limited to $3,000,000. No taxpayer clinic could receive more than $100,000 per year. The clinic must provide matching funds on a dollar-for-dollar basis. Matching funds may include the allocable portion of both the salary (including fringe benefits) of individuals performing services for the clinic and clinic equipment costs, but not general institutional overhead.

The following criteria are to be considered in making awards: (1) number of taxpayers served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language; (2) the existence of other taxpayer clinics serving the same population; (3) the quality of the program; and (4) alternative funding sources available to the clinic.

EFFECTIVE DATE

The provision is effective on the date of enactment.

H. Other Taxpayer Rights Provisions

1. Actions for Refund with respect to Certain Estates which have Elected the Installment Method of Payment (sec. 371 of the bill and sec. 7422 of the Code)

PRESENT LAW

In general, the U.S. Court of Federal Claims and the U.S. district courts have jurisdiction over suits for the refund of taxes, as long as full payment of the assessed tax liability has been made. *Flora* v. *United States,* 357 U.S. 63 (1958), aff'd on reh'g, 362 U.S. 145 (1960). Under Code section 6166, if certain conditions are met, the executor of a decedent's estate may elect to pay the estate tax attributable to certain closely-held businesses over a 14-year period. Courts have held that U.S. district courts and the U.S. Court of Federal Claims do not have jurisdiction over claims for refunds by taxpayers deferring estate tax payments pursuant to section 6166 unless the entire estate tax liability has been paid (i.e., timely payment of the installments due prior to the bringing of an action is not sufficient to invoke jurisdiction). See, e.g., *Rocovich* v. *United States,* 933 F.2d 991 (Fed. Cir. 1991), *Abruzzo* v. *United States,* 24 Ct. Cl. 668 (1991).

REASONS FOR CHANGE

The Committee believes that the refund jurisdiction of the U.S. Court of Federal Claims and the U.S. district courts should apply without regard to whether the taxpayer has elected, and the Secretary accepted, the payment of that tax in installments.

EXPLANATION OF PROVISION

The bill grants the U.S. Court of Federal Claims and the U.S. district courts jurisdiction to determine the correct amount of estate tax liability (or for any refund) in actions brought by taxpayers deferring estate tax payments under section 6166, as long as certain conditions are met. In order to qualify for the provision, the estate must have made an election pursuant to section 6166, fully paid each installment of principal and/or interest due before the date the suit is filed (as long as one or more installments are not yet due), and no portion of the payments due may have been accelerated. The bill further provides that once a final judgment has been entered by a district court or the U.S. Court of Federal Claims, the IRS would not be permitted to collect any amount disallowed by the court, and any amounts paid by the taxpayer in excess of the amount the court finds to be currently due and payable would be refunded to the taxpayer. Lastly, the bill provides that the 2-year statute of limitations for filing a refund action would be suspended during the pendency of any action brought by a taxpayer pursuant to section 7479 for a declaratory judgment as to an estate's eligibility for section 6166.

EFFECTIVE DATE

The provision is effective for claims for refunds filed after the date of enactment.

2. Cataloging Complaints (sec. 372 of the bill)

PRESENT LAW

The IRS is required to make an annual report to the Congress, beginning in 1997, on all categories of instances involving allegations of misconduct by IRS employees, arising either from internally identified cases or from taxpayer or third-party initiated complaints.[44] The report must identify the nature of the misconduct or complaint, the number of instances received by category, and the disposition of the complaints.

REASONS FOR CHANGE

The Committee believes that all allegations of misconduct by IRS employees must be carefully investigated. The Committee also believes that the annual report to Congress will help develop a public perception that the IRS takes such allegations of misconduct seriously. The Committee is concerned that, in the absence of records detailing taxpayer complaints of misconduct on an individual employee basis, the IRS will not be able to adequately investigate such allegations or properly prepare the required report.

[44] Section 1211 of the Taxpayer Bill of Rights 2 (Public Law 104–168; July 30, 1996).

EXPLANATION OF PROVISION

The bill requires that, in collecting data for this report, records of taxpayer complaints of misconduct by IRS employees shall be maintained on an individual employee basis. These individual records are not to be listed in the report, but they will be useful in preparing the report. The Committee intends that these records be used in evaluating individual employees.

EFFECTIVE DATE

The requirement is effective on the date of enactment.

3. Archive of Records of the IRS (sec. 373 of the bill and sec. 6103 of the Code)

PRESENT LAW

The IRS is obligated to transfer agency records to the National Archives and Records Administration ("NARA") for retention or disposal. The IRS is also obligated to protect confidential taxpayer records from disclosure. These two obligations have created conflict between NARA and the IRS. Under present law, the IRS determines whether records contain taxpayer information. Once the IRS has made that determination, NARA is not permitted to examine those records. NARA has expressed concern that the IRS may be using the disclosure prohibition to improperly conceal agency records with historical significance.

IRS obligation to archive records

The IRS, like all other Federal agencies, must create, maintain, and preserve agency records in accordance with section 3101 of title 44 of the United States Code. NARA is the Government agency responsible for overseeing the management of the records of the Federal government.[45] Federal agencies are required to deposit significant and historical records with NARA.[46] The head of each Federal agency must also establish safeguards against the removal or loss of records.[47]

Authority of NARA

NARA is authorized, under the Federal Records Act, to establish standards for the selective retention of records of continuing value.[48] NARA has the statutory authority to inspect records management practices of Federal agencies and to make recommendations for improvement.[49] The head of each Federal agency must submit to NARA a list of records to be destroyed and a schedule for such destruction.[50] NARA examines the list to determine if any of the records on the list have sufficient administrative, legal research, or other value to warrant their continued preservation. In many cases, the description of the record on the list is sufficient for NARA to make the determination. For example, NARA does not

[45] 44 U.S.C. sec. 2904.
[46] 5 U.S.C. sec. 552a(b)(6).
[47] 44 U.S.C. sec. 3105.
[48] 44 U.S.C. sec. 2905.
[49] 44 U.S.C. sec. 2904(c)(7).
[50] 44 U.S.C. sec. 3303.

need to inspect Presidential tax returns to determine that they have historical value and should be retained. In some cases, NARA may find it helpful to examine a particular record. NARA has general authority to inspect records solely for the purpose of making recommendations for the improvement of records management practices.[51] However, tax returns and return information can only be disclosed under the authority provided in section 6103 of the Internal Revenue Code. There is no exception to the disclosure prohibition for records management inspection by NARA.[52]

In connection with its evaluation of the records management system of the IRS, NARA noted several instances where the disclosure prohibitions of Code section 6103 complicated their review of many IRS records.

NARA is also responsible for the custody, use and withdrawal of records transferred to it.[53] Statutory provisions that restrict public access to the records in the hands of the agency from which the records were transferred also apply to NARA. Thus, if a confidential record, such as a Presidential tax return, is transferred to NARA for archival storage, NARA is not permitted to disclose it. In general, the application of such restrictions to records in the hands of NARA expire after the records have been in existence for 30 years.[54] The issue of whether the specific disclosure prohibition of section 6103 takes precedence over the general 30-year expiration of restrictions generally applicable to records in the hands of NARA has not been addressed by a court, but an informal advisory opinion from the Office of Legal Counsel of the Attorney General concluded that the 30-year expiration provision would not reach records subject to section 6103.[55]

Confidentiality requirements

The IRS must preserve the confidentiality of taxpayer information contained in Federal income tax returns. Such information may not be disclosed except as authorized under Code section 6103. Section 6103 was substantially revised in 1976 to address Congress' concern that tax information was being used by Federal agencies in pursuit of objectives unrelated to administration and enforcement of the tax laws. Congress believed that the widespread use of tax information by agencies other than the IRS could adversely affect the willingness of taxpayers to comply voluntarily with the tax laws and could undermine the country's self-assessment tax system.[56] Section 6103 does not authorize the disclosure of confidential return information to NARA.

Section 6103 restricts the disclosure of returns and return information only. Return means any tax or information return, declaration of estimated tax, or claim for refund, including schedules and attachments thereto, filed with the IRS. Return information includes the taxpayer's name; nature and source or amount of income; and whether the taxpayer's return is under investigation.

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[51] 44 U.S.C. sec. 2906.
[52] *American Friends Service Committee* v. *Webster,* 720 F.2d 29 (D.C. Cir. 1983).
[53] 44 U.S.C. sec. 2108.
[54] 44 U.S.C. sec. 2108.
[55] Department of Justice, Office of Legal Counsel, Memorandum to Richard K. Willard, Assistant Attorney General (Civil Division) (February 27, 1986).
[56] S. Rept. 94–938, p. 317 (1976).

Section 6103(b)(2) provides that "nothing in any other provision of law shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws." Section 6103 does not restrict the disclosure of other records required to be maintained by the IRS, such as records documenting agency policy, programs and activities, and agency histories. Such records are required to be made available to the public under the Freedom of Information Act ("FOIA").[57]

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

REASONS FOR CHANGE

The Committee believes that it is appropriate to permit disclosure to NARA for purposes of scheduling records for destruction or retention, while at the same time preserving the confidentiality of taxpayer information in those documents.

EXPLANATION OF PROVISION

The bill provides an exception to the disclosure rules to require IRS to disclose IRS records to officers or employees of NARA, upon written request from the Archivist, for purposes of the appraisal of such records for destruction or retention in the National Archives. The present-law prohibitions on and penalties for disclosure of tax information will generally apply to NARA.

EFFECTIVE DATE

The provision is effective for requests made by the Archivist after the date of enactment.

4. Payment of Taxes (sec. 374 of the bill)

PRESENT LAW

The Code provides that it is lawful for the Secretary to accept checks or money orders as payment for taxes, to the extent and under the conditions provided in regulations prescribed by the Secretary (sec. 6311). Those regulations[58] state that checks or money orders should be made payable to the Internal Revenue Service.

REASONS FOR CHANGE

The Committee believes that it more appropriate that checks be made payable to the United States Treasury.

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[57] FOIA does not require disclosure of records or information that would frustrate law enforcement efforts. 5 U.S.C. sec. 552(b)(7).

[58] Treas. Reg. Sec. 301.6311–1(a)(1).

EXPLANATION OF PROVISION

The bill requires the Secretary or his delegate to establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order to be made payable to the United States Treasury.

EFFECTIVE DATE

The provision is effective on the date of enactment.

5. Clarification of Authority of Secretary Relating to the Making of Elections (sec. 375 of the bill and sec. 7805 of the Code)

PRESENT LAW

Except as otherwise provided, elections provided by the Code are to be made in such manner as the Secretary shall by regulations or forms prescribe.

REASONS FOR CHANGE

The Committee wishes to eliminate any confusion over the type of guidance in which the Secretary may prescribe the manner of making any election.

EXPLANATION OF PROVISION

The provision clarifies that, except as otherwise provided, the Secretary may prescribe the manner of making of any election by any reasonable means.

EFFECTIVE DATE

The provision is effective as of the date of enactment.

6. Limitation on Penalty on Individual's Failure to Pay for Months During Period of Installment Agreement (sec. 376 of the bill and sec. 6651 of the Code)

PRESENT LAW

Taxpayers who fail to pay their taxes are subject to a penalty of one-half percent per month on the unpaid amount, up to a maximum of 25 percent (sec. 6651(a)). Taxpayers who make installment payments pursuant to an agreement with the IRS (under sec. 6159) are also subject to this penalty.

REASONS FOR CHANGE

The Committee believes that it is inappropriate to apply the full penalty for failure to pay taxes to taxpayers who are in fact paying their taxes through an installment agreement.

EXPLANATION OF PROVISION

The bill provides that the penalty for failure to pay taxes is not imposed with respect to the tax liability of an individual with respect to any month in which an installment payment agreement with the IRS (under sec. 6159) is in effect to the extent that doing so would result in the cumulative penalty percentage exceeding 9.5 percent (instead of 25 percent).

EFFECTIVE DATE

The provision is effective for installment agreement payments made after the date of enactment.

I. STUDIES

1. Study of Penalty Administration (sec. 381 of the bill)

PRESENT LAW

The last major revision of the overall penalty structure in the Internal Revenue Code was the Improved Penalty Administration and Compliance Tax Act, part of the Omnibus Budget Reconciliation Act of 1989.[59]

REASONS FOR CHANGE

The Committee believes that it is appropriate to undertake a study of penalty administration, which will permit the Committee whether the current penalty structure could be improved.

EXPLANATION OF PROVISION

The bill requires the Joint Committee on Taxation to conduct a study reviewing the administration and implementation of the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989, and making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

EFFECTIVE DATE

The report must be provided not later than nine months after the date of enactment.

2. Study of Confidentiality of Tax Return Information (sec. 382 of the bill)

PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

REASONS FOR CHANGE

The Committee believes that a study of the confidentiality provisions will be useful in assisting the Committee in determining whether improvements can be made to these provisions.

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[59] Subtitle G of Title 7 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239).

EXPLANATION OF PROVISION

The bill requires the Joint Committee on Taxation to conduct a study on provisions regarding taxpayer confidentiality. The study is to examine present-law protections of taxpayer privacy, the need for third parties to use tax return information, and the ability to achieve greater levels of voluntary compliance by allowing the public to know who is legally required to file tax returns but does not do so.

EFFECTIVE DATE

The findings of the study, along with any recommendations, are required to be reported to the Congress no later than one year after the date of enactment.

TITLE IV. CONGRESSIONAL ACCOUNTABILITY FOR THE IRS

A. REVIEW OF REQUESTS FOR GAO INVESTIGATIONS OF THE IRS

(sec. 401 of the bill and sec. 8021(e) of the Code)

There is presently no specific statutory requirement that requests for investigations by the General Accounting Office ("GAO") relating to the IRS be reviewed by the Joint Committee on Taxation (the "Joint Committee"). However, some of the studies that GAO conducts relating to taxation and oversight of the IRS require access under section 6103 of the Code to confidential tax returns and return information. Under section 6103, the GAO may inform the Joint Committee of its initiation of an audit of the IRS and obtain access to confidential taxpayer information unless, within 30 days, three-fifths of the Members of the Joint Committee disapprove of the audit. This provision has not been utilized; the GAO generally seeks advance access to confidential taxpayer return information from the Joint Committee.

REASONS FOR CHANGE

The Restructuring Commission recommended changes to the approval process for GAO reports based on its findings that the GAO conducts myriad audits of the IRS, many of which relate to lesser matters and which are not integrated into a constructive, focused package. The Committee believes that GAO audits and reports can be helpful as an oversight tool, but that they should be coordinated so as to ensure appropriate allocation of resources, both of the IRS and the GAO.

EXPLANATION OF PROVISION

Under the bill, the Joint Committee on Taxation reviews all requests (other than requests by the chair or ranking member of a Committee or Subcommittee of the Congress) for investigations of the IRS by the GAO and approves such requests when appropriate. In reviewing such requests, the Joint Committee is to eliminate overlapping investigations, ensure that the GAO has the capacity to handle the investigation, and ensure that investigations focus on areas of primary importance to tax administration.

The provision does not change the present-law rules under section 6103.

EFFECTIVE DATE

The provision is effective with respect to requests for GAO investigations made after the date of enactment.

B. Joint Congressional Hearings and Coordinated Oversight Reports

(secs. 401 and 402 of the bill and secs. 8021(f) and 8022 of the Code)

PRESENT LAW

Under the present Congressional committee structure, a number of committees have jurisdiction with respect to IRS oversight. The committees most responsible for IRS oversight are the House Committees on Ways and Means, Appropriations, Government Reform and Oversight, the corresponding Senate Committees on Finance, Appropriations, and Governmental Affairs, and the Joint Committee on Taxation. While these Committees have a shared interest in IRS matters, they typically act independently, and have separate hearings and make separate investigations into IRS matters. Each committee also has jurisdiction over certain issues. For example, the House Ways and Means Committee and the Senate Finance Committee have exclusive jurisdiction over changes to the tax laws. Similarly, the House and Senate Appropriations Committees have exclusive jurisdiction over IRS annual appropriations. The Joint Committee does not have legislative jurisdiction, but has significant responsibilities with respect to tax matters and IRS oversight.

REASONS FOR CHANGE

The Restructuring Commission found that the Congressional committees responsible for IRS oversight "focus on different issues that change from year to year. While these issues are important, there is a lack of coordinated focus on high level and strategic matters. Because the IRS tries to satisfy requests from Congress, this nonintegrated approach to oversight further blurs the ability to set strategic direction and focus on priorities."

The committee believes that Congressional oversight of the IRS should be more coordinated, and should include long-term objectives.

EXPLANATION OF PROVISION

Under the bill, there will be two annual joint hearings of two majority and one minority members of each of the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight. The first annual hearing is to take place before April 1 of each calendar year and is to review the strategic plans and budget for the IRS (including whether the budget supports IRS objectives). The second annual hearing is to be held after the conclusion of the annual tax filing season, and is to review the progress of the IRS in meeting its objectives under the

strategic and business plans, the progress of the IRS in improving taxpayer service and compliance, progress of the IRS on technology modernization, and the annual filing season. The bill does not modify the existing jurisdiction of the Committees involved in the joint hearings.

The bill provides that the Joint Committee is to make annual reports to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable. The Joint Committee also is to report annually to the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight with respect to the matters that are the subject of the annual joint hearings of members of such Committees.

EFFECTIVE DATE

The provision is effective on the date of enactment.

C. BUDGET MATTERS

1. Funding for century date change (sec. 411 of the bill)

PRESENT LAW

No specific provision.

REASONS FOR CHANGE

The Committee believes that adequate funding of efforts to resolve this problem is essential.

EXPLANATION OF PROVISION

The bill provides that it is the sense of the Congress that the IRS efforts to resolve the century date change computing problems should be fully funded to provide for certain resolution of such problems.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Financial management advisory group (sec. 412 of the bill)

PRESENT LAW

No provision.

REASONS FOR CHANGE

The Committee believes that the IRS Commissioner could benefit from input from experts in governmental accounting and auditing.

EXPLANATION OF PROVISION

The bill directs the Commissioner to convene a financial management advisory group consisting of individuals with expertise in governmental accounting and auditing from both the private sector

and the Government to advise the Commissioner on financial management issues.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. Tax Law Complexity Analysis

(sec. 421 and 422 of the bill and sec. 8024 of the Code)

PRESENT LAW

Present law does not require a formal complexity analysis with respect to changes to the tax laws.

REASONS FOR CHANGE

The Restructuring Commission found a clear connection between the complexity of the Internal Revenue Code and the difficulty of tax law administration and taxpayer frustration. The Committee shares the concern that complexity is a serious problem with the Federal tax system. Complexity and frequent changes in the tax laws create burdens for both the IRS and taxpayers. Failure to address complexity may ultimately reduce voluntary compliance.

The Committee is aware that it may not be possible or desirable to eliminate all complexity in the tax system. There are many objectives of a tax system and particular tax provisions, and simplicity is only one. In some cases other policies, such as fairness, may outweigh concerns about complexity.

Nevertheless, the Committee believes it essential to try to reduce the complexity of the tax system whenever possible. Accordingly, the Committee believes it appropriate to introduce new procedural rules that will help to focus attention on complexity as an issue. Such rules are an important step, but do not take the place of the most effective way to address complexity—that is for the Congress and the Administration to make reducing complexity a priority when drafting tax legislation.

The Committee also believes that encouraging the participation of IRS personnel in drafting legislation will help to highlight administrative and complexity issues while legislation is being developed.

EXPLANATION OF PROVISION

IRS participation in drafting legislation

The bill provides that it is the sense of the Congress that the IRS should provide the Congress with an independent view of tax administration and that the tax-writing committees should hear from front-line technical experts at the IRS during the legislative process with respect to the administrability of pending amendments to the Internal Revenue Code.

Complexity analysis

The bill requires the staff of the Joint Committee on Taxation to provide a "Tax Complexity Analysis" for legislation reported by the Senate Committee on Finance and the House Committee on Ways

and Means and conference reports amending the tax laws. The Tax Complexity Analysis is to identify those provisions in the bill or conference report that, as determined by the staff of the Joint Committee, add significant complexity to the tax laws, or provide significant simplification. The Complexity Analysis is required to include a discussion of the basis for the determination by the staff of the Joint Committee. It is expected that, in general, the Complexity Analysis will be limited to no more than 20 provisions. If the staff of the Joint Committee determines that a bill or conference report does not contain any provisions that add significant complexity or simplification to the tax laws, then the Complexity Analysis is to contain a statement to that effect.

Factors that may be taken into account by the staff of the Joint Committee in preparing the Complexity Analysis include the following: (1) whether the provision is new, modifies or replaces existing law, and whether hearings were held to discuss the proposal and whether the IRS provided input as to its administrability; (2) when the provision becomes effective and corresponding compliance requirements on taxpayers; (3) whether new IRS forms or worksheets are needed, whether existing forms or worksheets must be modified, and whether the effective date allows sufficient time for the IRS to prepare such forms and educate taxpayers; (4) necessity of additional interpretive guidance (e.g., regulations, rulings, notices); (5) the extent to which the proposal relies on concepts contained in existing law, including definitions; (6) effect on existing record keeping requirements and the activities of taxpayers, complexity of calculations and likely behavioral response, and standard business practices and resource requirements; (7) number, type, and sophistication of affected taxpayers; and (8) whether the proposal requires the IRS to assume responsibilities not directly related to raising revenue which could be handled through another Federal agency.

The bill requires the Commissioner to provide the Joint Committee with such information as is necessary to prepare each required Tax Complexity Analysis.

A point of order arises with respect to the floor consideration of a bill or conference report that does not contain the required Complexity Analysis. The point of order may be waived by a majority vote.

It is hoped that the Administration will include a similar complexity analysis when submitting proposed legislation.

EFFECTIVE DATE

The requirement for a Tax Complexity Analysis is effective with respect to legislation considered on or after January 1, 1998.

TITLE V. REVENUE OFFSET: EMPLOYER DEDUCTION FOR VACATION PAY

(sec. 501 of the bill and sec. 404 of the Code)

PRESENT LAW

For deduction purposes, any method or arrangement that has the effect of a plan deferring the receipt of compensation or other bene-

fits for employees is treated as a deferred compensation plan (sec. 404(b)). In general, contributions under a deferred compensation plan (other than certain pension, profit-sharing and similar plans) are deductible in the taxable year in which an amount attributable to the contribution is includible in income. However, vacation pay which is treated as deferred compensation is deductible for the taxable year of the employer in which the vacation pay is paid to the employee (sec. 404(a)(5)).

Temporary Treasury regulations provide that a plan, method, or arrangement defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. A plan, method or arrangement is presumed to defer the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered (the "2½ month" period). A plan, method or arrangement is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. (Temp. Treas. Reg. Sec. 1.404(b)–1T A–2.)

The Tax Court recently addressed the issue of when vacation pay and severance pay are considered deferred compensation in *Schmidt Baking Co., Inc.,* 107 T.C. 271 (1996). In *Schmidt Baking,* the taxpayer was an accrual basis taxpayer with a fiscal year that ended December 28, 1991. The taxpayer funded its accrued vacation and severance pay liabilities for 1991 by purchasing an irrevocable letter of credit on March 13, 1992. The parties stipulated that the letter of credit represented a transfer of substantially vested interest in property to employees for purposes of section 83, and that the fair market value of such interest was includible in the employees' gross incomes for 1992 as a result of the transfer.[60] The Tax Court held that the purchase of the letter of credit, and the resulting income inclusion, constituted payment of the vacation and severance pay within the 2½ month period. Thus, the vacation and severance pay were treated as received by the employees within the 2½ month period and were not treated as deferred compensation. The vacation pay and severance pay were deductible by the taxpayer for its 1991 fiscal year pursuant to its normal accrual method of accounting.

REASONS FOR CHANGE

Prior to the Tax Reform Act of 1986, an employer could make an election to deduct an amount representing a reasonable addition to a reserve account for vacation pay earned by employees before the close of the current year and expected to be paid by the close of that year or within 12 months thereafter. As a result of concerns

[60] While the rules of section 83 may govern the income inclusion, section 404 governs the deduction if the amount involved is deferred compensation.

that this rule provided more favorable tax treatment for vacation pay than other types of compensation or deductible items, the Tax Reform Act of 1986 limited this special rule to vacation pay that is paid during the current taxable year or within 8½ months after the close of the taxable year of the employer with respect to which the vacation pay was earned by employees.

The tax treatment of vacation pay was again changed in the Omnibus Budget Reconciliation Act of 1987 ("OBRA 1987"). At that time, the Congress was concerned that then-present law provided more favorable tax treatment for vacation pay that was deferred by employees beyond the end of the year than was provided for other deferred benefits. The House and Senate bills would have repealed the reserve for accrued vacation pay and would have provided that deductions for vacation pay generally would be allowed in any taxable year for amounts paid during the year, plus vested vacation amounts paid or funded within 2½ months after the end of the year. The conference agreement followed a different approach, and provided that "vacation pay earned during any taxable year, but not paid to employees on or before the date that is 2½ months after the end of the taxable year, is deductible for the taxable year of the employer in which it is paid to employees."[61] The key difference between the House and Senate provisions and the conference agreement to OBRA 1987 is that the conference agreement does not allow a deduction for amounts merely because they are vested and funded (i.e., are includible in income) within 2½ months after the end of the employer's taxable year.

The Committee believes that the decision in *Schmidt Baking* reaches an inappropriate result and represents an incorrect interpretation of the intent of the Congress in adopting the vacation pay provision in OBRA 1987. The Committee believes that the intent of that provision was clearly to provide that a deduction for vacation pay is not available for the current taxable year unless the vacation pay is actually paid to employees within 2½ months after the end of the year. Moreover, OBRA 1987 reflects Congressional intent and understanding that compensation actually paid beyond the 2½ month period is deferred compensation.

Further, the Committee is concerned that taxpayers may inappropriately extend the rationale of *Schmidt Baking* to other situations in which a deduction or other tax consequences are contingent upon an item being paid. The Committee does not believe that, as a general rule, letters of credit and similar mechanisms should be considered payment for any purposes of the Code.

EXPLANATION OF PROVISION

The bill provides that, for purposes of determining whether an item of compensation (other than severance pay),[62] is deferred compensation (under Code sec. 404), the compensation is not considered to be paid or received until actually received by the employee.

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[61] H. Rept. 100–495, at 921 (December 21, 1987).

[62] This provision is also included in H.R. 2646, the "Education Savings Act for Public and Private Schools Act" as passed by the House on October 23, 1997 (See H. Rept. 105–332, October 21, 1997). A provision that overrules *Schmidt Baking* with respect to severance pay was included in H.R. 2644, the "United States-Caribbean Trade Partnership Act," as ordered reported by the Committee on Ways and Means on October 9, 1997.

In addition, an item of deferred compensation is not considered paid to an employee until actually received by the employee. The bill is intended to overrule the result in *Schmidt Baking*. For example, with respect to the determination of whether vacation pay is deferred compensation, the fact that the value of the vacation pay is includible in the income of employees within the applicable 2½ month period is not relevant. Rather, the vacation pay must have been actually received by employees within the 2½ month period in order for the compensation not to be treated as deferred compensation.

It is intended that similar arrangements, in addition to the letter of credit approach used in *Schmidt Baking,* do not constitute actual receipt by the employee, even if there is an income inclusion. Thus, for example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Amounts set aside in a trust for employees generally are not considered to be actually received by the employee.

Under the bill, sick pay that is deferred compensation is treated the same as vacation pay that is deferred compensation, and is not deductible until paid to employees. The bill does not change the rule under which deferred compensation (other than vacation pay and sick pay and deferred compensation under qualified plans) is deductible in the year includible in the gross income of employees participating in the plan if separate accounts are maintained for each employee.

While *Schmidt Baking* involved only vacation pay and severance pay, there is concern that this type of arrangement may be tried to circumvent other provisions of the Code where payment is required in order for a deduction to occur. Thus, it is intended that the Secretary will prevent the use of similar arrangements. No inference is intended that the result in *Schmidt Baking* is present law beyond its immediate facts or that the use of similar arrangements is permitted under present law.

The bill does not affect the determination of whether an item is includible in income. Thus, for example, using the mechanism in *Schmidt Baking* for vacation pay would still result in income inclusion to the employees, but the employer would not be entitled to a deduction for the vacation pay until actually paid to and received by the employees.

EFFECTIVE DATE

The provision is effective for taxable years ending after October 8, 1997. Any change in method of accounting required by the proposal will be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change will be taken into account in the year of the change.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(*l*)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of the bill, H.R. 2676.

Motion to report the bill

The bill, H.R. 2676, as amended, was ordered favorably reported by a roll call vote of 33 yeas to 4 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Archer	X		Mr. Rangel	X	
Mr. Crane	X		Mr. Stark		X
Mr. Thomas	X		Mr. Matsui		X
Mr. Shaw	X		Mrs. Kennelly	X	
Mrs. Johnson	X		Mr. Coyne	X	
Mr. Bunning	X		Mr. Levin	X	
Mr. Houghton	X		Mr. Cardin	X	
Mr. Herger	X		Mr. McDermott		X
Mr. McCrery	X		Mr. Kleczka	X	
Mr. Camp	X		Mr. Lewis		X
Mr. Ramstad	X		Mr. Neal	X	
Mr. Nussle	X		Mr. McNulty		
Mr. Johnson	X		Mr. Jefferson	X	
Ms. Dunn	X		Mr. Tanner	X	
Mr. Collins	X		Mr. Becerra [1]		
Mr. Portman	X		Mrs. Thurman	X	
Mr. English	X				
Mr. Ensign	X				
Mr. Christensen	X				
Mr. Watkins	X				
Mr. Hayworth	X				
Mr. Weller	X				
Mr. Hulshof	X				

[1] Mr. Becerra passed.

Vote on amendment

A roll call vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Stark that would impose conflict of interest requirements on the Board members from the private sector was defeated by a roll call vote of 14 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Archer		X	Mr. Rangel	X	
Mr. Crane		X	Mr. Stark	X	
Mr. Thomas		X	Mr. Matsui		
Mr. Shaw		X	Mrs. Kennelly	X	
Mrs. Johnson		X	Mr. Coyne	X	
Mr. Bunning		X	Mr. Levin	X	
Mr. Houghton		X	Mr. Cardin		X
Mr. Herger		X	Mr. McDermott	X	
Mr. McCrery		X	Mr. Kleczka	X	
Mr. Camp		X	Mr. Lewis	X	
Mr. Ramstad		X	Mr. Neal	X	
Mr. Nussle		X	Mr. McNulty		
Mr. Johnson		X	Mr. Jefferson	X	
Ms. Dunn		X	Mr. Tanner		X
Mr. Collins		X	Mr. Becerra	X	

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Portman		X	Mrs. Thurman	X	
Mr. English		X			
Mr. Ensign	X				
Mr. Christensen		X			
Mr. Watkins		X			
Mr. Hayworth		X			
Mr. Weller	X				
Mr. Hulshof		X			

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimates

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the estimated budget effects of H.R. 2676 as reported.

The bill, as reported, is estimated to have the following effect on the budget:

ESTIMATED BUDGET EFFECTS OF H.R. 2676,
THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1997,"
AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS ON OCTOBER 22, 1997

Fiscal Years 1998 - 2002

[Millions of Dollars]

Provision	Effective	1998	1999	2000	2001	2002	1998-02
Title I. Executive Branch Governance				*No Revenue Effect*			
Title II. Electronic Filing				*No Revenue Effect*			
Title III. Taxpayer Bill of Rights 3							
1. Burden of Proof	aca DOE	-80	-166	-174	-183	-192	-795
2. Expansion of authority to award costs and certain fees	180da DOE	-8	-10	-11	-12	-13	-54
3. Civil damages for negligence in collection actions	DOE	-2	-15	-25	-50	-30	-122
4. Increase in size of cases permitted on small case calendar	pca DOE			*No Revenue Effect*			
5. Innocent spouse relief	tyba DOE	---	---	-5	-12	-14	-31
6. Suspension of statute of limitations on filing refund claims during periods of disability	tyoea 1/1/98	-40	-50	-25	-15	-16	-146
7. Elimination of interest rate differential on overlapping periods of interest on income tax overpayments and underpayments	cqba DOE	-1	-9	-28	-42	-54	-134
8. Increase refund interest rate to Applicable Federal Rate ("AFR") + 3 for individual taxpayers	cqba DOE	-49	-51	-54	-56	-59	-269
9. Privilege of confidentiality extended to taxpayer's dealings with non-attorneys authorized to practice before Internal Revenue Service	DOE	[1]	[1]	[1]	[1]	[1]	[2]
10. Expansion of authority to issue taxpayer assistance orders	DOE	[1]	[1]	[1]	[1]	[1]	[2]

Provision	Effective	1998	1999	2000	2001	2002	1998-02
11. Limitation on financial status audits	DOE	*Negligible Revenue Effect*					
12. Limitation on authority to require production of computer source code	si 90da DOE	[1]	[1]	[1]	[1]	[1]	[2]
13. Procedures relating to extensions of statute of limitations by agreement	DOE	*No Revenue Effect*					
14. Offers-in-compromise	DOE	*No Revenue Effect*					
15. Notice of deficiency to specify deadlines for filing Tax Court petition	12/31/98	*Negligible Revenue Effect*					
16. Refund or credit of overpayments before final determination	DOE	*Negligible Revenue Effect*					
17. Prohibition on improper threat of audit activity	DOE	*No Revenue Effect*					
18. Explanation of joint and several liability	180da DOE	*No Revenue Effect*					
19. Explanation of taxpayers' rights in interviews with the Internal Revenue Service	180da DOE	-13	[4]	[4]	[4]	[4]	-16
20. Disclosure of criteria for examination selection	180da DOE	*No Revenue Effect*					
21. Explanations of appeals and collection process	180da DOE	*No Revenue Effect*					
22. Low-income taxpayer clinics	DOE	*No Revenue Effect*					
23. Estates holding closely-held businesses	DOE	*Negligible Revenue Effect*					
24. Cataloging complaints	DOE	*No Revenue Effect*					
25. Archive of records of Internal Revenue Service	DOE	*No Revenue Effect*					
26. Payment of taxes [5]	DOE	*No Revenue Effect*					
27. Clarification of authority of Secretary relating to the making of elections	DOE	*No Revenue Effect*					
28. Failure to pay penalty capped at 9.5% for individuals (installment agreements only)	DOE	-176	-198	-209	-220	-231	-1,034
29. Study of penalty administration	9ma DOE	*No Revenue Effect*					
30. Study of confidentiality of tax return information	1ya DOE	*No Revenue Effect*					
Subtotal of Title III		**-378**	**-509**	**-541**	**-600**	**-619**	**-2,646**
Title IV. Congressional Accountability for the Internal Revenue Service		***No Revenue Effect***					

Provision	Effective	1998	1999	2000	2001	2002	1998-02
Title V. Revenue Offset: Clarify Deduction for Accrued Vacation Pay	**tyea 10/8/97**	**705**	**1,111**	**584**	**120**	**126**	**2,646**
NET TOTAL		**327**	**602**	**43**	**-480**	**-493**	**---**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

aca = audits commencing after
cqba = calendar quarters beginning after
DOE = date of enactment
pca = proceedings commencing after
si = summaries issued
tyba = taxable years beginning after
tyea = taxable years ending after
tyoea = taxable years open or ending on or after
1ya = 1 year after
9ma = 9 months after
90da = 90 days after
180da = 180 days after

[1] Loss of less than $5 million.
[2] Loss of less than $25 million.
[3] Loss of less than $50 million.
[4] Loss of less than $1 million.
[5] Estimate provided by the Congressional Budget Office.

B. Budget Authority and Tax Expenditures

Budget authority

With respect to subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to budget authority), see the statement of the Congressional Budget Office.

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve a reduction in tax expenditures for the amounts for the vacation pay provision shown in the revenue table in IV.A., above.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 31, 1997.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter and Mary Maginniss (for federal costs), Marc Nicole (for the impact on state and local governments), and Matthew Eyles (for the impact on the private sector).

Sincerely,

James L. Blum
(For June E. O'Neill, Director).

Enclosure.

H.R. 2676—Internal Revenue Service Restructuring and Reform Act of 1997

Summary: H.R. 2676 would make a number of changes to the management and oversight of the Internal Revenue Service (IRS), add or amend 28 taxpayer rights, and require the IRS to implement several changes designed to increase the amount of forms filed electronically by taxpayers. The Joint Committee on Taxation (JCT) estimates that this bill would increase governmental receipts (revenues) by $327 million in fiscal year 1998 but would have no net effect on such receipts over the 1998–2002 period. Over the 1998–2007 period, JCT estimates that enacting this bill would decrease governmental receipts by $2.9 billion.

In addition, CBO estimates that enacting H.R. 2676 would increase direct spending by $5 million in fiscal year 1998, $25 million over the 1998–2002 period, and $50 million over the 1998–2007 period. Because enacting the bill would increase both direct spending and receipts, pay-as-you-go procedures would apply. H.R. 2676 also would affect discretionary spending, subject to the availability of funds. Because of the uncertainty of efforts by the Treasury and the IRS under current law to increase the availability and use of electronic filing by taxpayers, CBO cannot estimate the bill's total effect on discretionary spending at this time.

JCT has determined that H.R. 2676 contains one new private-sector mandate, as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). JCT estimates that the provision clarifying employer deductions for vacation pay would increase tax revenue by $2.65 billion over the 1998–2002 period, which is the estimated cost to the private sector to comply with the mandate. The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Description of major provisions: H.R. 2676 would make a number of changes to the management oversights of the IRS and to the rights of taxpayers. Specifically, the bill would:

Establish an 11-member Internal Revenue Service Oversight board within the Department of the Treasury to oversee the service's planning, budgeting, and operations;

Require the IRS to begin developing a paperless tax return system and authorize it to offer certain incentives to encourage taxpayers to file tax returns electronically;

Require the IRS, subject to the proper safeguards, to create a system under which taxpayers could review their own IRS files electronically by fiscal year 2007;

Add or amend 28 provisions affecting taxpayer rights, including shifting the burden from the taxpayer to the IRS in certain court cases, making it easier for taxpayers to recover court costs and to sue the IRS for civil damages, eliminating the threshold and allowing for partial relief from the tax bills owed by innocent spouses, suspending the time limit for disabled individuals to file for a refund, and requiring that the IRS provide additional notification to taxpayers of certain rights and deadlines;

Make several congressional reforms to discourage the Congress from adding further complexity to the tax code and to coordinate the oversight functions of the various committees that have jurisdiction over the IRS; and

Clarify employer deductions for vacation pay to raise governmental receipts and offset the cost of other provisions.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2676 is shown in Table 1. The costs of this bill fall within budget function 800 (general government). The legislation would also affect revenues.

TABLE 1. ESTIMATED COST TO THE FEDERAL GOVERNMENT

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING AND REVENUES [1]					
Direct spending:					
Estimated Budget authority	3	3	5	5	6
Estimated outlays	3	3	5	5	6
Revenues:					
Estimated revenues	327	602	43	−480	−493

[1] Implementing the bill would also require increases in spending subject to appropriation, but CBO cannot estimate these costs at this time.

Basis of estimate

H.R. 2676 would affect both revenues and direct spending. JCT estimates the bill would increase revenues by nearly $1 billion over the fiscal year 1998–2000 period, but decrease such receipts by an equal amount over fiscal years 2001 and 2002. For the 1998–2007 period, JCT estimates that enacting H.R. 2676 would decrease governmental receipts by about $2.9 billion. CBO estimates that enacting the bill would increase direct spending, on average, by about $5 million in each of fiscal years 1998 through 2002, for a total of about $25 million. For fiscal years 1998 through 2007, CBO estimates the bill would increase direct spending by a total of about $50 million.

Subject to the availability of funds, the bill also would increase costs at the IRS and JCT to perform various requirements of the bill and those increases would probably be significant. But, because of the Treasury's plans for increasing the availability and use of electronic filing by taxpayers are uncertain, CBO cannot estimate the bill's likely effect on discretionary spending at this time. The bill's major provisions that could affect discretionary spending are discussed in detail below.

This estimates assumes the bill would be enacted by the middle of fiscal year 1998.

Revenues

H.R. 2676 would make several changes to the Internal Revenue code. The major provisions affecting receipts are summarized in Table 2.

TABLE 2. ESTIMATED CHANGES IN REVENUES

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
Clarify deduction for accrued vacation pay	705	1,111	584	120	126
Failure to pay penalty capped at 9.5 percent for individuals	−176	−196	−209	−220	−231
Burden of proof	−80	−166	−174	−183	−192
Increase refund interest rate to AFR plus 3 percent for individuals	−49	−51	−54	−56	−59
Suspension of statute of limitations on filing refund claims during periods of disability	−40	−50	−25	−15	−16
Elimination of interest rate differential on overlapping periods of interest on income tax overpayments and underpayments	−1	−9	−28	−42	−54
All Other Provisions Affecting Revenues	−32	−35	−51	−84	−67

TABLE 2. ESTIMATED CHANGES IN REVENUES—Continued

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
Total Estimated Revenues	327	602	43	−480	−493

Direct spending

Low-Income Taxpayer Clinics.—H.R. 2676 would require the Secretary of the Treasury to make grants on a matching basis to clinics that provide services to low-income taxpayers. The bill would limit the total amount of such grants in any one year to $3 million. Thus, CBO estimates that enacting this provision would increase direct spending by $3 million in each of fiscal years 1998 through 2002, or by a total of $15 million.

Taxpayer Bill of Rights.—The bill also would increase the amount of penalties—attorney's fees and administrative costs—and civil damages that courts could award to taxpayers in certain cases brought against the federal government. In particular, the bill would provide for up to $100,000 in civil damages to taxpayers in cases where a court finds that officers or employees of the IRS negligently disregarded provisions of the Internal Revenue Code. Courts could award damages only after the taxpayer had exhausted all administrative remedies at the IRS. Under current law, taxpayers may receive damages only for cases where a court finds that an IRS officer or employee has recklessly or internationally disregarded provisions of the Internal Revenue Code. The government would pay the additional amounts from the permanent, indefinite appropriation for claims and judgments.

Although considerable uncertainty exists as to how the courts would determine and award damages based on negligent behavior CBO estimates that the provisions would increase direct spending, on average, by $10 million over the 1998–2007 period and by $28 million over the 1998–2007 period. That estimate assumes that lowering the standard for civil damages would result in courts awarding additional damages to taxpayers. Because the provision would apply only to actions that occur after enactment and would require taxpayers to first exhaust administrative remedies. CBO expects the provision initially would have no significant impact on direct spending, but would result in a steady increase in damages awarded after 1999. On average, we estimate that the provision would increase direct spending annually by $2 million over the 1998–2002 period and by $3 million over the 1998–2007 period.

Spending subject to appropriation

Electronic Filing.—The bill's biggest potential impact on discretionary spending involves its requirements to increase the availability and use of electronic filing. H.R. 2676 would generally require the IRS to study and implement several major changes to the way taxpayers file their returns each year. Specifically, the bill would: (1) require the Secretary of the Treasury to develop a strategic plan to eliminate barriers and provide incentives to increase the number of returns filed electronically, (2) beginning in fiscal year 2000, extend the due date for electronic filers of information returns from February 28 to March 31, (3) require the Treasury to

develop procedures for accepting signature information from electronic filers in a digital or other electronic form, (4) require the Treasury to develop procedures for implementing a return-free tax system beginning with tax years that begin after 2007, and (5) provided the necessary safeguard are in place, require the Treasury to develop procedures to enable taxpayers to review their account information electronically by 2007.

The Treasury is already developing or studying most of these proposals. For instance, according to the Department of the Treasury, the IRS currently is using some signature alternatives and studying others. The Treasury also has already awarded a contract to design and develop a large educational campaign to encourage taxpayers to file electronically. The IRS is also implementing new payment methods and preparing its systems to accept new forms that should reduce the amount of paper filed by taxpayers each year. Finally, the Treasury is studying alternatives for allowing taxpayers to eventually review account information electronically. Thus, even though CBO expects that implementing the bill's procedures would increase costs for the Treasury, subject to the availability of funds, we cannot estimate the amount that such costs would increase. The amount of the costs would depend, in part, on the overall effort at the IRS to modernize its information systems, for which the Congress has appropriated about $4 billion over the last decade.

In general, receiving and processing forms electronically should reduce costs at the IRS in the long run. The IRS is currently analyzing the per-unit costs of processing tax forms electronically. In the past, the IRS has estimated that it costs at least two and one-half times more to process such forms by paper, since the data must be input manually into IRS's systems, the error rate in processing such forms is significantly higher, and the papers require handing and storage. Thus, if enacting the bill results in an increase in the number of taxpayers that file electronically with the IRS each year—in fiscal year 1997, 19.1 million of the estimated 120 million individual income tax returns were filed with the IRS by computer or phone—then the bill should eventually reduce the government's annual costs to process tax information.

IRS Oversight Board.—H.R. 2676 would establish an 11-member management board within the Department of the Treasury to oversee the management and operations of the IRS, including reviewing and approving the agency's strategic plans and annual budget request. The board would consist of eight members from outside the federal government, the Secretary of the Treasury, a union representative, and the IRS Commissioner. The bill would compensate the nonfederal members at a rate of $30,000 per year, except for the chair, who would receive an annual salary of $50,000. The members also could receive reimbursement for any travel expenses incurred in attending official board meetings. The bill would not provide the board with its own permanent staff. The bill would require that the board meet at least once a month. Upon enactment, the President would have six months to submit nominations to the Senate.

Based on the bill's requirements and compensation, CBO estimates that the board would cost about $400,000 in each of fiscal

years 1999 through 2002. That estimate assumes the board would not meet until the beginning of fiscal year 1999.

Taxpayer Bill of Rights.—H.R. 2676 would add or amend 28 taxpayers rights. In general, the new rights would result in minimal additional costs for the IRS to write regulations, provide additional training to employees, and create or amend tax forms and other tax-related documents. CBO estimates that these provisions would increase costs at the IRS over fiscal years 1998 and 1999 by between $5 million and $10 million. In later years, we expect such costs would not be significant.

Congressional Accountability.—H.R. 2676 would expand the responsibilities of the Joint Committee on Taxation (JCT) and streamline Congressional procedures for overseeing the IRS. It would require JCT to coordinate joint Congressional oversight hearings and various reports related to IRS matters, report annually on the overall state of the federal tax system, prepare a detailed "Tax Complexity Analysis" for proposed legislation amending tax laws, and conduct two studies within one year from the date of enactment. The bill also would require JCT to review all Congressional requests (other than requests by the chairman or ranking member of a Congressional committee or subcommittee) for General Accounting Office (GAO) investigations that access confidential information under section 6103 of the U.S. Code.

Under the current structure, several committees have jurisdiction over the IRS. Assuming enactment of H.R. 2676, the Congress, with the assistance of JCT, would hold two joint hearings each year on the IRS. The first would review the strategic plans and budget for the IRS; the second would focus on the status of the IRS in meeting its budgetary and policy goals. The bill would require the JCT to prepare annual reports on the overall state of the federal tax system, along with recommendations for simplification and other matters. The JCT also would be responsible for providing a tax complexity analysis for legislation resulting in changes in tax law. This review would identify and analyze proposals in a bill or conference report that would add or reduce complexity in the tax laws.

CBO estimates that enacting H.R. 2676 would cost JCT approximately $200,000 in 1998 and $400,000 beginning in 1999 and each year thereafter, assuming appropriation of the necessary amounts. Depending upon the amount and nature of tax legislation considered by the Congress, analyzing the complexity of legislative initiatives could increase this cost somewhat. According to the GAO, securing JCT approval for certain tax investigations would affect perhaps one study annually, and thus would have no significant budgetary effect. Streamlining the legislative process for overseeing the IRS could result in some savings to Congressional committees, but any such savings is not expected to be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies procedures for legislation affecting direct spending and receipts. The projected changes in direct spending and receipts are shown in the following table for fiscal years 1998 through 2007. For purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the succeeding four years are counted.

SUMMARY OF EFFECTS ON DIRECT SPENDING AND RECEIPTS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Changes in outlays	3	3	5	5	6	6	7	7	8	8
Changes in receipts	327	602	43	−480	−493	−517	−542	−570	−597	−627

Estimated impact on State, Local, and Tribal Governments: H.R. 2676 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would provide $3 million a year for low-income taxpayer clinics that could be operated by accredited law schools (public or private) or certain tax-exempt organizations.

Estimated impact on the private sector: JCT has determined that H.R. 2676 contains one new private-sector mandate as defined in UMRA. The provision relating to clarification of deduction for accrued vacation pay is estimated to increase tax revenue by $2.65 billion over fiscal years 1998 through 2002, which is the estimated amount that the private sector would be required to spend in order to comply with this mandate. The revenue provision would offset the budgetary cost of the Internal Revenue Service restructuring provisions of the bill. The revenue provision would not impose a federal intergovernmental mandate on state, local, or tribal governments, as such governmental entities are generally exempt from the federal income tax.

Estimate prepared by: Federal costs: John R. Righter and Mary Maginniss; Impact on State, local, and tribal governments: Marc Nicole; Impact on the private sector: Matthew Eyles.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee's oversight activities concerning the need to restructure and reform the IRS, additional taxpayer rights and protections, greater Congressional oversight of the IRS, and a revenue offset provision relating to the tax treatment of employer deduction for vacation pay that the Committee concluded that it is appropriate to enact the provisions contained in the bill as reported.

For a listing of the Committee and Subcommittee hearings relating to the provisions of the bill, see Part I.C of this report.

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the Committee advises that no specific oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

(However, see correspondence received from the Chairman, Committee on Government Reform and Oversight, regarding the bill in Part VII of this report.)

C. Constitutional Authority Statement

With respect to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts . . . of the United States"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the provision of the bill relating to the tax treatment of employer deduction for vacation pay will impose a Federal mandate on the private sector in the amount shown in the revenue table in IV.A., above. This revenue is needed to offset the budget cost of the IRS restructuring and reform provisions. This provision of the bill will not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI5(c)

Rule XXI5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

* * * * * * *

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) * * *

* * * * * * *

(5) OTHER PLANS.—If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay *or sick leave pay* which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

* * * * * * *

(11) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—

(A) IN GENERAL.—For purposes of determining under this section—

(i) whether compensation of an employee is deferred compensation, and

(ii) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(B) EXCEPTION.—Subparagraph (A) shall not apply to severance pay.

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 42—PRIVATE FOUNDATIONS AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

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Subchapter A—Private Foundations

* * * * * * *

SEC. 4946. DEFINITIONS AND SPECIAL RULES.

(a) * * *

(c) GOVERNMENT OFFICIAL.—For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) * * *

* * * * * * *

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $20,000 or more, [or]

(6) a position as personal or executive assistant or secretary to any of the foregoing[.], *or*

(7) a member of the Internal Revenue Service Oversight Board.

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART II—TAX RETURNS OR STATEMENTS

* * * * * * *

Subpart B—Income Tax Returns

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) * * *

* * * * * * *

(f) PROMOTION OF ELECTRONIC FILING.—

(1) IN GENERAL.—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) INCENTIVES.—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

[(f)] *(g)* INCOME, ESTATE, AND GIFT TAXES.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

* * * * * * *

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) * * *

* * * * * * *

[(e) SPOUSE RELIEVED OF LIABILITY IN CERTAIN CASES.—

[(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

[(A) a joint return has been made under this section for a taxable year,

[(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

[(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

[(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

[(2) GROSSLY ERRONEOUS ITEMS.—For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse—

[(A) any item of gross income attributable to such spouse which is omitted from gross income, and

[(B) any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

[(3) SUBSTANTIAL UNDERSTATEMENT.—For purposes of this subsection, the term "substantial understatement" means any understatement (as defined in section 6662(d)(2)(A)) which exceeds $500.

[(4) UNDERSTATEMENT MUST EXCEED SPECIFIED PERCENTAGE OF SPOUSE'S INCOME.—

[(A) ADJUSTED GROSS INCOME OF $20,000 OR LESS.—If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this subsection shall apply only if the liability described in paragraph (1) is greater than 10 percent of such adjusted gross income.

[(B) ADJUSTED GROSS INCOME OF MORE THAN $20,000.—If the spouse's adjusted gross income for the preadjustment year is more than $20,000, subparagraph (A) shall be applied by substituting "25 percent" for "10 percent".

[(C) PREADJUSTMENT YEAR.—For purposes of this paragraph, the term "preadjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

[(D) COMPUTATION OF SPOUSE'S ADJUSTED GROSS INCOME.—If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

[(E) EXCEPTION FOR OMISSIONS FROM GROSS INCOME.—This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

[(5) SPECIAL RULE FOR COMMUNITY PROPERTY INCOME.—For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws.]

* * * * * * *

SEC. 6015. INNOCENT SPOUSE RELIEF; PETITION TO TAX COURT.

(a) SPOUSE RELIEVED OF LIABILITY IN CERTAIN CASES.—

(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

(A) a joint return has been made under section 6013 for a taxable year,

(B) on such return there is an understatement of tax attributable to erroneous items of 1 spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement,

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such understatement, and

(E) the other spouse claims (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date of the assessment of such deficiency,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

(2) APPORTIONMENT OF RELIEF.—If a spouse who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such spouse did not know, and had no reason to know, the extent of such understatement, then such spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such spouse did not know and had no reason to know.

(3) UNDERSTATEMENT.—For purposes of this subsection, the term "understatement" has the meaning given to such term by section 6662(d)(2)(A).

(4) SPECIAL RULE FOR COMMUNITY PROPERTY INCOME.—For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws.

(b) PETITION FOR REVIEW BY TAX COURT.—In the case of an individual who has filed a claim under subsection (a) within the period specified in subsection (a)(1)(E)—

(1) IN GENERAL.—Such individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine such claim if such petition is filed during the 90-day period beginning on the earlier of—

(A) the date which is 6 months after the date such claim is filed with the Secretary, or

(B) the date on which the Secretary mails by certified or registered mail a notice to such individual denying such claim.

Such 90-day period shall be determined by not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day of such period.

(2) RESTRICTIONS APPLICABLE TO COLLECTION OF ASSESSMENT.—

(A) IN GENERAL.—Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court for collection of any assessment to which such claim relates shall be made, begun, or prosecuted, until the expiration of the 90-day period described in paragraph (1), nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

(B) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time the prohibition under subparagraph (A) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this paragraph unless a timely pe-

tition for a determination of such claim has been filed and then only in respect of the amount of the assessment to which such claim relates.

(C) JEOPARDY COLLECTION.—If the Secretary makes a finding that the collection of the tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

(c) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under subsection (b) relates shall be suspended for the period during which the Secretary is prohibited by subsection (b) from collecting by levy or a proceeding in court and for 60 days thereafter.

(d) APPLICABLE RULES.—

(1) ALLOWANCE OF APPLICATION.—Except as provided in paragraph (2), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

(2) RES JUDICATA.—In the case of any claim under subsection (a), the determination of the Tax Court in any prior proceeding for the same taxable periods in which the decision has become final, shall be conclusive except with respect to the qualification of the spouse for relief which was not an issue in such proceeding. The preceding sentence shall not apply if the Tax Court determines that the spouse participated meaningfully in such prior proceeding.

(3) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either spouse pursuant to section 6532, the Tax Court shall lose jurisdiction of the spouse's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund.

SEC. 6061. SIGNING OF RETURNS AND OTHER DOCUMENTS.

[Except as otherwise provided by]

(a) General Rule.—Except as otherwise provided by subsection (b) and sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

(b) ELECTRONIC SIGNATURES.—

(1) IN GENERAL.—The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for all returns or classes of returns, or may provide for alternative methods of subscribing all returns, declarations, statements, or other documents required or permitted to be made or written under internal revenue laws and regulations.

(2) TREATMENT OF ALTERNATIVE METHODS.—Notwithstanding any other provision of law, any return, declaration, statement or other document filed without signature under the authority of this subsection or verified, signed or subscribed under any method adopted under paragraph (1) shall be treated for all

purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed and subscribed. Any such return, declaration, statement or other document shall be presumed to have been actually submitted and subscribed by the person on whose behalf it was submitted.

(3) PUBLISHED GUIDANCE.—The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements.

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PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

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SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) ELECTRONICALLY FILED INFORMATION RETURNS.—Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate.

[(b)**]** *(c)* SPECIAL TAXES.—For payment of special taxes before engaging in certain trades and businesses, see section 4901 and section 5142.

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Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsections (f), (i)(7), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National

Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), or (7)(A)(ii), (k)(1), (2), (6), or (8), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), (15), [or (16)] *(16), or (17)*, (m) or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (k)(8), (l)(1), (2), (3), (5), (11), (13), [or (14)]*, (14), or (17)* or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (l)(6), (7), (8), (9), (10), (12) or (15) shall, as a condition for receiving returns or return information—

(A) * * *

* * * * * * *

(F) upon completion of use of such returns or return information—

(i) * * *

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (k)(8), (l)(1), (2), (3), (5), (10), (11), (12), (13), (14), [or (15)], *(15), or (17)* or (o)(1), or the General Accounting Office, either—

(I) * * *

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CHAPTER 63—ASSESSMENT

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Subchapter A—In General

* * * * * * *

SEC. 6201. ASSESSMENT AUTHORITY.

(a) * * *

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[(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.**]**

[(e)**]** *(d)* DEFICIENCY PROCEEDINGS.—For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

* * * * * * *

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court**[**, including the Tax Court.**]***, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from col-*

lecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction [to enjoin any action or proceeding] *to enjoin any action or proceeding or order any refund* under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. *Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.*

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Subchapter C—Tax Treatment of Partnership Items

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SEC. 6230. ADDITIONAL ADMINISTRATIVE PROVISIONS.

(a) * * *

* * * * * * *

(c) CLAIMS ARISING OUT OF ERRONEOUS COMPUTATIONS, ETC..—

(1) * * *

* * * * * * *

(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section [6013(e)] *6015* from a liability that is attributable to an adjustment to a partnership item.

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CHAPTER 64—COLLECTION

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Subchapter D—Seizure of Property for Collection of Taxes

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SEC. 6344. CROSS REFERENCES.

(a) * * *

(b) DELINQUENT COLLECTION OFFICERS.—

For distraint proceedings against delinquent internal revenue officers, see [section 7803(d)] *section 7804(c)*.

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) * * *

* * * * * * *

(c) EXCEPTIONS.—

(1) * * *

* * * * * * *

(4) EXTENSION BY AGREEMENT.—[Where]

(A) IN GENERAL.—Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues, on each occasion when the taxpayer is requested to provide such consent.

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Subchapter B—Limitations on Credit or Refund

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) * * *

* * * * * * *

(h) RUNNING OF PERIODS OF LIMITATION SUSPENDED WHILE TAXPAYER IS UNABLE TO MANAGE FINANCIAL AFFAIRS DUE TO DISABILITY.—

(1) IN GENERAL.—In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

(2) FINANCIALLY DISABLED.—

(A) IN GENERAL.—For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of his medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is fur-

nished in such form and manner as the Secretary may require.

(B) EXCEPTION WHERE INDIVIDUAL HAS GUARDIAN, ETC.—An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

[(h)] *(i)* CROSS REFERENCES.—

(1) * * *

* * * * * * *

SEC. 6512. LIMITATIONS IN CASE OF PETITION TO TAX COURT.

(a) EFFECT OF PETITION TO TAX COURT.—If the Secretary has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and certain excise taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a) (or 7481(c) with respect to a determination of statutory interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) * * *

* * * * * * *

(4) As to overpayments attributable to partnership items, in accordance with subchapter C of chapter 63[.], *and*

(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b).

(b) OVERPAYMENT DETERMINED BY TAX COURT.—

(1) JURISDICTION TO DETERMINE.—Except as provided by paragraph (3) and by section 7463, if the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year, or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. *If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the*

overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

* * * * * * *

CHAPTER 67—INTEREST

* * * * * * *

Subchapter A—Interest on Overpayments

* * * * * * *

SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) * * *

* * * * * * *

(f) SATISFACTION BY CREDITS.—If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment. *The preceding sentence shall not apply to the extent that section 6621(d) applies.*

* * * * * * *

Subchapter C—Determination on Interest Rate, Compounding of Interest

* * * * * * *

SEC. 6621. DETERMINATION OF RATE OF INTEREST.

(a) GENERAL RULE.—

(1) OVERPAYMENT RATE.—The overpayment rate established under this section shall be the sum of—

(A) the Federal short-term rate determined under subsection (b), plus

[(B) 2 percentage points.]

(B) 3 percentage points (2 percentage points in the case of a corporation).

To the extent that an overpayment of tax by a corporation for any taxable period (as defined in subsection (c)(3), applied by substitiuting "overpayment" for "underpayment") exceeds $10,000, subparagraph (B) shall be applied by substituting "0.5 percentage point" for "2 percentage points".

* * * * * * *

(d) ELIMINATION OF INTEREST ON OVERLAPPING PERIODS OF INCOME TAX OVERPAYMENTS AND UNDERPAYMENTS.—To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by chapters 1 and

2, the net rate of interest under this section on such amounts shall be zero for such period.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNT, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) * * *

* * * * * * *

(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—No addition to the tax shall be imposed under paragraph (2) or (3) of subsection (a) with respect to the tax liability of an individual for any month during which an installment agreement under section 6159 is in effect for the payment of such tax to the extent that imposing an addition to the tax under such paragraph for such month would result in the aggregate number of percentage points of such addition to the tax exceeding 9.5.

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CHAPTER 74—CLOSING AGREEMENTS AND COMPROMISES

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SEC. 7122. COMPROMISES.

(a) * * *

* * * * * * *

(c) ALLOWANCES FOR BASIC LIVING EXPENSES.—The Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.

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CHAPTER 75—CRIMES, OTHER OFFENSES, ABD FORFEITURES

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Subchapter A—Crimes

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PART I—GENERAL PROVISIONS

SEC. 7217. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

(a) PROHIBITION.—It shall be unlawful for any applicable person to request any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

(b) REPORTING REQUIREMENT.—Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Chief Inspector of the Internal Revenue Service.

(c) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) any request made to an applicable person by the taxpayer or a representative of the taxpayer and forwarded by such applicable person to the Internal Revenue Service,

(2) any request by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section, or

(3) any request by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

(d) PENALTY.—Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(e) APPLICABLE PERSON.—For purposes of this section, the term "applicable person" means—

(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President, and

(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code.

* * * * * * *

CHAPTER 76—JUDICIAL PROCEEDINGS

Subchapter B—Proceedings by Taxpayers and Third Parties

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SEC. 7422. CIVIL ACTIONS FOR REFUND.

(a) * * *

* * * * * * *

(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE.—

(1) IN GENERAL.—The district courts of the United States and the United States Court of Federal Claims shall have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) even if the full amount of such liability has not been paid.

(2) ESTATES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any estate if, as of the date the action is filed—

(A) an election under section 6166 is in effect with respect to such estate,

(B) no portion of the installments payable under such section have been accelerated, and

(C) all installments the due date for which is on or before the date the action is filed have been paid.

(3) PROHIBITION ON COLLECTION OF DISALLOWED LIABILITY.—If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.

[(j)] *(k)* CROSS REFERENCES.—

(1) * * *

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SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

(a) * * *

* * * * * * *

(c) DEFINITIONS.—For purposes of this section—

(1) REASONABLE LITIGATION COSTS.—The term "reasonable litigation costs" includes—

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished—

(i) * * *

* * * * * * *

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of $110 per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, *the difficulty of the issues pre-*

sented in the case, or the local availability of tax expertise, justifies a higher rate.

In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting "calendar year 1995" for "calendar year 1992" in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

(2) REASONABLE ADMINISTRATIVE COSTS.—The term "reasonable administrative costs" means—

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(C) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

[Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.] *Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, (ii) the date of the notice of deficiency, or (iii) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.*

[(3) ATTORNEY'S FEES.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.]

(3) ATTORNEY'S FEES.—

(A) IN GENERAL.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

(B) PRO BONO SERVICES.—In any case in which the court could have awarded attorney's fees under subsection (a) but for the fact that an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee, the court may also award a judgment or settlement for such amounts as the court determines to be appropriate (based on hours worked and costs expended) for services of such individual but only if such award is paid to such individual or such individual's employer.

(4) PREVAILING PARTY.—

(A) * * *

(B) EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.—

(i) * * *

* * * * * * *

(iii) EFFECT OF LOSING ON SUBSTANTIALLY SIMILAR ISSUES.—In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.

[(iii)**]** *(iv)* APPLICABLE PUBLISHED GUIDANCE.—For purposes of clause (ii), the term "applicable published guidance" means—

(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.

* * * * * * *

SEC. 7433. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS.

(a) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally*, or by reason of negligence,* disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 *($100,000, in the case of negligence)* or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional *or negligent* actions of the officer or employee, and

* * * * * * *

(d) LIMITATIONS.—

[(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.**]**

(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plain-

tiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

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Subchapter C—The Tax Court

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PART II—PROCEDURE

SEC. 7463. DISPUTES INVOLVING [$10,000] *$25,000* OR LESS.

(a) IN GENERAL.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) [$10,000] *$25,000* for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) [$10,000] *$25,000*, in the case of the tax imposed by chapter 11,

(3) [$10,000] *$25,000* for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) [$10,000] *$25,000* for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency), at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

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PART IV—DECLARATORY JUDGMENTS

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SEC. 7479. DECLARATORY JUDGMENTS RELATING TO ELIGIBILITY OF ESTATE WITH RESPECT TO INSTALLMENT PAYMENTS UNDER SECTION 6166.

(a) * * *

* * * * * * *

(c) EXTENSION OF TIME TO FILE REFUND SUIT.—The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a

pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.

* * * * * * *

Subchapter E—Burden of Proof

Sec. 7491. Burden of proof.

SEC. 7491. BURDEN OF PROOF.

(a) GENERAL RULE.—The Secretary shall have the burden of proof in any court proceeding with respect to any factual issue relevant to ascertaining the income tax liability of a taxpayer.

(b) LIMITATIONS.—Subsection (a) shall only apply with respect to an issue if—

(1) the taxpayer asserts a reasonable dispute with respect to such issue,

(2) the taxpayer has fully cooperated with the Secretary with respect to such issue, including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary, and

(3) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

(c) SUBSTANTIATION.—Nothing in this section shall be construed to override any requirement of this title to substantiate any item.

CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec. 7501. Liability for texes withheld or collected.

* * * * * * *

Sec. 7525. Low income taxpayer clinics.

* * * * * * *

SEC. 7502. TIMELY MAILING TREATED AS TIMELY FILING AND PAYING.

(a) * * *

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[(c) REGISTERED AND CERTIFIED MAILING.—

[(1) REGISTERED MAIL.—For purposes of this section, if any such return, claim, statement, or other document, or payment, is sent by United States registered mail—

[(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

[(B) the date of registration shall be deemed the postmark date.

[(2) CERTIFIED MAIL.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.]

(c) REGISTERED AND CERTIFIED MAILING; ELECTRONIC FILING.—

(1) REGISTERED MAIL.—For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

(B) the date of registration shall be deemed the postmark date.

(2) CERTIFIED MAIL; ELECTRONIC FILING.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.

* * * * * * *

SEC. 7525. LOW INCOME TAXPAYER CLINICS.

(a) IN GENERAL.—The Secretary shall make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics.

(b) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED LOW INCOME TAXPAYER CLINIC.—

(A) IN GENERAL.—The term "qualified low income taxpayer clinic" means a clinic that—

(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

(ii)(I) represents low income taxpayers in controversies with the Internal Revenue Service, or

(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

(B) REPRESENTATION OF LOW INCOME TAXPAYERS.—A clinic meets the requirements of subparagraph (A)(ii)(I) if—

(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget, and

(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

(2) CLINIC.—The term "clinic" includes—

(A) a clinical program at an accredited law school in which students represent low income taxpayers in controversies arising under this title, and

(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

(3) QUALIFIED REPRESENTATIVE.—The term "qualified representative" means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

(c) SPECIAL RULES AND LIMITATIONS.—

(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more

than $3,000,000 per year (exclusive of costs of administering the program) to grants under this section.

(2) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed $100,000.

(3) MULTI-YEAR GRANTS.—Upon application of a qualified low income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

(4) CRITERIA FOR AWARDS.—In determining whether to make a grant under this section, the Secretary shall consider—

(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language,

(B) the existence of other low income taxpayer clinics serving the same population,

(C) the quality of the program offered by the low income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low income taxpayers, and

(D) alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

(5) REQUIREMENT OF MATCHING FUNDS.—A low income taxpayer clinic must provide matching funds on a dollar for dollar basis for all grants provided under this section. Matching funds may include—

(A) the salary (including fringe benefits) of individuals performing services for the clinic, and

(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Subchapter A—Examination and Inspection

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SEC. 7602. EXAMINATION OF BOOKS AND WITNESSES.

(a) * * *

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(d) PRIVILEGE OF CONFIDENTIALITY EXTENDED TO TAXPAYER'S DEALINGS WITH NON-ATTORNEYS AUTHORIZED TO PRACTICE BEFORE INTERNAL REVENUE SERVICE.—

(1) IN GENERAL.—In any noncriminal proceeding before the Internal Revenue Service, the taxpayer shall be entitled to the same common law protections of confidentiality with respect to tax advice furnished by any qualified individual (in a manner consistent with State law for such individual's profession) as the taxpayer would have if such individual were an attorney.

(2) QUALIFIED INDIVIDUAL.—For purposes of paragraph (1), the term "qualified individual" means any individual (other than an attorney) who is authorized to practice before the Internal Revenue Service.

(e) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(f) LIMITATION ON AUTHORITY TO REQUIRE PRODUCTION OF COMPUTER SOURCE CODE.—

(1) IN GENERAL.—No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, to produce or examine any tax-related computer source code.

(2) EXCEPTION WHERE INFORMATION NOT OTHERWISE AVAILABLE TO VERIFY CORRECTNESS OF ITEM ON RETURN.—Paragraph (1) shall not apply to any portion of a tax-related computer source code if—

(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

(i) the taxpayer's books, papers, records, or other data, or

(ii) the computer software program and the associated data which, when executed, produces the output to prepare the return for the period involved, and

(B) the Secretary identifies with reasonable specificity such portion as to be used to verify the correctness of such item.

The Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) after the 90th day after the Secretary makes a formal request to the taxpayer and the owner or developer of the computer software program for the material described in subparagraph (A)(ii) if such material is not provided before the close of such 90th day.

(3) OTHER EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws, and

(B) any tax-related computer source code developed by (or primarily for the benefit of) the taxpayer or a related person (within the meaning of section 267 or 707(b)) for internal use by the taxpayer or such person and not for commercial distribution.

(4) TAX-RELATED COMPUTER SOURCE CODE.—For purposes of this subsection, the term "tax-related computer source code" means—

(A) the computer source code for any computer software program for accounting, tax return preparation or compliance, or tax planning, or

(B) design and development materials related to such a software program (including program notes and memoranda).

(5) RIGHT TO CONTEST SUMMONS.—The determination of whether the requirements of subparagraphs (A) and (B) of paragraph (2) are met or whether any exception under paragraph (3) applies may be contested in any proceeding under section 7604.

(6) PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.—In any court proceeding to enforce a summons for any portion of a tax-related computer source code, the court may issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such source code, including providing that any information be placed under seal to be opened only as directed by the court.

* * * * * * *

SEC. 7609. SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.

(a) NOTICE.—

(1) * * *

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(3) THIRD-PARTY RECORDKEEPER DEFINED.—For purposes of this subsection, the term "third-party recordkeeper" means—

(A) * * *

* * * * * * *

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof, [and]

(I) any enrolled agent[.], *and*

(J) any owner or developer of a tax-related computer source code (as defined in section 7602(f)(4)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7602(f)(2)(A)(ii) to which such source code relates.

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CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

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[SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT.

[(a) COMMISSIONER OF INTERNAL REVENUE.—There shall be in the Department of the Treasury a Commissioner of Internal Reve-

nue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury.

[(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—

[(1) ESTABLISHMENT OF OFFICE.—There is established within the Internal Revenue Service an office to be known as the "Office of Employee Plans and Exempt Organizations" to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies).

[(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of the Treasury to carry out the functions of the Office an amount equal to the sum of—

[(A) so much of the collections from taxes imposed under section 4940 (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year; and

[(B) the greater of—

[(i) an amount equal to the amount described in paragraph (A); or

[(ii) $30,000,000.

[(c) ASSISTANT COMMISSIONER (TAXPAYER SERVICES).—There is established within the Internal Revenue Service an office to be known as the "Office for Taxpayer Services" to be under the supervision and direction of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for taxpayer services such as telephone, walk-in, and taxpayer educational services, and the design and production of tax and informational forms.

[(d) OFFICE OF TAXPAYER ADVOCATE.—

[(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate". Such office shall be under the supervision and direction of an official to be known as the "Taxpayer Advocate" who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

[(2) FUNCTIONS OF OFFICE.—

[(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

[(i) assist taxpayers in resolving problems with the Internal Revenue Service,

[(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

[(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

[(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

[(B) ANNUAL REPORTS.—

[(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

[(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

[(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

[(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

[(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

[(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

[(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

[(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

[(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue

Service in a timely manner, as specified under section 7811(b),

[(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

[(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

[(X) include such other information as the Taxpayer Advocate may deem advisable.

[(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

[(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner.

[SEC. 7803. OTHER PERSONNEL.

[(a) APPOINTMENT AND SUPERVISION.—The Secretary is authorized to employ such number of persons as the Secretary deems proper for the administration and enforcement of the internal revenue laws, and the Secretary shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

[(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—

[(1) DESIGNATION OF POST OF DUTY.—The Secretary shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

[(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Secretary may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

[(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

[SEC. 7804. EFFECT OF REORGANIZATION PLANS

[(a) APPLICATION.—The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

[(b) PRESERVATION OF EXISTING RIGHTS AND REMEDIES.—Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.]

SEC. 7802. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Internal Revenue Service Oversight Board (hereafter in this subchapter referred to as the "Oversight Board").

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Oversight Board shall be composed of 11 members, as follows:

(A) 8 members shall be individuals who are not Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

(B) 1 member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

(C) 1 member shall be the Commissioner of Internal Revenue.

(D) 1 member shall be an individual who is a representative of an organization that represents a substantial number of Internal Revenue Service employees and who is appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS AND TERMS.—

(A) QUALIFICATIONS.—Members of the Oversight Board described in paragraph (1)(A) shall be appointed solely on the basis of their professional experience and expertise in 1 or more of the following areas:

(i) Management of large service organizations.

(ii) Customer service.

(iii) Federal tax laws, including tax administration and compliance.

(iv) Information technology.

(v) Organization development.

(vi) The needs and concerns of taxpayers.

In the aggregate, the members of the Oversight Board described in paragraph (1)(A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

(B) TERMS.—Each member who is described in paragraph (1)(A) or (D) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1)(A)—

(i) 1 member shall be appointed for a term of 1 year,

(ii) 1 member shall be appointed for a term of 2 years,

(iii) 2 members shall be appointed for a term of 3 years, and

(iv) 2 members shall be appointed for a term of 4 years.

Such terms shall begin on the date of appointment.

(C) REAPPOINTMENT.—An individual who is described in paragraph (1)(A) may be appointed to no more than two 5-year terms on the Oversight Board.

(D) VACANCY.—Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(E) SPECIAL GOVERNMENT EMPLOYEES.—During the entire period that an individual appointed under paragraph (1)(A) is a member of the Oversight Board, such individual shall be treated as—

(i) serving as a special government employee (as defined in section 202 of title 18, United States Code) and as described in section 207(c)(2) of such title 18, and

(ii) serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act.

(3) QUORUM.—6 members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

(4) REMOVAL.—

(A) IN GENERAL.—Any member of the Oversight Board may be removed at the will of the President.

(B) SECRETARY AND COMMISSIONER.—An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of employment.

(C) REPRESENTATIVE OF INTERNAL REVENUE SERVICE EMPLOYEES.—The member described in paragraph (1)(D) shall be removed upon termination of employment, membership, or other affiliation with the organization described in such paragraph.

(5) CLAIMS.—

(A) IN GENERAL.—Members of the Oversight Board who are described in paragraph (1)(A) or (D) shall have no personal liability under Federal law with respect to any claim

arising out of or resulting from an act or omission by such member within the scope of service as a member. The preceding sentence shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious conduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the Oversight Board.

(B) EFFECT ON OTHER LAW.—This paragraph shall not be construed—

(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions,

(ii) to affect any other right or remedy against the United States under applicable law, or

(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

(c) GENERAL RESPONSIBILITIES.—

(1) IN GENERAL.—The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

(2) EXCEPTIONS.—The Oversight Board shall have no responsibilities or authority with respect to—

(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

(B) law enforcement activities of the Internal Revenue Service, including compliance activities such as criminal investigations, examinations, and collection activities, or

(C) specific procurement activities of the Internal Revenue Service.

(3) RESTRICTION ON DISCLOSURE OF RETURN INFORMATION TO OVERSIGHT BOARD MEMBERS.—No return, return information, or taxpayer return information (as defined in section 6103(b)) may be disclosed to any member of the Oversight Board described in subsection (b)(1)(A) or (D). Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by a member of the Oversight Board so described to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary and the Joint Committee on Taxation.

(d) SPECIFIC RESPONSIBILITIES.—The Oversight Board shall have the following specific responsibilities:

(1) STRATEGIC PLANS.—To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

(A) mission and objectives, and standards of performance relative to either, and

(B) annual and long-range strategic plans.

(2) OPERATIONAL PLANS.—To review the operational functions of the Internal Revenue Service, including—

(A) plans for modernization of the tax system,

(B) plans for outsourcing or managed competition, and

(C) plans for training and education.

(3) MANAGEMENT.—To—

(A) recommend to the President candidates for appointment as the Commissioner of Internal Revenue and recommend to the President the removal of the Commissioner,

(B) review the Commissioner's selection, evaluation, and compensation of senior managers, and

(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

(4) BUDGET.—To—

(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner,

(B) submit such budget request to the Secretary of the Treasury, and

(C) ensure that the budget request supports the annual and long-range strategic plans.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

(e) BOARD PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) IN GENERAL.—Each member of the Oversight Board who is described in subsection (b)(1)(A) shall be compensated at a rate of $30,000 per year. All other members of the Oversight Board shall serve without compensation for such service.

(B) CHAIRPERSON.—In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of $50,000.

(2) TRAVEL EXPENSES.—The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business for purposes of attending meetings of the Oversight Board.

(3) STAFF.—At the request of the Chairperson of the Oversight Board, the Commissioner shall detail to the Oversight Board such personnel as may be necessary to enable the Oversight Board to perform its duties. Such detail shall be without interruption or loss of civil service status or privilege.

(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) ADMINISTRATIVE MATTERS.—

(1) CHAIR.—The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

(2) COMMITTEES.—The Oversight Board may establish such committees as the Oversight Board determines appropriate.

(3) MEETINGS.—The Oversight Board shall meet at least once each month and at such other times as the Oversight Board determines appropriate.

(4) REPORTS.—The Oversight Board shall each year report to the President and the Congress with respect to the conduct of its responsibilities under this title.

SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) COMMISSIONER OF INTERNAL REVENUE.—

(1) APPOINTMENT.—

(A) IN GENERAL.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate, to a 5-year term. The appointment shall be made without regard to political affiliation or activity.

(B) VACANCY.—Any individual appointed to fill a vacancy in the position of Commissioner occurring before the expiration of the term for which such individual's predecessor was appointed shall be appointed only for the remainder of that term.

(C) REMOVAL.—The Commissioner may be removed at the will of the President.

(2) DUTIES.—The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party; and

(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives, the Committees on Finance, Government Operations, and Appropriations of the Senate, and the Joint Committee on Taxation.

(3) CONSULTATION WITH BOARD.—The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the "Office of Employee Plans and Exempt Organizations" to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies) and

other nonqualified deferred compensation arrangements. The Assistant Commissioner shall report annually to the Commissioner with respect to the Assistant Commissioner's responsibilities under this section.

(c) OFFICE OF TAXPAYER ADVOCATE.—

(1) IN GENERAL.—

(A) ESTABLISHMENT.—There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate". Such office shall be under the supervision and direction of an official to be known as the "Taxpayer Advocate" who shall be appointed with the approval of the Oversight Board by the Commissioner of Internal Revenue and shall report directly to the Commissioner. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Commissioner of Internal Revenue.

(B) RESTRICTION ON SUBSEQUENT EMPLOYMENT.—An individual who is an officer or employee of the Internal Revenue Service may be appointed as Taxpayer Advocate only if such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the Taxpayer Advocate.

(2) FUNCTIONS OF OFFICE.—

(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

(i) assist taxpayers in resolving problems with the Internal Revenue Service,

(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

(B) ANNUAL REPORTS.—

(i) OBJECTIVES.—Not later than June 30 of each calendar year, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(ii) ACTIVITIES.—Not later than December 31 of each calendar year, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems,

(X) in conjunction with the National Director of Appeals, identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes, and

(XI) include such other information as the Taxpayer Advocate may deem advisable.

(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the committees described in clauses (i) and (ii) without any prior review or comment from the Oversight Board, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

(C) OTHER RESPONSIBILITIES.—The Taxpayer Advocate shall—

(i) monitor the coverage and geographic allocation of problem resolution officers, and

(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to problem resolution officers.

(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner.

SEC. 7804. OTHER PERSONNEL.

(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

(1) DESIGNATION OF POST OF DUTY.—The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

SEC. 7805. RULES AND REGULATIONS.

(a) * * *

* * * * * * *

(d) MANNER OF MAKING ELECTIONS PRESCRIBED BY SECRETARY.—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall [by regulations or forms] prescribe.

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SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

(a) AUTHORITY TO ISSUE.—[Upon application]

(1) IN GENERAL.—Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Taxpayer Advocate may issue a Taxpayer Assistance Order if, in the determination of the Taxpayer Advocate, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

(2) ISSUANCE OF TAXPAYER ASSISTANCE ORDERS.—For purposes of determining whether to issue a taxpayer assistance order, the Taxpayer Advocate shall consider the following factors, among others:

(A) Whether there is an immediate threat of adverse action.

(B) Whether there has been an unreasonable delay in resolving taxpayer account problems.

(C) Whether the taxpayer will have to pay significant costs (including fees for professional representation) if relief is not granted.

(D) Whether the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted.

(3) STANDARD WHERE ADMINISTRATIVE GUIDANCE NOT FOLLOWED.—In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a taxpayer assistance order in the manner most favorable to the taxpayer.

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CHAPTER 92—POWERS AND DUTIES OF JOINT COMMITTEE

SEC. 8021. POWERS.

(a) * * *

* * * * * * *

(e) INVESTIGATIONS.—The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a Committee or Subcommittee) for investigations of the Internal Revenue Service by the General Accounting Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the General Accounting Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

(f) RELATING TO JOINT HEARINGS.—

(1) IN GENERAL.—The Chief of Staff, and such other staff as are appointed pursuant to section 8004, shall provide such as-

sistance as is required for joint hearings described in paragraph (2).

(2) JOINT HEARINGS.—On or before April 1 of each calendar year after 1997, there shall be a joint hearing of two members of the majority and one member of the minority from each of the Committees on Finance, Appropriations, and Government Affairs of the Senate, and the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, to review the strategic plans and budget for the Internal Revenue Service. After the conclusion of the annual filing season, there shall be a second annual joint hearing to review the other matters outlined in section 8022(3)(C).

SEC. 8022. DUTIES.

It shall be the duty of the Joint Committee—

(1) * * *

* * * * * * *

[(3) REPORTS.—To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.]

(3) REPORTS.—

(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

(B) To report, annually, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

(C) To report, annually, to the Committees on Finance, Appropriations, and Government Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to—

(i) strategic and business plans for the Internal Revenue Service;

(ii) progress of the Internal Revenue Service in meeting its objectives;

(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

(v) progress of the Internal Revenue Service on technology modernization; and

(vi) the annual filing season.

* * * * * * *

SEC. 8024. TAX COMPLEXITY ANALYSIS.

(a) IN GENERAL.—If—

(1) legislation is reported by the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference, and

(2) such legislation includes any provision amending the Internal Revenue Code of 1986,

the report or statement accompanying such legislation shall contain a Tax Complexity Analysis prepared by the staff of the Joint Committee on Taxation.

(b) CONTENT OF COMPLEXITY ANALYSIS.—Each Tax Complexity Analysis shall identify the provisions, if any, adding significant complexity or providing significant simplification, as determined by the staff of the Joint Committee on Taxation, and shall include the basis for such determination.

(c) LEGISLATION SUBJECT TO POINT OF ORDER.—It shall not be in order in the Senate or the House of Representatives to consider any legislation described in subsection (a) required to be accompanied by a Tax Complexity Analysis that does not contain a Tax Complexity Analysis.

(d) RESPONSIBILITIES OF THE COMMISSIONER.—The Commissioner shall provide the Joint Committee on Taxation with such information as is necessary to prepare Tax Complexity Analyses.

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

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§ 5109. Positions classified by statute

(a) * * *

(b) The position held by the employee appointed under section [7802(b)] *7803(b)* of the Internal Revenue Code of 1954 shall be considered a position classified above GS–15 pursuant to section 5108.

* * * * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Subpart I—Miscellaneous

Subpart I—Miscellaneous

CHAPTER 93—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

§ 9301. General requirements

(a) CONFORMANCE WITH MERIT SYSTEM PRINCIPLES, ETC.—Any flexibilities under this chapter shall be exercised in a manner consistent with—

(1) chapter 23, relating to merit system principles and prohibited personnel practices; and

(2) provisions of this title (outside of this subpart) relating to preference eligibles.

(b) REQUIREMENT RELATING TO UNITS REPRESENTED BY LABOR ORGANIZATIONS.—

(1) WRITTEN AGREEMENT REQUIRED.—Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to the exercise of any flexibility under section 9302, 9303, or 9304, unless there is a written agreement between the Internal Revenue Service and the organization permitting such exercise.

(2) DEFINITION OF A WRITTEN AGREEMENT.—In order to satisfy paragraph (1), a written agreement—

(A) need not be a collective bargaining agreement within the meaning of section 7103(8); and

(B) may not be an agreement imposed by the Federal Service Impasses Panel under section 7119.

§ 9302. Flexibilities relating to performance management

(a) IN GENERAL.—The Commissioner of Internal Revenue shall, within a year after the date of the enactment of this chapter, establish a performance management system which—

(1) subject to section 9301(b), shall cover all employees of the Internal Revenue Service other than—

(A) the members of the Internal Revenue Service Oversight Board;

(B) the Commissioner of Internal Revenue; and

(C) the Chief Counsel for the Internal Revenue Service;

(2) shall maintain individual accountability by—

(A) establishing standards of performance which—

(i) shall permit the accurate evaluation of each employee's performance on the basis of the individual and organizational performance requirements applicable with respect to the evaluation period involved, taking into account individual contributions toward the attainment of any goals or objectives under paragraph (3);

(ii) shall be communicated to an employee before the start of any period with respect to which the performance of such employee is to be evaluated using such standards; and

(iii) shall include at least 2 standards of performance, the lowest of which shall denote the retention standard and shall be equivalent to fully successful performance;

(B) providing for periodic performance evaluations to determine whether employees are meeting all applicable retention standards; and

(C) using the results of such employee's performance evaluation as a basis for adjustments in pay and other appropriate personnel actions; and

(3) shall provide for (A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with Internal Revenue Service performance planning procedures, including those established under the Government Performance and Results Act of 1993, the Information Technology Management Reform Act of 1996, Revenue Procedure 64–22 (as in effect on July 30, 1997), and taxpayer service surveys, (B) communicating such goals or objectives to employees, and (C) using such goals or objectives to make performance distinctions among employees or groups of employees.

For purposes of this title, performance of an employee during any period in which such employee is subject to standards of performance under paragraph (2) shall be considered to be "unacceptable" if the performance of such employee during such period fails to meet any retention standard.

(b) AWARDS.—

(1) FOR SUPERIOR ACCOMPLISHMENTS.—In the case of a proposed award based on the efforts of an employee or former employee of the Internal Revenue Service, any approval required under the provisions of section 4502(b) shall be considered to have been granted if the Office of Personnel Management does not disapprove the proposed award within 60 days after receiving the appropriate certification described in such provisions.

(2) FOR EMPLOYEES WHO REPORT DIRECTLY TO THE COMMISSIONER.—

(A) IN GENERAL.—In the case of an employee of the Internal Revenue Service who reports directly to the Commissioner of Internal Revenue, a cash award in an amount up

to 50 percent of such employee's annual rate of basic pay may be made if the Commissioner finds such an award to be warranted based on such employee's performance.

(B) NATURE OF AN AWARD.—A cash award under this paragraph shall not be considered to be part of basic pay.

(C) TAX ENFORCEMENT RESULTS.—A cash award under this paragraph may not be based solely on tax enforcement results.

(D) ELIGIBLE EMPLOYEES.—Whether or not an employee is an employee who reports directly to the Commissioner of Internal Revenue shall, for purposes of this paragraph, be determined under regulations which the Commissioner shall prescribe, except that in no event shall more than 8 employees be eligible for a cash award under this paragraph in any calendar year.

(E) LIMITATION ON COMPENSATION.—For purposes of applying section 5307 to an employee in connection with any calendar year to which an award made under this paragraph to such employee is attributable, subsection (a)(1) of such section shall be applied by substituting "to equal or exceed the annual rate of compensation for the Vice President for such calendar year" for "to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year".

(F) APPROVAL REQUIRED.—An award under this paragraph may not be made unless—

(i) the Commissioner of Internal Revenue certifies to the Office of Personnel Management that such award is warranted; and

(ii) the Office approves, or does not disapprove, the proposed award within 60 days after the date on which it is so certified.

(3) BASED ON SAVINGS.—

(A) IN GENERAL.—The Commissioner of Internal Revenue may authorize the payment of cash awards to employees based on documented financial savings achieved by a group or organization which such employees comprise, if such payments are made pursuant to a plan which—

(i) specifies minimum levels of service and quality to be maintained while achieving such financial savings; and

(ii) is in conformance with criteria prescribed by the Office of Personnel Management.

(B) FUNDING.—A cash award under this paragraph may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting.

(C) TAX ENFORCEMENT RESULTS.—A cash award under this paragraph may not be based solely on tax enforcement results.

(c) OTHER PROVISIONS.—

(1) NOTICE PROVISIONS.—In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, "15 days" shall be substituted for "30 days".

(2) APPEALS.—Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

§ 9303. Staffing flexibilities

(a) ELIGIBILITY TO COMPETE FOR A PERMANENT APPOINTMENT IN THE COMPETITIVE SERVICE.—

(1) ELIGIBILITY OF QUALIFIED VETERANS.—

(A) IN GENERAL.—No veteran described in subparagraph (B) shall be denied the opportunity to compete for an announced vacant competitive service position within the Internal Revenue Service by reason of—

(i) not having acquired competitive status; or

(ii) not being an employee of that agency.

(B) DESCRIPTION.—An individual shall, for purposes of a position for which such individual is applying, be considered a veteran described in this subparagraph if such individual—

(i) is either a preference eligible, or an individual (other than a preference eligible) who has been separated from the armed forces under honorable conditions after at least 3 years of active service; and

(ii) meets the minimum qualification requirements for the position sought.

(2) ELIGIBILITY OF CERTAIN TEMPORARY EMPLOYEES.—

(A) IN GENERAL.—No temporary employee described in subparagraph (B) shall be denied the opportunity to compete for an announced vacant competitive service position within the Internal Revenue Service by reason of not having acquired competitive status.

(B) DESCRIPTION.—An individual shall, for purposes of a position for which such individual is applying, be considered a temporary employee described in this subparagraph if—

(i) such individual is then currently serving as a temporary employee in the Internal Revenue Service;

(ii) such individual has completed at least 2 years of current continuous service in the competitive service under 1 or more term appointments, each of which was made under competitive procedures prescribed for permanent appointments;

(iii) such individual's performance under each term appointment referred to in clause (ii) met all applicable retention standards; and

(iv) such individual meets the minimum qualification requirements for the position sought.

(b) RATING SYSTEMS.—

(1) IN GENERAL.—Notwithstanding subchapter I of chapter 33, the Commissioner of Internal Revenue may establish category rating systems for evaluating job applicants for positions in the competitive service, under which qualified candidates are divided into 2 or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical

ratings. Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the job to be filled.

(2) TREATMENT OF PREFERENCE ELIGIBLES.—Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS–9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

(3) SELECTION PROCESS.—An appointing authority may select any applicant from the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories. Notwithstanding the preceding sentence, the appointing authority may not pass over a preference eligible in the same or a higher category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied, except that in no event may certification of a preference eligible under this subsection be discontinued by the Internal Revenue Service under section 3317(b) before the end of the 6-month period beginning on the date of such employee's first certification.

(c) INVOLUNTARY REASSIGNMENTS AND REMOVALS OF CAREER APPOINTEES IN THE SENIOR EXECUTIVE SERVICE.—Neither section 3395(e)(1) nor section 3592(b)(1) shall apply with respect to the Internal Revenue Service.

(d) PROBATIONARY PERIODS.—Notwithstanding any other provision of law or regulation, the Commissioner of Internal Revenue may establish a period of probation under section 3321 of up to 3 years for any position if, as determined by the Commissioner, a shorter period would be insufficient for the incumbent to demonstrate complete proficiency in such position.

(e) PROVISIONS THAT REMAIN APPLICABLE.—No provision of this section exempts the Internal Revenue Service from—

(1) any employment priorities established under direction of the President for the placement of surplus or displaced employees; or

(2) its obligations under any court order or decree relating to the employment practices of the Internal Revenue Service.

§ 9304. Flexibilities relating to demonstration projects

(a) AUTHORITY TO CONDUCT.—The Commissioner of Internal Revenue may, in accordance with this section, conduct 1 or more demonstration projects to improve personnel management; provide increased individual accountability; eliminate obstacles to the removal of or imposing any disciplinary action with respect to poor performers, subject to the requirements of due process; expedite appeals from adverse actions or performance-based actions; and promote pay based on performance.

(b) GENERAL REQUIREMENTS.—Except as provided in subsection (c), each demonstration project under this section shall comply with the provisions of section 4703.

(c) SPECIAL RULES.—For purposes of any demonstration project under this section—

(1) AUTHORITY OF COMMISSIONER.—The Commissioner of Internal Revenue shall exercise the authority provided to the Office of Personnel Management under section 4703.

(2) PROVISIONS NOT APPLICABLE.—The following provisions of section 4703 shall not apply:

(A) Paragraphs (3) through (6) of subsection (b).

(B) Paragraphs (1), (2)(B)(ii), and (4) of subsection (c).

(C) Subsections (d) through (g).

(d) NOTIFICATION REQUIRED TO BE GIVEN.—

(1) TO EMPLOYEES.—The Commissioner of Internal Revenue shall notify employees likely to be affected by a project proposed under this section at least 90 days in advance of the date such project is to take effect.

(2) TO CONGRESS AND OPM.—The Commissioner of Internal Revenue shall, with respect to each demonstration project under this section, provide each House of Congress and the Office of Personnel Management with a report, at least 30 days in advance of the date such project is to take effect, setting forth the final version of the plan for such project. Such report shall, with respect to the project to which it relates, include the information specified in section 4703(b)(1).

(e) LIMITATIONS.—No demonstration project under this section may—

(1) provide for a waiver of any regulation prescribed under any provision of law referred to in paragraph (2)(B)(i) or (3) of section 4703(c);

(2) provide for a waiver of subchapter V of chapter 63 or subpart G of part III (or any regulations prescribed under such subchapter or subpart);

(3) provide for a waiver of any law or regulation relating to preference eligibles as defined in section 2108 or subchapter II or III of chapter 73 (or any regulations prescribed thereunder);

(4) permit collective bargaining over pay or benefits, or require collective bargaining over any matter which would not be required under section 7106; or

(5) include a system for measuring performance that provides for only 1 level of performance at or above the level of fully successful or better.

(f) PERMISSIBLE PROJECTS.—Notwithstanding any other provision of law, a demonstration project under this section—

(1) may establish alternative means of resolving any dispute within the jurisdiction of the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Federal Service Impasses Panel; and

(2) may permit the Internal Revenue Service to adopt any alternative dispute resolution procedure that a private entity may lawfully adopt.

(g) CONSULTATION AND COORDINATION.—The Commissioner of Internal Revenue shall consult with the Director of the Office of Personnel Management in the development and implementation of each demonstration project under this section and shall submit such reports to the Director as the Director may require. The Director or the Commissioner of Internal Revenue may terminate a demonstration project under this section if either of them determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or qualified applicants for employment with the Internal Revenue Service.

(h) TERMINATION.—Each demonstration project under this section shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that any such project may continue beyond the end of such period, for not to exceed 2 years, if the Commissioner of Internal Revenue, with the concurrence of the Director, determines such extension is necessary to validate the results of the project. Not later than 6 months before the end of the 5-year period and any extension under the preceding sentence, the Commissioner of Internal Revenue shall, with respect to the demonstration project involved, submit a legislative proposal to the Congress if the Commissioner determines that such project should be made permanent, in whole or in part.

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VII. CORRESPONDENCE FROM OTHER COMMITTEES

A. CORRESPONDENCE FROM COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

The following correspondence was received from Representative Dan Burton, Chairman, Committee on Government Reform and Oversight, regarding the bill, H.R. 2676:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC, October 31, 1997.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
Washington, DC.

DEAR MR. CHAIRMAN: After several months of negotiation with the interested parties, the Committee on Government Reform and Oversight agrees to the provisions of H.R. 2676, a bill to restructure and reform the Internal Revenue Service. The Government Reform and Oversight Committee does not object to the current legislation, and therefore does not intend to exercise its jurisdiction over H.R. 2676.

The Committee initially had concerns about the Freedom of Information Act and civil service related provisions included within the original text. Through negotiation, we were able to draft language in these areas that protects the interests of taxpayers and institutes employee performance measures that provide the IRS Commissioner with the tools necessary to make it easier to fire poor performers and people who engage in misconduct. I would particularly like to thank Rep. Rob Portman, the sponsor of H.R. 2292,

and the National Commission on Restructuring the Internal Revenue Service in helping with our efforts.

As you know, House Rule X, "Establishment and Jurisdiction of Standing Committees", grants the Government Reform and Oversight Committee jurisdiction over legislation related to government information management and the civil service. Although the Committee will not mark up H.R. 2676, this does not in any way waive this Committee's jurisdiction over the bill or related legislation, nor over the general subject matters contained in the bill which fall within this Committee's jurisdiction. Further, I request that members of the Government Reform and Oversight Committee be appointed to serve on any conference committee appointed with respect to this legislation.

I look forward to working with you on this and other issues throughout the 105th Congress.

Sincerely,

DAN BURTON, *Chairman.*

B. CORRESPONDENCE FROM COMMITTEE ON RULES

The following correspondence was received from Representative Gerald B. Solomon, Chairman, Committee on Rules, regarding the bill, H.R. 2676:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, DC, October 28, 1997.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
Washington, DC.

DEAR MR. CHAIRMAN: I am writing concerning H.R. 2676, The Internal Revenue Service Restructuring and Reform Act of 1997, which your committee ordered reported on October 22 by a vote of 33–4.

This legislation contains provisions in Title IV, Congressional Accountability for the Internal Revenue Service, which fall within the jurisdiction of the Committee on Rules.

The Committee on Rules does not intend to consider this bill as a matter of original jurisdiction. It is the intention of the Committee to address several concerns with the proposed language in Title IV during the Rules Committee's consideration of an appropriate rule for this legislation.

I reserve jurisdiction of the Committee on Rules over all bills relating to the rules, joint rules, and the order of business of the House. It would also be my intention to be represented on the conference committee on this bill. Thank you for your consideration.

Sincerely,

GERALD B. SOLOMON, *Chairman.*

VIII. ADDITIONAL VIEWS

We provide the following additional views and comments regarding H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1997. Importantly, this legislation would restructure the Internal Revenue Service to provide better oversight, greater continuity of leadership, improved access to expert advice from the private sector, additional management flexibility, incentives for expansion of electronic tax filing, taxpayer of safeguards in dealing with the IRS, and increased Congressional accountability.

We support the important goals of this legislation and have worked on several of its components over the last several years. In addition, we are pleased to have participated, on a bipartisan basis, in incorporating significant improvements to this bill from its original form.

Over the past year, there has been much heated debate over the provisions of various IRS reform bills. We believe that the debate was necessary and resulted in many IRS reforms which we support. Importantly, expressing our differences in opinion confirms our belief that the legislative process can work effectively, to the benefit of the public, where there is a true commitment to bipartisanship and cooperation.

There has long been agreement on the need for fundamental reform of the IRS. In fact, even back when the Members of the National Commission on Restructuring the Internal Revenue Service were discussing which recommendations to make to the Congress, there was uniform agreement that fundamental reform of the IRS was in order, and a consensus on the dozens of specific reform measures the Congress should be asked to adopt. The Democratic Members of the Committee on Ways and Means have continued to support wholeheartedly the vast majority of recommendations put forward by the National Commission, which were reflected in both H.R. 2428, to improve the operations and governance of the Internal Revenue Service, introduced on September 8, 1997, and H.R. 2292, the Internal Revenue Service Restructuring and Reform Act, introduced on July 30, 1997.

H.R. 2292, as introduced on governance

There were several aspects of H.R. 2292, legislation introduced originally by Rep. Rob Portman and others in response to the National Commission's report, which caused us great concern and to which we strongly objected. That bill, which was the subject of numerous Committee and Subcommittee hearings while it was pending before the Committee for over three months, remained unchanged by its sponsors before the Committee markup. After much bipartisan discussion and debate, a clean new version of the bill, H.R. 2676, which reflected responses to many of our concerns, was introduced and became the focus of the Committee's action. (During

this period, many of us sponsored an alternative bill, H.R. 2428, which was supported by the Administration, to improve the structure of IRS management, operations, and oversight).

Our major concern with the original IRS reform bill was that it failed to insure (1) effective and constitutional governance of the IRS, and (2) full accountability of the IRS to the public (directly and through their elected officials.) The original bill would have established an IRS Board of Directors, consisting primarily of private-sector appointees, with significant powers and authority to run the IRS. For example, the bill would have the private-sector Board members the authority to hire and fire the IRS Commissioner and would have eliminated the current Internal Revenue Code rules that place the IRS Commissioner under the control of the Secretary of the Treasury (and ultimately the President). Such an approach would not have solved any problem that has been enumerated by the National Commission or any abuse highlighted by recent Senate Committee on Finance hearings. Rather, such proposals would have made it more difficult for the IRS to function effectively in its efforts to collect Federal revenues and provide taxpayer services.

We believe that handing overall control of the IRS to a board composed primarily of private citizens (taxpayers themselves) would have reduced significantly the accountability of the IRS to the taxpaying public. In our view, the Constitution requires that the IRS Commissioner be appointed, hired, and, if necessary, fired by the President. The public expects the IRS Commissioner to be accountable to them through their elected representatives. Further, we believe that efforts to increase the IRS's accountability should not blur or eliminate the existing chain of command that runs from the IRS Commissioner, through the Secretary of the Treasury, and ultimately to the President.

Moreover, we believe that turning effective control of the IRS over to a part-time board, dominated by private sector individuals, raises significant conflict-of-interest problems. Such conflict of interest, whether real or perceived, undoubtedly would undermine further the public's support for our voluntary Federal income tax system. Accordingly, we believe that it would be inappropriate to grant—to a relatively small groups of private interests—autonomy and broad powers to run the IRS, while they serve as part-time public servants with full-time obligations to private sector employers or private interest clients.

Bipartisan negotiations and agreement on governance

Because of our strong commitment to an IRS that works fairly for taxpayers and effectively in collecting the country's tax revenues, we entered into intense bipartisan negotiations with numerous Members of this Committee, the House Leadership, and the Administration to improve the original legislation. As a result, several critically important improvements were made to H.R. 2292. While each of us would have made additional modifications, an acceptable compromise was reached.

Under the revised bill adopted by the Committee, the President—not a Board of private-sector individuals—would have the authority to appoint, hire, and fire the IRS Commissioner. As

under current law, this Nation's highest-elected official would remain ultimately responsible for the actions of the IRS and the decisions of its commissioner.

Also, under the revised bill, the lines of authority from the Secretary of the Treasury to the IRS Commissioner have been defined clearly. Overall management of the IRS, including tax policy, tax administration, and tax law enforcement activities, would continue to be coordinated through Treasury, as would overall responsibility for oversight and management of the IRS.

Once these two fundamental concerns of ours were addressed, we joined our colleagues in supporting H.R. 2676.

As H.R. 2676 moves forward in the House, we note that the bill grants the newly-create IRS Oversight Board members authority to review and approve the strategic plans of the IRS, authority to review and approve the Commissioner's annual budget, and authority to reveiw and approve the Commissioner's plans for major reorganization of the IRS. While many of us are not in favor of transferring even this much power to an independent body, we believe that, on the whole, it constitutes an acceptable compromise. Unfortunately, the bill is not clear about what happens to our tax administration system under these new Board authorities if a consensus is not reached among the Board members of the the IRS Commissioner and Treasury Secretary disagree with the views of the private-sector individuals. We intend to continue to work on resolution of these issues in the coming months before a final IRS reform bill is enacted into law.

Electronic filing of tax returns

H.R. 2676 contains important provisions to enhance the electronic filing of tax returns and other documents with the IRS. These provisions were developed by the Subcommittee on Oversight, on a bipartisan basis, for inclusion in the revised IRS reform bill. The two underlying IRS reform bills, H.R. 2428 and H.R. 2292 contained provisions to improve electronic tax filing and served as the basis for the Subcommittee's recommendations. We believe that these statutory changes are critical to bringing the IRS into the modern age of technology and strongly support the goal of having 80 percent of all tax returns filed electronically within the next ten years.

Taxpayer rights 3

Of great significance to taxpayers nationwide are the provisions in the bill, as approved by the Committee, to provide taxpayers with new statutory protections and other assistance to millions of Americans in their dealings with the IRS. Again, these provisions were developed by the Subcommittee on Oversight, on a bipartisan basis, for inclusion in the revised IRS reform bill. The Subcommittee's recommendations reflect a combination of proposals from H.R. 2292, proposals advanced by the Department of the Treasury, and new initiatives identified during the Subcommittee's hearings on taxpayer rights.

Of particular importance are the provisions to expand "innocent spouse" tax relief and provide tax refund relief to taxpayers during periods of disability. Also, contained in the bill are provisions to ex-

pand relief for taxpayers through issuance of "taxpayer assistance orders" by the Taxpayer Advocate, grants for low-income tax clinics, and penalty relief for taxpayers in installment agreements with the IRS.

However, we continue to have serious concerns about the provision in the bill that shifts the burden of proof from taxpayers to the IRS in certain court proceedings with respect to factual issues. This provision was not considered by the Subcommittee on Oversight, nor was it a recommendation of the National Commission.

We are concerned that the provision may have unintended negative consequences for both taxpayers and the tax administrative system. Currently, as a result of long-standing judicial decisions, a taxpayer in civil tax matters is generally required to maintain records substantiating the calculation of his or her income tax liability. The courts created this rule to facilitate the finding of fact, and thus the burden of proof is placed on the taxpayer simply because the taxpayer controls the underlying facts and the records. We are concerned that at least 15 percent of the revenue loss (and we believe more) attributable to the provision is due to anticipated additional taxpayer noncompliance. Further, we are not persuaded by the view of the Chief of Staff of the Joint Committee on Taxation, as stated at the markup, that, while the proposal will not do anything for most taxpayers, the public will find great comfort in knowing that the burden shifts to the IRS for some taxpayers in litigation. We similarly are concerned that shifting the burden of proof could result in the necessity of more intrusive and aggressive IRS examinations, more third-party summonses, and more thorough discovery. Also, this provision could assist aggressive taxpayers avoid taxation, or induce some taxpayers not to keep records at all. We believe that the tax laws should make it easier for taxpayers to deal with the IRS. However, we do not think the laws should make it easier for someone to evade taxes. The vast majority of citizens who obey the law deserve more. We intend to work toward improving the burden-of-proof provision in this bill in order to insure that it does not increase noncompliance and does not serve as an incentive for taxpayers to cease retention of appropriate records.

Finally, it would be wrong not to point out the Internal Revenue Service's many substantial accomplishments. As we work to reform the IRS, it is understandable that we focus on the agency's failings. However, it is easy in such circumstances to lose our sense of perspective about this much-disparaged but indispensable government agency. In such times, we must recognize the difficulty of the mission that the IRS undertakes—and the success that it has had in carrying out that mission. The IRS processes roughly 200 million forms each year and collects nearly one and a half trillion dollars annually from over 100 million Americans—all with relatively few complaints. That is by no means a small accomplishment. We are proud that this Nation has a very high voluntary compliance rate—one that is the envy of the world. We must not forget that the vast majority of IRS employees are dedicated, hard-working civil servants who want to do a good job.

CHARLES B. RANGEL,
BARBARA B. KENNELLY,

SANDER LEVIN,
RICHARD E. NEAL,
WILLIAM J. JEFFERSON,
WILLIAM J. COYNE,
XAVIER BECERRA,
MICHAEL R. MCNULTY,
KAREN L. THURMAN.

ADDITIONAL VIEWS OF HON. BENJAMIN CARDIN AND HON. JOHN TANNER

H.R. 2676, the Internal Revenue Service Restructuring Act of 1997, represents strong, bipartisan legislation to reform the Internal Revenue Service. The bill builds on the recommendations of the National Commission on Restructuring the IRS. Under the leadership of our colleague Rob Portman and Sen. Bob Kerrey, the National Commission undertook a year-long study of the IRS, and has made a tremendous difference already in raising the level of concern and awareness of the problems that plague the agency.

We are very proud to have joined Rep. Portman in cosponsoring H.R. 2292, which has had strong bipartisan support in this House. H.R. 2676 takes that very good bill and makes it even better. We are especially pleased with two changes in the bill. First, it restores the appointment of the Commissioner to the President, and second, it clarifies the lines of authority from the Secretary of the Treasury to the Commissioner. With the support of the Clinton Administration, this bill is poised to move very quickly through the House.

The problems in the management and culture of the IRS are not a new revelation to anyone on this committee. While recent publicity has brought new media attention to these issues, those of us on this committee know that the problems are of long duration.

While these problems are stubborn and deeply-rooted, they are not beyond our reach. The legislation before us marks the first fundamental reform of the IRS in nearly half a century. It will bring a new structure to the IRS, a structure that is designed to change the way the IRS treats its customers, the American taxpayers.

The litany of problems at the IRS is familiar to all of us—billions of dollars squandered on a bungled computer modernization effort, telephones unanswered, taxpayers too often treated with disrespect or suspicion, an agency that is unable to balance its own books. These problems have not emerged recently—they are not the legacy of one administration, but of decades.

In fact, this administration, and particularly this Treasury Secretary, have been more attentive to the problems of the IRS and more dedicated in seeking solutions than any in recent years. Secretary Rubin has made important changes in the management of the IRS, and those efforts have begun to show results.

But much more remains to be done, and it is not realistic to expect that IRS reform can be accomplished without legislation and without bringing new expertise to the management of the Service. The solution proposed in this bill is the creation of an Oversight Board that will bring private sector expertise in the areas where the IRS needs it most. The creation of this Board, with real authority to approve the strategic plans, major reorganizations, and the budgets of the IRS, is the crucial element in bringing real reform to this troubled agency.

The Board members, appointed by the President and confirmed by the Senate, will work with the Secretary and the Commissioner to help reform the IRS in the areas of customer service, information technology, organizational development, and meeting the needs and concerns of taxpayers. The Oversight Board will bring the expertise the IRS lacks, and it will have the authority to help turn this agency around.

Under this bill, the Commissioner's budget, as approved by the Board, will be forwarded to the Congress along with the president's budget for the entire government. The Board-approved budget will not have legal force—Congress will still control the purse strings. But the Board's budget will give us a clear view of the needs and requirements of the IRS, and will be tremendously helpful as we implement the reforms of the agency.

Just as it is not realistic to expect that IRS reform can be accomplished without a new management structure, it is not realistic to expect the Oversight Board to do this work along. IRS reform will require a committed partnership between the Board, the Secretary, and the Commissioner, as well as the more constructive involvement from those of us here in Congress.

Legislative oversight of the IRS is too unfocused, too scattered, with too many masters and not enough coordination among committees. The bill masters and not enough coordination among committees. The bill attempts to bring some order and structure to the current system.

In addition to the governance and oversight provisions, the bill contains a new set of provisions to be added to the Taxpayer Bill of Rights. These provisions, when they are enacted, will mark the third TBOR. The provisions address many problems that taxpayers have encountered in dealing with the IRS, and their enactment will help solve those problems.

We would add, however, that the broader objective of this bill must be to change the culture of the IRS to make it a taxpayer-friendly organization to that future Taxpayer Bills of Rights will not be necessary.

The Internal Revenue Service is charged with the vital task of collecting the revenue needed to fund the basic and essential operations of government. When the IRS is mismanaged in ways that create fear and anxiety among taxpayers, the result is to undermine the confidence of the American people in their government. The purpose of this legislation is to reform the IRS so that we can begin to restore that badly damaged confidence.

BEN CARDIN.
JOHN TANNER.

ADDITIONAL VIEWS OF HON. XAVIER BECERRA

> The Pharisee stood and prayed thus with himself, "God, I thank thee that I am not like other men, extortioners, unjust, adulterers, or even like this tax collector."
> —Luke, Ch. 8, v. 11

> Taxes are what we pay for civilized society.
> —Justice Oliver Wendell Holmes

No one likes paying taxes; however, an effective tax system is fundamental to the health and stability of our nation. Reconciling these competing principles is a difficult balancing act that necessitates respect for both individual taxpayers and the Treasury (i.e. taxpayers collectively). In many respects, the Internal Revenue Service Restructuring and Reform Act of 1997 achieves the goal of transforming the IRS into a world class service agency. Unfortunately, it contains several troublesome provisions.

It is encouraging that both Republican and Democratic tax writers, in conjunction with the Administration, have committed themselves to reforming and improving the IRS. It would have been all too simple for either side to not engage in the difficult policy deliberations, and score political points by bashing the IRS. In today's world of sound-bite politics, that party would have scored easy points at the expense of America's taxpayers.

I remain vitally committed to the process of bringing many of these overdue reforms to the IRS. The Internal Revenue Service Restructuring and Reform Act is a workable bill, but several important changes can and should be made to it before it is signed into law by the President. I am hopeful that these changes will be made.

Shifting of the burden of proof

Section 301 of the Committee-passed bill contains a provision that, on a superficial reading, seems rather innocuous: shifting the burden of proof in civil tax cases from the taxpayer to the Internal Revenue Service. While this makes for good bumper sticker politics, it is bad tax policy, and poses the specter of a more, not less, intrusive tax collection agency.

Taxpayers have the burden of proof under current law in civil tax cases because they possess the relevant records and documents. It is a relatively simple matter for them to come forward with those records and disprove IRS's position in a tax dispute. Section 301 may provide an incentive for aggressive taxpayers, seeking the benefit of the burden shift, not to settle their disputes at the administrative level and litigate their disputes in court. Some taxpayers might be tempted not to keep records at all, effectively making it impossible for the IRS to verify whether a taxpayer's position is justified. In fact, the Joint Committee on Taxation has estimated

that shifting the burden of proof will lead to a significant amount of reduced taxpayer compliance.

The overwhelming majority of tax experts reject this provision as unwise and unworkable. To quote at length from a former Republican Commissioner of the Internal Revenue Service, Fred Goldberg:

> Most of us believe that the IRS is far too intrusive today, and that tax administration is far too cumbersome, contentious, and burdensome. Well, as the saying goes, "you ain't seen nothing yet." Change the burden of proof and IRS tactics of today will seem like child's play. Of necessity, the IRS would be forced to resort to far more aggressive techniques in auditing taxpayers and developing cases. Summonses, including third party summonses, would become routine. Expanded record-keeping requirements and increased litigation over discovery issues would be standard fare. In addition, the number of revenue agents and audits of taxpayers would likely increase dramatically. In the world of tax administration, it's hard to imagine a more well-intentioned idea that would have more undesirable consequences.

This is a frightening vision of the future of the IRS which runs counter to the spirit behind the Internal Revenue Restructuring and Reform Act. For that simple reason, it is imperative that the burden of proof provision be removed from the bill.

Board member's conflicts of interest

Another important area in which the Internal Revenue Restructuring and Reform Act should be improved is in its conflict of interest rules for the private-sector members of the newly minted IRS Oversight Board. The American people deserve a tax collection agency with the highest ethical standards; even the mere appearance of impropriety cannot be tolerated. In that vein, section 104 of this legislation contains a prohibition on executive branch interference in the collection and audit practices of the IRS. Quite simply, politics should not play a role in the important business of collecting the revenue necessary to fund the functions of government. I would note as an aside that there has been no credible allegations that this has been a problem at the IRS since the early 1970s; nevertheless, this is a meritorious provision which I support.

Unfortunately, similar rigorous standards of conduct were not imposed for the IRS Oversight Board members. The Ways and Means Committee failed to adopt an amendment offered by my fellow Californian, Rep. Stark. The Stark amendment would have prohibited Board members from representing clients in tax matters before the IRS or in court while a member of the Board and for a limited time thereafter. This proposal simply recognizes the impropriety—or, more importantly, the appearance of impropriety—of those charged with governing the IRS having an interest, or representing a party in a tax controversy, before the IRS. As most working Americans probably can attest (or guess), it would be difficult to be an impartial judge in a case involving your boss. While I have every confidence in the honesty and integrity of future

Board members, the defeat of the Stark amendment opens the possibility for improper dealing, threatening to erode the public's confidence in the integrity of our nation's tax collection system and, by extension, our high voluntary taxpayer compliance rate.

Disclosure of audit selection criteria

I am troubled by section 353 of the Internal Revenue Service Restructuring and Reform Act, which calls upon the Treasury Secretary to reveal the procedures by which returns are selected for audit by the IRS. Audits are an unfortunate—but necessary—element of our tax collection system; an element that recognizes that a not inconsequential minority of taxpayers do not fully comply with our nation's tax laws, and thereby force the vast majority of honest taxpayers to shoulder a greater load.

Section 353 contains a caveat that "[s]uch statement shall not include any information the disclosure of which would be detrimental to law enforcement." The provision would have been strengthened by the further recognition that such disclosure by the Treasury should not lead to a reduction involuntary tax compliance.

Joint committee on taxation approval of GAO studies

The Internal Revenue Service Restructuring and Reform Act contains many worthy provisions designed to streamline Congressional oversight of the IRS. All too often in the past, the IRS has had to answer to too many parties, draining valuable agency resources from the important business of collecting the proper amount of revenues while treating taxpayers with the respect and courtesy they deserve. The more that Congress speaks with one voice, the more the Service will be able to better prioritize its mission.

At the same time, oversight of the Executive branch is one of Congress's most important Constitutional functions. Great care must be taken in retooling these procedures. Accordingly, I believe that one of these oversight provisions in the IRS restructuring bill should be modified. Section 401 of the legislation requires the Joint Committee on Taxation (JCT) to approve all Congressional requests of the General Accounting Office (GAO) to conduct investigations into the IRS, except in the case of Chairman and Ranking Members of all Congressional Committees and Subcommittees. I would note that if this provision were law today, neither of the principal House sponsors of the instant legislation—Reps. Portman and Cardin—would be able to secure a GAO report on the IRS without JCT approval. Quite simply, I do not believe that members of Congressional committees with substantive jurisdiction over the nation's tax laws should be denied access to GAO's resources.

Conclusion

American taxpayers deserve a world class tax agency. There is no dispute on that point. The dispute arises in how to achieve that laudatory goal. In many respects, the Internal Revenue Service Restructuring and Reform Act accomplishes its purpose. However, the bill has a few serious defects—most notably, the provision shifting the burden of proof—that may lead to a more intrusive IRS, which is exactly the wrong direction to take our nation's tax collection

agency. I trust that these problems can be worked out in the bill as it makes its way through the legislative process.

XAVIER BECERRA.

IX. DISSENTING VIEWS

We submit our dissenting views on H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1997, with the goal of improving the bill in several critical areas as it proceeds through the Congress this year and next. We refuse to join in the Republican stampede to use this legislation as the forerunner to their efforts to "tear the IRS out by its roots" or as a political step in their year-long efforts to attack the IRS for the purpose of pursuing a campaign issue for the 1998 elections.

We should be clear that the examples of taxpayer abuse highlighted by the recent Senate Committee on Finance hearings are unacceptable and must be addressed. However, the IRS restructuring bill before the Committee had nothing to do with these cases. In fact, the IRS Oversight Board created by the bill would be specifically precluded from involving itself, in any manner, in the "law enforcement activities of the IRS, including criminal investigations, examinations, and collection activities." The issue debated by the Committee focused on overall governance of the IRS, not abuses of the system in individual cases. In fact, administrative actions already have begun to be taken by the IRS and Treasury to provide relief to the taxpayers appearing before the Congress and to hundreds of other taxpayers, nationwide, which will resolve the problem cases—long before H.R. 2676 is enacted into law.

Nonetheless, there is much about which we all agree. The IRS needs to improve its customer service, training of employees, and development and application of technology; oversight of the IRS needs to be enhanced, with significant input from the Department of the Treasury and the advice of the private sector; the IRS Commissioner needs to have flexibility in hiring a topnotch team, and to remain as head of the IRS for at least 5 years; electronic tax filings need to be enhanced and encouraged; protections for taxpayers, in their efforts to comply with the tax laws, need to be expanded; and, the Congress needs to better coordinate and focus its oversight and funding responsibilities with regard to the IRS. To the extent the bill addresses these issues, it has our support.

However, there are several fundamental problems with the focus and direction of H.R. 2676 which should not go unnoted. These serve as the basis for our dissent.

Executive branch governance

We believe that mechanisms should be established to provide for consistent direction of a long-term strategy at the IRS and for holding IRS management accountable for its decisions and operations. Similarly, it is important that the IRS have systematic input from the Department of the Treasury and the private sector on critical aspects of IRS management, operations, and taxpayer services.

However, we do not believe that individual taxpayers from the private sector should have final decision-making authority over any fundamental aspect of the IRS's administration of the tax laws. Allowing eight private-sector individuals to make final decisions about the IRS's strategic plans, reorganization plans, and annual budget, raises basic and fundamental questions of accountability.

Under the bill, it is clear that the new private-sector Board would be integrally involved in the most "taxpayer sensitive" aspects of IRS's administration of the tax laws. Specifically, the Board would be given "decisive approval" authority over the agency-wide strategic plan, budget, and organizational structure. These key management tools define the priorities and goals of the IRS—particularly the IRS's priorities in the area of compliance, examinations and collections. We think that the result of H.R. 2676 is unacceptable, and that the bill's governance plans would result in an unprecedented transfer of governmental authority to individual taxpayers.

The bill also is flawed fundamentally in its failure to address the fact that the Oversight Board largely will be comprised of private-sector individuals. These Board members will be private-citizen taxpayers for 353 days a year and quasi-government employees 12 days a year. The potential for conflict of interest (both real and perceived) is guaranteed, since the Board members will be given real authorities and powers, not just expert advisory responsibilities.

In fact, during the Committee debate on the bill, clarification was requested concerning whether a Board member would be able to represent a client or employer in a tax dispute with the IRS during his or her tenure on the Board. There was agreement that the bill language was not intended to allow such conflict of interest. However, an amendment offered by Rep. Pete Stark—to insure that the statutory language would be changed to reflect the Committee's intent—was defeated by the Republicans. Included in this amendment was clarification that Board members would be subject to post-employment rules similar to those applicable to an IRS Commissioner.

The conflict-of-interest problems in the bill go even deeper—and have been conveniently ignored. What are the Board members' ethical obligations with regard to disclosure of financial interests, such as stock holdings? Under the bill, Board members would not be required to file annual reports under the Ethics in Government Act. Also, the Republicans have gone to great lengths to publicize that the present nominee for IRS Commissioner appropriately will divest his holdings in interests which may conflict with his duties to administer properly the tax laws. What are the Board members' ethical obligations to divest conflicting assets? Under the bill, there is no requirement that any of the eight private-sector Board members divest conflicting holdings, yet they would have fundamental approval authority over the IRS's direction, mission, and accountability to the public.

Tax simplification

We all agree that the tax laws are too complex and must be simplified. However, simplifying the tax laws takes more than political rhetoric and blaming those merely trying to administer the tax

laws. Many of those arguing that the IRS cannot effectively administer the tax rules are the same people responsible for making the tax system worse. An easy example is the myriad of miscellaneous credits, phase-outs, phase-ins, floors, and income limits contained in the Taxpayer Relief Act of 1997.

Ironically, the Republicans could not even pass their prize accomplishment in simple form—capital gains tax relief. The IRS estimates that claiming capital gains tax relief now will take over four hours to calculate and that the IRS will not even be able to process the required capital gains forms for tax year 1997 until February 1998.

It is clear to us that much of the current debate is no more than hollow political rhetoric. For example, during the Committee's debate on the Taxpayer Relief Act, Rep. Jim McDermott offered an amendment which would have reduced the marriage penalty of prior law (where some married couples who both have relatively equal incomes pay more income tax than they would as two single taxpayers filing individual returns). The amendment was defeated by Republicans on a party-line vote. The bill, as enacted, worsened the marriage penalty. Now, a number of the same Members of Congress who helped develop the many new inequities and complexities of the 1997 Act decry the IRS's inability to easily administer the law. In the case of the marriage penalty, some of those same Members now have announced that solving the marriage penalty is their highest priority. Unfortunately, it is all too easy to understand taxpayers' cynicism as they see the games played by many of their elected officials.

Burden of proof

We continue to have serious concerns about the provision in the bill that shifts the burden of proof from taxpayers to the IRS. We believe that the provision will have unintended negative consequences for both taxpayers and the tax administration system. The burden of proof is the result of long-standing judicial decisions to facilitate the finding of fact. Taxpayers in civil tax matters are required to justify their income tax liabilities because the taxpayers control the underlying facts and the records. We believe that most of the revenue loss attributable to the provision is due to additional taxpayer noncompliance. We believe that shifting the burden of proof will require the IRS to conduct more intrusive and aggressive examinations, and that the provision will assist aggressive taxpayers avoid taxation and induce some taxpayers not to keep records at all. We intend to work toward improving the burden of proof provision to insure that it does not increase noncompliance and that it does not serve as an incentive for taxpayers to cease retention of appropriate records.

Influencing IRS audits

We find it intriguing that the bill imposes criminal sanctions on the President, Vice President, and Cabinet officials (with limited exceptions) for requesting that the IRS conduct or terminate an audit of a specific taxpayer. While the Republican Committee Members went to great lengths to clarify that they knew of no such abuse by the Executive Branch, they seem to have intentionally ex-

cluded those individuals in a clear position to influence taxpayer audits and collection activity—Members of Congress—particularly those in positions of great power.

Conclusion

The Republicans are in the process of perfecting the political "perpetual motion" machine, and are going through their political consultant's dance steps with unusual skill. We have not been fooled. The public will not be fooled, either.

PETE STARK,
ROBERT T. MATSUI,
JIM MCDERMOTT,
JOHN LEWIS.

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