110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { 110–584

TAXPAYER ASSISTANCE AND SIMPLIFICATION ACT OF 2008

APRIL 14, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5719]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5719) to amend the Internal Revenue Code of 1986 to conform return preparer penalty standards, delay implementation of withholding taxes on government contractors, enhance taxpayer protections, assist low-income taxpayers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Assistance and Simplification Act of 2008".

(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.—The table of contents of this Act is as follows:

Sec. 1. Short title, etc.
Sec. 2. Modification of penalty on understatement of taxpayer's liability by tax return preparer.
Sec. 3. Removal of cellular telephones (or similar telecommunications equipment) from listed property.
Sec. 4. Delay of application of withholding requirement on certain governmental payments for goods and services.

69–006

Sec. 5. Elderly and disabled individuals receiving in-home care under certain government programs not subject to employment tax provisions.
Sec. 6. Referrals to low income taxpayer clinics permitted.
Sec. 7. Programs for the benefit of low-income taxpayers.
Sec. 8. EITC outreach.
Sec. 9. Prohibition on IRS debt indicators for predatory refund anticipation loans.
Sec. 10. Study on delivery of tax refunds.
Sec. 11. Extension of time for return of property for wrongful levy.
Sec. 12. Individuals held harmless on wrongful levy, etc., on individual retirement plan.
Sec. 13. Taxpayer notification of suspected identity theft.
Sec. 14. Repeal of authority to enter into private debt collection contracts.
Sec. 15. Clarification of IRS unclaimed refund authority.
Sec. 16. Prohibition on misuse of Department of the Treasury names and symbols.
Sec. 17. Substantiation of amounts paid or distributed out of health savings account.
Sec. 18. Certain domestically controlled foreign persons performing services under contract with United States Government treated as American employers.
Sec. 19. Time for payment of corporate estimated tax.

SEC. 2. MODIFICATION OF PENALTY ON UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY TAX RETURN PREPARER.

(a) IN GENERAL.—Subsection (a) of section 6694 (relating to understatement due to unreasonable positions) is amended to read as follows:

"(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

"(1) IN GENERAL.—If a tax return preparer—

"(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

"(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

"(2) UNREASONABLE POSITION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

"(B) DISCLOSED POSITIONS.—If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

"(C) TAX SHELTERS AND REPORTABLE TRANSACTIONS.—If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply—

(1) in the case of a position described in subparagraph (A) or (B) of section 6694(a)(2) of the Internal Revenue Code of 1986 (as amended by this section), to returns prepared after May 25, 2007, and

(2) in the case of a position described in subparagraph (C) of such section (as amended by this section), to returns prepared for taxable years ending after the date of the enactment of this Act.

SEC. 3. REMOVAL OF CELLULAR TELEPHONES (OR SIMILAR TELECOMMUNICATIONS EQUIPMENT) FROM LISTED PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 280F(d)(4) (defining listed property) is amended by inserting "and" at the end of clause (iv), by striking clause (v), and by redesignating clause (vi) as clause (v).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2008.

SEC. 4. DELAY OF APPLICATION OF WITHHOLDING REQUIREMENT ON CERTAIN GOVERNMENTAL PAYMENTS FOR GOODS AND SERVICES.

(a) IN GENERAL.—Subsection (b) of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking "December 31, 2010" and inserting "December 31, 2011".

(b) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report with respect to the withholding requirements of section 3402(t) of the Internal Revenue Code of 1986, including a detailed analysis of—

(1) the problems, if any, which are anticipated in administering and complying with such requirements,

(2) the burdens, if any, that such requirements will place on governments and businesses (taking into account such mechanisms as may be necessary to administer such requirements), and

(3) the application of such requirements to small expenditures for services and goods by governments.

SEC. 5. ELDERLY AND DISABLED INDIVIDUALS RECEIVING IN-HOME CARE UNDER CERTAIN GOVERNMENT PROGRAMS NOT SUBJECT TO EMPLOYMENT TAX PROVISIONS.

(a) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end the following new section:

"SEC. 3511. ELDERLY AND DISABLED INDIVIDUALS RECEIVING IN-HOME CARE UNDER CERTAIN GOVERNMENT PROGRAMS.

"(a) IN GENERAL.—In the case of amounts paid under a home care service program to a home care service provider by the fiscal administrator of such program—

"(1) the home care service recipient shall not be liable for the payment of any taxes imposed under this subtitle with respect to amounts paid for the provision of services under such program, and

"(2) the fiscal administrator shall be so liable.

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

"(1) HOME CARE SERVICE PROGRAM.—The term 'home care service program' means a State or local government program—

"(A) any portion of which is funded with Federal funds, and

"(B) under which domestic services are provided to elderly or disabled individuals in their homes.

Such term shall not include any program to the extent home care service recipients make payments to the home care service providers for such in-home domestic services.

"(2) HOME CARE SERVICE PROVIDER.—The term 'home care service provider' means any individual who provides domestic services to a home care service recipient under a home care service program.

"(3) HOME CARE SERVICE RECIPIENT.—The term 'home care service recipient' means any individual receiving domestic services under a home care service program.

"(4) FISCAL ADMINISTRATOR.—The term 'fiscal administrator' means any person or governmental entity who pays amounts under a home care service program to home care service providers for the provision of domestic services under such program.

"(c) RETURNS BY FISCAL ADMINISTRATOR.—For purposes of this section—

"(1) IN GENERAL.—Returns relating to taxes imposed or amounts required to be withheld under this subtitle shall be made under the identifying number of the fiscal administrator.

"(2) IDENTIFICATION OF SERVICE RECIPIENT.—The fiscal administrator shall, to the extent required under regulations prescribed by the Secretary, make a return setting forth—

"(A) the name, address, and identifying number of each home care service recipient for whom amounts are paid by such fiscal administrator under the home care services program, and

"(B) such other information as the Secretary may require.

"(d) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including requiring deposits of any tax imposed under this subtitle.".

(b) SERVICE RECIPIENT IDENTIFICATION RETURN TREATED AS INFORMATION RETURN.—Paragraph (3) of section 6724(d) is amended by striking "and" at the end of subparagraph (C)(ii), by striking the period at the end of subparagraph (D)(ii) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) any requirement under section 3511(c)(2).".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end the following new item:

"Sec. 3511. Elderly and disabled individuals receiving in-home care under certain government programs.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid after December 31, 2008.

SEC. 6. REFERRALS TO LOW INCOME TAXPAYER CLINICS PERMITTED.

(a) IN GENERAL.—Subsection (c) of section 7526 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(6) TREASURY EMPLOYEES PERMITTED TO REFER TAXPAYERS TO QUALIFIED LOW-INCOME TAXPAYER CLINICS.—Notwithstanding any other provision of law,

officers and employees of the Department of the Treasury may refer taxpayers for advice and assistance to qualified low-income taxpayer clinics receiving funding under this section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to referrals made after the date of the enactment of this Act.

SEC. 7. PROGRAMS FOR THE BENEFIT OF LOW-INCOME TAXPAYERS.

(a) VOLUNTEER INCOME TAX ASSISTANCE PROGRAMS.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

''SEC. 7526A. VOLUNTEER INCOME TAX ASSISTANCE PROGRAMS.

''(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of volunteer income tax assistance programs.

''(b) VOLUNTEER INCOME TAX ASSISTANCE PROGRAM.—For purposes of this section, the term 'volunteer income tax assistance program' means a program—

''(1) which does not charge taxpayers for its return preparation services,

''(2) which operates programs to assist low and moderate-income (as determined by the Secretary) taxpayers in preparing and filing their Federal income tax returns, and

''(3) in which all of the volunteers who assist in the preparation of Federal income tax returns meet the requirements prescribed by the Secretary.

''(c) SPECIAL RULES AND LIMITATIONS.—

''(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

''(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (6) of section 7526(c) shall apply with respect to the awarding of grants to volunteer income tax assistance programs.''.

(b) INCREASE IN AUTHORIZED GRANTS FOR LOW-INCOME TAXPAYER CLINICS.—Paragraph (1) of section 7526(c) (relating to aggregate limitation) is amended by striking ''$6,000,000'' and inserting ''$10,000,000''.

(c) CLERICAL AMENDMENTS.—

(1) Section 7526(c)(5) is amended by inserting ''qualified'' before ''low-income''.

(2) The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

''Sec. 7526A. Volunteer income tax assistance programs.''.

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

SEC. 8. EITC OUTREACH.

(a) IN GENERAL.—Section 32 (relating to earned income) is amended by adding at the end the following new subsection:

''(n) NOTIFICATION OF POTENTIAL ELIGIBILITY FOR CREDIT AND REFUND.—

''(1) IN GENERAL.—To the extent possible and on an annual basis, the Secretary shall provide to each taxpayer who—

''(A) for any preceding taxable year for which credit or refund is not precluded by section 6511, and

''(B) did not claim the credit under subsection (a) but may be allowed such credit for any such taxable year based on return or return information (as defined in section 6103(b)) available to the Secretary,

notice that such taxpayer may be eligible to claim such credit and a refund for such taxable year.

''(2) NOTICE.—Notice provided under paragraph (1) shall be in writing and sent to the last known address of the taxpayer.''.

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

SEC. 9. PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.

(a) IN GENERAL.—Subsection (f) of section 6011 (relating to promotion of electronic filing) is amended by adding at the end the following new paragraph:

''(3) PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.—

''(A) IN GENERAL.—In carrying out any program under this subsection, the Secretary shall not provide a debt indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory.

"(B) REFUND ANTICIPATION LOAN.—For purposes of this paragraph, the term 'refund anticipation loan' means a loan of money or of any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund.

"(C) IRS DEBT INDICATOR.—For purposes of this paragraph, the term 'debt indicator' means a notification provided through a tax return's acknowledgment file that a refund will be offset to repay debts for delinquent Federal or State taxes, student loans, child support, or other Federal agency debt.".

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

SEC. 10. STUDY ON DELIVERY OF TAX REFUNDS.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the National Taxpayer Advocate, shall conduct a study on the feasibility of delivering tax refunds on debit cards, prepaid cards, and other electronic means to assist individuals that do not have access to financial accounts or institutions.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to Congress containing the results of the study conducted under subsection (a).

SEC. 11. EXTENSION OF TIME FOR RETURN OF PROPERTY FOR WRONGFUL LEVY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking "9 months" and inserting "2 years".

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking "9 months" and inserting "2 years", and

(2) in paragraph (2) by striking "9-month" and inserting "2-year".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 12. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

"(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

"(A) the amount of money returned by the Secretary on account of such levy, and

"(B) interest paid under subsection (c) on such amount of money,

may be deposited into such individual retirement plan or any other individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted. An amount may not be deposited into a Roth IRA under the preceding sentence unless the individual retirement plan levied upon was a Roth IRA at the time of such levy.

"(2) TREATMENT AS ROLLOVER.—If amounts are deposited into an individual retirement plan under paragraph (1) not later than the 60th day after the date on which the individual receives the amounts under paragraph (1)—

"(A) such deposit shall be treated as a rollover described in section 408(d)(3)(A)(i),

"(B) to the extent the deposit includes interest paid under subsection (c), such interest shall not be includible in gross income, and

"(C) such deposit shall not be taken into account under section 408(d)(3)(B).

For purposes of subparagraph (B), an amount shall be treated as interest only to the extent that the amount deposited exceeds the amount of the levy.

"(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

"(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination

described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

SEC. 13. TAXPAYER NOTIFICATION OF SUSPECTED IDENTITY THEFT.

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

''SEC. 7529. NOTIFICATION OF SUSPECTED IDENTITY THEFT.

''If, in the course of an investigation under the internal revenue laws, the Secretary determines that there was or may have been an unauthorized use of the identity of the taxpayer or a dependent of the taxpayer, the Secretary shall, to the extent permitted by law—

''(1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination, and

''(2) if any person is criminally charged by indictment or information with respect to such unauthorized use, notify such taxpayer as soon as practicable of such charge.''.

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

''Sec. 7529. Notification of suspected identity theft.''.

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

SEC. 14. REPEAL OF AUTHORITY TO ENTER INTO PRIVATE DEBT COLLECTION CONTRACTS.

(a) IN GENERAL.—Subchapter A of chapter 64 is amended by striking section 6306.

(b) CONFORMING AMENDMENTS.—

(1) Subchapter B of chapter 76 is amended by striking section 7433A.

(2) Section 7811 is amended by striking subsection (g).

(3) Section 1203 of the Internal Revenue Service Restructuring Act of 1998 is amended by striking subsection (e).

(4) The table of sections for subchapter A of chapter 64 is amended by striking the item relating to section 6306.

(5) The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7433A.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTION FOR EXISTING CONTRACTS, ETC.—The amendments made by this section shall not apply to any contract which was entered into before March 1, 2008, and is not renewed or extended on or after such date.

(3) UNAUTHORIZED CONTRACTS AND EXTENSIONS TREATED AS VOID.—Any qualified tax collection contract (as defined in section 6306 of the Internal Revenue Code of 1986, as in effect before its repeal) which is entered into on or after March 1, 2008, and any extension or renewal on or after such date of any qualified tax collection contract (as so defined), shall be void.

SEC. 15. CLARIFICATION OF IRS UNCLAIMED REFUND AUTHORITY.

Paragraph (1) of section 6103(m) (relating to tax refunds) is amended by inserting '', and through any other means of mass communication,'' after ''media''.

SEC. 16. PROHIBITION ON MISUSE OF DEPARTMENT OF THE TREASURY NAMES AND SYMBOLS.

(a) IN GENERAL.—Subsection (a) of section 333 of title 31, United States Code, is amended by inserting ''Internet domain address,'' after ''solicitation,'' both places it appears.

(b) PENALTY FOR MISUSE BY ELECTRONIC MEANS.—Subsections (c)(2) and (d)(1) of section 333 of such Code are each amended by inserting ''or any other mass communications by electronic means,'' after ''telecast,''.

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

SEC. 17. SUBSTANTIATION OF AMOUNTS PAID OR DISTRIBUTED OUT OF HEALTH SAVINGS ACCOUNT.

(a) IN GENERAL.—Paragraph (1) of section 223(f) (relating to amounts used for qualified medical expenses) is amended by inserting ''(and, in the case of amounts paid or distributed after December 31, 2010, substantiated in a manner similar to

the substantiation required for flexible spending arrangements)" after "account beneficiary".

(b) REPORTS.—Subsection (h) of section 223 (relating to reports) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(2) by moving the text of subparagraphs (A) and (B) (as so redesignated) and the last sentence 2 ems to the right,

(3) by striking "(h) REPORTS.—The Secretary may require—" and inserting the following:

"(h) REPORTS.—

"(1) IN GENERAL.—The Secretary may require—", and

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

"(2) RELATING TO SUBSTANTIATION.—Not later than January 15 of each calendar year after 2011, the trustee of a health savings account shall make a report regarding such account to the Secretary and the account beneficiary setting forth—

"(A) the name, address, and identifying number of the account beneficiary, and

"(B) the amount paid or distributed out of such account for the preceding calendar year not substantiated in accordance with subsection (f)(1).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to amounts paid or distributed out of health savings accounts after December 31, 2010.

SEC. 18. CERTAIN DOMESTICALLY CONTROLLED FOREIGN PERSONS PERFORMING SERVICES UNDER CONTRACT WITH UNITED STATES GOVERNMENT TREATED AS AMERICAN EMPLOYERS.

(a) FICA TAXES.—Section 3121 (relating to definitions) is amended by adding at the end the following new subsection:

"(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS AMERICAN EMPLOYERS.—

"(1) IN GENERAL.—If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

"(2) DOMESTICALLY CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'domestically controlled group of entities' means a controlled group of entities the common parent of which is a domestic corporation.

"(B) CONTROLLED GROUP OF ENTITIES.—The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

"(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

"(3) LIABILITY OF COMMON PARENT.—In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

"(4) COORDINATION.—Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (l).

"(5) CROSS REFERENCE.—For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).".

(b) SOCIAL SECURITY BENEFITS.—Subsection (e) of section 210 of the Social Security Act (42 U.S.C. 410(e)) is amended—

(1) by striking "(e) The term" and inserting "(e)(1) The term",

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively, and

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

"(2)(A) If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated as an American employer with respect to such services performed by such employee.

"(B) For purposes of this paragraph—

"(i) The term 'domestically controlled group of entities' means a controlled group of entities the common parent of which is a domestic corporation.

"(ii) The term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, except that—

"(I) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein, and

"(II) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563 of such Code.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).".

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

SEC. 19. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAX.

The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 0.25 percentage points.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 5719, as amended, includes provisions to enhance taxpayer protections and outreach, delay implementation of withholding taxes on government payments, and repeal the authority of the Internal Revenue Service ("IRS") to use private debt collection companies, among other purposes.

SUMMARY

Effective as of the date of enactment of the Small Business and Work Opportunity Tax Act of 2007 (May 25, 2007), the bill generally conforms the understatement penalty standards for tax return preparers with those for taxpayers. Effective for taxable years beginning after December 31, 2008, the bill removes cellular telephones and similar telecommunications equipment from the definition of listed property and the corresponding heightened substantiation requirements. The bill delays until January 1, 2012, the effective date of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, which imposes withholding at the rate of three percent on certain government payments. Effective for amounts paid after December 31, 2008, the bill provides that fiscal administrators directly paying wages to a home care worker under certain State and local programs are liable for employment taxes, not the home care recipients. Effective for referrals made after the date of enactment, the bill allows IRS employees to refer taxpayers to qualified low-income taxpayer clinics. The bill codifies volunteer income tax programs to provide low- and moderate-income taxpayers with tax return preparation and filing services and increases to $10 million the annual grants that can be made to exist-

ing qualified low-income taxpayer clinics. Effective after the date of enactment, the bill expands IRS notice requirements relating to EIC outreach. Effective on the date of enactment, the bill prohibits the IRS from providing a debt indicator to any person with respect to a refund anticipation loan determined by the Secretary to be predatory. The bill requires an IRS study of the feasibility of delivering tax refunds on debit cards and by other means. Generally effective for levies made after the date of enactment, the bill extends from nine months to two years the time limits for returning money and the monetary proceeds from the sale of property that has been wrongfully levied, and for bringing a civil action for wrongful levy, respectively. Effective for levied amounts returned to individuals after the date of enactment, the bill holds individuals harmless on the improper levy on an individual retirement plan. Effective for determinations made after the date of enactment, the bill requires the IRS to (1) notify a taxpayer if the IRS determines during a tax investigation that there may have been an unauthorized use of a taxpayer's identity or that of the taxpayer's dependents (if disclosure will not jeopardize a tax investigation); and (2) notify the taxpayer if any person is criminally charged by indictment or information relating to such unauthorized use The bill repeals the authority for the IRS to enter into, renew, or extend any private debt collection contract, except that existing contracts may continue through their current term without renewal. Effective on the date of enactment, the bill allows the IRS to use any means of mass communication, including the internet, to notify taxpayers of undelivered refunds. The bill clarifies the penalties for the misuse of Department of the Treasury names and symbols. Effective for amounts paid or distributed out of a health savings account after December 31, 2010, the bill requires substantiation of qualified medical expenses and requires reporting of unsubstantiated distributions. With respect to services performed after the date of enactment, the bill provides that wages paid for services performed by a U.S. citizen or resident outside the United States under a U.S. Government contract are subject to employment taxes if the employer is a foreign subsidiary of a U.S. parent company. Finally, the bill modifies the July, August, and September 2013 estimated tax payments requirements for corporations with assets of at least $1 billion.

B. Background and Need for Legislation

Oversight of the IRS's administration of the tax laws often requires legislative action to enhance taxpayer protections and facilitate IRS operations. The IRS in administering the Federal tax laws needs additional tools to assist and reach out to taxpayers. Moreover, the collection of Federal income taxes is a core governmental function that should be restricted to IRS employees. The bill protects taxpayers by repealing the authorization for the IRS to use private contractors to collect Federal income taxes, by providing additional taxpayer protections, and generally bolstering the outreach efforts of the IRS.

C. Legislative History

Background

H.R. 5719 was introduced in the House of Representatives on April 8, 2008; and was referred to the Committee on Ways and Means.

Subcommittee action

On February 13, 2007, the Subcommittee on Oversight of the Committee on Ways and Means held a hearing on Earned Income Tax Credit outreach, and took testimony from invited witnesses. On March 13, 2008, the Subcommittee held a hearing on IRS operations, budget proposals, and the IRS National Taxpayer Advocate's annual report.

Committee action

On May 23, 2007, the Committee on Ways and Means held a hearing on the IRS's use of private debt collection companies to collect Federal income taxes.

The Committee on Ways and Means marked up the bill, H.R. 5719, on April 9, 2008, and ordered the bill, as amended, favorably reported.

II. EXPLANATION OF THE BILL

A. Modified Standard for Imposition of Tax Return Preparer Penalties (Sec. 2 of the Bill and Sec. 6694 of the Code)

PRESENT LAW

Taxpayer standards

Present law imposes accuracy-related penalties on a taxpayer at a rate of 20 percent of the portion of any underpayment that is attributable to any substantial understatement of income tax. In determining whether a substantial understatement exists, the amount of the understatement generally is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment.

In the case of a tax shelter item of a non-corporate taxpayer, the substantial understatement penalty does not apply if the taxpayer had substantial authority for the tax position and the taxpayer can demonstrate that he or she had a reasonable belief that the position is "more likely than not" the proper treatment. A taxpayer will be considered to have a reasonable belief that the treatment is more likely than not the proper treatment if the taxpayer relies upon the opinion of a professional advisor and the opinion is based upon the pertinent facts and authorities analyzed similar to the manner described in the substantial authority standard.[1]

Tax return preparer standards

Prior to enactment of the Small Business and Work Opportunity Tax Act of 2007, an income tax return preparer who prepared a tax

[1] Treas. Reg. sec 1.6662–4(g).

return with respect to which there was an understatement of tax that was due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits was liable for a $250 penalty. For a disclosed position, the preparer was liable only if the position was frivolous.

Legislation enacted as part of the Small Business and Work Opportunity Tax Act of 2007 broadened the scope of the preparer penalty by applying it to all tax return preparers and altered the standards of conduct a tax return preparer is required to meet in order to avoid the imposition of penalties for the preparation of a return with respect to which there is an understatement of tax. A tax return preparer now can be penalized for preparing a return on which there is an understatement of tax liability as a result of an "unreasonable position." Any position that a return preparer does not reasonably believe is more likely than not to be sustained on its merits is an "unreasonable position" unless the position is disclosed on the return and there is a reasonable basis for the position.

In general, the term "tax return preparer" is broadly defined as any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or any claim for refund of tax.[2] Preparation of a substantial portion of a return is treated as if it were the preparation of such return.

REASONS FOR CHANGE

The Committee believes that the standards of conduct for taxpayers and return preparers generally should be uniform. The Committee believes that the present-law standard for return preparers, which is generally higher than that for taxpayers, can result in a conflict of interest for return preparers. The conflict of interest arises because it is in the interest of a preparer to advise his taxpayer client to either disclose a tax position or alter such position in order to avoid the preparer penalty, even though the taxpayer could legally and appropriately take the position without disclosure or facing penalties. This may have the unintended consequence of causing taxpayers to be less inclined to use the services of professional tax preparers, which could harm the system of tax collections. Thus, the Committee believes the standards of conduct for taxpayers and return preparers generally should be uniform.

EXPLANATION OF PROVISION

The provision changes the standards for imposition of the tax return preparer penalty. The preparer standard for undisclosed positions is reduced to "substantial authority." The preparer standard for disclosed positions is "reasonable basis." For tax shelters and reportable transactions to which section 6662A applies (i.e., listed transactions and reportable transactions with significant avoidance or evasion purposes), a tax return preparer is required to have a reasonable belief that such a transaction was more likely than not to be sustained on its merits.

[2] Sec. 7701(a)(36)(A).

EFFECTIVE DATE

The provision generally is effective with respect to returns prepared after May 25, 2007. In the case of tax shelters and reportable transactions, the provision is effective for returns prepared for taxable years ending after the date of enactment.

B. Removal of Cellular Telephones (or Similar Telecommunications Equipment) From Listed Property (Sec. 3 of the Bill and Sec. 280F of the Code)

PRESENT LAW

Employer deduction

Property, including cellular telephones and similar equipment, used in carrying on a trade or business is subject to the general rules for deducting ordinary and necessary expenses under section 162. Under these rules, a taxpayer may properly claim depreciation deductions under the applicable cost recovery rules for only the portion of the cost of the property that is attributable to use in a trade or business.[3] Similarly, the business portion of monthly telecommunication service is generally deductible, subject to capitalization rules, as an ordinary and necessary expense of carrying on a trade or business.

In the case of certain listed property, special rules apply. Listed property generally is defined as (1) any passenger automobile; (2) any other property used as a means of transportation; (3) any property of a type generally used for purposes of entertainment, recreation; or amusement; (4) any computer or peripheral equipment; (5) any cellular telephone (or other similar telecommunications equipment);[4] and (6) any other property of a type specified in Treasury regulations.[5]

For listed property, no deduction is allowed unless the taxpayer adequately substantiates the expense and business usage of the property.[6] Under the applicable regulations, a taxpayer must substantiate the elements of each expenditure or use of listed property, including (1) the amount (e.g., cost) of each separate expenditure and the amount of business or investment use, based on the appropriate measure (e.g., mileage for automobiles), and the total use of the property for the taxable period, (2) the date of the expenditure or use, and (3) the business purposes for the expenditure or use.[7] The level of substantiation for business or investment use of listed property varies depending on the facts and circumstances. In general, the substantiation must contain sufficient information as to each element of every business or investment use.[8]

With regard to the business use of listed property made available by an employer for use by an employee, the employer generally may rely on adequate records maintained and retained by the employee or on the employee's own statement if it is corroborated by

[3] Sec. 212 allows deductions for ordinary and necessary expenses paid or incurred for the production or collection of income.

[4] Cellular telephones (or other similar telecommunications equipment) were added as listed property as part of the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101–239, sec. 7643 (1989).

[5] Sec. 280F(d)(4)(A).

[6] Sec. 274(d)(4).

[7] Temp. Reg. sec. 1.274–5T(b)(6).

[8] Temp. Reg. sec. 1.274–5T(c)(2)(ii)(C).

other sufficient evidence, unless the employer knows or has reason to know that the statement, records, or other evidence are not accurate.[9]

Taxation of employee

Gross income includes all income unless a specific exclusion applies.[10] Exclusions from gross income are provided in the case of certain fringe benefits.[11] Gross income does not include the value of de minimis fringe benefits. A de minimis fringe is any property or service the value of which is (after taking into account the frequency in which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. An exclusion from employee gross income also is provided in the case of a working condition fringe.[12] A working condition fringe is any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.[13] Treasury regulations provide that an employee may not exclude from gross income as a working condition fringe the value of listed property provided by an employer to the employee, unless the employee substantiates for the period of availability the amount of the exclusion in accordance with the substantiation requirements discussed above.[14] In general, under such requirements, in the case of listed property, the working condition fringe exception is allowed only in the case of substantiation of the employee's personal use of the property and the employer's inclusion of an appropriate amount (based on such personal use) in the employee's come.[15]

Cost recovery

A taxpayer is allowed to recover through annual depreciation deductions the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the taxpayer's depreciation deduction would be maximized.

In the case of certain listed property, special depreciation rules apply. First, if for the taxable year that the property is placed in service the use of the property for trade or business purposes does not exceed 50 percent of the total use of the property, then the depreciation deduction with respect to such property is determined

[9] Temp. Reg. sec. 1.274–5T(e)(2)(ii).
[10] Sec. 61.
[11] Sec. 132.
[12] Sec. 132(a)(3).
[13] Sec. 132(d).
[14] Temp. Reg. sec. 1.274–5T(e)(1).
[15] Temp. Reg. sec. 1.274–5T(e)(2).

under the alternative depreciation system.[16] The alternative depreciation system generally requires the use of the straight-line method and a recovery period equal to the class life of the property.[17] Second, if an individual owns or leases listed property that is used by the individual in connection with the performance of services as an employee, no depreciation deduction, expensing allowance, or deduction for lease payments is available with respect to such use unless the use of the property is for the convenience of the employer and required as a condition of employment.[18]

REASONS FOR CHANGE

In 1989, when Congress passed a law requiring taxpayers to document cellular telephone use, cellular telephones were an expensive perk for executives. Over time, the usage of these communication devices has become ubiquitous with the availability of less expensive airtime and unlimited usage plans. Today, in many cases, these communication devices simply represent an extension of the business day and workplace. As a result, the Committee believes that the present law heightened substantiation requirements place an unnecessary and time-consuming administrative burden upon taxpayers and should be eliminated.

EXPLANATION OF PROVISION

The provision removes cellular telephones (or other similar telecommunications equipment) from the definition of listed property. Thus, under the provision, the heightened substantiation requirements that apply to listed property do not apply to cellular telephones (or other similar telecommunications equipment).

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2008.

C. DELAYED IMPLEMENTATION OF GOVERNMENT WITHHOLDING REQUIREMENT (SEC. 4 OF THE BILL AND SEC. 3402(t) OF THE CODE)

PRESENT LAW

For payments made after December 31, 2010, the Code requires withholding at a three-percent rate on certain payments to persons providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies). The withholding requirement applies regardless of whether the government entity making such payment is the recipient of the property or services. Political subdivisions of States (or any instrumentality thereof) with less than $100 million of annual expenditures for property or services that would otherwise be subject to

[16] Sec. 280F(b)(1). If for any taxable year after the year in which the property is placed in service the use of the property for trade or business purposes decreases to 50 percent or less of the total use of the property, than the amount of depreciation allowed in prior years in excess of the amount of depreciation that would have been allowed for such prior years under the alternative depreciation system is recaptured (i.e., included in gross income) for such taxable year.
[17] Sec. 168(g).
[18] Sec. 280F(d)(3).

withholding under this provision are exempt from the withholding requirement.

Payments subject to the three-percent withholding include any payment made in connection with a government voucher or certificate program which functions as a payment for property or services. For example, payments to a commodity producer under a government commodity support program are subject to the withholding requirement. The provision imposes information reporting requirements on the payments that are subject to withholding under the provision.

The three-percent withholding requirement does not apply to any payments made through a Federal, State, or local government public assistance or public welfare program for which eligibility is determined by a needs or income test. The three-percent withholding requirement also does not apply to payments of wages or to any other payment with respect to which mandatory (e.g., U.S.-source income of foreign taxpayers) or voluntary (e.g., unemployment benefits) withholding applies under present law. The provision does not exclude payments that are potentially subject to backup withholding under section 3406. If, however, payments are actually being withheld under backup withholding, withholding does not apply.

The three-percent withholding requirement also does not apply to the following: payments of interest; payments for real property; payments to tax-exempt entities or foreign governments; intra-governmental payments; payments made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)); and payments to government employees that are not otherwise excludable from the new withholding provision with respect to the employees' services as employees.

REASONS FOR CHANGE

The Committee understands that the three-percent withholding requirement presents a number of challenges for the government entities and taxpayers subject to the requirement. The Committee believes the Treasury should conduct a study of the issues confronting both businesses and governments in complying with the three-percent requirement, as well as the issues confronting Treasury and the IRS in administering such requirement: Thus, the Committee believes it is appropriate to delay the effective date of the three-percent withholding requirement by one year to allow the Secretary further time to study issues associated with the requirement and to provide Congress with time to review and respond to the results of such study.

EXPLANATION OF PROVISION

The provision delays the effective date for the three-percent withholding requirement. Under the provision, the requirement applies to payments made after December 31, 2011.

The provision directs the Secretary to study issues associated with the three-percent withholding requirement, including (1) the problems, if any, which are anticipated in administering and complying with such requirement, (2) the burdens, if any, that such requirements will place on small businesses (taking into account such mechanisms as may be necessary to administer such require-

ments), and (3) the application of such requirements to small expenditures for services and goods by governments.

The Secretary is to submit his report to the Senate Committee on Finance and House Committee on Ways and Means no later than six months after the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. EMPLOYMENT TAX TREATMENT OF HOME CARE SERVICE RECIPIENTS (SEC. 5 OF THE BILL AND SEC. 3511 OF THE CODE)

PRESENT LAW

In general

Employment taxes generally consist of the taxes under the Federal Insurance Contributions Act ("FICA"), the tax under the Federal Unemployment Tax Act ("FUTA"), and income taxes required to be withheld by employers from wages paid to employees ("income tax withholding").[19]

FICA tax consists of two parts: (1) old age, survivor, and disability insurance ("OASDI"), which correlates to the Social Security program that provides monthly benefits after retirement, disability, or death; and (2) Medicare hospital insurance ("HI"). The OASDI tax rate is 6.2 percent on both the employee and employer (for a total rate of 12.4 percent). The OASDI tax rate applies to wages up to the OASDI wage base ($102,000 for 2008). The HI tax rate is 1.45 percent on both the employee and the employer (for a total rate of 2.9 percent). Unlike the OASDI tax, the HI tax is not limited to a specific amount of wages, but applies to all wages.

Under FUTA, employers must pay a tax of 62 percent of wages up to the FUTA wage base of $7,000. An employer may take a credit against its FUTA tax liability for its contributions to a State unemployment fund and, in certain cases, an additional credit for contributions that would have been required if the employer had been subject to a higher contribution rate under State law. For purposes of the credit, contributions means payments required by State law to be made by an employer into an unemployment fund, to the extent the payments are made by the employer without being deducted or deductible from employees' remuneration.

Employers generally are required to withhold income taxes from wages paid to employees. Withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee.

Wages paid to employees, and FICA and income taxes withheld from the wages, are required to be reported on employment tax returns (Forms 940 and 941) and on Form W–2.[20]

A number of special rules apply in the case of household employees. An exception from FICA exists in the case of domestic service in a private home if the cash remuneration paid during the year

[19] Secs. 3101–3128 (FICA), 3201–3241 (the Railroad Retirement Tax Act), 3301–3311 (FUTA), and 3401–3404 (income tax withholding). Sections 3501–3510 provide additional rules.

[20] Secs. 6011 and 6051.

by the employer to the employee for such service is less than $1,600 (for 2008).[21]

An employer of a household employee is liable for FUTA if the employer paid wages of $1,000 for such service in any calendar quarter in the calendar year or the preceding calendar year.[22] An employer of a household employee is not required to withhold Federal income taxes from wages paid to household employees.[23] Household employers may report employment taxes annually on Schedule H (filed with their annual Federal income tax return) rather than quarterly on Form 941.

Responsibility for employment tax compliance

Employment tax responsibility generally rests with the person who is the employer of an employee under a common-law test that has been incorporated into Treasury regulations.[24] Under the regulations, an employer-employee relationship generally exists if the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer, not only as to what is to be done, but also as to how it is to be done. It is not necessary that the employer actually control the manner in which the services are performed, rather it is sufficient that the employer have a right to control. Whether the requisite control exists is determined on the basis of all the relevant facts and circumstances. The test of whether an employer-employee relationship exists is relevant in determining whether a worker is an employee or an independent contractor. However, the same test applies in determining whether a worker is an employee of one person or another.[25]

In some cases, a person other than the common-law employer maybe liable for employment taxes. For example, if wages are paid to an employee by a person other than the employer and the payor, rather than the employer, has control of the payment of the wages, the payor is responsible for complying with the applicable employment tax requirements.[26] There are also special rules under which if a lender, surety or other person pays wages directly to an employee or group of employees, the lender, surety, or other person is

[21] Sec. 3121(a)(7)(B).
[22] Sec. 3306(a)(3).
[23] Sec. 3401(a)(3).
[24] Treas. Reg. secs. 31.3121(d)–l(c)(1), 31.3306(i)–1(a), and 31.3401(c)–l.
[25] Issues relating to the classification of workers as employees or independent contractors are discussed in Joint Committee on Taxation, Present Law and Background Relating to Worker Classification for Federal Tax Purposes (JCX–26–07), May 2007. These issues are also discussed in Joint Committee on Taxation, Study of the Overall State of the Federal Tax System and Recommendations for Simplification, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986 (JCS–3–01), April 2001, at Vol. III, Part XV.A, at 539–550.
[26] Sec. 3401(d)(1) (for purposes of income tax withholding, if the employer does not have control of the payment of wages, the person having control of the payment of such wages is treated as the employer); Otte v. United States, 419 U.S. 43 (1974) (the person who has the control of the payment of wages is treated as the employer for purposes of withholding the employee's share of FICA from wages); and In re Armadillo Corporation, 561 F.2d 1382 (10th Cir. 1977), and In re The Laub Baking Company v United States, 642 F.2d 196 (6th Cir. 1981) (the person who has control of the payment of wages is the employer for purposes of the employer's share of FICA and FUTA). The mere fact that wages are paid by a person other than the employer does not necessarily mean that the payor has control of the payment of the wages. Rather, control depends on the facts and circumstances. See, e.g., *Consolidated Flooring Services* v. *U.S.*, 38 Fed. Cl. 450 (1997), and *Winstead* v. *U.S.*, 109 F. 3d 989 (4th Cir. 1997).

responsible for employment taxes.[27] There is also a special rule under which a qualified real estate agent, or direct seller of certain consumer products, performing services is not treated as an employee with respect to the person for whom the services are performed.[28]

In addition, certain designated agents are jointly and severally liable with the employer for FICA tax and income tax withholding with respect to wages paid to the employer's employees.[29] These designated agents prepare and file employment tax returns using their own names and employer identification numbers.[30] In contrast, reporting agents (often referred to as payroll service providers) are generally not liable for the employment taxes reported on their clients' returns. Reporting agents prepare and file employment tax returns for their clients using the client's name and employer identification number.

Penalties apply in the case of failures to comply with information reporting requirements.[31] In the case of failure to file a specified information return, a penalty of $50 for each return (not to exceed $100,000) is imposed.[32]

Home-care services,

Many elderly and disabled individuals receive in-home care through state and local government health and welfare programs.[33] These programs generally are funded at least in part with Federal funds. In most cases, the service recipient (i.e., the elderly or disabled individual) is the common law employer.

IRS guidance provides rules for State and local government agencies as to how they can serve as agents for disabled individuals and other welfare recipients who employ home-care service providers to assist them in their homes.[34] In general, these rules provide that the elderly or disabled individual must complete a form designating the State or local government as their agent for employment tax purposes. Under IRS guidance, unlike the general rule for designated agents, a State that furnishes home-care service providers (or a third party subagent of the State) can act as an agent on behalf of the service recipient for FUTA purposes.[35] As previously discussed, in the case of a State or local government or independent third party serving as an agent on behalf of the service recipient, the service recipient remains liable for payment of the employment taxes and for any associated penalties for noncompliance.

REASONS FOR CHANGE

Many elderly and disabled individuals receive in-home care through State and local government health and welfare programs.

[27] Sec. 3505

[28] Sec. 3508

[29] Sec. 3504. The designated payroll agent rules do not apply for FUTA purposes.

[30] The employer's name, address, and employer identification number, as well as the agent's, are provided when the agent is designated by the employer. Form 2678 is used to designate an agent.

[31] Secs. 6721–6724.

[32] Sec. 6723.

[33] See National Taxpayer Advocate 2007 Annual Report to Congress, December 31, 2007 at 355.

[34] See Notice 2003–70, 2003–2 C.B. 916 (providing a proposed revenue procedure). See also, Rev. Proc. 76–6, 1970–1 C.B. 420, as modified by Rev. Proc. 80–4, 1980–1 C.B. 581.

[35] Notice 2003–70, 2003–2 C.B. 916. This is not the case if the independent third party is designated as the agent directly by the employer.

These elderly and disabled individuals are the common law employer of their service provider even though the payment for these services is handled by a fiscal administrator of the relevant State or local government agency. The administrator often pays the employment taxes to the IRS and handles any required IRS information reporting (for example, Form W–2) as an agent for the elderly and disabled individual. To allow the fiscal administrator to handle the employment tax responsibilities, the service recipients must designate the administrator as their agent in a cumbersome process that is confusing for the service recipients. In addition, this agency designation does not eliminate the liability of the service recipient, who as the common law employer, is ultimately liable for unpaid employment taxes. It is difficult for IRS systems to accurately reconcile information returns with respect to these taxes. In many cases; the inability to reconcile the information has resulted in the IRS contacting the service recipient for payment of the employment taxes even though, under the government program, the elderly or disabled individual does not have responsibility, or direct access to the funds, for paying the wages to the service provider. The Committee believes that, in these situations, the home care service recipient should be relieved of any potential liability for employment taxes, and responsibility for information reporting.

EXPLANATION OF PROVISION

The provision provides that, in the case of amounts paid under a home care service program to a home care service provider by the fiscal administrator of such program, the fiscal administrator is solely liable for the payment of employment taxes with respect to amounts paid for services under the program. In such case, the home care service recipient is not liable for the payment of employment taxes.

A home care service program is a State or local government program which is funded in whole or part by Federal funds and under which domestic services are provided to elderly or disabled individuals in their home. A home care service program does not include any program to the extent home care service recipients make payments to the home care service providers for such in-home domestic services.

A home care service provider is an individual who provides domestic services to a home care service recipient under a home care service program. A home care service recipient is an individual receiving domestic services under a home care service program. A fiscal administrator is any person or governmental entity who pays amounts under a home care service program to home care service providers for the provision of domestic services under such program.

Employment tax returns (i.e., Forms W–2, 940 and 941) must be made under the name and employer identification number of the fiscal administrator rather than that of the common law employer, the service recipient. The fiscal administrator is required, as prescribed by the Secretary, to report to the IRS the name, address, and social security number of each home care service recipient for whom amounts are paid by such fiscal administrator under the home care services program. This is intended to assist the IRS in preventing collection action against the elderly or disabled common

law employer. In the case of failure to file the required report, a penalty is imposed.[36]

Under the provision, the Secretary may prescribe regulations or other guidance as may be necessary to carry out the purposes of the provision, including rules for timing of employment tax deposits.

It is intended that the present law rules that apply in the case of household employees continue to apply under the provision. Relevant thresholds under these rules are also determined with respect to each home care recipient. For example, it is intended that the exception from FICA for domestic service in a private home if cash remuneration, paid during the year by the employer to the employee for such service is less than $1,600 (for 2008) would continue to apply. Similarly, FUTA would be required only if the employer paid wages of $1,000 for household service in any calendar quarter in the calendar year or the preceding calendar year. In addition, the present law exception from Federal income tax withholding for household employees would continue to apply.

EFFECTIVE DATE

The provision is effective for amounts paid after December 31, 2008.

E. REFERRALS TO LOW-INCOME TAXPAYER CLINICS (SEC. 6 OF THE BILL)

PRESENT LAW

The Code provides that the Secretary is authorized to provide up to $6 million per year in matching grants to certain qualified low-income taxpayer clinics.[37] 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. No clinic can receive more than $100,000 per year.

A qualified low-income taxpayer clinic. includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization described in section 501(c) which either represents low-income taxpayers as described above or provides referrals to qualified representatives. A low-income taxpayer is an individual whose income does 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 ("OMB").

The Department of the Treasury prohibits its officers and employees from referring taxpayers to qualified low-income taxpayer clinics for advice and assistance.

REASONS FOR CHANGE

The Committee believes that qualified low-income taxpayer clinics contribute to compliance with the tax laws by providing representation to taxpayers who might otherwise be uncertain about their rights and obligations under the law and lack the means to

[36] Section 6723 imposes a penalty of $50 per report (not to exceed $100,000 per calendar year).
[37] Sec. 7526.

secure adequate representation. Accordingly, the Committee believes that officers and employees of the Department of the Treasury should be permitted to inform taxpayers of the existence of these clinics and refer taxpayers to such clinics for assistance.

EXPLANATION OF PROVISION

The provision allows officers and employees of the Department of the Treasury to refer taxpayers for advice and assistance to qualified low-income taxpayer clinics that receive funding, notwithstanding any other provision of law.

EFFECTIVE DATE

The provision is effective for referrals made after the date of enactment.

F. Programs for the Benefit of Low-Income Taxpayers (Sec. 7 of the Bill and Sec. 7526 and New Sec. 7526A of the Code)

PRESENT LAW

The Code provides that the Secretary is authorized to provide up to $6 million per year in. matching grants to certain qualified low-income taxpayer clinics.[38] 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. No clinic can receive more than $100,000 per year.

A qualified low-income taxpayer clinic includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization described in section 501(c) which either represents low-income taxpayers as described above or provides referrals to qualified representatives. A low-income taxpayer is an individual whose income does 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 ("OMB").

REASONS FOR CHANGE

The Committee believes that taxpayer clinics contribute to compliance with the tax laws by providing representation to taxpayers who might otherwise be uncertain about their rights and obligations under the law and lack the means to secure adequate representation. Accordingly, the Committee believes that the work of the volunteer income tax assistance program should be encouraged to increase assistance provided to low- and moderate-income taxpayers. The Committee also believes that an increase in grants to qualified low-income taxpayer clinics is needed to improve the level of assistance provided to taxpayers unable to obtain representation for Federal tax disputes.

EXPLANATION OF PROVISION

The provision authorizes the Secretary to make $10 million in matching grants for volunteer income tax assistance programs. Vol-

[38] Sec. 7526.

unteer income tax assistance programs are programs that provide tax return preparation and filing services to low- and moderate-income (as determined by the Secretary) taxpayers. Under the provision, volunteer income tax assistance programs may not charge taxpayers for return preparation services. Volunteers assisting taxpayers through such programs must meet training requirements established by the Secretary.

The authorization of $6 million for qualified low-income taxpayer clinics under present law also is increased to $10 million.

EFFECTIVE DATE

The provision is effective on the date of enactment.

G. EARNED INCOME CREDIT OUTREACH (SEC. 8 OF THE BILL AND SEC. 32 OF THE CODE)

PRESENT LAW

In general

Low and moderate-income taxpayers may be eligible for the refundable earned income credit ("EIC").[39] Generally, the amount of the EIC is based on the presence and number of qualifying children in the taxpayer's family, as well as on adjusted gross income ("AGI") and earned income.[40] Other rules also apply.

Three separate schedules apply in computing the taxpayer's EIC: (1) one schedule for taxpayers with no qualifying children; (2) one schedule for taxpayers with one qualifying child; and (3) one schedule for taxpayers with more than one qualifying child.[41]

The EIC generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum EIC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. All income thresholds are adjusted annually for inflation.

Wage withholding

In general, the Code requires employers to withhold income tax on wages paid to employees, including wages and salaries of employees or elected officials of Federal, State, and local government units. Withholding rates vary depending on the amount of wages

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[39] The EIC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive a portion of the credit in their paychecks, rather than waiting to claim a refund on their tax return filed by April 15 of the following year.

[40] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the taxpayer's net self-employment earnings.

[41] In general, a child is a qualifying child of a taxpayer if the child satisfies each of three tests: (1) the child has the same principal place of abode as the taxpayer for more than one-half of the taxable year; (2) the child has a specified relationship to the taxpayer; and (3) the child has not yet attained a specified age. A tie-breaking rule applies if more than one taxpayer claims a child as a qualifying child.

paid, the length of the payroll period, and the number of withholding allowances claimed by the employee. The Code also requires that employers report wage withholding information annually to the IRS and their employees (e.g., Form W–2 and Form W–3).[42]

EIC outreach and assistance

Pre-tax return filing

The IRS has developed an outreach effort to inform taxpayers potentially eligible for the EIC and their employers about the EIC and how to claim the credit. One such public notice, contained in IRS Notice 797 (Rev. 12–2006), explains the EIC, its eligibility rules, and how to claim the credit. In addition, the IRS works with employers, community groups and other stakeholders to inform eligible taxpayers of the EIC. The IRS also helps taxpayers below certain income levels compute their Federal income tax liability, including the amount of EIC, if any.

Post-tax return filing

The IRS sends out notice letters addressed to taxpayers who it has identified as potentially eligible for the EIC in the immediately prior taxable year.

The notice letters are different depending on the presence of a qualifying child or children in the taxpayer's household. If the IRS identifies a taxpayer with one or more qualifying children as potentially eligible for the EIC, the notice letter informs the taxpayer that IRS records indicate that: (1) the taxpayer's income falls in the eligible range to receive the EIC; (2) the taxpayer has one or more dependents who may be an ETC qualifying child; and (3) the taxpayer did not claim the EIC for the applicable taxable year on his or her return filed with the IRS. If the IRS identifies a taxpayer without qualifying children as potentially eligible for the EIC, the notice letter informs the taxpayer that IRS records indicate that: (1) the taxpayer's income falls in the eligible range to receive the EIC and (2) the taxpayer did not claim the EIC for the applicable taxable year on his or her return filed with the IRS.

In all cases, the notice letters ask the taxpayers to complete an "EIC Eligibility Check-Sheet" and, if the check-sheet indicates eligibility for the EIC, to return it to the IRS. The EIC Eligibility Check-Sheet requests the taxpayer to provide all the information necessary to determine EIC eligibility. The EIC Eligibility Check-Sheet is completed under penalty of perjury by the taxpayer (and the taxpayer's spouse in the case of a joint return). The IRS reviews the information submitted by the taxpayer and either: (1) sends any applicable refund within eight weeks (net of any other amounts the IRS is required to collect), or (2) sends an explanation to the taxpayer stating why the taxpayer does not qualify for the EIC.

The notice letters also provide information to help eligible taxpayers correctly claim the EIC in future taxable years.

Under present law, these notice letters are sent by the IRS only to individuals who have filed a tax return for the applicable taxable

[42] Information returns, such as Form W–2, are returns within the meaning of section 6103(b)(1).

year. The absence of the taxpayer's filed tax return, notwithstanding the receipt by the IRS of return information or an information return (e.g., Form W–2 indicating wage withholding on the taxpayer) from the taxpayer's employer does not trigger—a notice letter to the taxpayer.

Limitations on credits and refunds

Under section 6511, a claim for credit or refund of overpayment of tax with respect to which a return must be filed must be made within the later of: (1) three years from the time the return was filed or (2) two years from the time the tax was paid. If no return was filed by the taxpayer, then the applicable time period ends two years, after the tax was paid.

REASONS FOR CHANGE

The Committee believes that all taxpayers who are eligible for the EIC should receive it. The IRS estimates that. 20–25 percent of taxpayers eligible for the EIC do not claim the credit. The Committee believes that the IRS should enhance its efforts to identify and contact taxpayers who are eligible for the EIC, particularly in the case of taxpayers who have had taxes withheld on their wages but who have not filed a tax return. In some instances, taxpayers who have incomes below tax filing thresholds and may not realize that they are eligible for the EIC. The Committee realizes that improving EIC outreach is an important component in ensuring that those who are eligible claim the credit.

EXPLANATION OF PROVISION

The provision requires the IRS to provide annually, and to the extent possible,[43] notice to all taxpayers who have-been identified based on return or return information as being potentially eligible for the EIC in any taxable year for which a claim for credit or refund is not barred by the limitation period under section 6511. Such notice must be in writing, address all. open tax years, and be sent to the last known address of such taxpayers: (1) who did not file a claim for the EIC for such taxable year, and (2) who the IRS identified as potentially eligible for the EIC for such taxable year based on a return or return information (as defined in sec. 6103(b)).

Upon receipt of this notice letter, the taxpayer who had filed a return for the applicable taxable years would complete the applicable EIC Eligibility Check-Sheet for each of the applicable taxable years. It is anticipated that this Check-Sheet would ask for all the information relating to the taxpayer's eligibility for the EIC (e.g., earned income, AGI, presence and number of qualifying children, and taxpayer identification numbers). If eligible for the EIC, in one or more of the applicable taxable years, the taxpayer would return the EIC Eligibility Check-Sheet to the IRS for any refund (including wages withheld by the taxpayer's employer). In the case of an eligible taxpayer who had not filed a return for the applicable taxable years, the taxpayer would be instructed to file a tax return claiming the EIC with the IRS for any refund (including wages

[43] It is anticipated that the type of available return information and available IRS resources will affect the IRS's ability to issue the additional notice letters contemplated under this proposal.

withheld by the taxpayer's employer) for each of the applicable taxable years.

EFFECTIVE DATE

The provision is effective on the date of enactment.

H. Prohibition on IRS Debt Indicators for Predatory Refund Anticipation Loans (Sec. 9 of the Bill and Sec. 6011 of the Code)

PRESENT LAW

A refund anticipation loan is a loan made by a commercial lender to a taxpayer based on the refund the taxpayer expects to receive. The loan is a private contract between the taxpayer and a commercial lender. The Code does not regulate the making of refund anticipation loans, but consumer groups, the Commissioner of the IRS, and the National Taxpayer Advocate all have raised concerns over the high interest rates and fees associated with such loans.[44]

Certain tax practitioners that file returns electronically and financial institutions may obtain a debt indicator from the IRS for their customer taxpayers. A debt indicator facilitates the making of refund anticipation loans because it tells whether or not a taxpayer has any scheduled offsets against a claimed refund. Thus, a debt indicator reduces the lender's risk of making a refund anticipation loan because it informs the lender whether the taxpayer's refund will be paid or reduced for certain debts.

REASONS FOR CHANGE

The Committee understands that the majority of refund anticipation loans are made to low-income families, including EIC claimants. The Committee also understands that the providers of refund anticipation loans often charge exorbitantly high fees and interest rates for such loans, at times in excess of 100 percent. The Committee is concerned that these high-cost, short-term loans unfairly siphon millions of dollars from low-income taxpayers. Moreover, the Committee is concerned that debt indicators are being used as a means to enable these predatory refund anticipation loans to taxpayers. The Committee believes that the Department of the Treasury should not be facilitating predatory refund anticipation loans by reducing the lender's risk of making such loans. Thus, the Committee believes that prohibiting debt indicators with respect to predatory refund anticipation loans will decrease the viability of such loans and provide additional protection to taxpayers.

EXPLANATION OF PROVISION

The provision prohibits the Secretary from providing a debt indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory. Under the provision, a refund anticipation loan is any loan of money or any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund.

[44] See e.g., National Taxpayer Advocate, 2005 Annual Report to Congress, Publication 2104 (Rev. 12–2005), at 162.

For purposes of the provision, a debt indicator means a notification provided to a tax practitioner or financial institution pursuant to a program or procedure that a taxpayer's refund will be reduced or offset to repay debts for delinquent Federal or State taxes, strident loans, child support, or other Federal agency debt.

EFFECTIVE DATE

The provision is effective on the date of enactment.

I. STUDY ON DELIVERY OF TAX REFUNDS (SEC. 10 OF THE BILL)

PRESENT LAW

A large number of individual taxpayers do not have bank accounts. These taxpayers are unable to participate fully in electronic filing, because the IRS cannot electronically transmit to them their tax refunds.

REASONS FOR CHANGE

The Committee believes that the attractiveness of electronic filing and faster deposit of direct deposited refunds is diminished when individuals do not have an account at a financial institution. These individuals rely on alternative financial service providers to cash checks, pay bills, send remittances, and obtain credit. The cost of these alternative services reduces benefits received through the tax system, such as the earned income tax credit. The Committee believes the Secretary should study alternative means of delivering tax refunds to taxpayers to reduce the cost and refund processing time for those taxpayers who do not have access to financial institutions.

EXPLANATION OF THE PROVISION

The provision requires the Secretary to conduct a study, in consultation with the National Taxpayer Advocate, of the implementation of a program to deliver tax refunds through debit cards or other electronic means. The provision requires the Secretary to submit a report to Congress on the results of such study no later than one year after the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

J. EXTENSION OF TIME LIMIT FOR RETURN OF PROPERTY FOR WRONGFUL LEVY (SEC. 11 OF THE BILL AND SECS. 6343 AND 6532 OF THE CODE)

PRESENT LAW

The IRS is authorized to return property that has been wrongfully levied.[45] In general, monetary proceeds from the sale of levied property, or an amount equal to the amount of money levied, may be returned within nine months of the date of the levy.

Generally, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest

[45] Sec. 6343.

in levied property may bring a civil action for wrongful levy in a district court of the United States.[46] Generally, an action for wrongful levy must be brought within nine months from the date of levy.[47] However, if a claim for a return of property is made to the IRS, the nine-month period is extended for the shorter of a period of 12 months from the date of filing of such request or six months from the date of mailing of an IRS notice of disallowance of such request.[48]

REASONS FOR CHANGE

The Committee understands that, in many cases, the time period for bringing an action may be insufficient for third parties to discover a wrongful or mistaken levy and seek to remedy it. Accordingly, the Committee believes it is appropriate to provide for a longer period of time within which a person may contest a wrongful IRS levy.

EXPLANATION OF PROVISION

The provision extends from nine months to two years the period for returning money and the monetary proceeds from the sale of property that has been wrongfully levied.

The provision also extends from nine months to two years the period for bringing a civil action for wrongful levy.

EFFECTIVE DATE

The provision is effective with respect to: (1) levies made after the date of enactment and (2) levies made on or before the date of enactment provided that the nine-month period has not expired as of the date of enactment.

K. Individuals Held Harmless on Improper Levy on Individual Retirement Plan (Sec. 12 of the Bill and Sec. 6343 of the Code)

PRESENT LAW

Distributions from an individual retirement arrangement ("IRA") made on account of an IRS levy are includible in the gross income of the individual under the rules applicable to the IRA subject to the levy. Thus, in the case of a traditional IRA, the amount distributed as a result of a levy is includible in gross income except to the extent such amount represents a return of nondeductible contributions (i.e., basis). In the case of a Roth IRA, earnings on a distribution are excludable from gross income if the distribution is made: (1) after the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA and (2) after attainment of age 59½ or on account of certain other circumstances. Amounts withdrawn from an IRA due to a levy are not subject to the 10 percent early withdrawal tax, regardless of whether the amount is includible in income.

Present law provides rules under which the IRS returns amounts subject to an incorrect levy. For example, amounts withdrawn from

[46] Sec. 7426(a)(1).
[47] Sec. 6532.
[48] Sec. 6532(c)(2).

an IRA pursuant to a levy are returned to the individual owning the IRA in the case of a wrongful levy or if the levy was not in accordance with IRS administrative procedures. In the case of a wrongful levy, the IRS is required to pay interest on the amount returned to the individual at the overpayment rate. The IRS is not required to pay interest if the levy was not in accordance with IRS administrative procedures.

Present law does not provide special rules to allow an individual to recontribute to an IRA amounts withdrawn from an IRA pursuant to a levy and later returned to the individual by the IRS (or interest thereon). Thus, if an individual wishes to contribute such returned amounts to an IRA, the contribution is subject to the normally applicable rules for IRA contributions.

REASONS FOR CHANGE

IRA assets provide an important source of retirement income for many Americans. Under present law, if the IRS improperly levies on an IRA, the individual owning the IRA may not be made whole, even if the IRS returns the amount levied, with interest, because the individual may lose the opportunity to have those funds accumulate on a tax-favored basis until retirement. The Committee believes that improper levies should not reduce retirement income security for IRA owners. Thus, the Committee bill provides that IRA funds that are withdrawn pursuant to an improper IRS levy and returned by the IRS may be recontributed to the IRA.

EXPLANATION OF PROVISION

Under the provision, an individual is able to recontribute to an IRA amounts withdrawn pursuant to a levy and returned by the IRS (and any interest thereon) within 60 days of receipt by the individual, without regard to the normally applicable limits on IRA contributions and rollovers. The provision applies to levied amounts returned to the individual because the levy (1) was wrongful or (2) is determined to be premature or otherwise not in accordance with administrative procedures. The recontribution may be made to the same IRA or to any other individuated retirement plan (other than an endowment contract) to which a rollover from the IRA levied upon is permitted. That is, the recontribution may be made to the same IRA or to an IRA of the same type.

Under the provision, the IRS is required to pay interest on amounts returned to the individual at the overpayment rate in the case of a levy that is determined to be premature or otherwise not in accordance with administrative procedures (as well as in the case of a wrongful levy under present law). Interest paid by the IRS on the amount returned to the individual is excludable from gross income if the interest is contributed to an IRA under the provision. An amount contributed to an IRA under the provision will only be treated as interest paid by the IRS to the extent the total amount contributed under the provision exceeds the amount of the levy.

Any tax attributable to an amount distributed from an IRA by reason of a levy is abated if the amount is recontributed to an IRA pursuant to the provision.

EFFECTIVE DATE

The provision is effective for levied amounts (and interest thereon) returned to individuals after the date of enactment.

L. Taxpayer Notification of Suspected Identity Theft (Sec. 13 of the Bill and New Sec. 7529 of the Code)

PRESENT LAW

Section 6103 provides that returns and return information are confidential and may not be disclosed by the Internal Revenue Service ("IRS"), other Federal employees, State employees, and certain others having access to the information except as provided in the Code.[49] The definition of "return information" is very broad and includes any information gathered by the IRS with respect to a person's liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.[50] Thus, information gathered by the IRS in connection with an investigation of a person for an offense under the Code, such as fraud, is return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

In July 2007, the IRS established the Privacy, Information Protection, and Data Security Office. Within that office is the Identity Theft and Incident Management office, which is responsible for implementing the IRS identity theft strategy and coordinating efforts within the IRS to provide assistance and consistent treatment to taxpayers who are victims of identity theft.

The IRS also recently implemented a pilot program to notify IRS-identified tax fraud victims of identity theft.

REASONS FOR CHANGE

Identity theft is a growing concern for the Committee. Identity thieves can use a taxpayer's identity, or the identity of their dependents, including their social security numbers, to file fraudulent tax returns and obtain fraudulent refunds. The Committee believes it is important for the IRS to promptly notify a taxpayer of potential identity theft so that the taxpayer can take measures to prevent the misuse of his identity.

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[49] Sec. 6103(a).

[50] Sec. 6103(b)(2). Return information is

- a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
- any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and
- any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

Return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

EXPLANATION OF PROVISION

The provision provides that if, in the course of an investigation under the internal revenue laws, the Secretary determines that there was, or may have been, an unauthorized use of a taxpayer's identity or that of a dependent of the taxpayer, the Secretary shall, to the extent permitted by law, (1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination, and (2) if any person is criminally charged by indictment or information with respect to such unauthorized use, notify such taxpayer as soon as practicable of such charge. Under the provision, the IRS is not required to make such notification if disclosure would be barred by any statute (other than Title 26) or would be, for example, in violation of grand jury secrecy rules.[51] Further, notification is not required if the IRS is unable to obtain an address or other contact information for the taxpayer. In such case notification would not be practicable because the IRS would not have the necessary information to notify that person.

EFFECTIVE DATE

The provision applies to determinations made after the date of enactment.

M. REPEAL OF PRIVATE TAX COLLECTION CONTRACTS (SEC. 14 OF THE BILL AND SEC. 6306 OF THE CODE)

PRESENT LAW

Under present law, the IRS may use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type and to arrange payment of those taxes by the taxpayers.

REASONS FOR CHANGE

Over 130 years ago, this Committee stated that "any system of farming the collection of any portion of the revenue of the Government is fundamentally wrong * * *. No necessity for such laws exist * * * the Secretary of the Treasury and the head of the Internal Revenue Bureau are empowered by law to make all collections of taxes * * *. The Internal Revenue Bureau is possessed of full knowledge of the laws relating to the collection of the revenue * * * and has all the machinery necessary for their full and complete enforcement."[52] The Committee believes these words remain true today.

The Committee believes that the collection of Federal income taxes is an inherently governmental function that should be restricted to IRS employees. The Committee believes that the use of private contractors to collect Federal tax debt violates the special and confidential relationship between taxpayers and the Federal government. The Committee believes that the use of private con-

[51] Persons bound by the rule of grand jury secrecy in Fed. R. Crim. P. 6(e)(2) are subject to prosecution for criminal contempt under 18 U.S.C. sec. 401 for the unauthorized disclosure of grand jury information. Thus, under the provision, a notification that was in violation of the grand jury secrecy rules would not be "permitted by law" within the meaning of the provision.

[52] H.R. Rep. No. 43–559, 1st Sess. (1874).

tractors jeopardizes the privacy of taxpayers and undermines long-term taxpayer compliance.

The IRS Commissioner has stated on numerous times before the Committee that IRS employees can collect Federal taxes more efficiently than private debt collection companies. IRS employees have access to a taxpayer's complete file and history, including the most recent information relating to tax filings and compliance data. Access to the taxpayer's complete file allows IRS employees to collect outstanding tax debt more efficiently and in a manner that ensures long-term compliance with the tax laws. The Committee believes that only IRS employees should be allowed to perform tax collection activities.

EXPLANATION OF PROVISION

The provision repeals the authority for the IRS to enter into, renew, or extend any private debt collection contract. The provision allows the IRS's existing contracts with private debt collection companies to continue through the end of their term.

EFFECTIVE DATE

The provision generally is effective on the date of enactment, except for any contract which was entered into before March 1, 2008, and is not renewed or extended on or after such date. The provision also provides that any private debt collection contract which is entered into on or after March 1, 2008, and any extension or renewal of any private debt collection contract on or after such date, shall be void.

N. CLARIFICATION OF IRS UNCLAIMED REFUND AUTHORITY (SEC. 15 OF THE BILL AND SEC. 6103 OF THE CODE)

PRESENT LAW

When the IRS is unable to find a taxpayer due a refund, present law provides that the IRS may use "the press or other media" to notify the taxpayer of the refund. Section 6103(m) allows the IRS to give the press taxpayer identity information for this purpose. Taxpayer identity includes, among other items, name and mailing address.[53]

The IRS believes that the current statutory framework of "press and other media" does not permit disclosures via the Internet on the IRS website (www.irs.gov). The legislative history of the present-law provision does not address the meaning of "press and other media." At the time enactment of section 6103(m) in 1976, the press (newspapers and periodicals) and other traditional media were the only means available for the IRS to distribute undelivered refund information to the public. Thus, the IRS interprets the term "other media" to exclude the Internet.

REASONS FOR CHANGE

In November 2007, the IRS announced that it is searching for 115,478 taxpayers whose income tax refund checks could not be de-

[53] Sec. 6103(b)(6).

livered.[54] These checks are worth a total of approximately $110 million. It is the understanding of the Committee that the current method of notifications, by newspaper, is ineffective. The Committee believes that the IRS should be able to use any method of mass communication, including the Internet, to reach taxpayers who are due refunds.

EXPLANATION OF PROVISION

The provision allows the IRS to use any means of "mass communication," including the Internet, to notify the taxpayer of an undelivered refund.

EFFECTIVE DATE

The provision is effective on the date of enactment.

O. PROHIBITION ON MISUSE OF DEPARTMENT OF THE TREASURY NAMES AND SYMBOLS (SEC. 16 OF THE BILL AND SEC. 333 OF TITLE 31)

PRESENT LAW

Section 333 of Title 31 of the United States Code prohibits the use, in connection with advertisements, solicitations, and other business activities, of the words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices, or subdivisions of the Department, including the IRS) in a manner which could reasonably be interpreted as conveying a connection with or approval by the Department of the Treasury (or one of its bureaus, offices, or subdivisions) in the absence of such connection or approval

The provision provides for a civil penalty of not more than $5,000 per violation (or not more than $25,000 in the case of a broadcast or telecast). In addition, the provision provides a criminal penalty of not more than $10,000 (or not more than $50,000 in the case of a broadcast or telecast) or imprisonment of not more than one year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation is made without regard to the use of a disclaimer of affiliation with the Federal Government.

The IRS has issued warnings to taxpayers about Internet sites that resemble the official IRS site:

> Taxpayers may be confused by the proliferation of Internet sites that contain some form of the Internal Revenue Service name or IRS acronym with a .com, .net, .org or other designation in the address instead of gov. Since many of these sites also bear a striking resemblance to the real IRS site, taxpayers may be misled into thinking that the site they have accessed is indeed the official IRS government site. These sites are not the official IRS Web site and have no connection to the official IRS site or to the IRS.[55]

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[54] Internal Revenue Service, IRS Has $110 Million in Refund Checks Looking for a Home (IR–2007–189, November 14, 2007).

[55] Internal Revenue Service, IRS Urges Caution about Internet Sites that Resemble the Official IRS Site (IR–2007–58, March 13, 2007).

The IRS also has issued a number of warnings regarding ongoing Internet scams.[56] The e-mails claim to be from the IRS and direct the consumer to a link (often resembling the IRS website) that requests personal and financial information. The practice is called "phishing" for information. Once the information is obtained, it could be used in identity theft and stealing a taxpayer's financial assets. Taxpayers who receive an unsolicited e-mail communication claiming to be from-the IRS can forward the message to the IRS. The IRS reports it has received almost 33,000 forwarded e-mail scams.[57]

REASONS FOR CHANGE

The Committee is aware of Internet sites that misuse the Department of Treasury and Internal Revenue Service names. Use of an Internet domain name in this manner is misleading and confusing. Taxpayers may believe that they will access, or may have accessed, the official IRS site. In addition, the Committee is aware of the use of e-mail, purporting to be from the IRS, and websites resembling the IRS website to obtain personal or financial information from taxpayers. The Committee believes such practices should be subject to significant penalties to deter such conduct and that the statute should be clarified accordingly.

EXPLANATION OF PROVISION

The provision clarifies that "phishing," misleading websites, and other misleading mass communications by electronic means using the name or symbols of the Department of the Treasury (or its components), are subject to the civil penalty of $25,000 per violation and criminal penalty of $50,000 per violation. The provision reaffirms that the use of the words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or subdivisions of the Department, including the IRS) in an Internet domain name is misleading and covered by section 333 of Title 31 of the United States Code.

EFFECTIVE DATE

The provision is effective for violations occurring after the date of enactment.

P. HEALTH SAVINGS ACCOUNT SUBSTANTIATION REQUIREMENT (SEC. 17 OF THE BILL AND SEC. 223(f) OF THE CODE)

PRESENT LAW

Health savings accounts

Present law section 223 provides that individuals with a high deductible health plan (and no other health plan other than a plan that provides certain permitted coverage).[58] may establish a health

[56] Internal Revenue Service, Identity Theft E-mail Scams a Growing Problem (FS–2008–9, January 2008).

[57] Id.

[58] An individual with other coverage in addition to a high deductible health plan is still eligible for an HSA if such other coverage is certain permitted insurance or permitted coverage. Permitted insurance is: (1) insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under worker's compensation law, (b) tort liabilities, (c)

Continued

savings account ("HSA"). An HSA is a tax-exempt trust or custodial account. Subject to certain limitations, contributions made to an HSA by an individual are deductible above-the-line for income tax purposes and contributions made by an employer (including contributions made through a cafeteria plan through salary reduction) are excludable from income and wages. Earnings on amounts in an HSA accumulate on a tax-free basis.

Distributions from an HSA that are for qualified medical expenses are excludable from gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 10-percent. However, the additional 10-percent tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65). Under present law, the individual maintaining the HSA is responsible for determining if the distribution was made for a qualified medical expense and whether the amount should be included in income and subject to the 10-percent additional tax.

HSAs provide the opportunity to pay for current out-of-pocket medical expenses on a tax-favored basis, as well as the ability to save for future medical and nonmedical expenses on a tax-favored basis. To the extent that amounts in an HSA are not used for qualified expenses, an HSA provides tax benefits similar to an individual retirement arrangement ("IRA").[59]

Qualified medical expenses generally are defined as under section 213(d) and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs; transportation primarily for and essential to such care, and qualified long-term care expenses. Qualified medical expenses do not include expenses for insurance other than for (1) long-term care insurance, (2) premiums for health coverage during any period of continuation coverage required by Federal law, (3) premiums for health care coverage while an individual is receiving unemployment compensation under Federal or State law, and (4) premiums for individuals who have attained the age of Medicare eligibility, other than premiums for Medigap policies.

A high deductible health plan is a health plan that has a deductible that is at least $1,100 for self only coverage or $2,200 for family coverage (for 2008) and that has an out-of-pocket expense limit that is no more than $5,600 in the case of self-only coverage and $11,200 in the case of family coverage (for 2008).[60]

For 2008 the maximum aggregate annual contribution that can be made to an HSA is $2,900 in the case of self-only coverage and $5,800 in the case of family coverage.[61] The annual contribution

liabilities relating to ownership or use of property (e.g., auto insurance), or (d) such other similar liabilities as the Secretary may prescribe by regulations; (2) insurance for a specified disease or illness; and (3) insurance that provides a fixed payment for hospitalization. Permitted coverage is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care. Effective after December 20, 2006, with respect to coverage for years beginning after December 31, 2006, certain coverage under an FSA is disregarded in determining eligibility for an HSA.

[59] Other tax-favored vehicles may also be used to save for future medical expenses, but do not provide the same tax benefits. For example, funds in an IRA may be used to pay medical expenses, but distributions for medical expenses are includible in gross income to the same extent as other IRA distributions.

[60] These amounts are indexed for inflation.

[61] These amounts are the same as the maximum deductible amounts permitted under a high deductible plan for purposes of Archer medical savings accounts ("MSAs") and are indexed for

limits are increased for individuals who have attained age 55 by the end of the taxable year (referred to as "catch up contributions"). In the case of policyholders and covered spouses who are age 55 or older, the HSA annual contribution limit is greater than the otherwise applicable limit by $900 in 2008, and $1,000 in 2009 and thereafter. Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

Health flexible spending arrangements

Health flexible spending arrangements ("FSAs") are commonly used by employers to reimburse medical expenses of their employees (and their spouses and dependents). Health FSAs typically are funded on a salary reduction basis, meaning that employees are given the option to reduce current compensation and instead have the compensation used to reimburse the employee for medical expenses. If the health FSA meets certain requirements, the compensation that is forgone is not includible in gross income or wages for employment tax purposes and reimbursements for medical care from the health FSA are excludable from gross income and wages. Health FSAs are subject to the requirements relating to cafeteria plans generally, including a requirement that a cafeteria plan generally may not provide deferred compensation.[62] This requirement is often referred to as, the "use-it-or-lose-it-rule."[63] Health FSAs are subject to certain other requirements, including rules that require that the FSA have certain characteristics similar to insurance. In addition, health FSAs are also subject to certain requirements relating to substantiation of expenses.[64]

REASONS FOR CHANGE

The Committee believes that it is appropriate to require trustee reporting of health savings account distributions that are used for nonqualified purposes. Under present law, the determination of whether an expense is a nonqualified medical expense, reported on an income tax return, and subject to tax and penalty, is made by the individual taxpayer. The Committee is aware of the effectiveness of third party reporting in improving compliance and addressing the $345 billion tax gap. A requirement for individuals to substantiate medical expenses to the HSA trustee (or its designee) would ensure that, in the case of a withdrawal for a nonqualitled medical expense, the appropriate amount is included in gross income and the additional tax is imposed. A delayed effective date is provided to allow the development of systems and procedures to properly substantiate expenses efficiently. The Committee does not intend for employers to be subject to any additional burdens or ob-

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inflation. In the case of individuals who are married to each other, if either spouse has family coverage, both spouses are treated as only having the family coverage with the lowest deductible and the contribution limit is divided equally between them unless they agree on a different division. Limitations based on the amount of the deductible under the high deductible plan applied to years beginning before January 1, 2007.

[62] Sec. 125(4)(2).

[63] This requirement has been interpreted to mean that amounts remaining in a health FSA as of the end of a plan year must be forfeited by the employee. However, Treasury guidance allows a grace period not to exceed two and one-half months immediately following the end of the plan year during which unused amounts may be used. Notice 2005–42, 2005–23 I.RB.1204. Prop. Treas. Reg. sec. 1.125–1.

[64] See Prop. Treas. Reg. sec. 1.125–6. See also, Notice 2002–45, 2002–2 C.B. 93, Rev. Rul. 2003–43, 2003–1 C.B. 935; Notice 2006–69, 2006.2 C.B. 107; and Notice 2007–2, 2007–1 C.B. 254.

ligations in respect of HSAs of employees unless such employers are trustees of these accounts. The Committee intends for the favorable substantiation rules applicable to FSAs (such as "real-time substantiation") to apply to reduce the substantiation requirements on individuals. The Committee does not intend that substantiation must be made in advance of distributions from HSAs.

EXPLANATION OF PROVISION

The provision provides that in the case of a health savings account distribution, in order to be a qualified medical expense, the amount must be substantiated in a manner similar to that required for health flexible spending arrangements. It is intended that substantiation is required by the individual to the trustee (or to a party—designated by the trustee). As under present law, distributions from a HSA would be allowed for any purpose. Substantiated expenses would be excludable from income. Expenses not substantiated would be includible in income and subject to the 10 percent additional tax. Under the provision, not later than January 15 of each calendar year, the HSA trustee is required to report to the account beneficiary and to the Secretary, the name, address and identifying number of the account beneficiary and the amount paid or distributed out of the HSA for the preceding year not substantiated.

EFFECTIVE DATE

The provision is effective with respect to amounts paid or distributions made out of a health savings account after December 31, 2010.

Q. CERTAIN DOMESTICALLY CONTROLLED FOREIGN PERSONS PERFORMING SERVICES UNDER CONTRACT WITH UNITED STATES GOVERNMENT TREATED AS AMERICAN EMPLOYERS (SEC. 18 OF THE BILL AND SEC. 3121 OF THE CODE)

PRESENT LAW

In general

Under the Federal Insurance Contributions Act ("FICA"), separate taxes are imposed on every employer and employee with respect to wages paid to such employer's employees.[65] These two taxes are commonly referred to as the employer's and the employee's share of FICA. The employee's share of FICA is collected by means of payroll withholding by the employee's employer.

For both the employer and the employee's share of FICA, the tax consists of two parts: (1) old age, survivor, and disability insurance ("OASDI"), which correlates to the Social Security program that provides monthly benefits after retirement, disability, or death; and (2) Medicare hospital insurance ("HI"). The OASDI tax rate is 6.2 percent on both the employee and employer (for a total rate of 12.4 percent). The OASDI tax rate applies to wages up to the OASDI wage base ($102,000 for 2008). The HI tax rate is 1.45 percent on both the employee and the employer (for a total rate of 2.9 per-

[65] Secs. 3101–3128 (FICA). Sections 3501–3510 provide additional rules.

cent). Unlike the OASDI tax, the HI tax is not limited to a specific amount of wages, but applies to all wages.

For purposes of the employer's and employee's share of FICA, wages generally means all remuneration for employment including the cash value of all remuneration paid in a medium other than cash. However, the general definition of wages is subject to a number of special rules and exceptions.[66]

Employment for FICA purposes generally means any service of whatever nature performed by an employee for the employer (irrespective of the citizenship or residence of either) within the United States. In the case of service outside the United States, employment also includes service performed by a United States citizen or resident as an employee for an American employer. As in the case of the definition of wages, the definition of employment is also subject to a number of exceptions and special rules.[67] An American employer is defined as an employer which is: (1) the United States or any instrumentality thereof; (2) an individual who is a resident of the United States; (3) a partnership, if at least two-thirds of the partners are United States residents; (4) a trust, if all of the trustees are United States residents; or (5) a corporation organized under the laws of the United States or any of the States.[68]

Section 3121(l) agreements

An American employer may enter into a voluntary agreement with the Secretary of the " Treasury to extend coverage of the insurance system of Title II of the Social Security Act to service performed outside the United States in the case of certain employees. Specifically, such an agreement may be entered into with respect to employees of a foreign affiliate of the American employer who are United States citizens or residents.[69] Such an agreement is commonly referred to as a "section 3121(l) agreement", and is entered into by completing Internal Revenue Service Form 2032. A foreign affiliate for purposes of the section 3121(l) agreement is any foreign entity in which the American employer has at least a 10-percent interest.[70]

If a section 3121(l) agreement is entered into, the American employer agrees to pay the Secretary of the Treasury amounts equivalent to the employer and employee's share of FICA (including amounts equivalent to interest, additional taxes, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment for purposes of FICA. In addition, the American employer agrees to comply with such regulations relating to payments and reports as the Secretary of the Treasury may prescribe.[71] A section 3121(l) agreement may not be terminated with respect to a foreign affiliate after June 15, 1989.[72]

In the case of a domestic corporation, a deduction is allowed for amounts paid or incurred pursuant to a section 3121(l) agreement

[66] Sec. 3121(a).

[67] Sec. 3121(b). For example, employment for FICA purposes includes certain service with respect to American vessels or aircrafts and also includes service that is designated as employment under an agreement entered into under section 233 of the Social Security Act.

[68] Sec. 3121(h).

[69] Sec. 3121(l).

[70] Sec. 3121(l)(6).

[71] Sec. 3121(l)(1).

[72] Sec. 3121(l)(3).

with respect to services performed by United States citizens employed by foreign subsidiary corporations.[73] Any reimbursement of any amount previously allowed as a deduction is included in gross income in the year received.

Totalization agreements

Under section 233 of the Social Security Act, the President of the United States is authorized to enter into agreements establishing totalization arrangements between the social security system of the United States and the social security system of a foreign country (referred to as a "totalization agreement").[74] The purposes of a totalization agreement are (1) to establish entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the United States social security system and the social security system of a foreign country, and (2) to prevent imposition of employment taxes by two countries on the same wages.

For purposes of FICA, during any period in which a totalization agreement is in effect, wages paid to an individual are exempt from the employer's and employee's share of FICA to the extent such wages are subject under the agreement exclusively to the laws applicable to the foreign country's social security system.[75]

REASONS FOR CHANGE

The Committee is aware that certain U.S. companies that contract with the United States government for the performance of services abroad are using controlled foreign entities as the employers of U.S. citizens and residents performing services under the contracts. This structure is undertaken, in part, to avoid liability for the employer and employee's share of FICA and other employment taxes. The Committee believes that these structures are abusive. The Committee believes that services performed under a contract with the U.S. government should be counted toward eligibility for U.S. Social Security benefits regardless of whether the services are performed for a U.S. company or for a foreign entity controlled by that company.

EXPLANATION OF PROVISION

Under the provision, a foreign person is treated as an American employer with respect to certain employees for purposes of determining whether their employment is subject to the employer's and employee's share of FICA. Specifically, a foreign person is treated as an American employer with respect to an employee of the foreign person who is performing services in connection with a contract between the United States government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person. Thus, under the provision, service performed as an employee for such an employer outside of the United States by a United States citizen or resident in connection with such a contract is employment that is subject to FICA. A domestically controlled group of entities is a

[73] Sec. 176.
[74] 42 U.S.C. sec. 433.
[75] Secs. 3101(c) and 3111(c).

controlled group of entities the common parent of which is a domestic corporation. For this purpose, a controlled group of entities is as defined in section 1563(a)(l) except that the ownership threshold is 50 percent rather than 80 percent and certain other changes are made, including that certain partnerships may be considered members of a controlled group. The sections 3101(c) and 3111(c) exceptions for wages not subject to FICA as a result of a totalization agreement apply under the provision. Also, this provision does not apply to any services covered by an agreement under section 3121(l).

The provision provides that the common parent of the domestically controlled group of entities is jointly and severally liable for the FICA taxes for which the foreign person is liable as a result of the provision. In addition; the common parent is liable for any penalty imposed on the foreign person with respect to any failure to pay the FICA taxes or any failure to file any return or statement with respect to such tax or wages subject to such tax. No deduction is allowed for any liability imposed on the common parent as a result of these joint and several liability rules.

EFFECTIVE DATE

The provision is effective for services performed after the date of enactment of the provision.

R. MODIFICATIONS TO CORPORATE ESTIMATED TAX PAYMENTS (SEC. 19 OF THE BILL)

PRESENT LAW

In general

In general, corporations are required to make-quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA")

TIPRA provided the following special rules:

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Subsequent legislation

Several public laws have been enacted since TIPRA which further increase the percentage of payments due under each of the two special rules enacted by TIPRA described above.

REASONS FOR CHANGE

The Committee believes it is appropriate to adjust the corporate estimated tax payments.

EXPLANATION OF PROVISION

Under the provision, in the case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, the otherwise applicable payment is increased by 0.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 5719, the "Taxpayer Assistance and Simplification Act of 2008".

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, as amended, was ordered favorably reported by a rollcall vote of 23 yeas and 17 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	X			Mr. McCrery		X	
Mr. Stark	X			Mr. Herger		X	
Mr. Levin	X			Mr. Camp		X	
Mr. McDermott	X			Mr. Ramstad		X	
Mr. Lewis (GA)	X			Mr. Johnson		X	
Mr. Neal	X			Mr. English		X	
Mr. McNulty	X			Mr. Weller		X	
Mr. Tanner	X			Mr. Hulshof		X	
Mr. Becerra	X			Mr. Lewis (KY)		X	
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy	X			Mr. Reynolds		X	
Ms. Tubbs Jones	X			Mr. Ryan		X	
Mr. Thompson	X			Mr. Cantor		X	
Mr. Larson				Mr. Linder		X	
Mr. Emanuel	X			Mr. Nunes		X	
Mr. Blumenauer	X			Mr. Tiberi		X	
Mr. Kind	X			Mr. Porter		X	
Mr. Pascrell	X						
Ms. Berkley	X						
Mr. Crowley	X						
Mr. Van Hollen	X						
Mr. Meek	X						
Ms. Schwartz	X						
Mr. Davis	X						

VOTES ON AMENDMENTS

A roll-call vote was conducted on the following amendments to the Chairman's Amendment in the Nature of a Substitute.

An amendment by Mr. Herger which would replace Section 4 of the Taxpayer Assistance and Simplification Act of 2008, dealing with the application of the 3 percent withholding requirement on payments to government contractors, was defeated by a vote of 17 yeas and 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner	X			Mr. Hulshof	X		
Mr. Becerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson				Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment by Mr. Brady and Mr. Reynolds which would strike Section 14 of the Taxpayer Assistance and Simplification Act of 2008 (H.R. 5719) to retain the statutory authority that allows the IRS to enter into qualified collection contracts with private collection agencies (PCS). These PCA(s) would locate and contact taxpayers with outstanding tax liabilities, as well as arrange for payment of those outstanding taxes to the IRS by the taxpayer. The amendment was defeated by a vote of 18 yeas and 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner	X			Mr. Hulshof	X		
Mr. Becerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson				Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

An amendment by Mr. Ryan would strike Section 17 of the Manager's Amendment, requiring Health Savings Account holders to re-

port on the distributions from these accounts was defeated by a roll call vote of 16 yeas and 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. BeCerra		X		Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson				Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter		X	
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 5719 as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2008–2018:

ESTIMATED REVENUE EFFECTS OF H.R. 5719,
THE "TAXPAYER ASSISTANCE AND SIMPLIFICATION ACT OF 2008,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2008 - 2018

[Millions of Dollars]

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
1. Modification of penalty on understatement of taxpayer's liability by tax return preparer	rpa 5/25/07	---	-1	-1	-2	-2	-2	-2	-2	-3	-3	-3	-9	-22
2. Removal of cellular telephones (or similar telecommunications equipment) from listed property	tyba 12/31/08	---	-3	-8	-13	-18	-22	-26	-30	-34	-39	-44	-63	-237
3. One-year delay of application of withholding requirement on certain governmental payments for goods and services	DOE	---	---	---	-6,313	5,998	---	---	---	---	---	---	-316	-316
4. Elderly and disabled individuals receiving home-based care under certain government programs not subject to employment tax provisions	apa 12/31/08	*Negligible Revenue Effect*												
5. Referrals to low-income taxpayer clinics permitted	rma DOE	*Negligible Revenue Effect*												
6. Programs for the benefits of low-income taxpayers	DOE	*No Revenue Effect*												
7. Increase outreach to possible EIC taxpayers	DOE	*No Revenue Effect*												
8. Prohibition on IRS debt indicators for predatory refund anticipation loans	DOE	*No Revenue Effect*												
9. Study on delivery of tax refunds	DOE	*No Revenue Effect*												
10. Extension of time for return of property for wrongful levy	[1]	*Negligible Revenue Effect*												
11. Individuals held harmless on wrongful levies on IRAs	lartia DOE	*Negligible Revenue Effect*												
12. Taxpayer notification of suspected identity theft	dma DOE	*No Revenue Effect*												

Provision	Effective	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
13. Repeal of authority to enter into private debt collection contracts	[2]	---	-26	-54	-59	-59	-59	-59	-59	-59	-59	-59	-257	-552
14. Clarification of IRS unclaimed refund authority	DOE	*No Revenue Effect*												
15. Prohibition on misuse of Department of the Treasury names and symbols	voa DOE	*No Revenue Effect*												
16. Substantiation of amounts paid or distributed out of health savings accounts ("HSAs")	[3]	---	---	---	61	59	31	25	28	31	33	39	151	308
17. Impose employment tax for wages paid for services performed by employees of foreign subsidiaries of U.S. parent companies under U.S. government contract [4]	spa DOE	14	81	80	81	82	83	84	84	86	86	86	420	846
18. Increase by 0.25 percentage points the required corporate estimated tax payments factor for corporations with assets of at least $1 billion for payments due in July, August, and September 2013	DOE	---	---	---	---	---	147	-147	---	---	---	---	147	---
NET TOTAL		**14**	**51**	**17**	**-6,245**	**6,060**	**178**	**-125**	**21**	**21**	**18**	**19**	**73**	**27**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be June 1, 2008.

Legend for "Effective" column:

apa = amounts paid after
dma = determinations made after
DOE = date of enactment
lartia = levied amounts returned to individuals after
rma = referrals made after
rpa = returns prepared after
spa = services performed after
tyba = taxable years beginning after
voa = violations occurring after

[1] Effective for levies made after the date of enactment and levies made on or before the date of enactment provided that the nine-month period has not expired as of the date of enactment.

[2] The provision is generally effective on the date of enactment, except for any contract which was entered into before March 1, 2008, and is not renewed or extended on or after such date. The provision also provides that any private debt collection contract which is entered into on or after March 1, 2008, and any extension or renewal of any private debt collection contract on or after such date shall be void.

[3] Effective for amounts paid or distributed out of HSAs after December 31, 2010.

[4] Estimate includes an increase in outlays provided by the Congressional Budget Office

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-13	2008-18
Congressional Budget Office	[5]	[5]	[5]	[5]	1	1	1	2	2	3	4	2	14

[5] Less than $500,000.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 14, 2008.

Hon. Charles B. Rangel,
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. 5719, the Taxpayer Assistance and Simplification Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Zachary Epstein.

Sincerely,

Robert A. Sunshine
(For Peter R. Orszag, Director).

Enclosure.

H.R. 5719—Taxpayer Assistance and Simplification Act of 2008

Summary: H.R. 5719 would make several changes to tax law. The bill would reduce revenues by modifying standards placed on preparers of tax returns, by loosening the restrictions on deducting cellular phone costs as a business expense, by delaying the withholding of taxes on payments for certain government contracts, and by repealing the Internal Revenue Service's (IRS's) authority to hire private debt collectors. H.R. 5719 would raise revenues by requiring additional information from preparers of tax returns regarding the use of health savings accounts (HSAs) and subjecting the wages of certain employees working under U.S. government contracts to payroll taxes. The bill also would shift some corporate receipts from 2014 into 2013.

The Joint Committee on Taxation (JCT) and the Congressional Budget Office (CBO) estimate that enacting H.R. 5719 would increase revenues by $41 million and reduce direct spending by $247 million over the 2008–2018 period.

JCT reviewed the tax provisions of the bill and determined that they contain no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the nontax provisions of H.R. 5719 and determined that they contain no intergovernmental mandates as defined in UMRA.

CBO has determined that the nontax provisions contain a private-sector mandate as defined is UMRA. The bill would prohibit anyone from using words, abbreviations, titles, or letters associated with the Department of the Treasury (or one of its bureaus, offices, or subdivisions) as a part of an Internet domain address in a manner that could be reasonably interpreted as conveying the false impression that the domain address is connected to or authorized by the department. Based on information from industry sources, CBO expects the total direct cost of the mandate would fall below the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation) in the first five years the mandate is in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5719 is shown in the following table. The costs of this legislation fall within budget functions 800 (general government) and 650 (Social Security).

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
CHANGES IN REVENUES													
Standards for Tax Return Preparers	0	−1	−1	−2	−2	−2	−2	−2	−3	−3	−3	−9	−22
Expensing of Cellular Phone Use	0	−3	−8	−13	−18	−22	−26	−30	−34	−39	−44	−63	−237
Delay in Implementing Government Withholding	0	0	0	−6,313	5,998	0	0	0	0	0	0	−316	−316
Repeal of Private Debt Collection Contracting Authority	0	−26	−54	−59	−59	−59	−59	−59	−59	−59	−59	−257	−552
Substantiation of HSA Distributions	0	0	0	61	59	31	25	28	31	33	39	151	308
Employment Taxes on Wages Paid Under Certain Government Contracts	14	81	80	81	83	84	85	86	88	89	90	422	860
Corporate Estimated Tax Payment Due in 2013	0	0	0	0	0	147	−147	0	0	0	0	147	0
Total Change in Revenues	14	51	17	−6,245	6,061	179	−124	23	23	21	23	75	41
On-Budget Revenues	−1	−37	−70	−6,333	5,972	88	−216	−71	−72	−75	−75	−383	−891
Off-Budget Revenues	15	88	87	88	89	91	92	94	95	96	98	458	932
CHANGES IN DIRECT SPENDING (OUTLAYS)[2]													
Wages Paid Under Certain Government Contracts[1]	*	*	*	*	1	1	1	2	2	3	4	2	14

	By fiscal year, in millions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008–2013	2008–2018
Private Debt Collection Authority	0	−12	−25	−28	−28	−28	−28	−28	−28	−28	−28	−121	−261
Total Changes in Direct Spending	*	−12	−25	−28	−27	−27	−27	−26	−26	−25	−24	−119	−247
On-Budget Spending	0	−12	−25	−28	−28	−28	−28	−28	−28	−28	−28	−121	−261
Off-Budget Spending	*	*	*	*	1	1	1	2	2	3	4	2	14
NET CHANGE IN THE BUDGET DEFICIT OR SURPLUS FROM CHANGES IN REVENUES AND DIRECT SPENDING													
Net Change in the Deficit or Surplus [3]	14	63	42	−6,217	6,088	206	−97	49	49	46	47	194	288
On-Budget	−1	−25	−45	−6,305	6,000	116	−188	−43	−44	−47	−47	−262	−630
Off-Budget	15	88	87	88	88	90	91	92	93	93	94	456	918
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Low-Income Taxpayer Clinics:													
Estimated Authorization Level	0	4	4	4	4	4	4	4	4	4	4	20	40
Estimated Outlays	0	4	4	4	4	4	4	4	4	4	4	20	40
Other Provisions:													
Estimated Authorization Level	0	3	2	2	2	2	2	2	2	2	2	11	21
Estimated Outlays	0	3	2	2	2	2	2	2	2	2	2	11	21
Total Changes:													
Estimated Authorization Level	0	7	6	6	6	6	6	6	6	6	6	31	61
Estimated Outlays	0	7	6	6	6	6	6	6	6	6	6	31	61

[1] A portion of the estimated effects on revenues, and all of the estimated effects on direct spending, are off-budget.
[2] Changes in direct spending budget authority would be identical ot the changes in outlays for each year.
[3] Negative numbers indicate increases in deficits (or decreases in surpluses); positive numbers indicate decreases in deficits (or increases in surpluses).

Sources: Congressional Budget Office and Joint Committee on Taxation.
Notes: HSA = health savings account; * = less than $500,000.

Basis of the estimate: JCT estimated the effects of H.R. 5719 on revenues, and CBO estimated the effects on direct spending.

Revenues

H.R. 5719 would affect revenues through a number of changes to tax law, some of which, JCT estimates, would have a negligible effect on revenues. Those provisions with measurable effects are described below.

Standards for Preparers of Tax Returns. Under current law, a preparer of tax returns can be subject to a penalty for understating an income tax liability if the justification for the tax position does not meet a certain standard. H.R. 5719 would reduce the standards

that such preparers must meet when not providing justification for a tax position. JCT estimates that this provision would decrease revenues by $22 million over the 2009–2018 period.

Expensing of Cellular Phone Use. Taxpayers can deduct business expenses associated with the use of cellular telephones only if they substantiate the use with detailed information, including the date and amount of each use in a tax year. Under the bill, the use of cellular telephones would not be subject to such information requirements. JCT estimates that this provision would decrease revenues by $237 million over the 2009–2018 period.

Delay on Implementation of Government Withholding. After December 31, 2010, federal, state, and local government entities making payments to persons providing goods and services will be required to withhold for income tax purposes 3 percent of those payments. Under H.R. 5719, that witholding would begin after December 31, 2011. JCT estimates that this provision would decrease revenues in 2011 and increase them in 2012, with a net reduction in revenues of $316 million over the 2011–2012 period.

Repeal of IRS's Authority to Contract with Private Debt Collectors. The bill would repeal the IRS's authority to enter into qualified tax collection contracts with private collection firms to collect delinquent tax liabilities. Any existing contracts entered into after February 29, 2008, would be void, as would any extensions or renewals occurring after such date. JCT estimates that this change would reduce revenues by $552 million over the 2009–2018 period. The provision also would affect direct spending (see "Direct Spending" section).

Substantiation of USA Distributions. Individuals who maintain a health savings account must determine whether money disbursed from the account and used to pay for a medical expense should be included in their taxable income. Under the bill, such persons would need to provide additional substantiation that an HSA distribution qualifies as excludable from taxable income. The additional requirements would apply to amounts disbursed after December 31, 2010. JCT estimates that this provision would increase revenues by $308 million over the 2011–2018 period.

Employment Taxes on Wages Paid Under Certain Government Contracts. For the purposes of determining one's employment tax liability, H.R. 5719 would extend the definition of a U.S. employer to include foreign subsidiaries of U.S. parent companies that employ a U.S. citizen working in connection with a U.S. government contract. The controlling parent entity and the employee of the foreign subsidiary would be liable for employment taxes. JCT estimates that this change would increase revenues by $860 million over the 2008–2018 period. Off-budget revenues would increase by an estimated $932 million, and on-budget revenues would decrease by an estimated $72 million over that period. The provision also would affect direct spending (see "Direct Spending" section).

Shifts in Corporate Estimated Payments. H.R. 5719 would shift revenues between 2013 and 2014. For corporations with at least $1 billion in assets, the bill would increase the portion of corporate estimated tax payments due in July through September of 2013. JCT estimates that this change would increase revenues by $147 million in 2013 and decrease revenues by $147 million in 2014.

Direct spending

Prohibition on the Use of Treasury Names and Symbols. The bill would establish a new federal crime for the misuse of Treasury names and symbols on the Internet. The bill also would apply and increase civil and criminal penalties (that are already levied on misuse of Treasury names in other mediums) to such Internet misuse. Enacting the provision could increase federal revenues and direct spending as a result of the collection of additional civil and criminal penalties. (Collections of civil penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation.) CBO estimates, however, that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

Repeal of IRS's Authority to Contract with Private Debt Collectors. As discussed above in the "Revenues" section, the bill, would repeal the authority for the IRS to enter into any new or extended contracts for private debt collection. Under current law, the IRS enters into contracts with private collection firms to collect delinquent tax liabilities owed to the federal government. Under those contracts, the IRS may allow those firms to retain up to 25 percent of the amounts they collect. Another 25 percent of amounts collected is available to IRS to spend on collection enforcement activities. Based on information from the IRS, CBO estimates that 47 percent of the amounts collected are retained by either the IRS or the private collection firms. Thus, CBO estimates that repealing the private debt collection authority and allowing the current contracts to expire would reduce direct spending by $261 million over the 2009–2018 period.

Employment Taxes on Wages Paid Under Certain Government Contracts. As discussed above, the bill would require certain U.S. parent companies with foreign subsidiaries to pay employment taxes on behalf of some employees. Those employees also would be liable for their share of employment taxes. Because Social Security benefits are calculated by a formula that is based on lifetime earnings subject to employment taxes, increasing the amount of earnings counted in the benefit formula would increase Social Security benefits. CBO estimates that enacting the provision would increase direct spending for Social Security benefits by less than $500,000 in 2008 and by $14 million over the 2009–2018 period.

Spending subject to appropriation

Clinics for Low-Income Taxpayers. Under current law, the Secretary of the Treasury is authorized to provide up to $6 million per year to clinics for low-income taxpayers. The bill would increase this authorization to $10 million per year and allow volunteers who provide income tax assistance to receive grants. Assuming appropriation of the specified amounts beginning in 2009, CBO estimates that implementing this provision would cost $40 million over the 2009–2018 period.

Other Provisions. H.R. 5719 would require the IRS to notify any taxpayer when the agency determines that the taxpayer has been a victim of identity theft and when any criminal charges have been filed. The bill also would require, to the extent possible, that the IRS annually provide written notice to taxpayers who may qualify

for an earned income tax credit or refund. In addition, H.R. 5719 would require a report by the Treasury on the feasibility to delivering tax refunds through electronic means to individuals who do not have a bank account. Based on information from IRS, and assuming the appropriation of the necessary amounts, CBO estimates that implementing those provisions would cost $3 million in 2009 and $2 million in each subsequent year.

Intergovernmental and private-sector impact: JCT reviewed the tax provisions of the bill and determined that they contain no private-sector or intergovernmental mandates as defined in UMRA. CBO has reviewed the nontax provisions and determined that they contain no intergovernmental mandates as defined in UMRA.

CBO has determined that the nontax provisions of H.R. 5719 contain a private-sector mandate as defined in UMRA. The bill would prohibit anyone from using words, abbreviations, titles, or letters associated with the Department of the Treasury (or one of its bureaus, offices, or subdivisions) as a part of an Internet domain address in a manner that could be reasonably interpreted as conveying the false impression that the domain address is connected to or authorized by the department.

The costs of the mandate would be the expenditures incurred to bring such an Internet domain address into compliance, added to any loss of net income associated with those changes. Current law already prohibits the use of words or symbols related to the Department of the Treasury in connection with advertisements, solicitations, or other business activities in such a manner. Based on information from industry sources, CBO expects the total direct cost of the mandate would fall below the annual threshold established by UMRA ($136 million in 2008, adjusted annually for inflation).

Estimate prepared by: Federal Revenues: Zachary Epstein; Federal Spending: Matthew Pickford and Sheila Dacey; Impact on State, Local, and Tribal Governments: Elizabeth Cove; and Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis and Peter H. Fontaine, 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 clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII 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 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises"), 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 (Pub. L. No. 104–4).

The Committee has determined that the revenue provisions of the bill contain no Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." 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 increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses:

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart C—Refundable Credits

* * * * * * *

SEC. 32. EARNED INCOME.

(a) * * *

* * * * * * *

(n) NOTIFICATION OF POTENTIAL ELIGIBILITY FOR CREDIT AND REFUND.—

(1) IN GENERAL.—To the extent possible and on an annual basis, the Secretary shall provide to each taxpayer who—

(A) for any preceding taxable year for which credit or refund is not precluded by section 6511, and

(B) did not claim the credit under subsection (a) but may be allowed such credit for any such taxable year based on return or return information (as defined in section 6103(b)) available to the Secretary,

notice that such taxpayer may be eligible to claim such credit and a refund for such taxable year.

(2) NOTICE.—Notice provided under paragraph (1) shall be in writing and sent to the last known address of the taxpayer.

* * * * * * *

Subchapter B—Computation of Taxable Income

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PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 223. HEALTH SAVINGS ACCOUNTS.

(a) * * *

* * * * * * *

(f) TAX TREATMENT OF DISTRIBUTIONS.—

(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary *(and, in the case of amounts paid or distributed after December 31, 2010, substantiated in a manner similar to the substantiation required for flexible spending arrangements)* shall not be includible in gross income.

* * * * * * *

[(h) REPORTS.—The Secretary may require—]

(h) REPORTS.—

(1) IN GENERAL.—The Secretary may require—

[(1)] *(A)* the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

[(2)] *(B)* any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(2) RELATING TO SUBSTANTIATION.—Not later than January 15 of each calendar year after 2011, the trustee of a health savings account shall make a report regarding such account to the Secretary and the account beneficiary setting forth—

(A) the name, address, and identifying number of the account beneficiary, and

(B) the amount paid or distributed out of such account for the preceding calendar year not substantiated in accordance with subsection (f)(1).

* * * * * * *

PART IX—ITEMS NOT DEDUCTIBLE

* * * * * * *

SEC. 280F. LIMITATION ON DEPRECIATION FOR LUXURY AUTOMOBILES; LIMITATION WHERE CERTAIN PROPERTY USED FOR PERSONAL PURPOSES.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(4) LISTED PROPERTY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "listed property" means—

(i) any passenger automobile,

* * * * * * *

(iv) any computer or peripheral equipment (as defined in section 168(i)(2)(B)), *and*

⟦(v) any cellular telephone (or other similar telecommunications equipment), and⟧

⟦(vi)⟧ *(v)* any other property of a type specified by the Secretary by regulations.

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Subtitle C—Employment Taxes

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

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SEC. 3121. DEFINITIONS.

(a) * * *

* * * * * * *

(z) TREATMENT OF CERTAIN FOREIGN PERSONS AS AMERICAN EMPLOYERS.—

(1) IN GENERAL.—If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

(2) DOMESTICALLY CONTROLLED GROUP OF ENTITIES.—For purposes of this subsection—

(A) IN GENERAL.—The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

(B) CONTROLLED GROUP OF ENTITIES.—The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) LIABILITY OF COMMON PARENT.—In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

(4) COORDINATION.—Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (l).

(5) CROSS REFERENCE.—For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).

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CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec. 3501. Collection and payment of taxes.

* * * * * * *

Sec. 3511. Elderly and disabled individuals receiving in-home care under certain government programs.

* * * * * * *

SEC. 3511. ELDERLY AND DISABLED INDIVIDUALS RECEIVING IN-HOME CARE UNDER CERTAIN GOVERNMENT PROGRAMS.

(a) IN GENERAL.—In the case of amounts paid under a home care service program to a home care service provider by the fiscal administrator of such program—

(1) the home care service recipient shall not be liable for the payment of any taxes imposed under this subtitle with respect to amounts paid for the provision of services under such program, and

(2) the fiscal administrator shall be so liable.

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

(1) HOME CARE SERVICE PROGRAM.—The term "home care service program" means a State or local government program—

(A) any portion of which is funded with Federal funds, and

(B) under which domestic services are provided to elderly or disabled individuals in their homes.

Such term shall not include any program to the extent home care service recipients make payments to the home care service providers for such in-home domestic services.

(2) HOME CARE SERVICE PROVIDER.—The term "home care service provider" means any individual who provides domestic

services to a home care service recipient under a home care service program.

(3) HOME CARE SERVICE RECIPIENT.—The term "home care service recipient" means any individual receiving domestic services under a home care service program.

(4) FISCAL ADMINISTRATOR.—The term "fiscal administrator" means any person or governmental entity who pays amounts under a home care service program to home care service providers for the provision of domestic services under such program.

(c) RETURNS BY FISCAL ADMINISTRATOR.—For purposes of this section—

(1) IN GENERAL.—Returns relating to taxes imposed or amounts required to be withheld under this subtitle shall be made under the identifying number of the fiscal administrator.

(2) IDENTIFICATION OF SERVICE RECIPIENT.—The fiscal administrator shall, to the extent required under regulations prescribed by the Secretary, make a return setting forth—

(A) the name, address, and identifying number of each home care service recipient for whom amounts are paid by such fiscal administrator under the home care services program, and

(B) such other information as the Secretary may require.

(d) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including requiring deposits of any tax imposed under this subtitle.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

Subchapter A—Returns and Records

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PART II—TAX RETURNS OR STATEMENTS

* * * * * * *

Subpart A—General Requirement

* * * * * * *

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) * * *

* * * * * * *

(f) PROMOTION OF ELECTRONIC FILING.—

(1) * * *

* * * * * * *

(3) PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.—

(A) IN GENERAL.—In carrying out any program under this subsection, the Secretary shall not provide a debt indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory.

(B) REFUND ANTICIPATION LOAN.—For purposes of this paragraph, the term "refund anticipation loan" means a loan of money or of any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund.

(C) IRS DEBT INDICATOR.—For purposes of this paragraph, the term "debt indicator" means a notification provided through a tax return's acknowledgment file that a refund will be offset to repay debts for delinquent Federal or State taxes, student loans, child support, or other Federal agency debt.

* * * * * * *

Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media*, and through any other means of mass communication,* for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

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CHAPTER 64—COLLECTION

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Subchapter A—General Provisions

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Sec. 6301. Collection authority.

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[Sec. 6306. Qualified tax collection contracts.]

* * * * * * *

[SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

[(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

[(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term "qualified tax collection contract" means any contract which—

[(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

[(A) to locate and contact any taxpayer specified by the Secretary,

[(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

[(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

[(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

[(3) prohibits subcontractors from—

[(A) having contacts with taxpayers,

[(B) providing quality assurance services, and

[(C) composing debt collection notices, and

[(4) permits subcontractors to perform other services only with the approval of the Secretary.

[(c) FEES.—The Secretary may retain and use—

[(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

[(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

[(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

[(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

[(f) CROSS REFERENCES.—

[(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

[(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(g).]

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Subchapter D—Seizure of Property for Collection of Taxes

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PART II—LEVY

* * * * * * *

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) * * *

(b) RETURN OF PROPERTY.—If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

(1) * * *

* * * * * * *

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of ⟦9 months⟧ *2 years* from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

* * * * * * *

(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

(A) the amount of money returned by the Secretary on account of such levy, and

(B) interest paid under subsection (c) on such amount of money,

may be deposited into such individual retirement plan or any other individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted. An amount may not be deposited into a Roth IRA under the preceding sentence unless the individual retirement plan levied upon was a Roth IRA at the time of such levy.

(2) TREATMENT AS ROLLOVER.—If amounts are deposited into an individual retirement plan under paragraph (1) not later than the 60th day after the date on which the individual receives the amounts under paragraph (1)—

(A) such deposit shall be treated as a rollover described in section 408(d)(3)(A)(i),

(B) to the extent the deposit includes interest paid under subsection (c), such interest shall not be includible in gross income, and

(C) such deposit shall not be taken into account under section 408(d)(3)(B).

For purposes of subparagraph (B), an amount shall be treated as interest only to the extent that the amount deposited exceeds the amount of the levy.

(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.

* * * * * * *

CHAPTER 66—LIMITATIONS

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Subchapter D—Periods of Limitation in Judicial Proceedings

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SEC. 6532. PERIODS OF LIMITATION ON SUITS.

(a) * * *

* * * * * * *

(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of ⟦9 months⟧ *2 years* from the date of the levy or agreement giving rise to such action.

(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the ⟦9-month⟧ *2-year* period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6694. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY TAX RETURN PREPARER.

[(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

[(1) IN GENERAL.—Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

[(A) $1,000, or

[(B) 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

[(2) UNREASONABLE POSITION.—A position is described in this paragraph if—

[(A) the tax return preparer knew (or reasonably should have known) of the position,

[(B) there was not a reasonable belief that the position would more likely than not be sustained on its merits, and

[(C)(i) the position was not disclosed as provided in section 6662(d)(2)(B)(ii), or (ii) there was no reasonable basis for the position.

[(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.]

(a) UNDERSTATEMENT DUE TO UNREASONABLE POSITIONS.—

(1) IN GENERAL.—If a tax return preparer—

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) UNREASONABLE POSITION.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(B) DISCLOSED POSITIONS.—If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) TAX SHELTERS AND REPORTABLE TRANSACTIONS.—If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

* * * * * * *

PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

* * * * * * *

SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.

(a) * * *

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(d) DEFINITIONS.—For purposes of this part—

(1) * * *

* * * * * * *

(3) SPECIFIED INFORMATION REPORTING REQUIREMENT.—The term "specified information reporting requirement" means—

(A) * * *

* * * * * * *

(C) any requirement contained in the regulations prescribed under section 215 that a person—

(i) * * *

(ii) include on his return the TIN of another person, [and]

(D) any requirement under section 6109(h) that—

(i) * * *

(ii) a person furnish his TIN to another person[.]*, and*

(E) any requirement under section 3511(c)(2).

* * * * * * *

CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

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Sec. 7421. Prohibition of suits to restrain assessment or collection.

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[Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.]

* * * * * * *

[SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

[(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the

same manner as if such person were an employee of the Internal Revenue Service.

⟦(b) MODIFICATIONS.—For purposes of subsection (a):

⟦(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

⟦(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

⟦(3) Such civil action shall not be an exclusive remedy with respect to such person.

⟦(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.⟧

* * * * * * *

CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec. 7501. Liability for taxes withheld or collected.

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Sec. 7526. Low-income taxpayer clinics.
Sec. 7526A. Volunteer income tax assistance programs.

* * * * * * *

Sec. 7529. Notification of suspected identity theft.

* * * * * * *

SEC. 7526. LOW-INCOME TAXPAYER CLINICS.

(a) * * *

* * * * * * *

(c) SPECIAL RULES AND LIMITATIONS.—

(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than ⟦$6,000,000⟧ *$10,000,000* per year (exclusive of costs of administering the program) to grants under this section.

* * * * * * *

(5) REQUIREMENT OF MATCHING FUNDS.—A *qualified* 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) * * *

* * * * * * *

(6) TREASURY EMPLOYEES PERMITTED TO REFER TAXPAYERS TO QUALIFIED LOW-INCOME TAXPAYER CLINICS.—Notwithstanding any other provision of law, officers and employees of the Department of the Treasury may refer taxpayers for advice and assistance to qualified low-income taxpayer clinics receiving funding under this section.

* * * * * * *

SEC. 7526A. VOLUNTEER INCOME TAX ASSISTANCE PROGRAMS.

(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of volunteer income tax assistance programs.

(b) VOLUNTEER INCOME TAX ASSISTANCE PROGRAM.—For purposes of this section, the term "volunteer income tax assistance program" means a program—

(1) which does not charge taxpayers for its return preparation services,

(2) which operates programs to assist low and moderate-income (as determined by the Secretary) taxpayers in preparing and filing their Federal income tax returns, and

(3) in which all of the volunteers who assist in the preparation of Federal income tax returns meet the requirements prescribed by the Secretary.

(c) SPECIAL RULES AND LIMITATIONS.—

(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (6) of section 7526(c) shall apply with respect to the awarding of grants to volunteer income tax assistance programs.

* * * * * * *

SEC. 7529. NOTIFICATION OF SUSPECTED IDENTITY THEFT.

If, in the course of an investigation under the internal revenue laws, the Secretary determines that there was or may have been an unauthorized use of the identity of the taxpayer or a dependent of the taxpayer, the Secretary shall, to the extent permitted by law—

(1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination, and

(2) if any person is criminally charged by indictment or information with respect to such unauthorized use, notify such taxpayer as soon as practicable of such charge.

* * * * * * *

CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

* * * * * * *

SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

(a) * * *

* * * * * * *

[(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same

extent and in the same manner as such order or action applies to the Secretary.】

* * * * * * *

SECTION 511 OF THE TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

SEC. 511. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) * * *

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after 【December 31, 2010】 *December 31, 2011.*

SECTION 1203 INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

SEC. 1203. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

(a) * * *

* * * * * * *

【(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.】

* * * * * * *

SECTION 333 OF TITLE 31, UNITED STATES CODE

§ 333. Prohibition of misuse of Department of the Treasury names, symbols, etc

(a) GENERAL RULE.—No person may use, in connection with, or as a part of, any advertisement, solicitation, *Internet domain address,* business activity, or product, whether alone or with other words, letters, symbols, or emblems—

(1) * * *

* * * * * * *

in a manner which could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, *Internet domain address,* business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with, the Department of the Treasury or any entity referred to in paragraph (1) or any officer or employee thereof.

* * * * * * *

(c) CIVIL PENALTY.—

(1) * * *

(2) AMOUNT OF PENALTY.—The amount of the civil penalty imposed by paragraph (1) shall not exceed $5,000 for each use

of any material in violation of subsection (a). If such use is in a broadcast or telecast, *or any other mass communications by electronic means,* the preceding sentence shall be applied by substituting "$25,000" for "$5,000".

* * * * * * *

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—If any person knowingly violates subsection (a), such person shall, upon conviction thereof, be fined not more than $10,000 for each such use or imprisoned not more than 1 year, or both. If such use is in a broadcast or telecast, *or any other mass communications by electronic means,* the preceding sentence shall be applied by substituting "$50,000" for "$10,000".

* * * * * * *

SECTION 210 OF THE SOCIAL SECURITY ACT

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) * * *

* * * * * * *

American Employer

(e)*(1)* The term "American employer" means an employer which is ⟦(1)⟧ *(A)* the United States or any instrumentality thereof, ⟦(2)⟧ *(B)* a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, ⟦(3)⟧ *(C)* an individual who is a resident of the United States, ⟦(4)⟧ *(D)* a partnership, if two-thirds or more of the partners are residents of the United States, ⟦(5)⟧ *(E)* a trust, if all of the trustees are residents of the United States, or ⟦(6)⟧ *(F)* a corporation organized under the laws of the United States or of any State.

(2)(A) If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated as an American employer with respect to such services performed by such employee.

(B) For purposes of this paragraph—

(i) The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

(ii) The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, except that—

(I) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(II) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563 of such Code.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).

*   *   *   *   *   *   *

VI. DISSENTING VIEWS

Last year, each of us voted for H.R. 1677, a bill containing many of the same provisions as were included in this bill. That measure passed by a vote of 407 to 7, showing many of the items enjoy strong, bipartisan support. And we were pleased by the inclusion of new language this year related to tax return preparers and employer-provided cell phones. Many of us have been advocates for those changes for some time.

It was thus disappointing that the Majority elected to turn what should have been a triumph of bipartisanship into a highly partisan exercise by including two items to which we strongly object.

PRIVATE TAX COLLECTION

On Wednesday, May 23, 2007, the Ways and Means Committee held a hearing on the Internal Revenue Service's use of private collection agencies (PCAs) to collect Federal income taxes. During the hearing we heard repeated assurances from the IRS that the tax liabilities assigned to PCAs for collection would otherwise go uncollected even if the IRS had a greater enforcement budget. Turning a deaf ear, last year the Democrats put forth H.R. 3056 with repeal of the IRS's authority to. use PCAs as the bill's centerpiece. We opposed passage of that bill. With this bill, HR. 5719, once again, the Majority is proposing to terminate the private collection agency program. They already passed a bill on the floor of the House this Congress to repeal the program, but here we are again, wasting time doing the same thing.

As before, we strongly oppose the provision killing the private collection agency program. The hearing we held last year showed the skill and patience PCA employees employ to avoid disclosing any confidential taxpayer information. Even though the PCAs lack many of the enforcement-enhancing tools of the IRS, such as lien and levy, they are successfully collecting millions of dollars in unpaid taxes that the IRS would not otherwise pursue.

These are liabilities which are not in dispute. The taxpayer simply chose not to pay, even after the IRS sent multiple notices reminding the affected taxpayers of their unpaid obligation. During consideration of the bill, Members of the Majority spoke of the "special relationship" between taxpayers and the IRS. Most taxpayers we talk to would—hardly consider that relationship special. And for those who have ignored multiple. notices from the IRS about the delinquent liabilities, it-is even harder to characterize the relationship that way.

The Majority attempted to argue the cost to taxpayers would be even less if the IRS went after these obligations,. This is not true. The IRS is presently ill-equipped to engage in the massive outbound call operations the PCAs use to collect these obligations. The Majority cited poorly designed estimates that compared the effi-

ciency of the IRS with PCAs on an apples-to-oranges basis which fail to account for the large costs the IRS would have to incur to tackle these cases and other factors. In fact, a GAO report (GAO–04–492) looked to an apples-to-apples comparison ". . . under which the IRS would hire additional staff to work on the same volume for selected types of cases on which the PCAs would work. According to the report, PCAs would generate $4.6 in revenue for every dollar in cost and IRS employees would generate $4.1."

As of February 23, 2008, 98,000 cases have been placed with the PCAs. Full payment has been received for more than 12,000 tax debts. In addition, more than 5,000 debts are being paid through installment agreements. The PCAs have already collected more than $46 million in gross revenue that would not have been collected otherwise, making this a tax-gap closing program with a proven track record.

The PCA program has done all of this while preserving confidential taxpayer information. In fact, on March 26, 2008, the Treasury Inspector General for Tax Administration (TIGTA) issued a report titled "Private Collection Agencies Adequately Protected Taxpayer Data." In the report TIGTA says:

> We reviewed the computer security controls over taxpayer data provided to the two current PCAs and determined that the controls were adequate. In particular, files were securely transmitted from the IRS to the contractors and adequately secured on the contractors' systems. In addition, workstations used by contractor collection personnel were adequately controlled to prevent unauthorized copying of taxpayer information to removable media or transfer via email. The contractors. also maintained adequate audit trails and performed periodic reviews, including reviews to identify unauthorized access to taxpayer data.

In contrast to this report, TIGTA issued a report after investigating IRS computer security controls on the same date titled "Inadequate Controls over Routers and Switches Jeopardize Sensitive Taxpayer Information." This report once again cited the IRS for not having adequate controls over their computer systems placing confidential taxpayer information at risk of theft or other misuse. We do not mention this to embarrass the many responsible public servants that work at the IRS, but to highlight the competent and responsible nature of the PCA professionals working for this program.

According to the Joint Committee on Taxation, killing the program will reduce Federal budget receipts by approximately $600 million during the 2008 to 2018 period. We continue to be amazed that the Majority, despite their zeal to reduce the deficit and ensure everyone pays their fair share of taxes, is moving in the opposite direction in its attempt to kill this program.

SUBSTANTIATION OF HSA DISTRIBUTIONS

We also object to the majority's imposition of a new substantiation requirement for withdrawing money from Health Savings Accounts. The provision amends current law to specify that withdrawals from an HSA are only tax-exempt if they are for health

purposes and "substantiated in a manner similar to the substantiation required for flexible spending accounts." Further, the bill allows Treasury to require account custodians to report, on an annual basis, amounts withdrawn from an HSA that were not substantiated as being for a qualified medical expense. The provision is effective January 1, 2010.

There is simply not enough information about this issue. The committee has not held a single hearing to examine the issue of substantiation, and we have little or no reliable data on the scope of any potential problem. One company has distributed anecdotal information that suggests significant amounts of money are being spent at non-medical merchants. However, under current law, it is permissible to withdraw funds from one's HSA for any purpose as long as the appropriate taxes and penalties are paid. Unfortunately, no information has been provided to Members that discusses whether or not any taxes and penalties were paid.

Further, the anecdotal information provides no details on what was purchased with the HSA funds. Clearly, it is possible and permissible to spend one's HSA on qualifying products, such as on prescription and over-the-counter drugs, at a grocery store. Individuals are also allowed to reimburse themselves with HSA funds for out-of-pocket expenses. If an HSA account holder wishes to withdraw money from an ATM to do so, they can. Supporters of substantiation imply that all ATM withdrawals must be for improper purposes, but yet they presented no evidence to support such an assumption. We are troubled, therefore, that the Majority's proposal would attempt to address an undefined problem, while drawing support principally from anecdotes that do not necessarily prove noncompliance.

A new requirement that all HSA withdrawals be substantiated would impose significant burdens on account custodians to review transactions and make determinations about their validity. This new obligation could expose them to liability for decisions about whether an expense is qualified. Substantiation could also require account custodians, many of whom are banking institutions, to receive and review sensitive medical information. This new requirement would then force these institutions to comply with the complex and expensive privacy standards outlined in the Health Insurance Portability and Accountability Act.

Beyond the legal ramifications, a new substantiation requirement could force HSA account custodians to eliminate many convenient withdrawal methods, such as ATM access, because of the difficulties associated with substantiating these types of transactions. In a system where 90 percent of all transactions are done electronically, substantiation could have the unintended effect of pushing some HSA custodians away from a paperless health care system. Either way, health insurers and account custodians alike have indicated that this provision will substantially increase the administrative costs associated with Health Savings Accounts. These costs will ultimately be passed along to account holders, meaning enrollees will spend more money on overhead and, therefore, will have less in their account to pay for health care. Higher costs for HSA enrollees could lead to a reduction in the number of

people in HSAs. The program might still continue to grow, but at a slower pace than under the current baseline.

HSAs were designed to allow consumers to be more involved in decisions about their health care. It is a well-known fact that paper-based substantiation systems increase the amount of time it takes to receive reimbursements for qualified health expenses. With other health savings programs, such as Flexible Spending Accounts, this is less of a concern because the consumer is using account funds to supplement existing health coverage. However, an HSA is the consumer's primary health coverage and all expenses must be paid for out-of-pocket at the time service is rendered. Debit card technology was designed by account custodians to address the uniqueness of this situation by allowing HSA account holders to access funds to pay health care providers immediately. If account holders were suddenly forced to substantiate expenses before they could be reimbursed, this could make them liable for hundreds or even thousands of dollars in out-of-pocket costs.

It is not clear why HSAs are being singled out for substantiation, especially since we did not hold a hearing to establish whether there is a problem or whether this solution is appropriate. There are many other areas in the tax code involving more tax returns and more dollars, which do not require substantiation. One example is the deduction for charitable contributions, which is claimed on 40 million returns and resulted in $39 billion in tax expenditures in 2006. We can also point to the deduction for medical expenses in excess of 7.5% of adjusted gross income, which was claimed on 8.9 million returns; and resulted in almost $8 billion in tax expenditures in 2006. There is no evidence that noncompliance with respect to HSA spending is any worse than in these or other tax return items that do not require substantiation by a third party, but for which a taxpayer must provide documentation if audited.

These concerns should not be misconstrued as the minority's support for fraudulent use of HSA funds. We certainly believe that HSA money should be used first and foremost to cover health expenditures. However, at the end of the day, the money in an HSA, account belongs to the account holder. They should continue to be able to use the money as they see fit, as long as the letter of the law is followed and the applicable taxes and penalties are paid.

CONCLUSION

The tax gap, estimated at nearly $300 billion per year, can't be closed by waving a magic wand. Rather, ensuring that all taxes owed are actually paid requires many small steps to target facets of the problem. By terminating a proven method of ensuring all Americans pay their fair share, H.R. 5719 takes a giant step in the opposite direction. In addition, the juxtaposition between the repeal of the PCA program and imposing new burdensome HSA substantiation requirements reveals the fickle and inconsistent nature of the Majority. The Majority objects to the IRS using private collection agencies yet they want the IRS to "employ" private administrators to review the health spending of HSA enrollees? Surely the irony is not lost on us. We urge our colleagues to vote against it.

JIM MCCRERY.
WALLY HERGER.
DAVE CAMP.
JIM RAMSTAD.
SAM JOHNSON.
PHIL ENGLISH.
RON LEWIS.
KEVIN BRADY.
TOM REYNOLDS.
ERIC CANTOR.
DEVIN NUNES.
PAT TIBERI.