

112TH CONGRESS
2D SESSION

S. 2291

To provide a taxpayer bill of rights for small businesses.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2012

Mr. CORNYN (for himself, Ms. SNOWE, Mrs. HUTCHISON, and Mr. HELLER)
introduced the following bill; which was read twice and referred to the
Committee on Finance

A BILL

To provide a taxpayer bill of rights for small businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Taxpayer Bill of Rights Act of 2012”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Modification of standards for awarding of costs and certain fees.
- Sec. 3. Civil damages allowed for reckless or intentional disregard of internal revenue laws.
- Sec. 4. Modifications relating to certain offenses by officers and employees in connection with revenue laws.
- Sec. 5. Modifications relating to civil damages for unauthorized inspection or disclosure of returns and return information.
- Sec. 6. Interest abatement reviews.

- Sec. 7. Ban on ex parte discussions.
 Sec. 8. Alternative dispute resolution procedures.
 Sec. 9. Extension of time for contesting IRS levy.
 Sec. 10. Waiver of installment agreement fee.
 Sec. 11. Suspension of running of period for filing petition of spousal relief and collection cases.
 Sec. 12. Venue for appeal of spousal relief and collection cases.
 Sec. 13. Increase in monetary penalties for certain unauthorized disclosures of information.
 Sec. 14. De novo tax court review of claims for equitable innocent spouse relief.
 Sec. 15. Ban on raising new issues on appeal.

1 **SEC. 2. MODIFICATION OF STANDARDS FOR AWARDING OF**
 2 **COSTS AND CERTAIN FEES.**

3 (a) **SMALL BUSINESSES ELIGIBLE WITHOUT RE-**
 4 **GARD TO NET WORTH.**—Subparagraph (D) of section
 5 7430(c)(4) of the Internal Revenue Code of 1986 is
 6 amended by striking “and” at the end of clause (i), by
 7 striking the period at the end of clause (ii) and inserting
 8 “and”, and by adding at the end the following new clause:

9 “(iii) in the case of an eligible small
 10 business, the net worth limitation in clause
 11 (ii) of such section shall not apply.”.

12 (b) **ELIGIBLE SMALL BUSINESS.**—Paragraph (4) of
 13 section 7430(c) of the Internal Revenue Code of 1986 is
 14 amended by adding at the end the following new subpara-
 15 graph:

16 “(F) **ELIGIBLE SMALL BUSINESS.**—For
 17 purposes of subparagraph (D)(iii), the term ‘eli-
 18 gible small business’ means, with respect to any
 19 proceeding commenced in a taxable year—

1 “(i) a corporation the stock of which
2 is not publicly traded,
3 “(ii) a partnership, or
4 “(iii) a sole proprietorship,
5 if the average annual gross receipts of such cor-
6 poration, partnership, or sole proprietorship for
7 the 3-taxable-year period preceding such taxable
8 year does not exceed \$50,000,000. For pur-
9 poses of applying the test under the preceding
10 sentence, rules similar to the rules of para-
11 graphs (2) and (3) of section 448(c) shall
12 apply.”.

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

16 **SEC. 3. CIVIL DAMAGES ALLOWED FOR RECKLESS OR IN-**
17 **TENTIONAL DISREGARD OF INTERNAL REV-**
18 **ENUE LAWS.**

19 (a) INCREASE IN AMOUNT OF DAMAGES.—Section
20 7433(b) of the Internal Revenue Code of 1986 is amended
21 by striking “\$1,000,000 (\$100,000, in the case of neg-
22 ligence)” and inserting “\$3,000,000 (\$300,000, in the
23 case of negligence)”.

1 (b) EXTENSION OF TIME TO BRING ACTION.—Sec-
 2 tion 7433(d)(3) of the Internal Revenue Code of 1986 is
 3 amended by striking “2 years” and inserting “5 years”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to actions of employees of the In-
 6 ternal Revenue Service after the date of the enactment
 7 of this Act.

8 **SEC. 4. MODIFICATIONS RELATING TO CERTAIN OFFENSES**
 9 **BY OFFICERS AND EMPLOYEES IN CONNEC-**
 10 **TION WITH REVENUE LAWS.**

11 (a) INCREASE IN PENALTY.—Section 7214 of the In-
 12 ternal Revenue Code of 1986 is amended—

13 (1) by striking “\$10,000” in subsection (a) and
 14 inserting “\$25,000”, and

15 (2) by striking “\$5,000” in subsection (b) and
 16 inserting “\$10,000”.

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

20 **SEC. 5. MODIFICATIONS RELATING TO CIVIL DAMAGES FOR**
 21 **UNAUTHORIZED INSPECTION OR DISCLO-**
 22 **SURE OF RETURNS AND RETURN INFORMA-**
 23 **TION.**

24 (a) INCREASE IN AMOUNT OF DAMAGES.—Subpara-
 25 graph (A) of section 7431(c)(1) of the Internal Revenue

1 Code of 1986 is amended by striking “\$1,000” and insert-
2 ing “\$10,000”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to inspections and disclosure occur-
5 ring on and after the date of the enactment of this Act.

6 **SEC. 6. INTEREST ABATEMENT REVIEWS.**

7 (a) FILING PERIOD FOR INTEREST ABATEMENT
8 CASES.—

9 (1) IN GENERAL.—Subsection (h) of section
10 6404 of the Internal Revenue Code of 1986 is
11 amended—

12 (A) by striking “REVIEW OF DENIAL” in
13 the heading and inserting “JUDICIAL REVIEW”,
14 and

15 (B) by striking “if such action is
16 brought’ ” and all that follows in paragraph (1)
17 and inserting “if such action is brought—

18 “(A) at any time after the earlier of—

19 “(i) the date of the mailing of the
20 Secretary’s final determination not to
21 abate such interest, or

22 “(ii) the date which is 180 days after
23 the date of the filing with the Secretary (in
24 such form as the Secretary may prescribe)

1 of a claim for abatement under this sec-
2 tion, and

3 “(B) not later than the date which is 180
4 days after the date described in subparagraph
5 (A)(i).”.

6 (2) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to claims for abate-
8 ment of interest filed with the Secretary after the
9 date of the enactment of this Act.

10 (b) SMALL TAX CASE ELECTION FOR INTEREST
11 ABATEMENT CASES.—

12 (1) IN GENERAL.—Subsection (f) of section
13 7463 of the Internal Revenue Code of 1986 is
14 amended—

15 (A) by striking “and” at the end of para-
16 graph (1),

17 (B) by striking the period at the end of
18 paragraph (2) and inserting “, and”, and

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

21 “(3) a petition to the Tax court under section
22 6404(h) in which the amount of interest abatement
23 sought does not exceed \$50,000.”.

24 (2) EFFECTIVE DATE.—The amendments made
25 by this subsection shall apply to—

1 (A) cases pending as of the day after the
2 date of the enactment of this Act, and

3 (B) cases commenced after such date of
4 enactment.

5 **SEC. 7. BAN ON EX PARTE DISCUSSIONS.**

6 (a) IN GENERAL.—Notwithstanding section
7 1001(a)(4) of the Internal Revenue Service Restructuring
8 and Reform Act of 1998, the Internal Revenue Service
9 shall prohibit any ex parte communications between offi-
10 cers in the Internal Revenue Service Office of Appeals and
11 other Internal Revenue Service employees with respect to
12 any matter pending before such officers.

13 (b) TERMINATION OF EMPLOYMENT FOR MIS-
14 CONDUCT.—Subject to subsection (c), the Commissioner
15 of Internal Revenue shall terminate the employment of
16 any employee of the Internal Revenue Service if there is
17 a final administrative or judicial determination that such
18 employee committed any act or omission prohibited under
19 subsection (a) in the performance of the employee’s official
20 duties. Such termination shall be a removal for cause on
21 charges of misconduct.

22 (c) DETERMINATION OF COMMISSIONER.—

23 (1) IN GENERAL.—The Commissioner of Inter-
24 nal Revenue may take a personnel action other than

1 termination for an act prohibited under subsection
2 (a).

3 (2) DISCRETION.—The exercise of authority
4 under paragraph (1) shall be at the sole discretion
5 of the Commissioner of Internal Revenue and may
6 not be delegated to any other officer. The Commis-
7 sioner of Internal Revenue, in his sole discretion,
8 may establish a procedure which will be used to de-
9 termine whether an individual should be referred to
10 the Commissioner of Internal Revenue for a deter-
11 mination by the Commissioner under paragraph (1).

12 (3) NO APPEAL.—Any determination of the
13 Commissioner of Internal Revenue under this sub-
14 section may not be appealed in any administrative or
15 judicial proceeding.

16 (d) TIGTA REPORTING OF TERMINATION OR MITI-
17 GATION.—Section 7803(d)(1)(E) of the Internal Revenue
18 Code of 1986 is amended by inserting “or section 7 of
19 the Small Business Taxpayer Bill of Rights Act of 2012”
20 after “1998”.

21 **SEC. 8. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
22 **DURES.**

23 (a) IN GENERAL.—Section 7123 of the Internal Rev-
24 enue Code of 1986 is amended by adding at the end the
25 following new subsection:

1 “(c) AVAILABILITY OF DISPUTE RESOLUTIONS.—

2 “(1) IN GENERAL.—The procedures prescribed
3 under subsection (b)(1) and the pilot program estab-
4 lished under subsection (b)(2) shall provide that a
5 taxpayer may request mediation or arbitration in
6 any case unless the Secretary has specifically ex-
7 cluded the type of issue involved in such case or the
8 class of cases to which such case belongs as not ap-
9 propriate for resolution under such subsection. The
10 Secretary shall make any determination that ex-
11 cludes a type of issue or a class of cases public with-
12 in 5 working days and provide an explanation for
13 each determination.

14 “(2) INDEPENDENT MEDIATORS.—

15 “(A) IN GENERAL.—The procedures pre-
16 scribed under subsection (b)(1) shall provide
17 the taxpayer an opportunity to elect to have the
18 mediation conducted by an independent, neutral
19 individual not employed by the Office of Ap-
20 peals.

21 “(B) COST AND SELECTION.—

22 “(i) IN GENERAL.—Any taxpayer
23 making an election under subparagraph
24 (A) shall be required—

1 “(I) to share the costs of such
2 independent mediator equally with the
3 Office of Appeals, and

4 “(II) to limit the selection of the
5 mediator to a roster of recognized na-
6 tional or local neutral mediators.

7 “(ii) EXCEPTION.—Clause (i)(I) shall
8 not apply to any taxpayer who is an indi-
9 vidual or who was a small business in the
10 preceding calendar year if such taxpayer
11 had an adjusted gross income that did not
12 exceed 250 percent of the poverty level, as
13 determined in accordance with criteria es-
14 tablished by the Director of the Office of
15 Management and Budget, in the taxable
16 year preceding the request.

17 “(iii) SMALL BUSINESS.—For pur-
18 poses of clause (ii), the term ‘small busi-
19 ness’ has the meaning given such term
20 under section 41(b)(3)(D)(iii).

21 “(3) AVAILABILITY OF PROCESS.—The proce-
22 dures prescribed under subsection (b)(1) and the
23 pilot program established under subsection (b)(2)
24 shall provide the opportunity to elect mediation or
25 arbitration at the time when the case is first filed

1 with the Office of Appeals and at any time before
2 deliberations in the appeal commence.”.

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

6 **SEC. 9. EXTENSION OF TIME FOR CONTESTING IRS LEVY.**

7 (a) EXTENSION OF TIME FOR RETURN OF PROPERTY
8 SUBJECT TO LEVY.—Subsection (b) of section 6343 of the
9 Internal Revenue Code of 1986 is amended by striking “9
10 months” and inserting “3 years”.

11 (b) PERIOD OF LIMITATION ON SUITS.—Subsection
12 (c) of section 6532 of the Internal Revenue Code of 1986
13 is amended—

14 (1) in paragraph (1) by striking “9 months”
15 and inserting “3 years”, and

16 (2) in paragraph (2) by striking “9-month” and
17 inserting “3-year”.

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

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

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

1 **SEC. 10. WAIVER OF INSTALLMENT AGREEMENT FEE.**

2 (a) IN GENERAL.—Section 6159 of the Internal Rev-
 3 enue Code of 1986 is amended by redesignating subsection
 4 (f) as subsection (g) and by inserting after subsection (e)
 5 the following new subsection:

6 “(f) WAIVER OF INSTALLMENT AGREEMENT FEE.—
 7 The Secretary shall waive the fees imposed on installment
 8 agreements under this section for any taxpayer with an
 9 adjusted gross income that does not exceed 250 percent
 10 of the poverty level, as determined in accordance with cri-
 11 teria established by the Director of the Office of Manage-
 12 ment and Budget, and who has agreed to make payments
 13 under the installment agreement by electronic payment
 14 through a debit instrument.”.

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

18 **SEC. 11. SUSPENSION OF RUNNING OF PERIOD FOR FILING**
 19 **PETITION OF SPOUSAL RELIEF AND COLLEC-**
 20 **TION CASES.**

21 (a) PETITIONS FOR SPOUSAL RELIEF.—

22 (1) IN GENERAL.—Subsection (e) of section
 23 6015 of the Internal Revenue Code of 1986 is
 24 amended by adding at the end the following new
 25 paragraph:

1 “(6) SUSPENSION OF RUNNING OF PERIOD FOR
2 FILING PETITION IN TITLE 11 CASES.—In the case
3 of an individual who is prohibited by reason of a
4 case under title 11, United States Code, from filing
5 a petition under paragraph (1)(A) with respect to a
6 final determination of relief under this section, the
7 running of the period prescribed by such paragraph
8 for filing such a petition with respect to such final
9 determination shall be suspended for the period dur-
10 ing which the individual is so prohibited from filing
11 such a petition, and for 60 days thereafter.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by this subsection shall apply to petitions filed under
14 section 6015(e) of the Internal Revenue Code of
15 1986 after the date of the enactment of this Act.

16 (b) COLLECTION PROCEEDINGS.—

17 (1) IN GENERAL.—Subsection (d) of section
18 6330 of the Internal Revenue Code of 1986 is
19 amended—

20 (A) by striking “appeal such determination
21 to the Tax Court” in paragraph (1) and insert-
22 ing “petition the Tax Court for review of such
23 determination”,

24 (B) by striking “JUDICIAL REVIEW OF DE-
25 TERMINATION” in the heading of paragraph (1)

1 and inserting “PETITION FOR REVIEW BY TAX
2 COURT”,

3 (C) by redesignating paragraph (2) as
4 paragraph (3), and

5 (D) by inserting after paragraph (1) the
6 following new paragraph:

7 “(2) SUSPENSION OF RUNNING OF PERIOD FOR
8 FILING PETITION IN TITLE 11 CASES.—In the case
9 of an individual who is prohibited by reason of a
10 case under title 11, United States Code, from filing
11 a petition under paragraph (1) with respect to a de-
12 termination under this section, the running of the
13 period prescribed by such subsection for filing such
14 a petition with respect to such determination shall
15 be suspended for the period during which the indi-
16 vidual is so prohibited from filing such a petition,
17 and for 30 days thereafter.”.

18 (2) CONFORMING AMENDMENT.—Subsection (c)
19 of section 6320 of such Code is amended by striking
20 “(2)(B)” and inserting “(3)(B)”.

21 (3) EFFECTIVE DATE.—The amendments made
22 by this subsection shall apply to petitions filed under
23 section 6330 of the Internal Revenue Code of 1986
24 after the date of the enactment of this Act.

1 **SEC. 12. VENUE FOR APPEAL OF SPOUSAL RELIEF AND**
2 **COLLECTION CASES.**

3 (a) **IN GENERAL.**—Paragraph (1) of section 7482(b)
4 of the Internal Revenue Code of 1986 is amended—

5 (1) by striking “or” at the end of subparagraph
6 (E),

7 (2) by striking the period at the end of sub-
8 paragraph (F) and inserting a comma, and

9 (3) by inserting after subparagraph (F) the fol-
10 lowing new subparagraphs:

11 “(G) in the case of a petition under section
12 6015(e), the legal residence of the petitioner, or

13 “(H) in the case of a petition under sec-
14 tion 6320 or 6330—

15 “(i) the legal residence of the peti-
16 tioner if the petitioner is an individual, and

17 “(ii) the principal place of business or
18 principal office or agency if the petitioner
19 is an entity other than an individual.”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 this section shall apply to petitions filed after the date of
22 enactment of this Act.

1 **SEC. 13. INCREASE IN MONETARY PENALTIES FOR CER-**
2 **TAIN UNAUTHORIZED DISCLOSURES OF IN-**
3 **FORMATION.**

4 (a) **IN GENERAL.**—Paragraphs (1), (2), (3), and (4)
5 of section 7213(a) of the Internal Revenue Code of 1986
6 are each amended by striking “\$5,000” and inserting
7 “\$10,000”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to disclosures made after the date
10 of the enactment of this Act.

11 **SEC. 14. DE NOVO TAX COURT REVIEW OF CLAIMS FOR EQ-**
12 **UITABLE INNOCENT SPOUSE RELIEF.**

13 (a) **IN GENERAL.**—Subparagraph (A) of section
14 6015(e)(1) of the Internal Revenue Code of 1986 is
15 amended by adding at the end the following new flush sen-
16 tence:

17 “Any review of a determination by the Sec-
18 retary with respect to a claim for equitable re-
19 lief under subsection (f) shall be reviewed de
20 novo by the Tax Court.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 this section shall apply to petitions filed or pending before
23 the Tax Court on and after the date of the enactment of
24 this Act.

1 **SEC. 15. BAN ON RAISING NEW ISSUES ON APPEAL.**

2 (a) IN GENERAL.—Chapter 77 of the Internal Rev-
3 enue Code of 1986 is amended by adding at the end the
4 following new section:

5 **“SEC. 7529. PROHIBITION ON INTERNAL REVENUE SERVICE**
6 **RAISING NEW ISSUES IN AN INTERNAL AP-**
7 **PEAL.**

8 “(a) IN GENERAL.—In reviewing an appeal of any
9 determination initially made by the Internal Revenue
10 Service, the Internal Revenue Service Office of Appeals
11 may not consider or decide any issue that is not within
12 the scope of the initial determination.

13 “(b) CERTAIN ISSUES DEEMED OUTSIDE OF SCOPE
14 OF DETERMINATION.—For purposes of subsection (a), the
15 following matters shall be considered to be not within the
16 scope of a determination:

17 “(1) Any issue that was not raised in a notice
18 of deficiency or an examiner’s report which is the
19 subject of the appeal.

20 “(2) Any deficiency in tax which was not in-
21 cluded in the initial determination.

22 “(3) Any theory or justification for a tax defi-
23 ciency which was not considered in the initial deter-
24 mination.

25 “(c) NO INFERENCE WITH RESPECT TO ISSUES
26 RAISED BY TAXPAYERS.—Nothing in this section shall be

1 construed to provide any limitation in addition to any limi-
2 tations in effect on the date of the enactment of this sec-
3 tion on the right of a taxpayer to raise an issue, theory,
4 or justification on an appeal from a determination initially
5 made by the Internal Revenue Service that was not within
6 the scope of the initial determination.”.

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

“Sec. 7529. Prohibition on Internal Revenue Service raising new issues in an
internal appeal.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to matters filed or pending with
12 the Internal Revenue Service Office of Appeals on or after
13 the date of the enactment of this Act.

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