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2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–566

TAXPAYER BILL OF RIGHTS 2000

APRIL 10, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 4163]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4163) to amend the Internal Revenue Code of 1986 to provide for increased fairness to taxpayers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Bill of Rights 2000".

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

(c) TABLE OF CONTENTS.—

TITLE I—PENALTIES AND INTEREST

SEC. 101. FAILURE TO PAY ESTIMATED TAX PENALTY CONVERTED TO INTEREST CHARGE ON ACCUMULATED UNPAID BALANCE.

(a) PENALTY MOVED TO INTEREST CHAPTER OF CODE.—The Internal Revenue Code of 1986 is amended by redesignating section 6654 as section 6641 and by moving section 6641 (as so redesignated) from part I of subchapter A of chapter 68 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) PENALTY CONVERTED TO INTEREST CHARGE.—The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

"SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

"(a) IN GENERAL.—Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

"(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

"(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

"(2) DETERMINATION OF INTEREST RATE.—

"(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

"(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

"(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

"(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.".

(c) INCREASE IN SAFE HARBOR WHERE TAX IS SMALL.—

(1) IN GENERAL.—Clause (i) of section 6641(d)(1)(B) (as so redesignated) is amended to read as follows:

"(i) the lesser of—

"(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by $2,000, or".

(2) CONFORMING AMENDMENT.—Subsection (e) of section 6641 (as so redesignated) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (1) and (2) of subsection (e) (as redesignated by subsection (c)(2)) and subsection (h) of section 6641 (as so designated) are each amended by striking "addition to tax" each place it occurs and inserting "interest".

(2) Section 167(g)(5)(D) is amended by striking "6654" and inserting "6641".

(3) Section 460(b)(1) is amended by striking "6654" and inserting "6641".

(4) Section 3510(b) is amended—

(A) by striking "section 6654" in paragraph (1) and inserting "section 6641",

(B) by amending paragraph (2)(B) to read as follows:

"(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the $2,000 amount specified in section 6641(d)(1)(B)(i)(II).",

(C) by striking "section 6654(d)(2)" in paragraph (3) and inserting "section 6641(d)(2)", and

(D) by striking paragraph (4).

(5) Section 6201(b)(1) is amended by striking "6654" and inserting "6641".

(6) Section 6601(h) is amended by striking "6654" and inserting "6641".

(7) Section 6621(b)(2)(B) is amended by striking "addition to tax under section 6654" and inserting "interest required to be paid under section 6641".

(8) Section 6622(b) is amended—

(A) by striking "PENALTY FOR" in the heading, and

(B) by striking "addition to tax under section 6654 or 6655" and inserting "interest required to be paid under section 6641 or addition to tax under section 6655".

(9) Section 6658(a) is amended—

(A) by striking "6654, or 6655" and inserting "or 6655, and no interest shall be required to be paid under section 6641,", and

(B) by inserting "or paying interest" after "the tax" in paragraph (2)(B)(ii).

(10) Section 6665(b) is amended—

(A) in the matter preceding paragraph (1) by striking ", 6654,", and

(B) in paragraph (2) by striking "6654 or".

(11) Section 7203 is amended by striking "section 6654 or 6655" and inserting "section 6655 or interest required to be paid under section 6641".

(e) CLERICAL AMENDMENTS.—

(1) Chapter 67 is amended by inserting after subchapter D the following:

"Subchapter E—Interest on Failure by Individual to Pay Estimated Income Tax

"Sec. 6641. Interest on failure by individual to pay estimated income tax.".

(2) The table of subchapters for chapter 67 is amended by adding at the end the following new items:

"Subchapter D. Notice requirements.
"Subchapter E. Interest on failure by individual to pay estimated income tax.".

(3) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6654.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to installment payments for taxable years beginning after December 31, 2000.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 139A and by inserting after section 138 the following new section:

"SEC. 139. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

"(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

"(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

"(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income under subsection (a)

shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 139 and inserting the following new items:

"Sec. 139. Exclusion from gross income for interest on overpayments of income tax by individuals.
"Sec. 139A. Cross references to other Acts.".

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

SEC. 103. REDUCTIONS OF PENALTY FOR FAILURE TO PAY TAX.

(a) REDUCTIONS OF PENALTY FOR FAILURE TO PAY TAX.—

(1) REDUCTION OF PENALTY BY 50 PERCENT.—

(A) IN GENERAL.—Paragraphs (2) and (3) of section 6651(a) are each amended by striking "0.5" each place it appears and inserting "0.25".

(B) CONFORMING AMENDMENT.—Paragraph (1) of section 6651(d) is amended by striking "by substituting '1 percent' for '0.5 percent'" and inserting "by substituting '0.5 percent' for '0.25 percent'".

(2) REDUCTION OF PENALTY TO ZERO DURING PERIOD OF INSTALLMENT AGREEMENT.—Subsection (h) of section 6651 is amended by striking "by substituting '0.25' for '0.5'" and inserting "by substituting 'zero' for '0.25'".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply for purposes of determining additions to tax for months beginning after December 31, 2000.

(b) PROHIBITION OF FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—

(1) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) PROHIBITION OF FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—The Secretary may not charge a taxpayer a fee for entering into an agreement with the Secretary under this section only for so long as payments under such agreement are made by means of electronic transfer or by similar automated means.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to installment agreements entered into more than 30 days after the date of the enactment of this Act.

SEC. 104. ABATEMENT OF INTEREST.

(a) ABATEMENT OF INTEREST IF GROSS INJUSTICE WOULD OTHERWISE RESULT.—Section 6404 is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) ABATEMENT OF INTEREST IF GROSS INJUSTICE WOULD OTHERWISE RESULT.—The Secretary may abate the assessment of all or any part of interest on any amount of tax imposed by this title for any period if the Secretary determines that—

"(1) a gross injustice would otherwise result if interest were to be charged, and

"(2) no significant aspect of the events giving rise to the accrual of the interest can be attributed to the taxpayer involved.".

(b) ABATEMENT OF INTEREST FOR PERIODS ATTRIBUTABLE TO ANY UNREASONABLE IRS ERROR OR DELAY.—Subparagraphs (A) and (B) of section 6404(e)(1) are each amended by striking "in performing a ministerial or managerial act".

(c) ABATEMENT OF INTEREST WITH RESPECT TO ERRONEOUS REFUND CHECK WITHOUT REGARD TO SIZE OF REFUND.—Paragraph (2) of section 6404(e) is amended by striking "unless—" and all that follows and inserting "unless the taxpayer (or a related party) has in any way caused such erroneous refund."

(d) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS.—Subsection (f) of section 6404 is amended—

(1) in the subsection heading, by striking "PENALTY OR ADDITION" and inserting "INTEREST, PENALTY, OR ADDITION", and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking "penalty or addition" and inserting "interest, penalty, or addition".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 105. DEPOSITS MADE TO STOP THE RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter B of chapter 67 (relating to interest on overpayments) is amended by redesignating section 6612 as section 6613 and by inserting after section 6611 the following new section:

"SEC. 6612. DEPOSITS MADE TO STOP THE RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

"(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—Any taxpayer may make a cash bond deposit with the Secretary to offset any potential underpayment of tax imposed by this title for any taxable period. Such a deposit shall be made in such manner as the Secretary shall prescribe.

"(b) DEPOSITS USED TO PAY UNDERPAYMENT ALSO OFFSET RUNNING OF INTEREST ON UNDERPAYMENT.—Any cash bond deposit used to pay tax under this title shall offset interest under subchapter A during the period of such deposit on such tax under such procedures as the Secretary shall prescribe.

"(c) TAXPAYER MAY REQUEST RETURN OF CASH BOND DEPOSIT.—

"(1) IN GENERAL.—On written request of a taxpayer who made a cash bond deposit, the Secretary shall return to the taxpayer any amount of such deposit specified by the taxpayer.

"(2) NO INTEREST.—In the case of a deposit which is so returned—

"(A) the amount returned shall not offset interest under subchapter A for any period, and

"(B) except as provided in subsection (d), no interest shall be allowed on such amount.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply to any amount if—

"(A) such amount has been treated by the Secretary as a payment of tax after a final determination of the disputed items to which such amount relates,

"(B) such amount has been designated by the taxpayer as being a payment of tax,

"(C) the Secretary determines that assessment or collection of tax is in jeopardy, or

"(D) the amount is applied in accordance with section 6402.

Subparagraph (D) shall not apply to a payment to a taxpayer if the taxpayer is entitled to be paid interest under subsection (d) on such payment.

"(d) INTEREST ON AMOUNTS RETURNED IN CERTAIN CIRCUMSTANCES.—

"(1) IN GENERAL.—Interest shall be allowed and paid on the amount of any cash bond deposit for a taxable period which is returned to the taxpayer only if the deposit is attributable to a dispute reserve account for such period.

"(2) ATTRIBUTION TO DISPUTE RESERVE ACCOUNT.—For purposes of paragraph (1), an amount is attributable to a dispute reserve account for any taxable period only to the extent that the aggregate of the cash bond deposits for such period (reduced by the amount of such deposits which has been previously returned to the taxpayer or treated as a payment of tax) does not exceed the deposit limit for such period.

"(3) DEPOSIT LIMIT.—For purposes of paragraph (2)—

"(A) IN GENERAL.—The deposit limit for any taxable period is the amount specified by the taxpayer at the time of the deposit as the taxpayer's reasonable estimate of the potential underpayment for such period with respect to disputable items identified (at such time) by the taxpayer with respect to such deposit.

"(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who is issued a 30-day letter for any taxable period, the deposit limit for such period shall not be less than the amount of the proposed deficiency specified in such letter.

"(4) DEFINITIONS.—For purposes of paragraph (3)—

"(A) DISPUTABLE ITEM.—The term 'disputable item' means any item if the taxpayer—

"(i) has a reasonable basis for its treatment of such item, and

"(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

"(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

"(5) RATE AND PERIOD OF INTEREST.—

"(A) RATE.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

"(B) PERIOD.—Interest under this subsection on any payment to a taxpayer shall be payable from the date of the deposit to which such payment is attributable to a date (to be determined by the Secretary) preceding the date of the check making such payment by not more than 30 days. For purposes of the preceding sentence, cash bond deposits for any taxable period shall be treated as used and returned on a last-in first-out basis.

"(e) CASH BOND DEPOSIT.—For purposes of this section—

"(1) IN GENERAL.—The term 'cash bond deposit' means any payment which is designated by the taxpayer as being a cash bond deposit for a specified taxable period.

"(2) AMOUNTS DESIGNATED OR USED AS PAYMENT OF TAX.—A cash bond deposit shall cease to be treated as such for purposes of this section beginning on the date that the taxpayer designates such deposit as a payment of tax for purposes of this title, or, if earlier, on the date such deposit is so used.

"(f) CHANGE IN PERIOD FOR WHICH DEPOSIT MADE.—Subject to the requirements of subsection (d), a taxpayer may change the taxable period to which a cash bond deposit relates."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 67 is amended by striking the last item and inserting the following new items:

"Sec. 6612. Deposits made to stop the running of interest on potential underpayments, etc.
"Sec. 6613. Cross references."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to interest for periods after the date of the enactment of this Act.

(2) SPECIFICATION OF DISPUTED ITEMS.—In the case of amounts held by the Secretary of the Treasury on the date of the enactment of this Act as a deposit in the nature of a cash bond pursuant to Revenue Procedure 84-58, the date that the taxpayer makes the identification under subsection (d)(3)(A) of section 6612 of the Internal Revenue Code of 1986, as added by this section) shall be treated as the date such amounts were deposited for purposes of such section 6612.

SEC. 106. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: "Solely for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accrued after December 31, 2000.

TITLE II—CONFIDENTIALITY AND DISCLOSURE

SEC. 201. DISCLOSURE AND PRIVACY RULES RELATING TO RETURNS AND RETURN INFORMATION.

(a) IN GENERAL.—Subsection (a) of section 6103 (relating to general rule for confidentiality and disclosure of returns and return information) is amended by striking "title—" and inserting "title and notwithstanding any other provision of law—".

(b) PROCEDURAL AND JURISDICTIONAL RULES.—Subsection (p) of section 6103 (relating to procedure and recordkeeping) is amended by adding at the end the following new paragraph:

"(9) PROCEDURAL RULES APPLICABLE TO CERTAIN DISCLOSURES.—

"(A) IN GENERAL.—The Secretary shall prescribe regulations for purposes of providing for disclosures of return and return information under subsections (c), (e), and (k) (1) and (2). Such regulations shall include a schedule of fees, and waivers and reductions of such fees, applicable to the processing of requests for such disclosures.

"(B) DETERMINATIONS OF WHETHER TO COMPLY WITH DISCLOSURE REQUESTS.—

"(i) INITIAL REQUESTS.—In response to a request that reasonably describes the return or return information sought and is made in accordance with the published rules, the Secretary shall—

"(I) determine within 20 days after the receipt of any request for disclosure of return or return information under subsections (c), (e), and (k) (1) and (2) whether to comply with such request, and

"(II) immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the Commissioner any adverse determination.

"(ii) APPEAL.—The Commissioner shall—

"(I) make a determination with respect to any appeal of any adverse determination under clause (i)(I) within 20 days after the receipt of such appeal, and

"(II) if on appeal the denial of the request for disclosure of such return or return information is in whole or in part upheld, the Commissioner shall notify the person making such request of the provisions for judicial review of that determination under subparagraph (D).

"(iii) EXTENSION OF PERIODS FOR UNUSUAL CIRCUMSTANCES.—

"(I) IN GENERAL.—The time limits prescribed in clause (i) and clause (ii) (as the case may be) may be extended for not more than 10 days in unusual circumstances by providing to the person making such request for disclosure written notice which sets forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than 10 working days, except as provided in subclause (II).

"(II) MODIFICATION OF REQUEST OR TIME PERIOD.—If, with respect to a request for which the time limits are extended under subclause (I), the Secretary determines that the request cannot be processed within the time limit so specified, the Secretary shall notify the person making the request and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

"(iv) UNUSUAL CIRCUMSTANCES DEFINED.—For purposes of clause (iii), the term 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular requests—

"(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request,

"(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or

"(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(v) 20-DAY PERIOD EXCLUDES CERTAIN DAYS.—The 20-day periods referred to in clauses (i) and (ii) shall not include Saturdays, Sundays, and legal public holidays.

"(C) FAILURE TO MEET TIME LIMITS.—

"(i) IN GENERAL.—Any person making a request for the disclosure of return or return information which is subject to this paragraph shall be deemed to have exhausted his administrative remedies with respect to such request if the Secretary fails to comply with the applicable time limit provisions of this paragraph. If the Secretary can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by the Secretary to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

"(ii) EXCEPTIONAL CIRCUMSTANCES DEFINED.—For purposes of clause (i), the term 'exceptional circumstances' does not include a delay that results from a predictable workload of the Secretary relating to requests subject to this paragraph, unless the Secretary demonstrates reasonable progress in reducing its backlog of pending requests.

"(iii) REFUSAL TO MODIFY REQUEST OR TIME FRAME.—Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under subparagraph (B)(ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

"(D) JUDICIAL PROCEEDINGS.—

"(i) JURISDICTION OF THE DISTRICT COURTS.—

"(I) IN GENERAL.—On complaint, the district courts of the United States in the district in which the complainant resides, or has his principal place of business, or in which his return or return information is situated, or in the District of Columbia, shall have jurisdiction to enjoin the Secretary from withholding return or return information which is subject to disclosure under subsection (c), (e), or (k) (1) or (2), and to order the production of any return or return information improperly withheld from the complainant.

"(II) EXPEDITED PROCESSING.—No district court of the United States shall have jurisdiction to review a denial by the Secretary of expedited processing of a request for return or return information after the Secretary has provided a complete response to the request.

"(ii) PROCEDURAL MATTERS.—In a case arising under clause (i), the court shall determine the matter de novo (on the record before the Secretary at the time of the determination in the case of a request for expedited processing), and may examine the contents of such return or return information in camera to determine whether such return or return information or any part thereof shall be withheld under any of the provisions of this title, and the burden shall be on the Secretary to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of the Secretary concerning the Secretary's determination as to technical feasibility relating to, and reproducibility of, such return and return information.

"(E) DEADLINE FOR SECRETARY TO ANSWER COMPLAINT.—Notwithstanding any other provision of law, the Secretary shall serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon the Secretary of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.".

(c) ATTORNEY FEES.—Subsection (a) of section 7430 (relating to general rule for awarding of costs and certain fees) is amended by inserting after "title," the following: "and in any court proceeding in connection with the disclosure of return and return information under section 6103(p)(9),".

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

SEC. 202. EXPANSION OF TYPE OF ADVICE AVAILABLE FOR PUBLIC INSPECTION.

(a) IN GENERAL.—Subparagraph (A) of section 6110(i)(1) is amended—

(1) by striking "national office component of the Office of Chief Counsel" and inserting "component of the Office of Chief Counsel or of the Service", and

(2) in clause (i) by striking "field or service center employees of the Service or regional or district" and inserting "employees of the Service or".

(b) CONFORMING AMENDMENTS.—

(1) Section 6110(i)(2) is amended by inserting "or the Service" after "Office of Chief Counsel".

(2) The following provisions of section 6110 are amended by striking "Chief Counsel advice" each place it appears and inserting "official advice":

(A) Paragraph (1) of subsection (b).

(B) Subparagraph (A) of subsection (i)(1).

(C) Paragraphs (3) and (4) of subsection (i).

(3) Subparagraph (A) of section 6110(g)(5) is amended by inserting "official advice and" before "technical advice".

(4) The heading for subsection (i) of section 6110 is amended by striking "CHIEF COUNSEL" and inserting "OFFICIAL".

(5) The heading for paragraph (1) of section 6110(i) is amended by striking "CHIEF COUNSEL" and inserting "OFFICIAL".

(6) The headings for paragraphs (2) and (3) of section 6110(i), and for subparagraphs (A) and (B) of paragraph (4) of such section, are each amended by striking "CHIEF COUNSEL" and inserting "OFFICIAL".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any official advice issued more than 90 days after the date of the enactment of this Act.

(2) DOCUMENTS TREATED AS OFFICIAL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as official advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

(3) OFFICIAL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any official advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of the Internal Revenue Code of 1986, as amended by this section, also available by computer telecommunications within 1 year after issuance.

SEC. 203. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking "in writing" the first place it appears.

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

SEC. 204. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

"(7) TAXPAYER REPRESENTATIVES.—Notwithstanding paragraph (1), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.".

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

SEC. 205. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS.

(a) IN GENERAL.—Paragraph (4) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new subparagraph:

"(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS.—

"(i) NOTICE.—Return or return information of any person who is not a party to a judicial or administrative proceeding described in paragraph (4) shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

"(ii) DISCLOSURE LIMITED TO PERTINENT PORTION.—The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

"(iii) EXCEPTIONS.—Clause (i) shall not apply to—

"(I) any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

"(II) disclosure of third party return information by indictment or criminal information, or

"(III) if the Secretary determines that the application of such clause would seriously impair a criminal tax investigation.".

(b) CONFORMING AMENDMENTS.—Paragraph (4) of section 6103(h) is amended by—

(1) by striking "PROCEEDINGS.—A return" and inserting "PROCEEDINGS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a return",

(2) by redesignating subparagraphs (A), (B), (C), and (D) clauses (i), (ii), (iii), and (iv), respectively, and

(3) in the matter following clause (iv) (as so redesignated), by striking "subparagraph (A), (B), or (C)" and inserting "clause (i), (ii) or (iii)" and by moving such matter two ems to the right.

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

SEC. 206. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting "(other than address and TIN)" after "Return information".

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

SEC. 207. COMPLIANCE BY STATE CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Paragraph (8) of section 6103(p) (relating to State law requirements) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) DISCLOSURE TO CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed by any officer or employee of any State to any contractor of the State unless such State—

"(i) has requirements in effect which require each contractor of the State which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

"(ii) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each contractor to determine compliance with such requirements,

"(iii) submits the findings of the most recent review conducted under clause (ii) to the Secretary as part of the report required by paragraph (4)(E), and

"(iv) certifies to the Secretary for the most recent annual period that all contractors are in compliance with all such requirements.

The certification required by clause (iv) shall include the name and address of each contractor, a description of the contract of the contractor with the State, and the duration of such contract.".

(b) CONFORMING AMENDMENT.—Subparagraph (C) of section 6103(p)(8), as amended by subsection (a), is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after December 31, 2001.

(2) The first certification under section 6103(p)(8)(B)(iv) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2002.

SEC. 208. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

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

"(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS.—A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section or sections 7213, 7213A, or 7431 if—

"(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

"(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

"(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—Any person shall, as a condition for receiving return or return information under paragraph (1)—

"(A) ensure that such return and return information is kept confidential,

"(B) use such return and return information only for the purpose for which it was requested, and

"(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

"(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall—

"(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

"(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

"(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.".

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

(1) evaluate (on the basis of random sampling) whether—

(A) the amendments made by subsection (a) are achieving the purposes of this section,

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how, and

(C) the sanctions for violations of such requirements are adequate, and

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENT.—Section 6103(c) is amended by striking "TAXPAYER.—The Secretary" and inserting "TAXPAYER.—

"(1) IN GENERAL.—The Secretary".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 209. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: "The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration determines that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).".

(b) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 201(b), is further amended by adding at the end the following new paragraph:

"(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and return information, including the number, status, and results of—

"(A) administrative investigations,

"(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

"(C) criminal prosecutions.".

(c) EFFECTIVE DATE.—

(1) NOTICE.—The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) REPORTS.—The amendment made by subsection (b) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 210. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

Paragraph (1) of section 6103(m) (relating to disclosure of taxpayer identity information for tax refunds) is amended by inserting ", and through any other means of mass communication," after "media".

TITLE III—OTHER REQUIREMENTS

SEC. 301. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking "or" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", or", and by inserting after paragraph (5) the following:

"(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.".

SEC. 302. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended—

(1) in subparagraph (B) by inserting after "509(a))" the following: "or as a private operating foundation (as defined in section 4942(j)(3))", and

(2) by amending subparagraph (C) to read as follows:

"(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) which is exempt from tax under section 501(a), or".

(b) COURT JURISDICTION.—Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking "United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia" and inserting the following: "United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),".

(c) FAILURE OF SERVICE TO ACT ON DETERMINATIONS TREATED AS EXHAUSTION OF REMEDIES.—The second sentence of paragraph (2) of section 7428(b) (relating to exhaustion of administrative remedies) is amended to read as follows: "An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to—

"(A) a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination, and

"(B) a failure by any office of the Service (other than the office which is responsible for initial determinations with respect to such issue (hereinafter in this subparagraph referred to as the 'initial office'), to make a determination with respect to such issue at the expiration of 180 days after the date on which any request for such determination was made by the initial office if the organization has taken, in a timely manner, all reasonable steps to secure such determination.".

(d) EFFECTIVE DATES.—

(1) DECLARATORY JUDGMENT.—The amendments made by subsections (a) and (b) shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

(2) FAILURE OF SERVICE TO ACT.—The amendments made by subsection (c) shall apply to applications received in the national office of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 303. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY.

(a) IN GENERAL.—Clause (ii) of section 7803(d)(2)(A) is amended by inserting before the semicolon at the end the following: ", including a summary (by category)

of the 10 most common complaints made and the number of such common complaints".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to reporting periods ending after the date of the enactment of this Act.

SEC. 304. INCREASE IN THRESHOLD FOR JOINT COMMITTEE REPORTS ON REFUNDS AND CREDITS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6405 are each amended by striking "$1,000,000" and inserting "$2,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, except that such amendment shall not apply with respect to any refund or credit with respect to a report that has been made before such date of the enactment under section 6405 of the Internal Revenue Code of 1986.

SEC. 305. ANNUAL REPORT ON AWARDS OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

Not later than 3 months after the close of each Federal fiscal year after fiscal year 1999, the Treasury Inspector General for Tax Administration shall submit a report to Congress which specifies for such year—

(1) the number of payments made by the United States pursuant to section 7430 of the Internal Revenue Code of 1986 (relating to awarding of costs and certain fees),

(2) the amount of each such payment,

(3) an analysis of any administrative issue giving rise to such payments, and

(4) changes (if any) which will be implemented as a result of such analysis and other changes (if any) recommended by the Treasury Inspector General for Tax Administration as a result of such analysis.

SEC. 306. ANNUAL REPORT ON ABATEMENT OF PENALTIES.

Not later than 6 months after the close of each Federal fiscal year after fiscal year 1999, the Treasury Inspector General for Tax Administration shall submit a report to Congress on abatements of penalties under the Internal Revenue Code of 1986 during such year, including information on the reasons and criteria for such abatements.

SEC. 307. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 308. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning in 2000 and later (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds, and

(2) the consequences under such section 6511 of the failure to file a return of tax.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 4163, as amended, (the "Taxpayer Bill of Rights 2000") provides increased fairness to taxpayers and enhances the confidentiality of returns and return information.

SUMMARY

TITLE I—PENALTIES AND INTEREST

A. Convert Penalty for Failure To Pay Estimated Tax into an Interest Provision and Increase and Modify Threshold

The provision converts the present-law penalty for failure to pay estimated tax into an interest provision for individuals, estates, and trusts; increases the threshold for underpayment of estimated tax from $1,000 to $2,000; and allows both tax withheld and estimated tax paid equally throughout the year to be considered in determining whether the threshold has been met.

B. Simplify Estimated Tax Calculation for Individuals, Estates, and Trusts

The provision provides one interest rate per underpayment period for individuals, estates, and trusts. The provision also simplifies the calculation of estimated tax by eliminating the requirement to track each underpayment separately and providing that underpayment balances are cumulative. In addition, under the provision, a 365-day year is used for all estimated tax underpayment calculations regardless of whether the taxable year is a leap year.

C. Exclude Interest on Individual Federal Income Tax Overpayments

The bill excludes from gross income interest that is paid by the IRS to individual taxpayers on overpayments of Federal income tax. However, the exclusion will not apply if the taxpayer's principal purpose in filing a claim for refund or amended return is to take advantage of the exclusion.

D. Partial Repeal and Reduction in Penalty for Failure To Pay Tax

The bill repeals the present-law penalty for failure to pay tax for taxpayers for whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner (including extensions). For all other taxpayers, the rate of the penalty is cut in half. For those taxpayers who agree to an automated withdrawal of each installment payment directly from their bank account, the $43 fee on installment agreements is waived.

E. Abatement of Interest

The bill expands the circumstances in which interest on an underpayment of tax may be abated. Interest is required to be abated on any erroneous refund that was not caused by the taxpayer and on underpayments that are attributable to erroneous written advice furnished by the IRS. Abatement also is authorized to the extent the interest is attributable to any unreasonable IRS error or delay or if a gross injustice would result if interest were to be charged.

F. Qualified Dispute Reserve Accounts

The bill would allow taxpayers to limit their exposure to underpayment interest through the use of a qualified reserve account.

Amounts deposited in a qualified reserve account could either be withdrawn with interest or used to offset an underpayment of tax. The use of a qualified reserve account would not affect the ability of the taxpayer to be heard by the Tax Court.

G. Modification of Interest Netting Rules for Individuals

For individual taxpayers, the bill would apply the interest netting rules without regard to the 45-day period in which the Secretary may refund an overpayment of tax without the payment of interest under section 6611(e). Solely for the purpose of applying the interest netting rules, individual taxpayers may treat such period as a period for which interest is allowable on an overpayment at a zero percent rate.

TITLE II—CONFIDENTIALITY AND DISCLOSURE

A. Disclosure and Privacy Rules Relating to Returns and Return Information

The provision clarifies that the Internal Revenue Code exclusively governs the disclosure and inspection of returns and return information. Under the provision, administrative and judicial appeal process are available with respect to requests made to the IRS for returns and return information.

B. Expansion of Type of Advice Available for Public Inspection

The provision requires the IRS to disclose all advice or instructions ("official advice") issued by a component of the IRS or Chief Counsel to IRS or Chief Counsel employees. To qualify as official advice, such advice must convey (1) a legal interpretation of a revenue provision, (2) an IRS or Chief Counsel policy concerning a revenue provision, or (3) a legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision. The IRS and Chief Counsel are permitted to delete certain matters, such as deliberative material, from official advice prior to disclosure. Such deletions are subject to challenge via judicial review.

C. Disclosure Upon Oral Request of Collection Activities with Respect to a Joint Return

The provision eliminates the requirement that requests of former spouses be made in writing for disclosure of collection activities with respect to a joint return.

D. Taxpayer Representatives Not Subject to Inspection Without Supervisor Approval

The provision clarifies that an IRS employee conducting an examination of a taxpayer is not authorized to inspect a taxpayer representative's return or return information solely on the basis of the representative relationship to the taxpayer. Under the provision, the supervisor of the IRS employee would have to approve such inspection after making a determination that other grounds justified such an inspection.

E. Restrictions on Disclosure in Judicial or Administrative Tax Proceedings of Return and Return Information of Persons Who Are Not Party to Such Proceedings

The provision requires that only the portions of a nonparty return or return information that directly relate to the resolution of an issue in the proceeding would be disclosed in such proceeding. The nonparty is to be given reasonable notice prior to the disclosure and the opportunity to request that certain material be deleted from the information to be disclosed.

F. Prohibition in Disclosing Taxpayer Identification Information with Respect to Disclosure of Accepted Offers-in-Compromise

The provision prohibits the disclosure of the taxpayer's address and taxpayer identification number as part of the publicly available summaries of accepted offers-in-compromise.

G. Compliance By State Contractors With Confidentiality Safeguards

The provision requires that a State conduct annual on-site reviews of all contractors receiving Federal returns and return information as agents of the State tax administration agency. The reviews are to assess the contractors' efforts to safeguard Federal returns and return information. The State is required to submit a report of its findings to the IRS and certify annually that all contractors are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information.

H. Requests and Consents to Disclosure Must Contain Recipient and Be Dated When Executed

The provision renders invalid a consent that does not designate a recipient or is not dated at the time of execution. The person submitting the consent to the IRS is required to verify under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. The provision requires the consent form to contain a warning, prominently displayed, informing the taxpayer that he or she should not sign the form unless it is complete and dated. The provision requires the consent form to state that the taxpayer should report any attempts to coerce the signing of an incomplete form to the Treasury Inspector General for Tax Administration. The telephone number for the Treasury Inspector General for Tax Administration is required to be included on the form. All third parties receiving returns and return information by consent are required to: (1) ensure that the information received will be kept confidential; (2) use the information only for the purpose for which it was requested; and (3) not further disclose the information except to accomplish that purpose, unless a separate consent from the taxpayer is obtained. The Treasury Inspector General for Tax Administration is required to investigate a random sampling of consents and report on the effectiveness of the provision eighteen months after the date of enactment.

I. Notice to Taxpayer Concerning Administrative Determination of Browsing; Annual Report

The IRS is required to notify a taxpayer after the Treasury Inspector General for Tax Administration determines that a taxpayer's return or return information has been disclosed or inspected without authorization. The IRS is required to provide information on unauthorized disclosures or inspections of return and return information in its public annual report to the Joint Committee on Taxation.

J. Disclosure of Taxpayer Identity for Tax Refund Purposes

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

TITLE III—OTHER REQUIREMENTS

A. Clarification of Definition of Church Tax Inquiry

The bill clarifies that the church tax inquiry procedures do not apply to contacts made by the IRS for the purpose of educating churches with respect to the law governing tax-exempt organizations. For example, the bill clarifies that the IRS would not violate the church tax inquiry procedures when written materials are provided to a church for the purpose of educating the church with respect to the types of activities that are not permissible under section 501(c)(3).

B. Extension of Declaratory Judgment Procedures to Non-501(c)(3) Tax-exempt Organizations and Failure of IRS To Act on Determinations Treated as Exhaustion of Remedies

The provision extends declaratory judgment procedures similar to those currently available only to charities under section 7428 to other section 501(c) determinations. In addition, the provision modifies the present-law declaratory judgment procedures to provide that an organization is deemed to have exhausted its administrative remedies under the declaratory judgment procedures at the expiration of (1) 270 days after the date on which the request for a determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination, or (2) in the case of a failure by any office of the IRS (other than the office responsible for initial determinations with respect to the organization (the "initial office"), 180 days after any request with respect to such determination was made by the initial office if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

C. Treasury Inspector General for Tax Administration Semi-Annual Report on Employee Misconduct

The bill modifies the present-law requirement that the Treasury Inspector General for Tax Administration include a summary of allegations of employee misconduct in its semi-annual report. Under the bill, the Treasury Inspector General for Tax Administration, in its semi-annual report, is required to include a description of the

ten most common complaints of employee misconduct and the number of complaints made in each such category.

D. Increase Joint Committee Refund Review Threshold to $2 million

The bill increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $1 million to $2 million.

E. Annual Report on IRS Payment of Attorney's Fees

The bill directs the Treasury Inspector General for Tax Administration to submit to Congress annually a report on awards of costs and certain fees (such as attorney's fees) in administrative and court proceedings. The report must include an analysis of administrative issues giving rise to such payments and changes that would be made as a result of such analysis.

F. Annual Report on Abatement of Penalties

The bill directs the Treasury Inspector General for Tax Administration to submit to Congress annually a report on abatements of penalties under the Internal Revenue Code.

G. Better Means of Communicating with Taxpayers

The bill requires the Treasury Inspector General for Tax Administration to submit to Congress a report evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the IRS to communicate with taxpayers.

H. Information Regarding Statute of Limitations

The bill requires the IRS to revise Publication 1 ("Your Rights as a Taxpayer") and the instructions for Form 1040 packages to add a description of the statute of limitations and an explanation of the consequences of failing to file within the prescribed time period.

B. Background and Need for Legislation

The provisions approved by the Committee reflect the need for providing increased fairness to taxpayers and enhancing the confidentiality of returns and return information.

C. Legislative History

COMMITTEE ACTION

The Committee on Ways and Means marked up the provisions of the bill on April 5, 2000, and approved the provisions, as amended, by a voice vote with a quorum present.

COMMITTEE HEARINGS

The following Subcommittee hearings related to provisions in the bill were held during the 106th Congress.

Subcommittee hearings

The Oversight Subcommittee held related hearings as follows:

Annual Report of the Internal Revenue Service National Taxpayer Advocate (February 10, 1999).

1999 Tax Return Filing Season and the IRS Budget for Fiscal Year 2000 (April 13, 1999).

Impact of Complexity in the Tax Code on Individual Taxpayers and Small Businesses (May 25, 1999).

Implementation of the Internal Revenue Service Restructuring and Reform Act of 1998 (July 22, 1999).

Penalty and Interest Provisions in the Internal Revenue Code (January 27, 2000).

2000 Tax Return Filing Season and the IRS Budget for Fiscal Year 2001 (March 28, 2000).

Reports and studies

The following reports and studies assisted the Committee in developing the Taxpayer Bill of Rights 2000:

National Taxpayer Advocate's Annual Report to Congress for Fiscal Year 1998 (January 8, 1999).

Joint Committee on Taxation, Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998 (July 22, 1999).

Department of the Treasury, Report to the Congress on Penalty and Interest Provisions of the Internal Revenue Code (October 25, 1999).

National Taxpayer Advocate's Annual Report to Congress for Fiscal Year 1999 (January 4, 2000).

Joint Committee on Taxation, Study of Present-Law Taxpayer Confidentiality and Disclosure Provisions as Required by Section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998 (January 28, 2000).

Joint Committee on Taxation, Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters (March 16, 2000).

Requests for comments

The Committee on Ways and Means solicited written comments as follows:

Request for Written Comments on Recent Recommendations on Tax Penalty and Interest Provisions (November 15, 1999).

Request for Written Comments on Joint Committee on Taxation Disclosure Study (February 3, 2000).

II. EXPLANATION OF THE BILL

TITLE I—PENALTIES AND INTEREST

A. Failure to Pay Estimated Tax (Sec. 101 of the Bill and New Sec. 6641 of the Code)

1. Convert estimated tax penalty into an interest provision for individuals, estates, and trusts

PRESENT LAW

The Federal income tax system is designed to ensure that taxpayers pay taxes throughout the year based on their income earned and expenses. To the extent that tax is not collected through withholding, taxpayers are required to make quarterly estimated payments of tax. If an individual fails to make the required estimated tax payments under the rules, a penalty is imposed under section 6654. The amount of the penalty is determined by applying the underpayment interest rate to the amount of the underpayment for the period of the underpayment. The amount of the underpayment is the excess of the required payment over the amount (if any) of the installment paid on or before the due date of the installment. The period of the underpayment runs from the due date of the installment to the earlier of (1) the 15th day of the fourth month following the close of the taxable year or (2) the date on which each portion of the underpayment is made. The penalty for failure to pay estimated tax is literally interest, which is based on the time value of money.

REASONS FOR CHANGE

The present-law penalties for failure to pay estimated tax are essentially a time value of money calculation which is not punitive in nature, but rather compensatory. Because the penalties for failure to pay estimated tax are calculated as interest charges, the Committee believes that conforming their title to the substance of the provision will improve taxpayers' perceptions of the fairness of the estimated tax payment system. Therefore, the Committee finds that the effect of the estimated tax penalties for individuals, estates, and trusts is more appropriately described as interest.

EXPLANATION OF PROVISION

The penalty for failure to pay estimated tax is converted into an interest provision for individuals, estates, and trusts.

EFFECTIVE DATE

The provision is effective for estimated tax payments made for taxable years beginning on or after December 31, 2000.

2. Increase and revise estimated tax threshold

PRESENT LAW

Taxpayers are not liable for a penalty for the failure to pay estimated tax when the tax shown on the return for the taxable year (or, if no return is filed, the tax), reduced by withholding, is less

than $1,000. This safe harbor does not apply, however, when a taxpayer has paid tax throughout the year solely through estimated tax payments. For such taxpayers, any tax shown on the return for the taxable year, net of estimated tax paid, could subject the taxpayer to the penalty for failure to pay estimated tax (unless another safe harbor applies).

REASONS FOR CHANGE

The Committee believes that by increasing the estimated tax payment threshold, fewer taxpayers will be required to make estimated tax payments. In addition, by including equally-paid estimated tax in the threshold calculation, the de minimis safe harbor will be available to more taxpayers, such as those who pay throughout the year exclusively through estimated tax.

EXPLANATION OF PROVISION

Under the provision, there is no interest charged for underpayments of estimated tax if the tax shown on the return for the taxable year (or, if no return is filed, the tax), reduced by both withholding and/or equally-paid estimated tax is less than $2,000.

EFFECTIVE DATE

The provision is effective for estimated tax payments made for taxable years beginning on or after December 31, 2000.

3. Apply one interest rate per estimated tax underpayment period for individuals, estates, and trusts

PRESENT LAW

The present-law penalty for failure to pay estimated tax is equal to the underpayment interest rate multiplied by the number of days the underpayment is outstanding, which is the number of days between when the taxpayer should have made the estimated payment and the earlier of (1) the 15th day of the fourth month following the close of the taxable year or (2) the date on which each portion of the underpayment is made. The interest rate, which equals the Federal short-term rate plus three percentage points, is subject to change on the first day of each quarter, which is January 1, April 1, July 1, and October 1.

If interest rates change while an underpayment of estimated tax is outstanding, then taxpayers are required to make separate calculations for the periods before and after the interest rate change. Such calculations generally are needed to cover 15-day periods. For example, the July 1 interest rate occurs 15 days after the June 15 payment date (for calendar-year taxpayers). A change in interest rates, which occurs on the first day of each calendar quarter, would require the use of different interest rates during one estimated tax underpayment period and would increase the number of calculations that a taxpayer must make in calculating a penalty for failure to pay estimated tax.

REASONS FOR CHANGE

When interest rates change during an underpayment period, taxpayers must perform multiple calculations to account for the change in interest rate. Thus, the Committee finds that, if only one interest rate applied per underpayment period, complexity would be reduced because there generally would be only one interest calculation required per underpayment period.

EXPLANATION OF PROVISION

The interest rates are aligned so that, for any given estimated tax underpayment period, only one interest rate will apply. The underpayment interest rate in effect on the first day of the quarter in which the pertinent estimated payment due date arises is the interest rate that will apply during an entire underpayment period.

EFFECTIVE DATE

The provision is effective for estimated tax payments made for taxable years beginning on or after December 31, 2000.

4. Provide that underpayment balances are cumulative

PRESENT LAW

Section 6654(b)(1) defines "underpayment" as the amount of an installment due over the amount of any installment paid (including withholding) on or before the due date of the installment. In determining an underpayment penalty for a calendar year taxpayer, the period of underpayment runs for each underpayment from the payment's due date through the earlier of the date on which any portion of the payment is made or the 15th day of the fourth month following the close of the taxable year. Underpayment balances are not cumulative and must be tracked separately for each estimated tax underpayment period.

REASONS FOR CHANGE

Tracking underpayments separately results in additional complexity in calculating interest on underpayments of estimated tax. The Committee thus finds that the calculation of interest on underpayments of estimated tax would be simplified by providing that underpayment balances would roll into the next estimated tax period so that interest would be calculated once per cumulative underpayment, per period.

EXPLANATION OF PROVISION

The definition of "underpayment" is changed to allow existing underpayment balances to be used in underpayment calculations for succeeding estimated payment periods. Taxpayers will now calculate a cumulative underpayment at the end of each underpayment period.

EFFECTIVE DATE

The provision is effective for estimated tax payments made for taxable years beginning on or after December 31, 2000.

5. Require 365-day year for all estimated tax interest calculations for individuals, estates, and trusts

PRESENT LAW

Under current IRS procedures, taxpayers with outstanding underpayment balances that extend from a leap year through a non-leap year are required to make separate calculations solely to account for the different number of days in the two different years. For example, if a taxpayer has an underpayment outstanding from September 15, 2000, through January 15, 2000, then the taxpayer must account for the period from September 15, 2000, through December 31, 2000, by using a 366-day formula.[1] The taxpayer then must account for the period from January 1, 2001, through January 15, 2001, under a 365-day formula. This calculation is required regardless of whether the interest rate changes on January 1, 2001.

REASONS FOR CHANGE

The Committee finds that complexity in calculating interest on underpayments of estimated tax would be reduced by eliminating the extra calculation that is required for underpayment balances that extend from a leap year to a non-leap year or from a non-leap year to a leap year.

EXPLANATION OF PROVISION

A 365-day year will be used for all individual, estate, and trust estimated tax interest calculations.

EFFECTIVE DATE

The provision is effective for estimated tax payments made for taxable years beginning on or after December 31, 2000.

B. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS (SEC. 102 OF THE BILL AND NEW SEC. 139 OF THE CODE)

PRESENT LAW

Overpayment interest

Interest is included in the list of items that are required to be included in gross income (sec. 61(a)(4)). Interest on overpayments of Federal income tax is required to be included in taxable income in the same manner as any other interest that is received by the taxpayer.[2]

Cash basis taxpayers are required to report overpayment interest as income in the period the interest is received. Accrual basis taxpayers are required to report overpayment interest as income when all events fixing the right to the receipt of the overpayment interest have occurred and the amount can be estimated with reasonable accuracy.[3] Generally, this occurs on the date the appropriate IRS official signs the pertinent schedule of overassessments.[4]

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[1] The year 2000 is a leap year; the year 2001 is not.
[2] Treas. Reg. sec. 1.61–7.
[3] Treas. Reg. sec. 1.451–1(a).
[4] Rev. Rul. 62–160, 1962–2 C.B. 451.

Underpayment interest

A corporate taxpayer is allowed to currently take into account interest paid on underpayments of Federal income tax as an ordinary and necessary business expense. Typically, this results in a current deduction. However, the deduction may be deferred if the interest is required to be capitalized[5] or may be disallowed if and to the extent it is determined to be a cost of earning tax exempt income under section 265.

Section 163(h) of the Code prohibits the deduction of personal interest by taxpayers other than corporations. Noncorporate taxpayers, including individuals, generally are not allowed to deduct interest on the underpayment of Federal income taxes.

Temporary regulations[6] provide that personal interest includes interest paid on underpayments of individual Federal, State or local income taxes, regardless of the source of the income generating the tax liability. This is consistent with the statement in the General Explanation of the Tax Reform Act of 1986 that "(p)ersonal interest also includes interest on underpayments of individual Federal, State, or local income taxes notwithstanding that all or a portion of the income may have arisen in a trade or business, because such taxes are not considered derived from conduct of a trade or business."[7] The validity of the temporary regulation has been upheld in those Circuits that have considered the issue, including the Fourth,[8] Sixth,[9] Eighth,[10] and Ninth Circuits.[11]

Personal interest also includes interest that is paid by a trust, S corporation, or other pass-through entity on underpayments of State or local income taxes. Personal interest does not include interest that is paid with respect to sales, excise or similar taxes that are incurred in connection with a trade or business or an investment activity.[12]

REASONS FOR CHANGE

The Committee believes that there should be consistency in the treatment of interest paid by the Federal government to an individual taxpayer and interest paid by an individual taxpayer to the Federal government. Allowing individual taxpayers to exclude interest on overpayments will treat all individual taxpayers consistently, whether or not they itemize deductions.

EXPLANATION OF PROVISION

The provision excludes overpayment interest that is paid to individual taxpayers on overpayments of Federal income tax from gross income. Interest excluded under the provision is not considered disqualified income that could limit the earned income credit. Interest excluded under the provision is also not considered in determining what portion of a taxpayer's social security or tier 1 railroad retire-

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[5] Interest may be required to be capitalized under section 263A and similar sections.
[6] Treas. Regs. sec. 1.163–9T.
[7] Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (JCS–10–87), p. 266.
[8] *Allen* v. *U.S.,* 173 F. 3d 533 (1999).
[9] *McDonnell* v. *U.S.,* 1999 U.S. App. LEXIS 10842 (1999).
[10] *Miller* v. *U.S.,* 65 F. 3d 687 (1995).
[11] *Redlark* v. *U.S.,* 141 F. 3d 936 (1998).
[12] Treas. Regs. sec. 1.163–9T(b)(2)(iii)(A).

ment benefits are subject to tax (sec. 86), whether a taxpayer has sufficient taxable income to be required to file a return (sec. 6012(d)), or for any other computation in which interest exempt from tax is otherwise required to be added to adjusted gross income.

The exclusion from income of overpayment interest does not apply if the Secretary determines that the taxpayer's principal purpose for overpaying his or her tax is to take advantage of the exclusion.

For example, a taxpayer prepares his return without taking into account significant itemized deductions of which he is, or should be, aware. Before the expiration of the statute of limitations, the taxpayer files an amended return claiming these itemized deductions and requesting a refund with interest. Unless the taxpayer can establish a principle purpose for originally overpaying the tax other than collecting excludible interest, the Secretary may determine that the principal purpose of waiting to claim the deductions on an amended return was to earn interest that would be excluded from income. In that case, the interest on the underpayment could not be excluded from income.

It is expected that the Secretary will indicate whether the interest is eligible to be excluded from income on the Form 1099 it provides that taxpayer for taxable year in which the underpayment interest is paid.

EFFECTIVE DATE

The provision is effective for interest that would otherwise be required to be included in income in calendar years beginning after the date of enactment.

C. Partial Repeal and Reduction in the Penalty for Failure To Pay Tax (Sec. 103 of the Bill and Sec. 6651 of the Code)

PRESENT LAW

Taxpayers who fail to pay their taxes are generally subject to a penalty of 0.5 percent per month on the unpaid amount, up to a maximum of 25 percent.[13] If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return. If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $100 or 100 percent of the amount required to be shown on the return. For any month in which an installment payment agreement with the IRS is in effect, the rate of the penalty is half the usual rate (0.25 percent instead of 0.5 percent), provided that the taxpayer filed the tax return in a timely manner (including extensions).[14] The rate of the penalty is twice the usual rate (1.0 percent instead of 0.5 percent) for months beginning after the IRS notifies

[13] Sec. 6651(a)(2) and (3).

[14] Sec. 6651(h). This provision was added by sec. 3303 of the IRS Reform Act, effective for purposes of determining additions to the tax for months beginning after December 31, 1999.

the taxpayer that the IRS will levy upon the assets of the taxpayer.[15]

REASONS FOR CHANGE

The Committee believes that, in general, it is inappropriate to apply the penalty for failure to pay taxes to taxpayers who are in fact paying their taxes through an installment agreement. The repeal of the penalty for failure to pay tax for taxpayers with respect to whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner (including extensions), continues a policy initiative begun by the IRS Reform Act, in which this penalty was reduced by half for these taxpayers.[16]

The elimination of the $43 user fee for installment agreements for taxpayers who both enter into installment agreements and who agree to use automated mechanisms to pay their installment payments is designed to increase the certainty of timely payment, simplify the payment process for taxpayers, and decrease administrative costs of collection for the IRS.[17]

EXPLANATION OF PROVISION

The bill partially repeals and reduces the penalty for failure to pay tax. The first element of the bill repeals the penalty for failure to pay tax for taxpayers for whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner (including extensions). Thus, for any month in which an installment payment agreement with the IRS is in effect, the rate of the penalty is zero (instead of 0.25 percent), provided that the taxpayer filed the tax return in a timely manner (including extensions).

The second element of the bill reduces by half the failure to pay tax penalty for all other taxpayers (generally, those who have not entered into an installment payment agreement with the IRS). Thus, in general, the rate of the penalty is 0.25 percent per month instead of 0.5 percent per month. The special rate for months beginning after the IRS notifies the taxpayer that the IRS will levy upon the assets of the taxpayer is also reduced by half (0.5 percent per month instead of 1.0 percent per month).

The third element of the bill provides that taxpayers who enter into installment agreements are not required to pay the present-law $43 fee for installment agreements[18] while automated withdrawals of installment payments are made directly from their bank account.

EFFECTIVE DATE

The repeal of the penalty for failure to pay tax for taxpayers for whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner

[15] Sec. 6651(d). This provision was added by sec. 1502 of the Tax Reform Act of 1986.
[16] Sec. 6651(h).
[17] The cost to the IRS of administering these automated payment mechanisms is less than a dollar a payment. See, Tax Notes, June 14, 1999, at 1544.
[18] The IRS charges a user fee of $43 upon approval of an application to enter into an installment agreement.

(including extensions), is effective for purposes of determining additions to tax for months beginning after December 31, 2000.

The reduction by half of the failure to pay tax penalty for all other taxpayers also is effective for purposes of determining additions to tax for months beginning after December 31, 2000.

The prohibition on the fee for installment agreements using automated withdrawals is effective for installment agreements entered into more than 30 days after the date of enactment.

D. ABATEMENT OF INTEREST (SEC. 104 OF THE BILL AND SEC. 6404 OF THE CODE)

PRESENT LAW

In general

The Secretary of the Treasury can abate or suspend the accrual of interest in a number of situations. In general, the Secretary is authorized to abate interest that is not owed by the taxpayer, either because the interest was erroneously or illegally assessed, or because the interest was assessed after the expiration of the period of limitations. The Secretary also may abate interest that is attributable to certain unreasonable errors and delays by the Internal Revenue Service. The Secretary may abate interest where, in his judgment, the administration and collection costs involved do not warrant the collection of the amount due.

The Secretary is required to abate interest in the case of a declared disaster or certain erroneous refunds attributable solely to errors made by the IRS. The Secretary is required to suspend the accrual of interest if the IRS fails to contact the taxpayer in a timely manner and in the case of taxpayers serving in a combat zone.

Interest that is abated is not owed by the taxpayer and does not accrue additional interest through compounding or result in any additional penalties. If the accrual of interest is suspended for a period, then that period is not taken into account in determining the interest owed on an underpayment.

Abatement of interest that is erroneously or illegally assessed

Most abatements of interest are a result of adjustments to the underlying tax liability. Underpayment interest is assessed any time an underpayment is assessed. If the underlying tax liability is later adjusted, resulting in a reduction in the amount of the underpayment, the portion of the interest attributable to such adjustment must be abated.

Abatements due to unreasonable error or delay by the IRS

If any part of an underpayment of a tax described in section 6212(a)[19] is attributable to an unreasonable error or delay by an officer or employee of the Internal Revenue Service, acting in his official capacity, in the performance of a ministerial or managerial act, the Secretary may abate all or a part of the interest on the underpayment. Similarly, if a delay in the payment of tax is attributable to such an officer or employee being erroneous or dilatory

[19] The taxes described in section 6212(a) are those with respect to which a deficiency may be assessed. These include the income, estate, gift, generation skipping, and certain excise taxes.

in performing a ministerial or managerial act, the Secretary may abate all the interest that would otherwise accrue for that period.

Prior to 1986, the IRS generally did not have the authority to abate interest charges that were properly calculated and based on a correctly determined underpayment. This was the case even if the IRS errors or delays had prevented the earlier satisfaction of the taxpayer's underpayment and resulted in the accrual of additional interest. The Tax Reform Act of 1986 provided the IRS the authority to abate interest where an IRS official fails either to perform a ministerial act in a timely manner or makes an error in performing a ministerial act. The term 'ministerial act' means "a nondiscretionary act when all of the prerequisites to the (a)ct, such as fact gathering, analysis, decision-making, and conferencing and review by supervisors, have taken place."[20] Abatement is available under this authority only where "no significant aspect of the error or delay can be attributable to the taxpayer"[21] and relates only to periods after the taxpayer has been contacted for examination.[22] The rule authorizes, but does not require the abatement of interest. Abatement is at the discretion of the Secretary. "Congress did not intend that this provision be used routinely to avoid the payment of interest; rather, it intended that the provision be utilized in instances where failure to perform a ministerial act results in the imposition of interest, and the failure to abate the interest would be widely perceived as grossly unfair."[23]

In 1996, the authority to abate interest was expanded to permit the IRS to abate interest with respect to any unreasonable error or delay resulting from the managerial as well as ministerial acts. A managerial act is an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgement or discretion relating to the management of personnel.[24] This allows interest to be abated where extensive delays result from managerial acts such as the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave. "For this purpose, delays resulting from managerial acts do not include delays resulting from general administrative decisions. For example, the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable delay in the Service's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived."[25]

The authority to abate interest under this rule does not apply where an underpayment or delay in payment of tax is attributable to an error or delay by an officer or employee of the IRS in the performance of an act that is not managerial or ministerial. Ministe-

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[20] Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 ("Bluebook") (JCS–10–87), at 1310.

[21] H.Rept. No. 99–841 (Conference Report on the Tax Reform Act of 1986), at II–811.

[22] Id.

[23] Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 ("Bluebook") (JCS–10–87), at 1310.

[24] Treas. Regs. sec. 301.6404–2(b).

[25] H.Rept. 104–506 (Taxpayer Bill of Rights 2).

rial and managerial acts do not include a decision as to the application of any Federal or state law, including any Federal tax law.[26]

The proposed regulations provide a number of examples of situations in which abatement of interest under this rule would or would not be allowed. Abatement is generally limited to situations where resolution of the taxpayer's liability is delayed because the IRS has failed to assign appropriate personnel to a taxpayer's case (a managerial act), there is an unaccountable delay in the issuance of a notice by the IRS (a ministerial act), an IRS employee requests an insufficient amount of payment because he misreads the amount on the taxpayer's master file (a ministerial act), or the IRS loses or misplaces vital information (a managerial act). Abatement is not available where the delay in resolving the taxpayer's liability is attributable to excessive time spent by the IRS in interpreting the tax laws, to erroneous interpretations and calculations made by the IRS, to the IRS' decision to examine other returns prior to the examination of the taxpayer's return, or to other failures to resolve a taxpayer's liability in a timely manner.

Abatement of interest on erroneous refunds

The Secretary is required to abate interest on an erroneous refund for the period from the issuance of the refund until its return is demanded.[27] Since the taxpayer has 21 days from the date of demand to pay without interest,[28] no interest must be paid as the result of an erroneous refund if the taxpayer repays the refund within 21 days of the IRS asking for its return. If the taxpayer does not repay the refund within the 21 day grace period, interest must be paid from the date the return of the refund is demanded. The rule abating interest in the case of erroneous refunds does not apply if the taxpayer (or a related party) has in any way caused the erroneous refund or if the amount of the erroneous refund exceeds $50,000.

Abatement of penalties and additions to tax attributable to erroneous written advice given by the IRS

The Secretary is required to abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the IRS acting in his or her official capacity. The abatement applies only if (1) the advice is given in response to a specific written request made by the taxpayer, (2) the taxpayer reasonably relied on the advice, and (3) the taxpayer provided adequate and accurate information.[29]

Only penalties and additions to tax that are attributable to erroneous written advice given by the IRS are abated under this rule. Interest is abated only to the extent that it is attributable to abated penalties and additions to tax. Interest attributable to an underpayment of tax, where such underpayment is the result of the taxpayer's proper reliance on written advice of the IRS, is not eligible for abatement.

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[26] Treas. Reg. sec. 301.6404–2(b).
[27] 27 Sec. 6404(e)(2).
[28] Sec. 6601(e)(3).
[29] Sec. 6404(f).

Suspension of the accrual of interest for taxpayers serving in a combat zone[30]

Taxpayers serving in a combat zone generally are not required to file tax returns or pay taxes until 180 days after their service in the combat zone is completed. Accordingly, the accrual of interest on any underpayment is suspended during that period.[31] This suspension of interest applies to the underpayment of any tax, whether or not related to a return that would otherwise have been due while the taxpayer was serving in the combat zone.

A taxpayer is serving in a combat zone if serving in the Armed Forces of the United States in an area designated as a "combat zone" during the period of combatant activities. An individual who becomes a prisoner of war is considered to continue in such active service. An individual serving in support of the Armed Forces of the United States in the combat zone, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces, are also considered to be serving in the combat zone for this purpose. The designation of a combat zone may be made by the President in an Executive Order, or may be declared legislatively by the Congress. The President must also designate the period of combatant activities in the combat zone (the starting date and the termination date of combat).

The suspension of interest applies during the period of combatant activities in the combat zone, as well as (1) any time of continuous qualified hospitalization resulting from injury received in the combat zone or (2) time in missing in action status, plus the next 180 days.

Taxpayers located in a Presidentially declared disaster area

In the case of a Presidentially declared disaster, the Secretary of the Treasury has the authority to extend the filing date for returns of taxpayers that are located in the disaster area. The Secretary may also extend the payment date for any taxes shown on such an extended return. If the Secretary extends the filing and payment dates, any interest that would otherwise be accrued during the period of the extension must be abated.[32]

Suspension of interest where the Secretary fails to contact a taxpayer

For individual taxpayers who have filed a timely Federal income tax return, the accrual of interest is suspended after 1 year if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. With respect to taxable years beginning before January 1, 2004, the 1-year period is increased to 18 months. Interest and penalties resume 21 days after the IRS sends the required notice to the taxpayer. The rule applies separately with respect to each

[30] The relief available to taxpayers serving in combat zones is discussed more fully in Joint Committee on Taxation, Description of Present Law and a Proposal Relating to Tax Relief for Personnel in the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the Northern Ionian Sea (JCX–18–99).

[31] Sec. 7508.

[32] Sec. 6404(h).

item or adjustment[33] and does not apply where a taxpayer has self-assessed the tax. The suspension does not apply in the case of fraud.[34] Any interest that is assessed with respect to the suspension period is required to be abated.

Procedures for the abatement of interest

Taxpayers may apply for the abatement of interest by filing a claim on Form 843 with the Internal Revenue Service Center that has assessed the interest the taxpayer seeks to have abated.[35]

Typically, interest is abated when the amount of tax assessed is reduced. Thus, any procedure that may result in the reduction of assessed tax may also result in an abatement of interest.

Where abatement of interest is sought separate from any redetermination of tax the availability of judicial review depends upon the basis on which abatement is sought. If the IRS is required to abate the interest, judicial review is available to determine if the facts exist that mandate abatement. The Taxpayer Bill of Rights 2 specifically granted jurisdiction to the Tax Court to review for abuse of discretion any decision by the IRS not to abate interest that is attributable to unreasonable error or delay by Service employees in the performance of a ministerial or managerial act, effective for requests for abatement filed after July 30, 1996.[36] Otherwise, review of the Secretary's failure to use his or her discretion to abate interest may not be available. The courts have held that judicial review of the IRS' failure to use its discretion to abate interest is generally not available, unless jurisdiction is specifically granted by statute or a standard for review has been established.[37]

REASONS FOR CHANGE

The Committee believes that there are additional situations in which it is not appropriate for the Secretary to collect interest on an underpayment of tax.

EXPLANATION OF PROVISION

Allow the abatement of interest if a gross injustice would otherwise result if interest were to be charged

The bill grants the Secretary the authority to abate interest if a gross injustice would otherwise result if interest were to be charged and no significant aspect of the events giving rise to the accrual of the interest can be attributed to the taxpayer. This authority is intended to allow the Secretary to address those extraordinary situations where normally appropriate rules could result in a gross injustice if strictly applied. It is anticipated that such authority will be used infrequently and will be determined on a case-by-case basis.

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[33] For example, if the IRS sends a math error notice to a taxpayer 2 months after the return is filed and also sends a notice of deficiency related to a different item 2 years later, the suspension of interest applies to the item reflected on the second notice (notwithstanding that the first notice was sent within the applicable time period).

[34] Sec. 6404(g).

[35] Rev. Proc. 87–43, 1987–2 C.B. 590.

[36] Sec. 6404 (as amended by section 301 of the Taxpayer Bill of Rights 2).

[37] *Horton Homes, Inc.* v. *United States,* 727 F. Supp. 1450 (M.D. Ga. 1990) aff'd., 936 F.2d 548 (11th Cir. 1991).

Abatement under this authority is solely within the discretion of the Secretary.

Allow the abatement of interest for periods attributable to any unreasonable IRS error or delay

The bill grants the Secretary the authority to abate interest for any period that is attributable to unreasonable IRS errors or delays, whether or not related to managerial or ministerial acts. Abatement is not expected to be available to the extent the taxpayer contributes to the delay by providing erroneous information or failing to provide reasonably requested information within a reasonable period, or otherwise failing to timely disclose information or cooperate with reasonable IRS requests.

The bill allows the Secretary to consider abatement of interest in situations where unreasonable errors or delays occur in the context of the consideration of a legal position. For example, an IRS field agent refers a complicated issue to the IRS National Office. The National Office attorney misplaces the file and is then transferred to a different branch without either notifying his superiors that the file is missing or arranging for the transfer of the issue to his replacement. Some time later, the file is found and the issue reassigned. Assuming that this results in an unreasonable delay in the resolution of the taxpayer's liability, interest for the period from the original misplacing of the file until the issue is reassigned may be abated.

The bill also allows the Secretary to consider abatement in situations where an IRS employee gives erroneous advice or information that the employee knows, or should know, will cause the taxpayer to believe that his liability is resolved. For example, an IRS employee tells a taxpayer by telephone that a payment will be satisfactory to settle his liability for a taxable year. In fact, the IRS employee has made a error in calculating the amount owed by the taxpayer and the amount he requests is insufficient.[38] The taxpayer makes the requested payment and is surprised some time later to discover that the IRS is seeking an additional payment for the year. The bill allows the Secretary to abate the interest attributable to the period that occurs after the taxpayer had made the payment he was led to believe would satisfy his liability, provided the taxpayer did not contribute to the error in any significant way, such as by providing erroneous information that was used by the IRS employee to determine the insufficient payment amount.

It is not expected that this expansion of authority will result in an abatement of interest solely because the taxpayer is not able to resolve its tax liability as quickly as the taxpayer would like. Interest owed by a taxpayer will not be abated because other taxpayers have their returns examined first, or because the determination of the taxpayer's liability proves difficult and requires additional time. Abatement is expected to be available only where the additional time needed to resolve the taxpayer's liability is the result of unreasonable error or delay by the IRS, considering all the facts and circumstances applicable to the taxpayer's case.

[38] Abatement could be allowed under present law if the error were in the performance of a ministerial act, such as reading the taxpayer's transcript.

Allow for the abatement of interest in situations where the taxpayer is repaying an excessive refund based on IRS calculations without regard to the size of the refund

The bill eliminates the $50,000 threshold for abatement of interest on erroneous refunds. Under the bill, the Secretary is required to abate interest on any erroneous refund, provided the taxpayer has not in any way caused the erroneous refund to occur.

Allow the abatement of interest to the extent the interest is attributable to taxpayer reliance on written statements of the IRS

The bill requires the Secretary to abate interest on an underpayment where the underpayment is attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the IRS acting in his or her official capacity. It is anticipated that the abatement would apply to interest attributable to the period of time from the issuance of the erroneous advice through the day that is 21 days (10 days in the case of an underpayment in excess of $100,000) after the day the IRS gives written notice that its advice was erroneous. The bill does not eliminate the taxpayer's obligation to satisfy any underpayment of tax attributable to such erroneous advice.

EFFECTIVE DATE

The changes made by these provisions are effective with respect to interest accruing on or after the date of enactment.

E. Deposits To Stop the Running of Interest on Potential Underpayments (Sec. 105 of the Bill and New Sec. 6612 of the Code)

PRESENT LAW

Generally, interest on underpayments and overpayments continues to accrue during the period that a taxpayer and the IRS dispute a liability. The accrual of interest on an underpayment is suspended if the IRS fails to notify an individual taxpayer in a timely manner,[39] but interest will begin to accrue once the taxpayer is properly notified. No similar suspension is available for other taxpayers.

A taxpayer that wants to limit its exposure to underpayment interest has a limited number of options. The taxpayer can continue to dispute the amount owed and risk paying a significant amount of interest. If the taxpayer continues to dispute the amount and ultimately loses, the taxpayer will be required to pay interest on the underpayment from the original due date of the return until the date of payment.

In order to avoid the accrual of underpayment interest, the taxpayer may choose to pay the disputed amount and immediately file a claim for refund. Payment of the disputed amount will prevent further interest from accruing if the taxpayer loses (since there is no longer any underpayment) and the taxpayer will earn interest on the resultant overpayment if it wins. However, the taxpayer will generally lose access to the Tax Court if it follows this alter-

[39] Sec. 6404(g).

native.[40] Amounts paid generally cannot be recovered by the taxpayer on demand, but must await final determination of the taxpayer's liability. Even if an overpayment is ultimately determined, overpaid amounts may not be refunded if they are eligible to be offset against other liabilities of the taxpayer.[41]

The taxpayer may also make a deposit in the nature of a cash bond. The procedures for making a deposits in the nature of a cash bond are provided in Rev. Proc. 84–58.[42]

A deposit in the nature of a cash bond will stop the running of interest on an amount of underpayment equal to the deposit, but the deposit does not itself earn interest. A deposit in the nature of a cash bond is not a payment of tax and is not subject to a claim for credit or refund. A deposit in the nature of a cash bond may be made for all or part of the disputed liability and generally may be recovered by the taxpayer prior to a final determination. However, a deposit in the nature of a cash bond need not be refunded to the extent the Secretary determines that the assessment or collection of the tax determined would be in jeopardy, or that the deposit should be applied against another liability of the taxpayer in the same manner as an overpayment of tax.[43] If the taxpayer recovers the deposit prior to final determination and a deficiency is later determined, the taxpayer will not receive credit for the period in which the funds were held as a deposit. The taxable year to which the deposit in the nature of a cash bond relates must be designated, but the taxpayer may request that the deposit be applied to a different year under certain circumstances.[44]

REASONS FOR CHANGE

The Committee believes that an improved deposit system that allows for the payment of interest on amounts that are not ultimately needed to offset tax liability when the taxpayer's position is upheld, as well as allowing for the offset of tax liability when the taxpayer's position fails, will provide a more effective way for taxpayers to manage their exposure to underpayment interest. However, the Committee believes that such an improved deposit system should be reserved for the issues that are known to both parties, either through IRS examination or voluntary taxpayer disclosure.

EXPLANATION OF PROVISION

In general

The bill allows a taxpayer to deposit funds in a qualified dispute reserve account. The taxpayer may subsequently designate all or a part of such deposit to offset an underpayment of tax. Interest will not be charged on the portion of the underpayment that is offset by the designated amount for the period the amount designated as

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[40] The taxpayer may, however, sue the IRS for the refund in either the U.S. District Court or the U.S. Court of Federal Claims.

[41] The amount of any overpayment, including interest thereon, may be credited against any other internal revenue tax liability of the taxpayer (sec. 6402(a)). In addition, the overpayment and any overpayment interest may be used to offset past due support payments (sec. 6402(c)), debts owed to other Federal agencies (sec. 6402(d)), and past due, legally enforceable State income tax obligations of residents of the same State (sec. 6402(e)).

[42] 1984–2 C.B. 501.

[43] Rev. Proc. 84–58, sec. 4.02(1).

[44] Id. sec. 4.02(4).

an offset was on deposit. Generally, funds deposited in a qualified dispute reserve account may be withdrawn at any time and will earn interest at the applicable Federal rate if they are not used to offset underpayments of tax.

The amount of funds that may be deposited in a qualified dispute reserve account is generally limited to the amount potentially in dispute with respect to disclosed issues for the taxable year. Amounts deposited in excess of this limit will be treated in the same manner as a deposit in the nature of a cash bond under present law.

Use of a qualified dispute reserve fund to offset underpayments of tax

The taxpayer may designate any amounts in a qualified dispute reserve account to offset an underpayment of tax that is ultimately determined for the taxable year to which the deposit relates. If an underpayment is offset in this manner, the taxpayer will not be charged underpayment interest on the portion of the underpayment that is offset for the period the funds were on deposit in a qualified dispute reserve account.

For example, a calendar year individual taxpayer identifies sufficient disputable issues and deposits $20,000 in a dispute reserve account that relates to taxable year 2000 on May 15, 2001. On April 15, 2003, an examination of the taxpayer's return is completed, the taxpayer and the IRS agree that the taxable year 2000 taxes were underpaid by $25,000, the taxpayer designates the amount in the qualified dispute reserve account as an offset to the underpayment, and the taxpayer pays the balance. In this case, the taxpayer will owe underpayment interest from April 15, 2001 (the original due date of the return) to the date of payment (April 15, 2003) only with respect to the $5,000 of the underpayment that is not offset by the dispute reserve account. The taxpayer will owe underpayment interest on the remaining $20,000 of the underpayment only from April 15, 2001 to May 15, 2001, the date the $20,000 was deposited in the qualified dispute reserve account.

Withdrawal of amounts

A taxpayer may request the withdrawal of any amount in a qualified dispute reserve account at any time. The Secretary must comply with the withdrawal request unless the amount has already been designated to offset an underpayment of tax or the Secretary properly determines that assessment and collection of tax is in jeopardy. Interest is paid on amounts that are withdrawn from a dispute reserve account at a rate equal to the short-term applicable Federal rate for the period from the date of deposit to a date not more than 30-days preceding the date of the check paying the withdrawal.[45]

For example, a calendar year individual taxpayer receives a 30-day letter showing a deficiency of $20,000 for taxable year 2000 and deposits $20,000 in a qualified dispute reserve account that relates to taxable year 2000 on May 15, 2002. On April 15, 2003, an administrative appeal is completed, the taxpayer and the IRS agree

[45] This 30-day period is consistent with other determinations of interest owed to a taxpayer.

that the 2000 taxes were underpaid by $15,000, and the taxpayer designates $15,000 of the amount in the qualified dispute reserve account as an offset to the underpayment. In this case, the taxpayer will owe underpayment interest from April 15, 2001 (the original due date of the return) to May 15, 2002, the date the $20,000 was deposited in the dispute reserve account. Simultaneously with the designation of the $15,000 to offset the deficiency, the taxpayer requests the return of the remaining $5,000 in the qualified dispute reserve account. This amount must be returned to the taxpayer with interest determined at the short-term applicable Federal rate from the May 15, 2002 to a date not more than 30 days preceding the date of the check repaying the $5,000 to the taxpayer.

Limitations on amounts deposited in a qualified dispute reserve account

The amount on deposit in a qualified dispute reserve account for any taxable year may not exceed the amount necessary to offset the disputable items for the taxable year that have been identified by the taxpayer. A disputable item is any item for which the taxpayer (1) has a reasonable basis for the treatment used on its return and (2) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item. The taxpayer must include a reasonable estimate of the potential underpayment as part of its identification of the disputable item. The amount on deposit in the qualified dispute reserve account for the taxable year may not exceed the sum of such reasonable estimates.

All items included in a 30-day letter to a taxpayer are deemed to be identified for this purpose. Thus, once a 30-day latter has been issued, the deposit limit cannot be less than the amount of the deficiency shown in the 30-day letter. A 30-day letter is the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

If the taxpayer deposits an amount in excess of the limit, that amount will be a cash bond deposit that is not part of a qualified dispute reserve account. Such amounts will be treated in the same manner as deposits in the nature of a cash bond under present law.

Deposits in dispute reserve accounts are not payments of tax

An amount deposited in a dispute reserve account is not a payment of tax prior to the time it is designated to offset an underpayment. Thus, the interest earned on withdrawn amounts would not be eligible for the proposed exclusion from income of an individual. Similarly, withdrawal of an amount from a qualified dispute reserve account will not establish a period for which interest was allowable at the short-term applicable Federal rate for the purpose of establishing a net zero rate interest rate on a similar amount of underpayment for the same period.

Application of amounts to different years

A taxpayer may change the taxable year to which an amount in a qualified dispute reserve account relates. Such an amount will continue to be considered to have been deposited on its original de-

posit date for the purpose of determining the period of interest on any underpayment it is designated to offset or the period for which interest is owed to the taxpayer should the deposit be withdrawn.

For example, a calendar year individual taxpayer receives a 30-day letter showing a deficiency of $20,000 of taxable year 2000 and deposits $20,000 in a qualified dispute reserve account that relates to taxable year 2000 on May 15, 2002. On April 15, 2003, an administrative appeal is completed, the taxpayer and the IRS agree that the 2000 taxes were underpaid by $15,000, and the taxpayer designates $15,000 of the amount in the qualified dispute reserve account as an offset to the underpayment. Simultaneously with the designation of the $15,000 to offset the deficiency, the taxpayer requests the remaining $5,000 in the qualified dispute reserve account relate to taxable year 2001, and identifies sufficient disputable items for taxable year 2001. This $5,000 amount will be considered to have been deposited on May 15, 2002, the date of original deposit, for the purpose of offsetting underpayment interest owed with respect to taxable year 2001, or for determining the interest owed the taxpayer should the amount be withdrawn.

EFFECTIVE DATE

The provision applies to periods after the date of enactment. Amounts already on deposit as of the date of enactment will be treated as deposited in a qualified dispute reserve account as of the date the disputable issues are identified by the taxpayer.

F. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS (SEC. 106 OF THE BILL AND SEC. 6404 OF THE CODE)

PRESENT LAW

A special net interest rate of zero applies to the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer.[46] If both the underpayment and overpayment are unsatisfied, the interest rate applied to both will be zero. If either the underpayment or overpayment has previously been satisfied, the interest rate applicable to the unsatisfied amount will be equal to the interest rate applicable to the satisfied amount to the extent that interest was allowable or payable on both the underpayment and the overpayment for the same period.

Interest must be both payable and allowable for interest netting to apply. If interest is not payable by the taxpayer with respect to an underpayment of tax, or interest is not allowable to the taxpayer on an overpayment of tax, the interest netting rules will not apply.

For example, on July 1, 2003, a deficiency of $1,500 is determined with respect to an individual taxpayer's 2000 Federal income tax return, which the taxpayer pays within 21 days. In the meantime, the taxpayer has filed returns for 2001 and 2002, showing a refund due to overwithholding each year of $1,000. The IRS issues the appropriate refund checks on May 15 of each year, within 45 days of the due date of the return. Thus, interest is not allow-

[46] This provision was enacted in section 3301 of the IRS Reform Act.

able to the taxpayer with respect to either 2001 or 2002.[47] In this case, the taxpayer owes interest on the $1500 year 2000 underpayment from the original due date of the return (April 15, 2001) until the underpayment is satisfied.[48] Although, there are offsetting periods of overpayment (April 15, 2002 to May 15, 2002 and April 15, 2003 to May 15, 2003), there is no offsetting period for which interest is allowable on an overpayment.

REASONS FOR CHANGE

The Committee believes that individual taxpayers should be allowed to consider the period of time the Secretary is allowed to process a refund in determining a net interest rate.

EXPLANATION OF PROVISION

In the case of an individual taxpayer, the interest netting rules are to be applied without regard to the 45–day period in which the Secretary may refund an overpayment of tax without the payment of interest under section 6611(e). Solely for the purpose of the interest netting computation, the portion of the 45–day period before repayment of the overpayment will be considered as a period for which overpayment interest was allowable at a zero rate. The bill does not modify the period for which interest is payable or allowable for any other purpose.

In the example discussed as part of present law, above, a net interest rate of zero would be applied to $1,000 of the taxpayer's year 2000 underpayment for the periods between the due date of the 2002 and 2003 returns and the dates on which the refunds are made. The taxpayer in the example would owe interest at the underpayment rate for the periods from April 16, 2001 to April 16, 2002; May 16, 2002 to April 16, 2003; and from May 16, 2003 to July 1, 2003. For the periods April 16 to May 15, 2002 and April 16, 2003 to May 15, 2003, a zero net interest rate will apply.

EFFECTIVE DATE

The provision is effective for interest accrued for periods beginning on or after the date of enactment.

TITLE II—CONFIDENTIALITY AND DISCLOSURE

A. Disclosure and Privacy Rules Relating to Returns and Return Information (Sec. 201 of the Bill and Sec. 6103(a) and New Sec. 6103(p)(9) of the Code)

PRESENT LAW

Section 6103

Under section 6103, returns and return information are confidential and cannot be disclosed unless authorized by the Internal Rev-

[47] Sec. 6611(e)(1) provides that no interest will be allowable if any overpayment of tax is refunded within 45 days after the return is filed.

[48] If the underpayment is satisfied within 21 days of the determination on July 1, 2003, the taxpayer does not owe interest for any portion of time after that date (sec. 6601(e)(3)).

enue Code.[49] The Code defines return information broadly. Return information includes:

- a taxpayer's identity, the nature, source or amount of 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 which is not open to public inspection under section 6110; and
- any advance pricing agreement entered into by a taxpayer and the IRS and any background information related to such agreement or any application for an advance pricing agreement.[50]

Section 6103 contains a number of exceptions to the general rule of confidentiality, which authorize disclosure in particular circumstances.[51] The IRS may disclose returns and return information to, among others, the taxpayer, the taxpayer's designee, and to certain other persons having a material interest.[52] The IRS may withhold return information when disclosure would "seriously impair federal tax administration."[53]

Freedom of Information Act

The Freedom of Information Act ("FOIA"), enacted in 1966, established a statutory right to access government information.[54] While the purpose of section 6103 is to restrict access to returns and return information, the basic purpose of the FOIA is to ensure that the public has access to government documents. In general, the FOIA provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Returns and return information that cannot be disclosed under section 6103 are exempt from disclosure under the FOIA.[55] However, persons seeking access to information have used the FOIA as a method to attempt to compel disclosure of information arguably protected under section 6103.

Under the FOIA, the IRS (as do other agencies) has twenty days (excluding Saturdays, Sundays, and legal holidays) to respond to a FOIA request. The IRS can respond either by providing the records

[49] Sec. 6103(a).
[50] Sec. 6103(b)(2)(A)–(C).
[51] Sec. 6103(c) through (o).
[52] Sec. 6103(c) and (e).
[53] Sec. 6103(c) and (e)(7).
[54] 5 U.S.C. sec. 552.
[55] Courts use two approaches to reach this result. Some courts have held that section 6103 preempts the FOIA. Most courts, however, have held that section 6103 meets the requirements of exemption 3 of the FOIA, which allows the withholding of information prohibited from disclosure by another statute if certain requirements are met.

sought or by notifying the requestor of the reasons why the IRS is denying access and the right to appeal such denial.[56] If the requestor appeals, the IRS has twenty days to rule on such appeal.[57] If the IRS upholds the denial on administrative appeal, the IRS then notifies the requestor of his or her right to seek judicial review in a United States District Court.[58]

The Privacy Act

The Privacy Act was enacted in 1974 to regulate the collection, use, dissemination, and maintenance of personal information about individuals by Federal agencies.[59] The Privacy Act applies only to the records of individuals. Thus, the Privacy Act does not protect records of corporations. The Privacy Act has four principal provisions. These provisions: (1) restrict the disclosure of personally identifiable records maintained by agencies; (2) allow individuals to access agency records maintained about the individual; (3) allow an individual to request amendment of agency records pertaining to the individual if the individual believes the records are not accurate, relevant, timely, or complete; and (4) require agencies to comply with statutory guidelines for collection, maintenance, and dissemination of records. In general, the provisions of the Privacy Act prohibit the disclosure of an individual's records without the consent of the individual. Section 7852(e) of the Code provides that certain provisions of the Privacy Act cannot be applied directly or indirectly to the determination of the existence or possible existence of liability (or amount thereof) of any person for any tax, penalty interest, fine forfeiture, or other imposition or offense to which the Code applies. The Privacy Act provisions specified by section 7852(e) are (d)(2), (3) and (4) (amendment provisions), and (g) (civil remedies for an agency's failure to comply with a provision of the Privacy Act). The Privacy Act predated section 6103 by two years. Courts disagree on whether the Privacy Act is preempted by section 6103.

REASONS FOR CHANGE

Present law states that no disclosures of returns and return information can be made unless authorized by Title 26. However, the FOIA, the Privacy Act and other laws have sought to authorize disclosure. The Committee believes that it should be clarified that the Code is the sole authority for the disclosure of returns and return information.

The purpose of the FOIA is to shed light on the operations of government. The FOIA presumes that records are subject to disclosure unless they fall within certain exemptions. Section 6103 takes the opposite approach. It presumes that returns and return information are confidential unless disclosure is authorized by the Code. Section 6103 provides a comprehensive system for releasing information to discrete identified parties under section 6103. In con-

[56] 5 U.S.C. sec. 552(a)(6)(A)(i).
[57] 5 U.S.C. sec. 552(a)(4)(A)(ii). The average FOIA request to the IRS takes six months to process and appeals can take nearly a year. National Commission on Restructuring the Internal Revenue Service, Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS at 47 (June 25, 1997).
[58] 5 U.S.C. sec. 552(a)(4)(A)(ii).
[59] 5 U.S.C. sec. 552a.

trast, the general rule under the FOIA is to release information to the public at large with no showing of need. The Committee recognizes that the FOIA contains significant administrative and judicial review mechanisms not available under section 6103. The Committee believes it is appropriate to incorporate those mechanisms into section 6103.

The purpose of the Privacy Act is to safeguard an individual's personal privacy against unwarranted invasions through the misuse of Federal records, and, among other things, to provide an individual with access to agency records concerning that individual.[60] Generally, with specified exceptions, the Privacy Act prohibits an agency from disclosing an individual's records without that individual's consent. A comparison of the Privacy Act and section 6103 reveals that while similar, the disclosure provisions of section 6103 are more detailed and allow less disclosure than the Privacy Act. Thus, section 6103 provides more protection for the privacy of a taxpayer's return or return information. The Committee believes that the confidentiality provisions and restrictions on disclosure contained in section 6103 preempt the Privacy Act as to access and restriction on disclosure.

The Committee believes that centralizing the authority for the disclosure of returns and return information in the Code will reduce conflicts over the governing law. For example, as noted above, section 6103 provides that no disclosures of returns and return information are to be made unless authorized by the Code. To verify information reported by applicants on student financial aid applications, the Higher Education Act Amendments of 1998 ("the Higher Education Act") authorized the Department of Education to confirm with the IRS four discrete items of return information.[61] The Higher Education Act, however, did not amend the Code to permit disclosures for this purpose. This has caused the two agencies to disagree as to whether the required disclosures can be made by the IRS.

Centralizing the disclosure authority in the Code will also ensure consistent application of privacy and confidentiality principles to returns and return information. For example, when a statute authorizes the disclosure of returns and return information notwithstanding the provisions of section 6103, it relieves an agency from having to comply with the safeguards and record keeping requirements for returns and return information provided by that section.[62]

EXPLANATION OF PROVISION

The provision clarifies that the Internal Revenue Code exclusively governs the disclosure and inspection of returns and return information. The effect of the provision would be to provide that the Internal Revenue Code provision preempts the FOIA, the Privacy Act, and other laws solely with respect to the confidentiality and disclosure of returns and return information. The provision would not affect the ability of persons to make a FOIA request for information that does not fall within the definition of a return or

[60] Pub. L. No. 93–579, sec. 2(b) (1974).
[61] Pub. L. No. 105–244, sec. 483 (1998).
[62] See generally sec. 6103(p).

return information. Such FOIA requests would still be made of the IRS under the FOIA. The provision would not affect the disclosure of written determinations under section 6110.

The provision provides a 20-day period in which the IRS must respond to requests by the taxpayer, and persons with a material interest in such information, and an administrative appeal process to contest the IRS decision to withhold information. Under the provision, de novo judicial review of the IRS decision to withhold returns and return information is provided. Attorneys fees to the prevailing party under section 7430 are also available. The provision authorizes the Secretary of the Treasury to issue regulations to implement the provision and to set fees applicable to the processing of requests for disclosure.

EFFECTIVE DATE

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

B. EXPANSION OF TYPE OF ADVICE AVAILABLE FOR PUBLIC INSPECTION (SEC. 202 OF THE BILL AND SEC. 6110(I) OF THE CODE)

PRESENT LAW

Section 6110 makes the text of any written determination issued by the IRS (and related background file document) available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Before making written determinations and background file documents available for public inspection, section 6110 requires the IRS to delete specific categories of information. Any part of a written determination or background file that is not disclosed under section 6110 constitutes confidential "return information" under section 6103.[63] Section 6110 also provides administrative and judicial procedures to resolve disputes over the scope of the information the IRS will disclose.[64]

Section 6110 defines Chief Counsel advice as that issued by the national office component of the Office of Chief Counsel to IRS field or service center employees, or regional or district employees of the Office of Chief Counsel.[65] By definition, Chief Counsel advice conveys: (1) a legal interpretation of a revenue provision, (2) the IRS or Chief Counsel position or policy concerning a revenue provision, or (3) a legal interpretation of any law (Federal, State, or foreign) relating to the assessment or collection of liability under a revenue provision.[66] The definition of Chief Counsel advice does not encompass advice issued from one National Office component of the Office of Chief Counsel to another. Nor does it encompass advice issued by the regional or district office of the Office of Chief Counsel to IRS employees. The term "Chief Counsel advice" also does not encompass any advice or instructions issued by persons other than

[64] 63 Section 6103(b)(2)(B) provides that the term "return information" means 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.

[64] Sec. 6110(d)(3), (d)(4), (f), and (j).

[65] Sec. 6110(i)(A)(i).

[66] Sec. 6110(i)(A)(ii).

Chief Counsel personnel. The Secretary is permitted to delete certain material, and such deletions can be challenged judicially.

REASONS FOR CHANGE

The Committee believes that the working law of the IRS should be publicly available. Such interpretations should not be limited to issuances from certain IRS offices (such as the national office of IRS Chief Counsel) but should also include issuances from other offices, such as from District Counsel to IRS administrative personnel in the field, which are currently not covered by the definition of Chief Counsel advice. The Committee also believes that when one division of the IRS Office of the Chief Counsel requests legal advice on a subject matter within the jurisdiction of another Chief Counsel division, that intra-office advice should be disclosed once the final advice is given if it was incorporated in or served as the basis of the outgoing advice. The Committee recognizes the necessity of free flow of information and opinions in the decision-making process. However, once a decision is made, it affects a member of the public. The public is entitled to know of the rules being applied in its dealings with the IRS and the underlying rationale for the course of action. The public is also entitled to know whether the laws are being applied uniformly.

EXPLANATION OF PROVISION

Definition of official advice

The bill modifies the current provision relating to Chief Counsel advice. It removes the limitation that advice be issued by a national office component of the Office of Chief Counsel. It also eliminates the requirement that the recipient of the advice be either an IRS field or service center employee or an Office of Chief Counsel district or regional employee.

The bill requires disclosure of all advice and instructions ("official advice") that meet certain substantive requirements and are issued by a component of the Office of Chief Counsel or Internal Revenue Service to an employee. A "component" is any IRS or Chief Counsel component above front-line employee, unless such employee is authorized to act on behalf of the component above him in providing a legal interpretation to another employee. For example, a District counsel office would be a component, whereas an individual district counsel attorney ordinarily would not. One exception is for an individual district counsel attorney who had the authority to issue legal advice without securing the approval of the District Counsel. In that capacity he would be acting on behalf of the District Counsel component. In the national office, a component would be the branch chief. Under the provision, official advice is issued when the advice is signed or otherwise approved for distribution by the person authorized to do so, and sent to the employee.

The bill is designed to reach legal analysis and interpretation of the tax laws to be applied to a taxpayer or group of taxpayers. Thus, in order to qualify as official advice such advice must convey: (1) a legal interpretation of a revenue provision, (2) an IRS or Chief Counsel policy concerning a revenue provision, or (3) a legal interpretation of State law, foreign law, or other Federal law relating

to the assessment or collection of any liability under a revenue provision. Under this rule, a communication would not be required to be disclosed if it concerns factual issues with regard to a particular taxpayer and does not discuss the interpretation of and the application of law to those facts. The provision is not intended to cover documents that are largely administrative without legal analysis. In addition, for purposes of this provision "any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision" means positions or policies of the organization, adopted formally or informally, which function as guidance to IRS or Chief Counsel employees.

The Committee notes that the IRS is in the process of a reorganization. Thus, the bill allows the Secretary with authority to promulgate regulations providing that additional types of advice or instructions will be treated as official advice and subject to public inspection under this provision.

Redaction process

The provision retains the present law redaction process.[67] Under the bill, as under present law, the IRS and the Office of Chief Counsel will be able to delete identifying details under section 6110(c)(1), and material that would be exempt under subsections (b) and (c) of the FOIA (except with respect to 5 U.S.C. sec. 552(b)(3), only that material required to be withheld under a Federal statute other than title 26, may be redacted). This includes the ability to redact material that would be protected by the deliberative process privilege or other privileges encompassed in Exemption 5 of the FOIA. The deliberative process privilege protects material which is pre-decisional and deliberative. It protects material that reflects the give and take of the consultative process prior to a final decision. The bill does not encompass deliberative and predecisional material to the extent it does not provide the basis for a final decision. Thus, legal arguments that are rejected during the consultative process would not be required to be disclosed. As under current section 6110, an opportunity is afforded to challenge judicially the redaction determinations.

EFFECTIVE DATE

The provision is effective for official advice issued more than 90 days after the date of enactment. Under the provision, if by regulation the Secretary determined that additional advice or instructions would be treated as official advice, such additional official advice would be made available for public inspection in accordance with the effective date set forth in the regulation.

C. COLLECTION ACTIVITIES WITH RESPECT TO A JOINT RETURN DISCLOSABLE BASED ON ORAL REQUEST (SEC. 203 OF THE BILL AND SEC. 6103(e)(8) OF THE CODE)

PRESENT LAW

Section 6103(e) concerns disclosures to persons with a material interest. Section 6103(e)(7) permits the IRS to disclose return infor-

[67] Sec. 6110(i)(3).

mation to the same persons who may have access to a return under the other provisions of section 6103(e). Pursuant to this section 6103(e)(7) and section 6103(e)(1)(B), either spouse may obtain return information regarding a joint return. This includes collection information. Requests for information pursuant to this section do not have to be in writing.

In response to concerns that former spouses were not able to obtain information regarding collection activities relating to a joint return, the Taxpayer Bill of Rights 2 added section 6103(e)(8).[68] When a deficiency is assessed with respect to a joint return, upon written request, section 6103(e)(8) permits the IRS to disclose: (1) whether the IRS has attempted to collect such deficiency from the other individual; (2) the general nature of such collection activities; and (3) the amount collected.[69] This provision applies if individuals who filed the joint return are no longer married or no longer reside in the same household. Requests under this section must be in writing.

REASONS FOR CHANGE

The Committee believes that former spouses should be able to receive collection information with respect to a joint return in the same manner as if they were current spouses. Thus, a former spouse should not be required to make a written request because if the spouses were still married, a written request would not be required.

EXPLANATION OF PROVISION

The provision eliminates the requirement for former spouses to make a written request for disclosure of collection activities with respect to a joint return.

EFFECTIVE DATE

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

D. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION WITHOUT SUPERVISOR APPROVAL (SEC. 204 OF THE BILL AND SEC. 6103(h)(1) OF THE CODE)

PRESENT LAW

Under section 6103(h)(1), returns and return information are, without written request, open to inspection by or disclosure to officers and employees of the Department of the Treasury, including IRS employees, whose official duties require such inspection or disclosure for tax administration purposes. The Office of Chief Counsel issued an opinion stating that it was appropriate for a local IRS employee to examine tax records to determine whether taxpayer representatives who submit Form 2848 (Power of Attorney) are cur-

[68] "The IRS does not routinely disclose collection information to a former spouse that relates to tax liabilities attributable to a joint return that was filed when married." Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress (JCS–12–96), December 18, 1996 at 29.

[69] Sec. 6103(e)(8).

rent in their tax obligations.[70] The opinion concluded that section 6103(h)(1) permits local IRS employees to access the Integrated Data Retrieval System[71] to determine whether a taxpayer's representative is current in his or her tax obligations.

REASONS FOR CHANGE

The Committee believes that the official duties of the IRS employee examining a taxpayer concern the tax affairs of the taxpayer, not the taxpayer's representative. The taxpayer is under audit, not the taxpayer's representative. Whether the representative has filed his or her returns ordinarily has no bearing on the IRS's determination of the liability of the taxpayer. An IRS employee should make a referral to the Director of Practice, if the employee has reason to believe the taxpayer's representative has engaged in inappropriate behavior.

EXPLANATION OF PROVISION

The provision clarifies that an IRS employee conducting an examination of a taxpayer is not authorized to inspect a taxpayer representative's return or return information solely on the basis of the representative relationship to the taxpayer. Under the provision, the supervisor of the IRS employee must approve such inspection after making a determination that other grounds justified such an inspection. The provision does not affect the ability of employees of the IRS Director of Practice, or other employees whose assigned duties concern the regulation of practice before the IRS, to access returns and return information of a representative.

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS (SEC. 205 OF THE BILL AND SEC. 6103(h)(4) OF THE CODE)

PRESENT LAW

Under section 6103(h)(4), a return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration under certain circumstances. Under section 6103(h)(4)(A), such information may be disclosed if the taxpayer is a party to the proceeding or if the proceeding arose out of, or in connection with, determining the taxpayer's liability with respect to any tax. Under section 6103(h)(4)(B), such information may be disclosed if the treatment of an item reflected on a return is directly related to the resolution of an issue in the proceeding. Under section 6103(h)(4)(C), such information may be disclosed if the return or return information directly relates to a transactional relationship between a person who is a party to the

[70] Internal Revenue Service, IRS Legal Memorandum ILM 199941038 (August 19, 1999) reprinted in Disclosure Provisions Don't Bar IRS Access to Integrated Data Retrieval System, Tax Notes Today, 1999 TNT 200–54 (October 18, 1999).

[71] The Integrated Data Retrieval System (commonly referred to as "IDRS") is the IRS' primary computer database for return information.

proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding. Thus, the returns and return information of a nonparty taxpayer may be disclosed if one of these requirements are met. The statute does not require that the nonparty taxpayer be given notice or be consulted prior to disclosure.

REASONS FOR CHANGE

The Committee believes that nonparty taxpayers should be afforded notice of when their returns or return information is disclosed in a judicial or administrative proceeding pertaining to tax administration. The Committee also believes that such nonparty taxpayers should be consulted regarding the disclosure of sensitive information in such a proceeding. The purpose of the provision is to give notice to a nonparty prior to the disclosure of a return or return information. The nonparty notification requirements are not intended to adversely affect the parties to the litigation.

EXPLANATION OF PROVISION

The provision requires that only the portions of a nonparty return or return information that directly relate to the resolution of an issue in the proceeding would be disclosed in such proceeding. When nonparty returns and return information are to be disclosed under section 6103(h)(4) (B) and (C)[72], the provision requires that an effort be made to give notice to the taxpayer prior to the disclosure. The notice would include a statement of the issue or issues for which such return or return information affects resolution. Finally, the nonparty taxpayer is given an opportunity to request the deletion of certain matters from the return or return information that would be disclosed. For purposes of S corporations, partnerships, estates, and trusts, the notice is to be made at the entity level.

The provision does not afford a right to intervene or for judicial review of the requested redactions. The notification requirements are not intended to apply to *ex parte* proceedings for securing a search warrant, orders for entry on premises or safe deposit boxes, or similar *ex parte* proceedings. The notification requirements do not apply to the disclosure of third party return information by indictment or criminal information. The notice provision is also not intended to apply if it would seriously impair a criminal tax investigation.

EFFECTIVE DATE

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

[72] Under the proposal these provisions would be redesignated as clauses ii and iii of section 6103(h)(4)(A).

F. Prohibition of Disclosure of Taxpayer Identification Information With Respect to Disclosure of Accepted Offers-in-Compromise (Sec. 206 of the Bill and Sec. 6103(k)(1) of the Code)

PRESENT LAW

Section 6103 permits the IRS to disclose return information to members of the general public to permit inspection of accepted offers in compromise.[73] The IRS makes summaries of the accepted offers in compromise, Form 7249—Offer Acceptance Report, available for public inspection in the IRS district offices. Currently, this form contains the taxpayer identification number of the taxpayer, e.g., the social security number in the case of an individual taxpayer, along with the taxpayer's name and full address.

REASONS FOR CHANGE

Summaries of accepted offers in compromise, Form 7249—Offer Acceptance Report, are available for public inspection in the IRS district offices. Currently, this form contains the taxpayer identification number of the taxpayer, e.g., the social security number in the case of an individual taxpayer, along with the taxpayer's name and full address. The Committee believes that the disclosure of a taxpayer's taxpayer identification number and address is unnecessary and an unwarranted invasion of privacy. In addition, the Committee believes such disclosure provides an opportunity for identity fraud and abuse.

EXPLANATION OF PROVISION

The provision prohibits the disclosure of the taxpayer's address and taxpayer identification number as part of the publicly available summaries of accepted offers in compromise.

EFFECTIVE DATE

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

G. Compliance By State Contractors With Confidentiality Safeguards (Sec. 207 of the Bill and Sec. 6103(p)(8) of the Code)

PRESENT LAW

Section 6103(d) permits the disclosure of returns and return information to State tax agencies. Section 6103(p)(4) requires, as conditions of receiving returns and return information, that State agencies (and others) provide safeguards as prescribed the Secretary of the Treasury by regulation to be necessary or appropriate to protect the confidentiality of returns or return information.[74] It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary regarding the procedures established and utilized for ensur-

[73] Sec. 6103(k)(1).
[74] Sec. 6103(p)(4)(D).

ing the confidentiality of returns and return information.[75] After an administrative review, the Secretary may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.[76]

Under present law, employees of a State tax agency may disclose returns and return information to contractors for tax administration purposes.[77] These disclosures can be made only to the extent necessary to procure contractually equipment, other property, or the providing of services, related to tax administration.[78]

The contractors can make redisclosures of returns and return information to their employees as necessary to accomplish the tax administration purposes of the contract, but only to contractor personnel whose duties require disclosure.[79] Treasury regulations prohibit redisclosure to anyone other than contractor personnel without the written approval of the IRS.[80]

By regulation, all contracts must provide that the contractor will comply with all applicable restrictions and conditions for protecting confidentiality prescribed by regulation, published rules or procedures, or written communication to the contractor.[81] Failure to comply with such restrictions or conditions may cause the IRS to terminate or suspend the duties under the contract or the disclosures of returns and return information to the contractor.[82] In addition, the IRS can suspend disclosures to the State tax agency until the IRS determines that the conditions are or will be satisfied.[83] The IRS may take such other actions as deemed necessary to ensure that such conditions or requirements are or will be satisfied.[84]

REASONS FOR CHANGE

The Committee notes the increasing use of contractors by government agencies to perform the work of the government. Twenty-nine IRS district offices have responsibilities for overseeing safeguard reviews at State and local agencies.[85] As of June 1999, there were 230 professional and 24 support staff assigned to IRS national and district disclosure offices.[86] In addition to overseeing the safeguard program, disclosure offices conduct a variety of other disclosure activities. In the Committee's view, the IRS has insufficient resources

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[75] Sec. 6103(p)(4)(E).

[76] Sec. 6103(p)(4) (flush language) and (7); Treas. Reg. sec. 301.6103(p)(7)–1.

[77] Sec. 6103(n) and Treas. Reg. sec. 301.6103(n)–1(a). "Tax administration" includes "the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws or related statutes (or equivalent laws and statutes of a State) * * *" Sec. 6103(b)(4).

[78] Treas. Reg. sec. 301.6103(n)–1(a). Such services include the processing, storage, transmission or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services for purposes of tax administration.

[79] Treas. Reg. sec. 301.6103(n)–1(a) and (b). A disclosure is necessary if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically accomplished without such disclosure. Treas. Reg. sec. 301.6103(n)–1(b). The regulations limit the quantity of information to that needed to perform the contract.

[80] Treas. Reg. sec. 301.6103(n)–1(a).

[81] Treas. Reg. sec. 301.6103(n)–1(d).

[82] Treas. Reg. sec. 301.6103(n)–1(d)(1).

[83] Treas. Reg. sec. 301.6103(n)–1(d)(2).

[84] Treas. Reg. sec. 301.6103(n)–1(d).

[85] General Accounting Office, Taxpayer Confidentiality: Federal, State, and Local Agencies Receiving Taxpayer Information (GAO–GGD–99–164, August 1999) at 13.

[86] Id.

to monitor the compliance of every contractor of every State tax agency in addition to its other duties. Further, the Committee finds that it is appropriate to require that the States monitor and certify that their contractors have in place adequate safeguards to protect this information.

EXPLANATION OF PROVISION

The provision requires that a State conduct annual on-site reviews of all of its contractors receiving Federal returns and return information. If the duration of the contract is less than one year, a review is required at the mid-point of the contract. The purpose of the review is to assess the contractor's efforts to safeguard Federal returns and return information. The Committee intends that such review cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the provision, the State is required to submit a report of its findings to the IRS and certify annually that all contractors are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information. The certification includes the name and address of each contractor, the duration of the contract, and a description of its contract with the State.

This provision does not alter or affect in any way the right of the IRS to conduct safeguard reviews of State contractors. It also does not affect the right of the IRS to initially approve the safeguard language in the contract and the safeguards in place prior to any disclosures made in connection with such contracts.

EFFECTIVE DATE

The provision is effective for disclosures made after December 31, 2001. The first certification is required to be made with respect to calendar year 2002.

H. Higher Standards for Requests for and Consents to Disclosure (Sec. 208 of the Bill and Sec. 6103(c) of the Code)

PRESENT LAW

Under section 6103(c), a taxpayer may designate in a request or consent to the disclosure by the IRS of his or her return or return information to a third party. Treasury regulations set forth the requirements for such consent.[87] The Treasury regulations require that the taxpayer sign and date the consent. The taxpayer must also indicate in the written document: (1) the taxpayer's taxpayer identity information; (2) the identity of the person to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year covered by the return or return information. The regulations also require that the consent be submitted within 60 days of the date signed and dated, however, at the time of submission, the IRS generally is unaware of whether a consent form was completed or dated after the taxpayer signs it. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the

[87] Treas. Reg. 301.6103(c)–1.

information received. Under present law, the recipient is also free to use the information for purposes other than for which the information was solicited from the taxpayer.

Section 6103(c) consents are often used in connection with mortgage loan applications. Mortgage originators qualify loan applicants as meeting or not meeting the requirements for loan approval. This process involves the verification and investigation of information and conditions. If the loan is granted, the mortgage originator may use its own money to fund the loan. Alternatively, another entity, an "investor," may buy the loan and provide the money. Investors typically perform a re-investigation of loans received for funding. Such re-investigations may include verification through the IRS of the tax return provided by the taxpayer to the mortgage originator.

Usually the mortgage originator does not know which investor will ultimately fund the loan. Thus, at the time of application, the originator asks the borrower/taxpayer to sign a consent (Form 4506) designating the originator as the third party to receive the taxpayer's returns. Subsequently, at closing, the investor may request that the originator obtain another Form 4506 naming the investor as the third party to receive the taxpayer's return.

Ostensibly to avoid confusion over why the taxpayer would be authorizing a party other than the originator to receive his tax return, the taxpayer may be asked to sign a blank Form 4506 at closing. In some cases, mortgage originators ask taxpayers not to date the Form 4506. This allows the form to be submitted to the IRS at a later date, often months or years later, for purposes of mortgage resale.

Under section 7206, it is a felony to willfully make and subscribe any document that contains or is verified by a written declaration that it is made under penalties of perjury and which such person does not believe to be true and correct as to every material matter.[88] Upon conviction, such person may be fined up to $100,000 ($500,000 in the case of a corporation) or imprisoned up to 3 years, or both, together with the costs of prosecution.

REASONS FOR CHANGE

The Committee does not believe that the practice of asking taxpayers to sign blank or undated consent forms is appropriate. While recognizing that investors may want to minimize their risks in buying a loan, the Committee finds that these practices can abuse the taxpayer consent process. It is doubtful that a taxpayer is aware that by not dating the form, it could be used months or years after the date it is executed. Taxpayers may be unaware that a blank consent form which does not designate a recipient can be used for purposes other than those related to the transaction under which the request for consent arose.

In addition, the IRS does not have the resources to verify that the return information was used solely for the stated purpose. The IRS estimates that it receives annually more than 800,000 requests from taxpayers directing that their returns or return information be sent to a third party. Examples of third party entities to which the IRS provides information include financial institutions (includ-

[88] Sec. 7206(1).

ing the mortgage banking industry), colleges and universities, and Federal, State, and local governmental entities.

The Committee believes that to preserve the integrity of the consent process, a penalty must be placed on the third party soliciting a taxpayer to sign an undated or otherwise incomplete consent. Consistent with a taxpayer's reasonable expectation of privacy, the Committee believes that limitations should be placed on the use of returns and return information obtained by consent.

EXPLANATION OF PROVISION

The provision renders invalid a consent that does not designate a recipient or is not dated at the time of execution. The person submitting the consent to the IRS is required to verify under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. Inspection or disclosure of a return or return information pursuant to an invalid consent will be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7431, and criminal penalties under section 7213 or 7213A for willful unauthorized disclosure or inspection. The Committee does not intend to validate consents that do not otherwise comply with the Treasury regulations. For example, a consent that does not contain tax years or type of tax at the time of execution is not valid, and this provision does not authorize disclosures pursuant to such consents.

The provision requires the consent form prescribed by the IRS to contain a warning, prominently displayed, informing the taxpayer that he or she should not sign the form unless it is complete. The provision requires the consent form to state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration. The telephone number and address for the Treasury Inspector General for Tax Administration would be included on the form. Under the provision, all third parties receiving returns and return information by consent would be required to: (1) ensure that the information received will be kept confidential; (2) use the information only for the purpose for which it was requested; and (3) not further disclose the information except to accomplish that purpose, unless a separate consent from the taxpayer is obtained.

The Treasury Inspector General for Tax Administration is required to submit a report to Congress on compliance with the designation and certification requirements no later than 18 months after the date of enactment. Such report will evaluate (on the basis of random sampling) whether the proposal is achieving its purpose, whether requesters and submitters are continuing to evade the purpose of the proposal, whether the sanctions are adequate, and such recommendations as considered necessary or appropriate to better achieve the purposes of the proposal.

EFFECTIVE DATE

The provision applies to requests and consents made after six months after the date of enactment.

I. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT (SEC. 209 OF THE BILL AND SEC. 7431(e) AND NEW SEC. 6103(p)(10) OF THE CODE)

PRESENT LAW

Present law requires the IRS to notify a taxpayer that an unlawful disclosure or inspection of the taxpayer's return or return information has occurred when the offender has been charged by criminal indictment or information.[89] If the offender is not so charged, present law does not require the IRS to give notice to the taxpayer, even though the Treasury Inspector General for Tax Administration has concluded that an inspection or disclosure in violation of section 6103 has occurred.

The IRS is required under present law to provide, for disclosure to the public, an annual report to the Joint Committee on Taxation regarding authorized disclosures of returns and return information.[90] The IRS is not required to submit a report to Congress on unauthorized disclosures or inspections of returns and return information.

REASONS FOR CHANGE

Currently, the IRS is not required to notify a taxpayer that an unlawful disclosure or inspection of the taxpayer's return or return information has occurred until the offender has been charged by criminal indictment or information.[91] The Treasury Inspector General for Tax Administration investigates and substantiates more unlawful access (browsing) and disclosure cases than are accepted for prosecution by U.S. Attorneys.[92] The staff of the Joint Committee on Taxation recently reported that the U.S. Attorneys declined to prosecute more than 80 percent of the cases referred.[93]

Notwithstanding the lack of a criminal prosecution, the Committee believes that the IRS should make taxpayers aware that their returns or return information has been unlawfully accessed or disclosed. Thus, the IRS should notify the taxpayer at the time Treasury Inspector General for Tax Administration administratively determines that returns and return information have been unlawfully accessed or disclosed.

The Committee also believes that the IRS should provide as part of its public annual report to the Joint Committee on Taxation information on unauthorized disclosures or inspections of return and return information. The Committee believes such information will allow review of the enforcement efforts in this area and the extent to which taxpayer privacy is being protected.

EXPLANATION OF PROVISION

Under the provision, the IRS is required to notify a taxpayer at the point the Treasury Inspector General for Tax Administration

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[89] Sec. 7431(e).
[90] See sec. 6103(p)(3)(C).
[91] Sec. 7431(e).
[92] See Joint Committee on Taxation, Study of Present-Law Taxpayer Confidentiality and Disclosure Provisions as Required by Section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998, Volume I: Study of General Disclosure Provisions (JCS–1–00) January 28, 2000 at 175–176.
[93] Id.

determines that a taxpayer's return or return information has been disclosed or inspected without authorization. The provision further requires the IRS to provide information on unauthorized disclosures or inspections of return and return information in its public annual report to the Joint Committee on Taxation.

EFFECTIVE DATE

The provision is effective upon date of enactment as it relates to notifying the taxpayer determinations of an unlawful disclosure or inspection. As to the annual report requirement, the provision is effective for calendar years ending after the date of enactment.

J. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES (SEC. 210 OF THE BILL AND SEC. 6103(m)(1) 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.[94] Section 6103(m) allows the IRS to give the press taxpayer identity information for this purpose.[95]

The IRS believes that the current statutory framework of "press and other media" does not permit disclosures via the Internet. The legislative history of the present-law provision does not address the meaning of "press and other media." At the time of the statute's enactment 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

The National Taxpayer Advocate noted that "[e]very year many taxpayers move, do not give the IRS their new address, and thousands of refund checks are returned by the post office because they are undeliverable."[96] In November 1999, the IRS announced that the U.S. Postal Service returned 102,840 more refund checks as undeliverable.[97] These checks totaled $72 million, averaging almost $700 per check.[98]

Based on the National Taxpayer Advocate's report, it is the understanding of the Committee that the current method of notification, by newspaper, is ineffective.[99] The Committee believes that the IRS should be able to use any method of mass communication, including the Internet, to reach a taxpayer who is due a refund.

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[94] Sec. 6103(m)(1). This section provides: The Secretary may disclose taxpayer identity information to the press or other media 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.

[95] Sec. 6103(m)(1), and (b)(6) (definition of "taxpayer identity").

[96] Internal Revenue Service, Publication 2104, FY 1999: National Taxpayer Advocate's Annual Report to Congress, at IV–30 (December 1999).

[97] Internal Revenue Service, Information Release IR–999–91 (November 9, 1999).

[98] Id.

[99] Internal Revenue Service, Publication 2104, FY 1999: National Taxpayer Advocate's Annual Report to Congress, at IV–31 (December 1999).

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 would be effective upon date of enactment.

TITLE III—OTHER REQUIREMENTS

A. Clarification of Definition of Church Tax Inquiry (Sec. 301 of the Bill and Sec. 7611 of the Code)

PRESENT LAW

Under present law, the IRS may begin a church tax inquiry only if the IRS regional commissioner (or a higher official) reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization (1) may not qualify for tax exemption as a church, (2) may be carrying on an unrelated trade or business, or (3) otherwise may be engaged in taxable activities.[100] A church tax inquiry is defined as any inquiry to a church (other than an examination) that serves as a basis for determining whether the organization qualified for tax exemption as a church or whether it is carrying on an unrelated trade or business or otherwise is engaged in taxable activities. An inquiry is considered to commence when the IRS request information or materials from a church or a type contained in church records, other than routine requests for information or inquiries regarding matters that do not primarily concern the tax status or liability of the church itself.

REASONS FOR CHANGE

The Committee believes that the present-law church tax inquiry procedures provide important safeguards against the IRS engaging in unnecessary and intrusive examinations of churches. However, the church tax inquiry procedures also have the effect of hampering IRS efforts to educate churches with respect to actions that are not permissible under section 501(c)(3). The Committee believes that a clarification of the scope of the church tax inquiry procedures to make it clear that the IRS may undertake educational outreach efforts with respect to specific churches (e.g., initiating meetings with representatives of a particular church to discuss the rules that apply to such church) will improve compliance with the law by churches.

EXPLANATION OF PROVISION

The provision clarifies that the present-law church tax inquiry procedures do not apply to contacts made by the IRS for the purpose of educating churches with respect to the law governing tax-exempt organizations. For example, the provision clarifies that the IRS does not violate the church tax inquiry procedures when written materials are provided to a church or churches for the purpose

[100] Sec. 7611.

of educating such church or churches with respect to the types of activities that are not permissible under section 501(c)(3).

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO NON–501(c)(3) TAX-EXEMPT ORGANIZATIONS AND FAILURE OF IRS TO ACT ON DETERMINATIONS TREATED AS EXHAUSTION OF REMEDIES (SEC. 302 OF THE BILL AND SEC. 7428 OF THE CODE)

PRESENT LAW

In order for an organization to be granted tax exemption as a charitable entity described in section 501(c)(3), it generally must file an application for recognition of exemption with the IRS and receive a favorable determination of its status. Similarly, for most organizations, a charitable organization's eligibility to receive tax-deductible contributions is dependent upon its receipt of a favorable determination from the IRS. In general, a section 501(c)(3) organization can rely on a determination letter or ruling from the IRS regarding its tax-exempt status, unless there is a material change in its character, purposes, or methods of operation. In cases in which an organization violates one or more of the requirements for tax exemption under section 501(c)(3), the IRS is authorized to revoke an organization's tax exemption, notwithstanding an earlier favorable determination.

In situations in which the IRS denies an organization's application for recognition of exemption under section 501(c)(3) or fails to act on such application, or in which the IRS informs a section 501(c)(3) organization that it is considering revoking or adversely modifying its tax-exempt status, present law authorizes the organization to seek a declaratory judgment regarding its tax status (sec. 7428). Section 7428 provides a remedy in the case of a dispute involving a determination by the IRS with respect to: (1) the initial qualification or continuing qualification of an organization as a charitable organization for tax exemption purposes or for charitable contribution deduction purposes; (2) the initial classification or continuing classification of an organization as a private foundation; (3) the initial classification or continuing classification of an organization as a private operating foundation; or (4) the failure of the IRS to make a determination with respect to (1), (2), or (3). A "determination" in this context generally means a final decision by the IRS affecting the tax qualification of a charitable organization, although it also can include a proposed revocation of an organization's tax-exempt status or public charity classification. Section 7428 vests jurisdiction over controversies involving such a determination in the U.S. District Court for the District of Columbia, the U.S. Court of Federal Claims, and the U.S. Tax Court.

Prior to utilizing the declaratory judgment procedure, an organization must have exhausted all administrative remedies available to it within the IRS. An organization is deemed to have exhausted its administrative remedies at the expiration of 270 days after the date on which the request for a determination was made if the or-

ganization has taken, in a timely manner, all reasonable steps to secure such determination.

If an organization (other than a section 501(c)(3) organization) files an application for recognition of exemption and receives a favorable determination from the IRS, the determination of tax-exempt status is usually effective as of the date of formation of the organization if its purposes and activities during the period prior to the date of the determination letter were consistent with the requirements for exemption. However, if the organization files an application for recognition of exemption and later receives an adverse determination from the IRS, the IRS may assert that the organization is subject to tax on some or all of its income for open taxable years. In addition, as with charitable organizations, the IRS may revoke or modify an earlier favorable determination regarding an organization's tax-exempt status.

Under present law, a non-charity (i.e., an organization not described in section 501(c)(3)) may not seek a declaratory judgment with respect to an IRS determination regarding its tax-exempt status. The only remedies available to such an organization are to petition the U.S. Tax Court for relief following the issuance of a notice of deficiency or to pay any tax owed and sue for refund in federal district court or the U.S. Court of Federal Claims.

REASONS FOR CHANGE

The Committee believes that it is important to provide certainty for organizations that have sought a determination of their tax-exempt status. Thus, the Committee finds it appropriate to extend the present-law declaratory judgment procedures to all organizations that apply for tax-exempt status as organizations described in section 501(c). In addition, the Committee is aware that certain issues relating to determinations of tax-exempt status are forwarded to the IRS National Office and certain of these determinations may take extensive time to resolve by the IRS National Office. The Committee finds it appropriate to permit an organization to seek a declaratory judgment if a determination has been pending in the IRS National Office for more than 180 days after the organization has taken, in a timely manner, all reasonable steps to secure such determination, if that period is shorter than the normal 270 day period.

EXPLANATION OF PROVISION

The provision extends declaratory judgment procedures similar to those currently available only to charities under section 7428 to other section 501(c) determinations. The provision limits jurisdiction over controversies involving such determinations to the United States Tax Court.[101]

In addition, the provision modifies the present-law declaratory judgment procedures to provide that an organization is deemed to have exhausted its administrative remedies under the declaratory judgment procedures at the expiration of (1) 270 days after the date on which the request for a determination was made if the or-

[101] This limitation currently applies to declaratory judgments relating to tax qualification for certain employee retirement plans (sec. 7476).

ganization has taken, in a timely manner, all reasonable steps to secure such determination, or (2) in the case of a failure by any office of the IRS (other than the office responsible for initial determinations with respect to the organization (the "initial office")), 180 days after any request with respect to such determination was made by the initial office if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

EFFECTIVE DATE

The extension of the declaratory judgment procedures to organizations other than section 501(c)(3) organizations is effective for pleadings with respect to determinations made after the date of enactment. The provision modifying the time that an organization is deemed to have exhausted it administrative remedies is effective on the date of enactment.

C. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY (SEC. 303 OF THE BILL AND SEC. 7803(d)(2) OF THE CODE)

PRESENT LAW

The Treasury Inspector General for Tax Administration is subject to the semi-annual reporting requirements set forth in section 5 of the Inspector General Act of 1978. Under present law, reports are made to the Committees on Government Reform and Oversight and Ways and Means in the House of Representatives and the Committees on Governmental Affairs and Finance in the Senate. Each semi-annual report is required to include information regarding the source, nature and status of taxpayer complaints and allegations of serious misconduct by IRS employees received by the IRS or by the Treasury Inspector General for Tax Administration.

REASONS FOR CHANGE

The Committee believes that the information available to the Congress and the public under present law would be enhanced by additional reporting of the types of allegations made with respect to IRS employee misconduct and the number of complaints made with respect to the most common types of allegations.

EXPLANATION OF PROVISION

The provision modifies the semi-annual reporting requirement for the Treasury Inspector General for Tax Administration to require that the reporting with respect to allegations of serious IRS employee misconduct include a summary (by category) of the 10 most common complaints made and the number of such common complaints (by category).

EFFECTIVE DATE

The provision is effective for reporting periods ending after the date of enactment.

D. Increase Joint Committee on Taxation Refund Review Threshold to $2 Million (Sec. 304 of the Bill and Sec. 6405 of the Code)

PRESENT LAW

No refund or credit in excess of $1,000,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues.

REASONS FOR CHANGE

The Committee believes that it is appropriate to increase the refund review threshold, which has been set at $1,000,000 since 1990. Increasing it will accelerate the issuance of refunds between $1,000,000 and $2,000,000 to the taxpayers involved. In addition, this increase will free up significant resources of both the Internal Revenue Service and the staff of the Joint Committee on Taxation, without materially impairing the ability to monitor problems in the administration of the tax laws.

EXPLANATION OF PROVISION

The provision increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $1,000,000 to $2,000,000. The staff of the Joint Committee on Taxation would continue to exercise its existing statutory authority to conduct a program of expanded post-audit reviews of large deficiency cases and other select issues, and the IRS is expected to cooperate fully in this expanded program.

EFFECTIVE DATE

The provision is effective on the date of enactment, except that the higher threshold does not apply to a refund or credit with respect to which a report was made before the date of enactment.

E. Annual Report on Awards of Costs and Certain Fees in Administrative and Court Proceedings (Sec. 305 of the Bill)

PRESENT LAW

The Code requires that the IRS pay a taxpayer's reasonable administrative and litigation expenses under specified circumstances.[102] Among other requirements, the IRS is not required to pay these amounts if the IRS can demonstrate that its position was substantially justified.

REASONS FOR CHANGE

The fact that the IRS paid these expenses may be an indication that its position was not substantially justified, as well as an indication that the IRS may be inappropriately pursuing an issue. The

[102] Sec. 7430.

lack of published statistics and analytical information hinders the Congress and taxpayers from assessing the extent to which the IRS may be inappropriately pursuing an issue and from pursuing potential remedies to alleviate this problem.

EXPLANATION OF PROVISION

The bill requires TIGTA to publish annually statistics on the number of payments (whether as a result of a settlement or judicial decision) made pursuant to section 7430 and the amount of each such payment. TIGTA would also be required to publish an analysis of the administrative issues that gave rise to the necessity of making these payments and the changes (if any) that will be implemented by the IRS as a result of TIGTA's analysis, as well as any other changes that TIGTA recommends on the basis of its analysis. This will permit the Congress to assess the extent to which the IRS may be inappropriately pursuing an issue and to pursue potential remedies to alleviate this problem.

EFFECTIVE DATE

The first annual report is required for fiscal year 2000. The reports must be published no later than three months following the close of the fiscal year.

F. ANNUAL REPORT ON ABATEMENTS OF PENALTIES (SEC. 306 OF THE BILL)

PRESENT LAW

Some penalties in the Code are imposed automatically (such as for failure to file or failure to pay), while others are imposed in response to the specific factual situation presented on a tax return (such as negligence). In addition, some penalties can be abated automatically, while others are abated in response to a specific factual presentation made by the taxpayer. In general, most penalties can be abated for reasonable cause, but the details of what constitutes reasonable cause can vary somewhat from penalty to penalty as a reflection of the differences in the types of behaviors that the different penalties are designed to deter.

REASONS FOR CHANGE

Both the manner in which penalties are imposed and the manner in which they are abated can present issues for consideration with respect to the uniformity of penalty administration. The system of penalty administration has a number of goals and it is not always possible to reconcile them completely. One goal is uniformity of application of penalties (both in their original imposition and in their abatement) for similarly situated taxpayers. Another goal is to reflect the individual circumstances surrounding the failure for which the taxpayer is being penalized. Another goal is to provide rapid resolution for taxpayers of disputes with the IRS, including disputes over penalties. Accomplishing this goal entails giving "front line" IRS employees the authority to resolve disputes (within certain parameters) on their own authority.

One challenge in providing proper tax administration is balancing all of these goals so that one does not predominate at the expense of the others. For example, one theoretical way to maximize uniformity might be to centralize the administration of penalties in one office. This would, however, make it more difficult for taxpayers to reach a rapid resolution of their disputes with the IRS, because it could be more difficult for taxpayers to deal with a centralized penalty administration structure than with the current locally-based structure. It could also present administrative difficulties, such as divorcing decisions concerning penalties from decisions concerning the underlying liability, when in reality the two may be inextricably interconnected. On the other hand, the maximization of the goal of reflecting individual circumstances could adversely affect both uniformity and the rapid resolution of disputes. Similarly, maximizing the rapid resolution of disputes could adversely affect both uniformity and individualization.

Balancing these goals necessarily means that any one of them will not be maximized. Accordingly, a balanced approach means that some compromises will have to be made to permit the most appropriate balancing of these goals.

EXPLANATION OF PROVISION

The bill requires TIGTA to report to the Congress annually on penalty abatements and the reasons and criteria for abatements. Better statistical information will enable more rigorous analysis of the systems to occur, which will provide the opportunity for problems to surface and be dealt with in a systematic manner.

EFFECTIVE DATE

The first annual report is required for fiscal year 2000. The reports must be provided to the Congress no later than six months following the close of the fiscal year.

G. Better Means of Communicating with Taxpayers (Sec. 307 of the Bill)

PRESENT LAW

The IRS generally communicates with taxpayers (or their designated representatives) in one of three methods: by mail, by telephone, or in person. Many telephone or in person contacts are initiated by the taxpayer, whereas many mail contacts are initiated by the IRS.

REASONS FOR CHANGE

Many of the difficulties taxpayers encounter in the course of communicating with the IRS are inherent to mail communications: documents missing in the mail, difficulties in forwarding documents, maintaining updated address records, etc. The Committee believes that it will be beneficial to receive an evaluation of whether technological advances, such as e-mail and the fax, could permit the utilization of alternate means of communicating with taxpayers, which in turn could eliminate some of the difficulties with the present system.

EXPLANATION OF PROVISION

The bill requires TIGTA to issue a report to the Congress evaluating whether technological advances, such as e-mail and the fax, permit the utilization of alternate means of communicating with taxpayers to eliminate some of the difficulties with the present system.

EFFECTIVE DATE

The report must be issued no later than 18 months after the date of enactment.

H. Information Regarding Statute of Limitations (Sec. 308 of the Bill)

PRESENT LAW

In general, a taxpayer must file a refund claim within three years of the filing of the return or within two years of the payment of the tax, whichever period expires later (if no return is filed, the two-year limit applies).[103] A refund claim that is not filed within these time periods is rejected as untimely.

A special rule applies during periods of disability. Equitable tolling of the statute of limitations for refund claims of an individual taxpayer applies during any period in which an individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Equitable tolling does not apply during periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf in financial matters.

There is no requirement that IRS publications contain information that both describes this statute of limitations provision and explains the consequences of failing to file within the time period prescribed by the statute of limitations.

REASONS FOR CHANGE

Some taxpayers who are due refunds fail to file tax returns by the due date. Several years later they realize that they owe additional taxes to the IRS for that later year and attempt to offset the amount that they owe against the refund that they were due for the earlier year. They are unable to do so, however, if their claim for the refund is filed beyond the statutorily specified deadline. The Committee recognizes that in general statutes of limitations promote important policy goals of repose and certainty. The Committee also believes that it is important that taxpayers be adequately informed of the operation of these provisions so that they are not inadvertently disadvantaged by consequences that they did not foresee.

EXPLANATION OF PROVISION

The bill requires the IRS to revise Publication 1 ("Your Rights as a Taxpayer") by adding an explanation of the consequences of

[103] Sec. 6511(a).

failing to file within the time period prescribed by the statute of limitations to the section on refunds that describes the statute of limitations. The bill also requires the IRS to revise the instructions that accompany all of the Form 1040 packages (including 1040A and 1040EZ) in a similar manner to add a description of this statute of limitations and an explanation of the consequences of failing to file within the time period prescribed by the statute of limitations.

EFFECTIVE DATE

The revisions to Publication 1 are required to be made as soon as practicable, but not later than 180 days after the date of enactment. The revisions to the Form 1040 instructional packages are required to be made for instructions for taxable years beginning after December 31, 1999.

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 votes of the Committee on Ways and Means in its consideration of the bill, H.R. 4163.

MOTION TO REPORT THE BILL

The bill, H.R. 4163, as amended, was ordered favorably reported by voice vote.

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Doggett, relating to disclosure requirements for political organizations under Section 527 of the Internal Revenue Code, was defeated by a rollcall vote of 15 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer		X		Mr. Rangel	X		
Mr. Crane				Mr. Stark	X		
Mr. Thomas		X		Mr. Matsui	X		
Mr. Shaw		X		Mr. Coyne	X		
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal			
Mr. Nussle		X		Mr. McNulty	X		
Mr. Johnson				Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner	X		
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mrs. Thurman	X		
Mr. English		X		Mr. Doggett	X		
Mr. Watkins		X					
Mr. Hayworth		X					
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		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. 4163, as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2000–2005:

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. 4163, as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2000–2005:

ESTIMATED BUDGET EFFECTS OF THE ''TAXPAYER BILL OF RIGHTS 2000,'' AS ORDERED TO BE REPORTED BY THE COMMITTEE ON WAYS AND MEANS ON APRIL 5, 2000

[Fiscal years 2000–2005 in [millions of dollars]

Provision	Effective	2000	2001	2002	2003	2004	2005	2000–05
Penalties and Interest Provisions:								
1. Convert penalty for failure to pay estimated tax into an interest provision and increase and mostly threshold.	tyba 12/31/00	.....	−66	−68	−70	−72	−74	−348
2. Simplify estimated tax calculation	tyba 12/31/00			Negligible Revenue Effect				
3. Exclude interest on individual Federal income tax overpayments	ipi cyba DOE	.....	1,902	−85	−87	−88	−91	1,552
4. Failure to pay penalty:								
a. Repeal penalty in installment agreements	pma 12/31/00	.....	−144	−178	−184	−189	−195	−890
b. Reduce penalty by one half for all other taxpayers	pma 12/31/00	.....	−145	−458	−472	−486	−501	−2,362
5. Abatement of interest	iao/a DOE	.....	−3	−6	−10	−15	−23	−56
6. Qualified reserve account	ipa DOE	100	49	−4	−4	−4	−4	137
7. Apply interest netting to individuals without regard to 45-day period of section 6611(e)	iao/a 12/31/00	.....	−25	−26	−27	−28	−28	−134
Total of Penalties and Interest Provisions	.....	.....	1,319	−772	−854	−882	−916	−2,101
Confidentiality and Disclosure Provisions	.....			No Revenue Effect				
Other Requirements Provisions:								
1. Expansion of declaratory judgment remedy to tax-exempt organizations	generally DOE			Negligible Revenue Effect				
2. Increase in threshold for Joint Committee reports on refunds and credits	DOE			Negligible Revenue Effect				
3. Other provisions	.....			Negligible Revenue Effect				
Total of Other Requirements Provisions	.....			Negligible Revenue Effect				
Net Total	.....	.....	1,319	−772	−854	−882	−916	−2,101

Legend for ''Effective'' column: DOE=date of enactment; cyba=calendar years beginning after; iao/a=interest accruing on or after; ipa=interest for periods after; ipi=interest paid in; pma=payments made after; tyba=taxable years beginning after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

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.

Tax expenditures

In compliance with clause 2(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee states that the revenue-reducing income 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 Congressional Budget Office ("CBO"), the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 10, 2000.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4163, the Taxpayer Bill of Rights 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Hester Grippando (for revenues) and John Righter (for direct spending).

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4163—Taxpayer Bill of Rights 2000

Summary: H.R. 4163 would impose new confidentiality and disclosure requirements on the government with regard to taxpayer information. In addition, the bill would reduce or repeal certain penalties for failure to pay taxes; allow taxpayers to exclude interest earned from overpayments of federal income tax from their income; allow the Secretary of Treasury to abate interest on overdue tax payments in certain additional situations; allow taxpayers to create dispute-reserve accounts whose funds may be applied to offset a tax underpayment; and apply interest netting rules without regard to the 45-day period during which the Treasury may refund overpayments without interest.

The Joint Committee on Taxation (JCT) estimates that the bill would increase revenues by $1.3 billion in 2001, reduce revenues by about $2.1 billion over the 2001–2005 period, and reduce reve-

nues by about $7.3 billion over the 2001–2010 period. In addition, the bill would affect direct spending, but CBO estimates that such amounts would total less than $500,000 each year. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 4163 contains one new intergovernmental mandate, the costs of which would not exceed the threshold for intergovernmental mandates ($55 million in fiscal year 2000, adjusted annually for inflation) established in the Unfunded Mandates Reform Act (UMRA). H.R. 4163 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4163 is shown in the following table.

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN REVENUES						
Estimated revenues	0	1,319	−772	−854	−882	−916
CHANGES IN DIRECT SPENDING						
Estimated budget authority	0	(1)	(1)	(1)	(1)	(1)
Estimated outlays	0	(1)	(1)	(1)	(1)	(1)

[1] Less than $500,000.

Sources: Joint Committee on Taxation and Congressional Budget Office.

Basis of Estimate

Revenues

Estimates of all revenue provisions in H.R. 4163 were provided by JCT.

DIRECT SPENDING

In addition to the bill's estimated effect on revenues, enacting H.R. 4163 would affect direct spending, but CBO estimates that the net effect of such changes would be less than $500,000 each year.

Under current law, taxpayers can elect to pay their taxes through installments. The Internal Revenue Service (IRS) charges a fee of $43 for each installment agreement, which it can retain and spend without further appropriation action. For those taxpayers who allow the IRS to automatically withdraw each installment payment directly from their bank account, H.R. 4163 would waive the payment of the processing fee. Because the IRS can retain and spend such amounts, the loss of offsetting receipts (a form of direct spending) from not collecting the fees would be offset by an equivalent reduction in spending, resulting in a net budgetary impact of less than $500,000 each year.

In addition, enacting H.R. 4613 could increase the amount of penalties awarded taxpayers in administrative or court proceedings. CBO estimates that the amount of such penalties, which would be paid for from the permanent, indefinite appropriation for claims and judgments, would total less than $500,000 each year.

Pay-as-you-go consideration: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-

go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	0	0	0	0	0	0	0	0	0	0
Changes in receipts	0	1,319	−772	−854	−882	−916	−953	−993	−1,040	−1.090	−1,146

Estimated impact on State, local and tribal governments: The provision in H.R. 4163 that would ensure compliance by state contractors with confidentiality safeguards on tax return information would impose a mandate on state, local, and tribal governments. JCT estimates the costs of this mandate would not exceed the threshold for intergovernmental mandates ($55 million in fiscal year 2000, adjusted annually for inflation) established in UMRA.

Estimated impact on the private sector: As estimated by JCT, the bill contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal revenues: Hester Grippando; Federal spending: John Righter.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax 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 was a result of the Committee's oversight review concerning fairness to individual taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Summary of Findings and Recommendations of the Committee on Government Reform

With respect to clause 3(c)(4) of rule XII of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform with respect to the provisions contained in the bill.

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 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The provision that ensures compliance by State contractors with confidentiality safeguards (sec. 207) imposes Federal intergovernmental mandates on State, local and tribal governments. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with these Federal intergovernmental mandates will not exceed $50,000,000 in either the first fiscal year or in any of the 4 fiscal years following the first fiscal year.

E. Applicability of House Rule XXI5(b)

Rule XXI5(b) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

F. Tax Complexity Analysis

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided, along with an estimate of the number and the type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

1. PARTIAL REPEAL AND REDUCTION IN THE PENALTY FOR FAILURE TO PAY TAX

Summary description of provision

The bill repeals the penalty for failure to pay tax for taxpayers with respect to whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner (including extensions). The bill also reduces by

half the failure to pay tax penalty for all other taxpayers (generally, those who have not entered into an installment payment agreement with the IRS). In addition, the bill provides that taxpayers who enter into installment agreements are not required to pay the present-law $43 fee for installment agreements while automated withdrawals of installment payments are made directly from their bank account.

Number of affected taxpayers

It is estimated that the provision will affect approximately thirteen million taxpayers.

Discussion

The provision should not result in an increase in disputes with the IRS. Regulatory guidance may be useful to taxpayers in explaining this provision. In addition, the provision should not increase individuals' tax preparation costs.

In general, the provision either eliminates or reduces by half the penalty for failure to pay tax. It does not increase the penalty for any taxpayer. Accordingly, taxpayers are directly benefitted by the provision.

It is anticipated that some individuals will need to keep additional records due to this provision. There are two reasons for this. First, the provision repeals the penalty for failure to pay tax for taxpayers with respect to whom an installment payment agreement with the IRS is in effect, provided that the taxpayer filed the tax return in a timely manner (including extensions). Thus, taxpayers will have an added incentive to enter into an installment payment agreement with the IRS. Accordingly, taxpayers who respond to the provision by entering into installment agreements who would not otherwise have done so will be required to complete and keep the additional paperwork that is prerequisite to obtaining an installment agreement. It is anticipated that these taxpayers will view the benefit of eliminating the penalty for failure to pay tax as outweighing the recordkeeping requirement. Second, the bill provides that taxpayers who enter into installment agreements are not required to pay the present-law $43 fee for installment agreements while automated withdrawals of installment payments are made directly from their bank account. To avail themselves of this provision, taxpayers will have to complete and keep the additional paperwork that is prerequisite to establishing the automated withdrawal of payments. It is anticipated that taxpayers will view the benefit of not having to pay the $43 fee (and of not having to write and mail monthly checks) as outweighing the recordkeeping requirement.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, April 6, 2000.

MS. LINDY L. PAULL,
Chief of Staff, Joint Committee on Taxation,
Washington, DC.

DEAR MS. PAULL: Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department on the amendments to the failure to pay penalty in the House Committee

on Ways and Means markup of the "Taxpayer Bill of Rights 2000," that you identified for complexity analysis in your letter of April 4, 2000. Our comments are based on the description of those amendments in JCX–43–00, Joint Committee on Taxation, An Amendment in the Nature of a Substitute to the Provisions of the "Taxpayer Bill of Rights 2000," April 4, 2000.

Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provisions.

Sincerely,

CHARLES O. ROSSOTTI.

Enclosure.

COMPLEXITY ANALYSIS OF FAILURE TO PAY AMENDMENTS IN THE TAXPAYER BILL OF RIGHTS 2000

Provisions

Reduce the current 0.5 percent per month failure to pay penalty and 1.0 percent a month special rate for months after the IRS informs the taxpayer that IRS will levy upon the taxpayer's assets, to 0.25 and 0.5 percent per month, respectively. Reduce to zero the current 0.25 percent per month failure to pay penalty for individuals during periods an installment agreement is in effect. Prohibit the IRS from charging taxpayers a fee for entering into an installment agreement so long as payments under the agreement are made by means of electronic transfer or by similar automated means. The reduced penalty rates apply to months beginning after December 31, 2000. The prohibition on fees for installment agreements using automated withdrawals applies to agreements entered into more than 30 days after date of enactment.

IRS and Treasury comments

All tax form instructions that currently mention the failure to pay rates would have to be modified to reflect the reduced rates. In addition, the instructions to Form 9465, Installment Agreement Request, would have to be revised to reflect the prohibition on installment agreement user fees (i.e., a zero user fee) where taxpayers agreed to make payments by means of electronic transfer or by similar automated means. The provisions would not require new tax forms.

All taxpayer notices, Internal Revenue manuals, and taxpayer information materials that currently mention the failure to pay rates or installment agreement user fees, would have to be revised to reflect the reduced failure to pay rates and zero user fees for installment agreements where the taxpayer agrees to make payments by means of electronic transfer. Regulations or other published guidance may be needed.

The programming changes needed to reflect the failure to pay reductions are comprehensive and affect a significant number of MasterFile and Compliance systems programs. Current programming resources are fully allocated to implementation of other legislatively mandated changes, including those required by the IRS Restructuring and Reform Act of 1998. To fully test and implement the programming changes for the failure to pay reductions, IRS

would need at least 12 months lead time. Since most MasterFile and Compliance systems program updates reflect calendar changes, IRS recommends that the failure to pay reductions be effective at the beginning of a calendar year.

VII. 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 italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

SEC. 139. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.

SEC. [139.] *139A.* CROSS REFERENCES TO OTHER ACTS.

(a) For exemption of—

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENT FOR STATE AND LOCAL BONDS

* * * * * * *

SEC. 167. DEPRECIATION.

(a) * * *

* * * * * * *

(g) DEPRECIATION UNDER INCOME FORECAST METHOD.—

(1) * * *

* * * * * * *

(5) SPECIAL RULES.—

(A) * * *

* * * * * * *

(D) COLLECTION OF INTEREST.—For purposes of subtitle F (other than sections **[**6654**]** *6641* and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

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Subpart B—Taxable Year for Which Items of Gross Income Included

* * * * * * *

SEC. 460. SPECIAL RULES FOR LONG-TERM CONTRACTS.

(a) * * *

(b) PERCENTAGE OF COMPLETION METHOD.—

(1) REQUIREMENTS OF PERCENTAGE OF COMPLETION METHOD.—Except as provided in paragraph (2), in the case of any long-term contract with respect to which the percentage of completion method is used—

(A) * * *

* * * * * * *

For purposes of subtitle F (other than sections **[**6654**]** *6641* and 6655) any interest required to be paid by the taxpayer under subparagraph (B) shall be treated as an increase in the tax imposed by this chapter for the taxable year in which the contract is completed (or, in the case of interest payable with respect to any amount properly taken into account after com-

pletion of the contract, for the taxable year in which the amount is so properly taken into account).

* * * * * * *

Subtitle C—Employment Taxes

* * * * * * *

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

* * * * * * *

SEC. 3510. COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.

(a) * * *

* * * * * * *

(b) DOMESTIC SERVICE EMPLOYMENT TAXES SUBJECT TO ESTIMATED TAX PROVISIONS.—

(1) IN GENERAL.—Solely for purposes of [section 6654] *section 6641*, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

(2) EMPLOYERS NOT OTHERWISE REQUIRED TO MAKE ESTIMATED PAYMENTS.—Paragraph (1) shall not apply to any employer for any calendar year if—

(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

[(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).]

(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the $2,000 amount specified in section 6641(d)(1)(B)(i)(II).

(3) ANNUALIZATION.—Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of [section 6654(d)(2)] *section 6641(d)(2)* in respect of the amount treated as tax under paragraph (1).

[(4) TRANSITIONAL RULE.—In the case of any taxable year beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.]

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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

(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this [title—] *title and notwithstanding any other provision of law—*

(1) * * *

* * * * * * *

(c) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.—[The Secretary]

(1) IN GENERAL.—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS.—A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section or sections 7213, 7213A, or 7431 if—

(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—Any person shall, as a condition for receiving return or return information under paragraph (1)—

(A) ensure that such return and return information is kept confidential,

(B) use such return and return information only for the purpose for which it was requested, and

(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall—

(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,

(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

* * * * * * *

(e) DISCLOSURE TO PERSONS HAVING MATERIAL INTEREST.—

(1) * * *

* * * * * * *

(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request **[**in writing**]** by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

* * * * * * *

(h) DISCLOSURE TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC.—

(1) * * *

* * * * * * *

(4) DISCLOSURE IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS.—**[**A return**]**

(A) IN GENERAL.—Except as provided in subparagraph (B), a return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

[(A)**]** *(i)* if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

[(B)**]** *(ii)* if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

[(C)**]** *(iii)* if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

[(D)**]** *(iv)* to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in [subparagraph (A), (B), or (C)] *clause (i), (ii) or (iii)* if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS.—

(i) NOTICE.—Return or return information of any person who is not a party to a judicial or administrative proceeding described in paragraph (4) shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

(ii) DISCLOSURE LIMITED TO PERTINENT PORTION.—The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

(iii) EXCEPTIONS.—Clause (i) shall not apply to—

(I) any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

(II) disclosure of third party return information by indictment or criminal information, or

(III) if the Secretary determines that the application of such clause would seriously impair a criminal tax investigation.

* * * * * * *

(7) TAXPAYER REPRESENTATIVES.—Notwithstanding paragraph (1), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.

* * * * * * *

(k) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION FOR TAX ADMINISTRATION PURPOSES.—

(1) DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.—Return information *(other than address and TIN)* shall be disclosed to members of the general public to the extent necessary

to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

* * * * * * *

(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.

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(8) STATE LAW REQUIREMENTS.—

(A) * * *

(B) DISCLOSURE TO CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed by any officer or employee of any State to any contractor of the State unless such State—

(i) has requirements in effect which require each contractor of the State which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

(ii) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each contractor to determine compliance with such requirements,

(iii) submits the findings of the most recent review conducted under clause (ii) to the Secretary as part of the report required by paragraph (4)(E), and

(iv) certifies to the Secretary for the most recent annual period that all contractors are in compliance with all such requirements.

The certification required by clause (iv) shall include the name and address of each contractor, a description of the contract of the contractor with the State, and the duration of such contract.

[(B)**]** *(C)* DISCLOSURE OF RETURNS OR RETURN INFORMATION IN STATE RETURNS.—Nothing in **[**subparagraph (A)**]** *subparagraphs (A) and (B)* shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(9) PROCEDURAL RULES APPLICABLE TO CERTAIN DISCLOSURES.—

(A) IN GENERAL.—The Secretary shall prescribe regulations for purposes of providing for disclosures of return and return information under subsections (c), (e), and (k) (1) and (2). Such regulations shall include a schedule of fees, and waivers and reductions of such fees, applicable to the processing of requests for such disclosures.

(B) DETERMINATIONS OF WHETHER TO COMPLY WITH DISCLOSURE REQUESTS.—

(i) INITIAL REQUESTS.—In response to a request that reasonably describes the return or return information sought and is made in accordance with the published rules, the Secretary shall—

(I) determine within 20 days after the receipt of any request for disclosure of return or return information under subsections (c), (e), and (k) (1) and (2) whether to comply with such request, and

(II) immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the Commissioner any adverse determination.

(ii) APPEAL.—The Commissioner shall—

(I) make a determination with respect to any appeal of any adverse determination under clause (i)(I) within 20 days after the receipt of such appeal, and

(II) if on appeal the denial of the request for disclosure of such return or return information is in whole or in part upheld, the Commissioner shall notify the person making such request of the provisions for judicial review of that determination under subparagraph (D).

(iii) EXTENSION OF PERIODS FOR UNUSUAL CIRCUMSTANCES.—

(I) IN GENERAL.—The time limits prescribed in clause (i) and clause (ii) (as the case may be) may be extended for not more than 10 days in unusual circumstances by providing to the person making such request for disclosure written notice which sets forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than 10 working days, except as provided in subclause (II).

(II) MODIFICATION OF REQUEST OR TIME PERIOD.—If, with respect to a request for which the time limits are extended under subclause (I), the Secretary determines that the request cannot be processed within the time limit so specified, the Secretary shall notify the person making the request and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time

(iii) REFUSAL TO MODIFY REQUEST OR TIME FRAME.—Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under subparagraph (B)(ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D) JUDICIAL PROCEEDINGS.—

(i) JURISDICTION OF THE DISTRICT COURTS.—

(I) IN GENERAL.—On complaint, the district courts of the United States in the district in which the complainant resides, or has his principal place of business, or in which his return or return information is situated, or in the District of Columbia, shall have jurisdiction to enjoin the Secretary from withholding return or return information which is subject to disclosure under subsection (c), (e), or (k)(1) or (2), and to order the production of any return or return information improperly withheld from the complainant.

(II) EXPEDITED PROCESSING.—No district court of the United States shall have jurisdiction to review a denial by the Secretary of expedited processing of a request for return or return information after the Secretary has provided a complete response to the request.

(ii) PROCEDURAL MATTERS.—In a case arising under clause (i), the court shall determine the matter de novo (on the record before the Secretary at the time of the determination in the case of a request for expedited processing), and may examine the contents of such return or return information in camera to determine whether such return or return information or any part thereof shall be withheld under any of the provisions of this title, and the burden shall be on the Secretary to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of the Secretary concerning the Secretary's determination as to technical feasibility relating to, and reproducibility of, such return and return information.

(E) DEADLINE FOR SECRETARY TO ANSWER COMPLAINT.—Notwithstanding any other provision of law, the Secretary shall serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon the Secretary of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION.—As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and re-

turn information, including the number, status, and results of—

(A) administrative investigations,

(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

(C) criminal prosecutions.

* * * * * * *

SEC. 6110. PUBLIC INSPECTION OF WRITTEN DETERMINATIONS.

(a) * * *

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

(1) WRITTEN DETERMINATION.—The term "written determination" means a ruling, determination letter, technical advice memorandum, or **[**Chief Counsel advice**]** *official advice*. Such term shall not include 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.

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(g) TIME FOR DISCLOSURE.—

(1) * * *

* * * * * * *

(5) SPECIAL RULES FOR CERTAIN WRITTEN DETERMINATIONS, ETC.—Notwithstanding the provisions of paragraph (1), the Secretary shall not be required to make available to the public—

(A) any *official advice and* technical advice memorandum and any related background file document involving any matter which is the subject of a civil fraud or criminal investigation or jeopardy or termination assessment until after any action relating to such investigation or assessment is completed, or

* * * * * * *

(i) SPECIAL RULES FOR DISCLOSURE OF **[**CHIEF COUNSEL**]** *OFFICIAL* ADVICE.—

(1) **[**CHIEF COUNSEL**]** *OFFICIAL* ADVICE DEFINED.—

(A) IN GENERAL.—For purposes of this section, the term "**[**Chief Counsel advice**]** *official advice*" means written advice or instruction, under whatever name or designation, prepared by any **[**national office component of the Office of Chief Counsel**]** *component of the Office of Chief Counsel or of the Service* which—

(i) is issued to **[**field or service center employees of the Service or regional or district**]** *employees of the Service or* employees of the Office of Chief Counsel; and

* * * * * * *

(2) ADDITIONAL DOCUMENTS TREATED AS **[**CHIEF COUNSEL**]** *OFFICIAL* ADVICE.—The Secretary may by regulation provide that this section shall apply to any advice or instruction pre-

pared and issued by the Office of Chief Counsel *or the Service* which is not described in paragraph (1).

(3) DELETIONS FOR [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* open to public inspection pursuant to this section—

* * * * * * *

(4) NOTICE OF INTENTION TO DISCLOSE.—

(A) NONTAXPAYER-SPECIFIC [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* which is written without reference to a specific taxpayer or group of specific taxpayers—

(i) subsection (f)(1) shall not apply; and

(ii) the Secretary shall, within 60 days after the issuance of the [Chief Counsel advice] *official advice*, complete any deletions described in subsection (c)(1) or paragraph (3) and make the [Chief Counsel advice] *official advice*, as so edited, open for public inspection.

(B) TAXPAYER-SPECIFIC [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the [Chief Counsel advice] *official advice*, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the [Chief Counsel advice] *official advice* on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the [Chief Counsel advice] *official advice* any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the [Chief Counsel advice] *official advice* that is furnished to the taxpayer any information of which that taxpayer was the source.

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

* * * * * * *

Subchapter A—In General

* * * * * * *

SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

(a) * * *

* * * * * * *

(e) PROHIBITION OF FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—The Secretary may not charge a taxpayer a fee for entering into an agreement with the Secretary under

pared and issued by the Office of Chief Counsel *or the Service* which is not described in paragraph (1).

(3) DELETIONS FOR [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* open to public inspection pursuant to this section—

* * * * * * *

(4) NOTICE OF INTENTION TO DISCLOSE.—

(A) NONTAXPAYER-SPECIFIC [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* which is written without reference to a specific taxpayer or group of specific taxpayers—

(i) subsection (f)(1) shall not apply; and

(ii) the Secretary shall, within 60 days after the issuance of the [Chief Counsel advice] *official advice*, complete any deletions described in subsection (c)(1) or paragraph (3) and make the [Chief Counsel advice] *official advice*, as so edited, open for public inspection.

(B) TAXPAYER-SPECIFIC [CHIEF COUNSEL] *OFFICIAL* ADVICE.—In the case of [Chief Counsel advice] *official advice* which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the [Chief Counsel advice] *official advice*, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the [Chief Counsel advice] *official advice* on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the [Chief Counsel advice] *official advice* any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the [Chief Counsel advice] *official advice* that is furnished to the taxpayer any information of which that taxpayer was the source.

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

* * * * * * *

Subchapter A—In General

* * * * * * *

SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

(a) * * *

* * * * * * *

(e) PROHIBITION OF FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—The Secretary may not charge a taxpayer a fee for entering into an agreement with the Secretary under

this section only for so long as payments under such agreement are made by means of electronic transfer or by similar automated means.

[(e)] *(f)* CROSS REFERENCE.—

For rights to administrative review and appeal, see section 7122(d).

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CHAPTER 63—ASSESSMENT

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Subchapter A—In General

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SEC. 6201. ASSESSMENT AUTHORITY.

(a) * * *

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(b) AMOUNT NOT TO BE ASSESSED.—

(1) ESTIMATED INCOME TAX.—No unpaid amount of estimated income tax required to be paid under section [6654] *6641* or 6655 shall be assessed.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

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SEC. 6404. ABATEMENTS.

(a) * * *

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(e) ABATEMENT OF INTEREST ATTRIBUTABLE TO UNREASONABLE ERRORS AND DELAYS BY INTERNAL REVENUE SERVICE.—

(1) IN GENERAL.—In the case of any assessment of interest on—

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) [in performing a ministerial or managerial act], or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such officer or employee being erroneous or dilatory [in performing a ministerial or managerial act],

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sen-

tence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) INTEREST ABATED WITH RESPECT TO ERRONEOUS REFUND CHECK.—The Secretary shall abate the assessment of all interest on any erroneous refund under section 6002 until the date demand for repayment is made, [unless—

[(A) the taxpayer (or a related party) has in any way caused such erroneos refund, or

[(B) such erroneous refund exceeds $50,000.] *unless the taxpayer (or a related party) has in any way caused such erroneous refund.*

(f) ABATEMENT OF ANY [PENALTY OR ADDITION] *INTEREST, PENALTY, OR ADDITION* TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE INTERNAL REVENUE SERVICE.—

(1) IN GENERAL.—The Secretary shall abate any portion of any [penalty or addition] *interest, penalty, or addition* to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) LIMITATIONS.—Paragraph (1) shall apply only if—

(A) * * *

(B) the portion of the [penalty or addition] *interest, penalty, or addition* to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

* * * * * * *

(i) ABATEMENT OF INTEREST IF GROSS INJUSTICE WOULD OTHERWISE RESULT.— The Secretary may abate the assessment of all or any part of interest on any amount of tax imposed by this title for any period if the Secretary determines that—

(1) a gross injustice would otherwise result if interest were to be charged, and

(2) no significant aspect of the events giving rise to the accrual of the interest can be attributed to the taxpayer involved.

[(i)] *(j)* REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.—

(1) * * *

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SEC. 6405. REPORTS OF REFUNDS AND CREDITS.

(a) BY TREASURY TO JOINT COMMITTEE.—No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of [$1,000,000] *$2,000,000* shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.

(b) TENTATIVE ADJUSTMENTS.—Any credit or refund allowed or made under section 6411 shall be made without regard to the pro-

visions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of [$1,000,000] *$2,000,000*, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary shall determine the correct amount of the tax.

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CHAPTER 67—INTEREST

Subchapter A—Interest on Underpayments

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SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) * * *

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(h) EXCEPTION AS TO ESTIMATED TAX.—This section shall not apply to any failure to pay any estimated tax required to be paid by section [6654] *6641* or 6655.

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Subchapter B—Interest on Overpayments

SEC. 6612. DEPOSITS MADE TO STOP THE RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—Any taxpayer may make a cash bond deposit with the Secretary to offset any potential underpayment of tax imposed by this title for any taxable period. Such a deposit shall be made in such manner as the Secretary shall prescribe.

(b) DEPOSITS USED TO PAY UNDERPAYMENT ALSO OFFSET RUNNING OF INTEREST ON UNDERPAYMENT.—Any cash bond deposit used to pay tax under this title shall offset interest under subchapter A during the period of such deposit on such tax under such procedures as the Secretary shall prescribe.

(c) TAXPAYER MAY REQUEST RETURN OF CASH BOND DEPOSIT.—

(1) IN GENERAL.—On written request of a taxpayer who made a cash bond deposit, the Secretary shall return to the taxpayer any amount of such deposit specified by the taxpayer.

(2) NO INTEREST.—In the case of a deposit which is so returned—

(A) the amount returned shall not offset interest under subchapter A for any period, and

(B) except as provided in subsection (d), no interest shall be allowed on such amount.

(3) EXCEPTIONS.—Paragraph (1) shall not apply to any amount if—

(A) such amount has been treated by the Secretary as a payment of tax after a final determination of the disputed items to which such amount relates,

(B) such amount has been designated by the taxpayer as being a payment of tax,

(C) the Secretary determines that assessment or collection of tax is in jeopardy, or

(D) the amount is applied in accordance with section 6402.

Subparagraph (D) shall not apply to a payment to a taxpayer if the taxpayer is entitled to be paid interest under subsection (d) on such payment.

(d) INTEREST ON AMOUNTS RETURNED IN CERTAIN CIRCUMSTANCES.—

(1) IN GENERAL.—Interest shall be allowed and paid on the amount of any cash bond deposit for a taxable period which is returned to the taxpayer only if the deposit is attributable to a dispute reserve account for such period.

(2) ATTRIBUTION TO DISPUTE RESERVE ACCOUNT.—For purposes of paragraph (1), an amount is attributable to a dispute reserve account for any taxable period only to the extent that the aggregate of the cash bond deposits for such period (reduced by the amount of such deposits which has been previously returned to the taxpayer or treated as a payment of tax) does not exceed the deposit limit for such period.

(3) DEPOSIT LIMIT.—For purposes of paragraph (2)—

(A) IN GENERAL.—The deposit limit for any taxable period is the amount specified by the taxpayer at the time of the deposit as the taxpayer's reasonable estimate of the potential underpayment for such period with respect to disputable items identified (at such time) by the taxpayer with respect to such deposit.

(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who is issued a 30-day letter for any taxable period, the deposit limit for such period shall not be less than the amount of the proposed deficiency specified in such letter.

(4) DEFINITIONS.—For purposes of paragraph (3)—

(A) DISPUTABLE ITEM.—The term "disputable item" means any item if the taxpayer—

(i) has a reasonable basis for its treatment of such item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

(B) 30-DAY LETTER.—The term "30-day letter" means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(5) RATE AND PERIOD OF INTEREST.—

(A) RATE.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

(B) PERIOD.—Interest under this subsection on any payment to a taxpayer shall be payable from the date of the deposit to which such payment is attributable to a date (to be determined by the Secretary) preceding the date of the check making such payment by not more than 30 days. For purposes of the preceding sentence, cash bond deposits for any taxable period shall be treated as used and returned on a last-in first-out basis.

(e) CASH BOND DEPOSIT.—For purposes of this section—

(1) IN GENERAL.—The term "cash bond deposit" means any payment which is designated by the taxpayer as being a cash bond deposit for a specified taxable period.

(2) AMOUNTS DESIGNATED OR USED AS PAYMENT OF TAX.—A cash bond deposit shall cease to be treated as such for purposes of this section beginning on the date that the taxpayer designates such deposit as a payment of tax for purposes of this title, or, if earlier, on the date such deposit is so used.

(f) CHANGE IN PERIOD FOR WHICH DEPOSIT MADE.—Subject to the requirements of subsection (d), a taxpayer may change the taxable period to which a cash bond deposit relates.

SEC. [6612.] *6613.* CROSS REFERENCES.

(a) * * *

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Subchapter C—Determination of Interest Rate; Compounding of Interest

SEC. 6621. DETERMINATION OF RATE OF INTEREST.

(a) * * *

(b) FEDERAL SHORT-TERM RATE.—For purposes of this section—

(1) * * *

(2) PERIOD DURING WHICH RATE APPLIES.—

(A) * * *

(B) SPECIAL RULE FOR INDIVIDUAL ESTIMATED TAX.—In determining the **[**addition to tax under section 6654**]** *interest required to be paid under section 6641* for failure to pay estimated tax for any taxable year, the Federal short-term rate which applies during the 3rd month following such taxable year shall also apply during the first 15 days of the 4th month following such taxable year.

* * * * * * *

SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) IN GENERAL.—Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE.—For purposes of subsection (a)—

(1) AMOUNT.—The amount of the underpayment on any day shall be the excess of—

(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

(2) DETERMINATION OF INTEREST RATE.—

(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

(B) INSTALLMENT UNDERPAYMENT PERIOD.—For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

(C) DAILY RATE.—The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

(3) TERMINATION OF ESTIMATED TAX INTEREST.—No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.

* * * * * * *

(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

(1) AMOUNT.—

(A) IN GENERAL.—Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

[(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or**]**

(i) the lesser of—

(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by $2,000, or

* * * * * * *

(e) EXCEPTIONS.—

[(1) WHERE TAX IS SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $1,000.**]**

[(2)**]** *(1)* WHERE NO TAX LIABILITY FOR PRECEDING TAXABLE YEAR.—No **[**addition to tax**]** *interest* shall be imposed under subsection (a) for any taxable year if—

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

[(3)**]** *(2)* WAIVER IN CERTAIN CASES.—

(A) IN GENERAL.—No **[**addition to tax**]** *interest* shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) NEWLY RETIRED OR DISABLED INDIVIDUALS.—No **[**addition to tax**]** *interest* shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that—

(i) * * *

* * * * * * *

(h) SPECIAL RULE WHERE RETURN FILED ON OR BEFORE JANUARY 31.—If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no **[**addition to tax**]** *interest* shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

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

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Subchapter A—Additions to the Tax and Additional Amounts

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PART I—GENERAL PROVISIONS

SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) ADDITION TO THE TAX.—In case of failure—

(1) * * *

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return [0.5] *0.25* percent of the amount of such tax if the failure is for not more than 1 month, with an additional [0.5] *0.25* percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand [0.5] *0.25* percent of the amount of such tax if the failure is for not more than 1 month, with an additional [0.5] *0.25* percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

* * * * * * *

(d) INCREASE IN PENALTY FOR FAILURE TO PAY TAX IN CERTAIN CASES.—

(1) IN GENERAL.—In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied [by substituting "1 percent" for "0.5 percent"] *by substituting "0.5 percent" for "0.25 percent"* each place it appears.

* * * * * * *

(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied [by substituting "0.2" for "0.5"] *by substituting "zero" for "0.25"* each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.

* * * * * * *

SEC. 6658. COORDINATION WITH TITLE 11.

(a) CERTAIN FAILURES TO PAY TAX.—No addition to the tax shall be made under section 6651, [6654, or 6655] *or 6655, and no interest shall be required to be paid under section 6641,* for failure to make timely payment of tax with respect to a period during which a case is pending under title 11 of the United States Code—

(1) if such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) if—

(A) such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and

(B)(i) the petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) the date for making the addition to the tax *or paying interest* occurs on or after the day on which the petition was filed.

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PART III—APPLICABLE RULES

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SEC. 6665. APPLICABLE RULES.

(a) * * *

(b) PROCEDURE FOR ASSESSING CERTAIN ADDITIONS TO TAX.—For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes), subsection (a) shall not apply to any addition to tax under section 6651[, 6654,] or 6655; except that it shall apply—

(1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) to an addition described in section [6654 or] 6655, if no return is filed for the taxable year.

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CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

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SEC. 7428. DECLARATORY JUDGMENTS RELATING TO STATUS AND CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(c)(3), ETC.

(a) CREATION OF REMEDY.—In a case of actual controversy involving—

(1) a determination by the Secretary—

(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),

(B) with respect to the initial classification or continuing classification of an organization as a private foundation (as defined in section 509(a)) *or as a private operating foundation (as defined in section 4942(j)(3))*, or

[(C) with respect to the initial classification or continuing classification of an organization as a private operating foundation (as defined in section 4942(j)(3)), or]

(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c) (other than paragraph (3)) which is exempt from tax under section 501(a), or

(2) a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),

upon the filing of an appropriate pleading, the [United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia] *United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),* may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

(b) LIMITATIONS.—

(1) PETITIONER.—A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. [An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.] *An organization requesting the determination of an issue referred to in sub-*

section (a)(1) shall be deemed to have exhausted its administrative remedies with respect to—

(A) a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination, and

(B) a failure by any office of the Service (other than the office which is responsible for initial determinations with respect to such issue (hereinafter in this subparagraph referred to as the "initial office"), to make a determination with respect to such issue at the expiration of 180 days after the date on which any request for such determination was made by the initial office if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

* * * * * * *

SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

(a) IN GENERAL.—In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, *and in any court proceeding in connection with the disclosure of return and return information under section 6103(p)(9),* the prevailing party may be awarded a judgment or a settlement for—

(1) * * *

* * * * * * *

SEC. 7431. CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.—If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

(1) * * *

The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration determines that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Subchapter A—Examination and Inspection

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SEC. 7611. RESTRICTIONS ON CHURCH TAX INQUIRIES AND EXAMINATIONS.

(a) * * *

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(i) SECTION NOT TO APPLY TO CRIMINAL INVESTIGATIONS, ETC.—This section shall not apply to—

(1) * * *

* * * * * * *

(4) any willful attempt to defeat or evade any tax imposed by this title, [or]

(5) any knowing failure to file a return of tax imposed by this title[.], *or*

(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.

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CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

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

(a) * * *

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(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—

(1) * * *

(2) SEMIANNUAL REPORTS.—

(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

(i) the number of taxpayer complaints during the reporting period;

(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources*, including a summary (by category) of the 10 most common complaints made and the number of such common complaints*;

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