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2d Session

HOUSE OF REPRESENTATIVES

REPORT
112–630

AMENDING TITLE 5, UNITED STATES CODE, TO MAKE CLEAR THAT ACCOUNTS IN THE THRIFT SAVINGS FUND ARE SUBJECT TO CERTAIN FEDERAL TAX LEVIES

JULY 30, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 4365]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4365) to amend title 5, United States Code, to make clear that accounts in the Thrift Savings Fund are subject to certain Federal tax levies, 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:

At the end of the bill, add the following:

SEC. 2. DISPOSITION OF AMOUNTS.

Any potential revenue gain attributable to the enactment of this Act, as determined by the Director of the Congressional Budget Office—

(1) shall be deposited in the general fund of the Treasury of the United States; and

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(2) shall be used solely for purposes of deficit reduction.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4365 provides the Internal Revenue Service (IRS) explicit authority to levy an individual's Thrift Savings Plan (TSP) account. Levy is the IRS's administrative authority to seize a taxpayer's property, or right to property, to pay the taxpayer's liability. The legislation would bring the TSP in line with private sector 401(k) savings plans, which are already subject to levy.

BACKGROUND AND NEED FOR LEGISLATION

Failure to pay federal taxes is a violation of the Government Code of Ethics, which prescribes that federal employees "satisfy in good faith their obligations as good citizens, including all just financial obligations, especially those such as Federal, State or local taxes that are imposed by law." [1]

Despite this requirement to comply with federal tax law, 279,000 federal employees owed $3.4 billion in federal taxes by the end of 2010.[2] When an employee in the private sector is delinquent on his or her taxes, the IRS can levy the person's 401(k) account. Levy is the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.[3] The IRS may establish a levy by attaching a tax lien to a taxpayer's property as long as that property is not exempt from levy, the IRS has provided notice of its intent to levy, and the IRS provides notice to the taxpayer of his or her right to an administrative hearing at least 30 days before it applies the levy.

The TSP's governing statute includes an anti-alienation provision that protects funds from execution, levy attachment, garnishment, or other legal process, except to provide for child support, alimony payments, restitution orders, certain forfeitures, or certain obligations of the TSP Executive Director.[4] The anti-alienation provision does not specifically mention the authority for the IRS to levy an individual's TSP account. In the absence of such explicit authorization in title 5, the Federal Retirement Thrift Investment Board has not honored notice of levies against TSP accounts.[5]

The IRS has asserted that IRS levies on TSP accounts should be honored. In May 2010, the Department of Justice Office of Legal Counsel provided a formal opinion which states the IRS is allowed to levy TSP accounts under the Internal Revenue Code, notwithstanding the anti-alienation provision in title 5 that governs TSP accounts.[6]

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[1] 5 CFR 2635.809.

[2] Internal Revenue Service, Federal Employee/Retiree Delinquency Initiative (FERDI), *Civilian/Military/Retiree Detail Report* (2010).

[3] 26 U.S.C. § 6331(a).

[4] 5 U.S.C. § 8437(e)(3).

[5] Statement of Gregory T. Long, Executive Director, Federal Retirement Thrift Investment Board, Before the House Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy, 112th Cong., 1–12 (July 27, 2011). Print.

[6] Office of Legal Counsel, U.S. Department of Justice, *Applicability of Tax Levies Under 26 U.S.C. § 6334 To Thrift Savings Plan Accounts,* 34 Opinions of Legal Counsel, (May 3, 2010).

H.R. 4365 amends Section 8437(e)(3) of title 5, United States Code to clarify that monies in the Thrift Savings Fund accounts of federal employees are subject to IRS levy for payment of delinquent taxes, in addition to the other provisions currently enumerated.

LEGISLATIVE HISTORY

The *Federal Employees' Retirement System Act of 1986*[7] (FERSA) provides that "[e]xcept as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. . . ."[8] FERSA excepted from this provision court orders for child support, alimony and enforcement of a judgment for physical, sexual, or emotional abuse of a child.[9] FERSA contained one other exception to the anti-alienation prohibition outside of paragraph 5 U.S.C. 8437(e)(3), for a court ordered property settlement in connection with a divorce, legal separation, or annulment.[10] FERSA was subsequently amended to allow for forfeiture of employer contributions and attributable earnings of TSP accounts of employees convicted of a national security offense.[11] The *Thrift Savings Plan Enhancement Act of 2009* made clear that Mandatory Victims' Restitution Act orders may be satisfied from TSP accounts.[12]

SECTION-BY-SECTION

Section 1. Amendments

This section makes clear that the Internal Revenue Service may issue a levy against an individual's Thrift Savings Plan account.

Section 2. Disposition of amounts

This section requires any increase in revenue resulting from enactment of H.R. 4363 be deposited in the general fund of the U.S. Treasury and used solely for deficit reduction.

EXPLANATION OF AMENDMENTS

Mr. Cummings offered an amendment directing that any revenue gain attributable to enactment of H.R. 4365 be deposited in the general fund of the U.S. Treasury for purposes of deficit reduction. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On April 18, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 4365, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill

[7] P.L. 99–335, 100 Stat. 514.
[8] 5 U.S.C. 8437(e)(2).
[9] 5 U.S.C. 8437(e)(3).
[10] 5 U.S.C. 8467(a)(1).
[11] P.L. 104–93, 109 Stat. 961, 965.
[12] P.L. 111–31, 123 Stat. 2815, 1856.

relates to the terms and conditions of employment or access to public services and accommodations. This bill provides the Internal Revenue Service explicit authority to levy an individual's Thrift Savings Plan (TSP) account. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 4365 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4365. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4365 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 2012.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4365, a bill to amend title 5, United States Code, to make clear that accounts in the Thrift Savings Fund are subject to certain federal tax levies.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4365—A bill to amend title 5, United States Code, to make clear that accounts in the Thrift Savings Fund are subject to certain federal tax levies

H.R. 4365 would eliminate an apparent conflict that exists in current law between the Federal Employees' Retirement System Act of 1986 (FERSA) and the Internal Revenue Code. The Internal Revenue Code provides broad authority to the Internal Revenue Service to collect unpaid federal taxes by levy, a legal process that includes ordering a third party to turn over property in its possession that belongs to the taxpayer who has unpaid tax liabilities. FERSA includes a provision (as contained in U.S. Code, title 5, section 8437) that broadly protects assets in Thrift Savings Plan accounts from levy, with certain exceptions. Currently, those exceptions do not include federal tax levies, and the Federal Retirement Thrift Investment Board has refused to honor notices of such levies. H.R. 4365 would include federal tax levies in the list of exceptions.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 4365 would increase revenues by $24 million over the 2012–2022 period. The entire revenue increase would result from an increase in on-budget revenues, and thus pay-as-you-go procedures apply. Enacting the bill would not affect direct spending.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 4365 would result in revenue gains in each year from 2013 to 2022. The net reduction in the deficit is shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 4365, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM ON APRIL 18, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	−1	−2	−2	−2	−2	−3	−3	−3	−3	−3	−10	−24

Source: Staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Barbara Edwards. The estimate was approved by Frank Sammartino, Assistant Director for Tax Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART G—INSURANCE AND ANNUITIES

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

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SUBCHAPTER III—THRIFT SAVINGS PLAN

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§ 8437. Thrift Savings Fund

(a) * * *

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(e)(1) * * *

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(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individ-

ual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. **[**659)**]** *659),* the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title**[**.**]***, and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986.* For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

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