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Presentation Note:

The presenter purposely elected to not modify the provisions of the “original” taxpayer bill of rights noted via this text for meaningful discussion and comparison purposes.

INTRODUCTION & OVERVIEW

The Internal Revenue Service (IRS) affects the lives of nearly every American citizen. Thus it is prudent that a “balance” be established between enforcement of tax laws and recognition of taxpayer rights. Whether perceived or unperceived...that’s “Powerful.” The IRS has stated that it is striving to ensure that all taxpayer contacts are conducted in a courteous, respectful, and responsible manner. However, the author believes that ultimately, it is the representative’s responsibility to ensure that those “strides” are actually taking place and are done so in accordance with established policies, procedures and laws. Taxpayer contacts include but are not limited to, written correspondence, face-to-face meetings (audits, appeals, & collection cases), telephone calls and conversations and other communicative mediums. In the pursuit and/or administration of the contacts, it is important and vital that “taxpayer’s rights” are acknowledged and protected. To do so, the representative must be knowledgeable of such rights and must be capable and competent to assert those rights when necessary. Whether the taxpayer files a Form 1040EZ or a complicated Form 1120 (Corporate) return, the taxpayer will always benefit from an informed representative knowing not only the taxpayer’s rights, but the representative’s rights as well. Although the IRS has an obligation to recognize a taxpayer’s rights, I believe the representative has a “higher responsibility” to *not only recognize those rights*, but to also ensure the protection of those rights in any IRS authorized proceeding.

Consequently, the Taxpayer Bill of Rights (TBOR) was established and implemented in 1988, and added an additional pair of “teeth” in 1996, pursuant to TBOR II. Additional “bill of rights” declarations via the IRS Restructuring and Reform Act of 1998 (which is sometimes referred to as TBOR III and/or RRA 98’) was signed into law **July 22, 1998**. This third set of “teeth” provides the taxpayer (and the representative) an additional layer of protection regarding “taxpayer rights.”

THE IRS RESTRUCTURING AND REFORM ACT OF 1998 (RRA 98')

RRA 98'

With the introduction of RRA 98', numerous additional taxpayer right provisions were enacted. The text noted below details major components of the Act. One of the highlights of RRA 98' related to the Taxpayer Advocate as follows:

- RRA 98' replaced the Taxpayer Advocate with the National Taxpayer Advocate whom is
 - a) Appointed by the Secretary of the Treasury, and
 - b) Reports directly to the Commissioner of the IRS.
- Created an independent reporting structure,
- Required that an Advocate be available for every state,
- Amended and significantly redefined IRC §7811,
- The Taxpayer Advocate organization renamed itself the "Taxpayer Advocate Service," and
- The new organization officially "stood up" March 12, 2000.

National Taxpayer Advocate

Act section 1102 renames the taxpayer advocate the National Taxpayer Advocate. The Treasury Secretary will appoint the national taxpayer advocate after consultation with the commissioner and the IRS board. An individual may be appointed only if the individual was not an officer or employee of the IRS (other than in the Office of the Taxpayer Advocate) during the two-year period ending with the appointment and the individual agrees not to accept employment with the IRS for at least five years after ceasing to be the national taxpayer advocate.

The national taxpayer advocate is required to monitor the coverage and geographical allocation of the local taxpayer advocates, develop guidance to be distributed to all IRS officers and employees outlining the criteria for referral of taxpayer inquiries to local taxpayer advocates, and ensure that the local telephone number for the local taxpayer advocate is published and available to taxpayers.

Taxpayer Assistance Orders (TAO's)

The Act expands the circumstances under which a TAO may be issued. It provides that a "significant hardship" is deemed to occur if one to the following four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's account problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if the relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted.

Those factors are not an exclusive list of what constitutes a significant hardship; a TAO may also be issued in other circumstances in which it is determined that the taxpayer is or will suffer a significant hardship. Further, a TAO may be issued if the taxpayer meets requirements set forth in regulations. According to the conference report, “It is intended that the circumstances set forth in regulations be based on considerations of equity.”

In determining whether to issue a TAO in cases in which the IRS fails to follow applicable published guidance (including procedures set forth in the Internal Revenue Manual), the taxpayer advocate is to construe the matter in a manner most favorable to the taxpayer.

PROHIBITION ON INFLUENCE OVER AUDITS [IRC §7217]

Act section 1105 makes it unlawful for a specified person to request that any officer or employee of the IRS conduct or terminate an audit or otherwise investigate or terminate the investigation of any particular taxpayer regarding the tax liability of that taxpayer. The prohibition applies to the president, the vice president, and employees of the executive offices of either, the president or vice president, as well as any individual (except the attorney general) serving in a position specified in section 5312 of Title 5 of the United States Code (those are generally Cabinet-level positions). The prohibition applies to both direct and indirect requests.

BURDEN OF PROOF [IRC §7491]

Act 3001 provides that the government will have the burden of proof in any court proceeding regarding a factual issue if the taxpayer introduces credible evidence relevant to ascertaining the taxpayer’s income tax liability. Four conditions apply:

1. The taxpayer must comply with the requirements of the code and the regulations to substantiate any item (as under current law).
2. The taxpayer must maintain records by the code and the regs (as under current law).
3. The taxpayer must cooperate with reasonable requests by the IRS for meetings, interviews, witnesses, information, and documents (including providing, within a reasonable time, access to and inspection of witnesses, information, and documents within the taxpayer’s control, as reasonably requested by the IRS). Cooperation also includes providing reasonable assistance to the IRS in obtaining access to and inspection of witnesses, information, or documents not within the taxpayer’s control – including any witnesses, information, or documents located in foreign countries. For this purpose, cooperation also includes providing English translations, as reasonably requested by the IRS.

A necessary element of cooperating with the government is that the taxpayer must exhaust his or her administrative remedies (including any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have cooperated. Cooperating also means that the taxpayer must establish the applicability of any privilege.

4. Taxpayers other than individuals must meet the net worth limitations that apply for awarding attorney's fees (accordingly, no net worth limitation would be applicable to individuals). Corporations, trusts, and partnerships whose net worth exceeds \$7 million are not eligible for the benefits of the burden-shifting provision.

The taxpayer has the burden of proving that it meets each of the conditions, because they are necessary prerequisites to establishing that the burden of proof is on the government.

Credible Evidence

The burden will shift to the government under this provision only if the taxpayer first introduces credible evidence on a factual issue relevant to ascertaining the taxpayer's income tax liability. Credible evidence is the quality of evidence that, after critical analysis, the court would find sufficient on which to base a decision on the issue if no contrary evidence were submitted (without regard to the judicial presumption of IRS correctness). A taxpayer merely makes implausible factual assertions, frivolous claims, or tax-protester-type arguments. The introduction of evidence will not meet this standard if the court is not convinced that it's worthy of belief. If after evidence from both sides, the court believes that the evidence is equally balanced, the court must find that the government has not sustained its burden of proof.

Substantiation

According to the committee report, nothing in the provision should be construed to override any requirement under the code or regulations to substantiate any item. Accordingly, taxpayers must meet applicable substantiation requirements, whether generally imposed or imposed regarding specific items, such as charitable contributions or meals, entertainment, travel, and certain other expenses. Substantiation requirements include any requirement of the code or regs that the taxpayer establish an item to the satisfaction of the secretary.

Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of the provision regarding the burden of proof. So, if a taxpayer required to substantiate an item fails to do so in the manner required (or destroys the substantiation, this burden of proof provision is inapplicable.

Statistical Information & Penalties

In the case of an individual taxpayer, the government will have the burden of proof in any court proceeding regarding any item of income that was reconstructed by the IRS solely through the use of the statistical information on unrelated taxpayers.

Further, the Act provides that in any court proceeding, the government must initially come forward with evidence that it is appropriate to apply a particular penalty to the taxpayer before the court can impose the penalty. According to the conference report, this provision is not intended to require the government to introduce evidence of elements such as a reasonable cause of substantial authority. Rather, the government must come forward initially with evidence regarding the appropriateness of applying a particular penalty to the taxpayer; if the taxpayer believes that because of reasonable cause, substantial authority, or a similar provision, it is inappropriate to impose the penalty, it is the taxpayer's responsibility (and not the government's obligation) to raise those issues.

Civil Damages for Collection Actions [IRC §7431]

Act section 3102 permits up to \$100,000 in civil damages caused by an officer or employee of the IRS who negligently disregards provisions of the code or regulations in connection with the collection of tax from the taxpayer.

The provision also permits up to \$1 million in civil damages caused by an officer or employee of the IRS who willfully violates provisions of the Bankruptcy Code relating to automatic stay or discharges.

Finally, the provision provides that persons other than the taxpayer may sue for civil damages for unauthorized collection actions.

Effective date: The provision is effective for actions of IRS officers or employees occurring after the date of enactment.

Small Case Calendar [IRC §7463]

Act section 3103 increases the cap for small case treatment from \$10,000 to \$50,000. According to the conference report, "The conferees recognize that an increase of this size may encompass a small number of cases of significant precedential value. Accordingly, the conferees anticipate that the Tax Court will carefully consider (1) IRS objections to small case treatment, such as objections based upon the potential precedential value of the case, as well as (2) the financial impact on the taxpayer, including additional legal fees and costs, of not utilizing small case treatment."

Effective date: The provision is effective for proceedings that begin after the date of enactment.

Release of Erroneous Liens [IRC §6325]

Section 3106 of the Act creates an administrative procedure permitting a record owner of property against which a federal tax lien has been filed to obtain a certificate of discharge of property from the lien as a matter of right. The third party is required to apply to the Secretary of the Treasury for such a certificate and either deposit cash or to furnish a bond sufficient to protect the lien interest of the United States. The provision also establishes a judicial cause of action for third parties challenging a lien. The period within which such an action must be brought is 120 days after the date the certificate of discharge is issued.

Effective date: The provision is effective on the date of enactment.

INNOCENT SPOUSES AND DISABLED TAXPAYERS

Innocent Spouses [IRC §6013 & §6015]

Act section 3201 generally makes innocent spouse status easier to obtain. It eliminates all the understatement thresholds and requires only that the understatement of tax be attributable to an erroneous (and not just a grossly erroneous) item of other spouse.

The Act also provides a separate liability election for a taxpayer who, at the time of the election, is no longer married to, is legally separated from, or has been living apart for at least 12 months from the person with whom the taxpayer originally filed a joint return. Those taxpayers may elect to have the liability for any deficiency limited to the portion of the deficiency that is attributable to items allocable to the taxpayer. The election is not available if the IRS demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme of the individuals or if both individuals had actual knowledge of the understatement to tax.

Suspension of Statute Limitations During Disability [IRC §6503]

Act section 3202 permits equitable tolling of the statute of limitations for refund claims of an individual taxpayer during any period of the individual's life in which he or she is unable to manage his or her financial affairs because of a medically determined 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. 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.

Effective date: The provision applies to periods of disability before, on, or after the date of enactment but does not apply to any claim for refund or credit that (without regard to the provision) is barred by the operation of any law, including the statute of limitations, as of the date of enactment.

INTEREST AND PENALTIES

Interest Netting [IRC §6621(d)]

Act section 3301 establishes a net interest rate of zero when interest is payable and allowable on equivalent amounts of overpayment and underpayment of any taxes (not just income taxes) imposed by the Internal Revenue Code that exists for any period. Each overpayment and underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment exist. The special rules that increase the interest rate paid on large corporate underpayments and decrease the interest rate received on corporate underpayments in excess of \$10,000 do not prevent the application of the net zero rate.

Failure to Pay Penalty and Installment Agreements [IRC §6651]

Act section 3303 provides that the penalty for failure to pay taxes is one half of the usual rate (0.25 percent instead of 0.5 percent) imposed regarding the tax liability of an individual for any month in which an installment payment agreement with the IRS is in effect, provided that the individual timely filed the tax return (including extensions).

Effective date: The provision is effective for installment agreement payments made after December 31, 1999.

Failure to Deposit Penalty [IRC §6656(e)]

Act section 3304 allows the taxpayer to designate the period to which each deposit is applied. The designation must be made during the 90 days immediately following the sending of the related IRS penalty notice. The provision extends the authorization to waive the failure to deposit penalty to the first deposit a taxpayer is required to make after the taxpayer is required to change the frequency of deposits.

Effective date: The provision is effective for deposits to be made more than 180 days after the date of enactment. The Act also provides that for deposits required to be made after December 31, 2001, any deposit is to be applied to the most recent period to which the deposit relates, unless the taxpayer explicitly designates otherwise.

Suspension of Interest and Penalties [Pub. 556 & ILM 200130040]

Act section 3305 suspends the actual of specified penalties and interest if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability for additional taxes (and the basis for the liability) within one year following the date that's the later of (1) the original due date of the return or (2) the date on which the individual taxpayer timely filed the return. The suspension applies only to individuals who file a timely tax return and does not apply to the failure to pay penalty, in the case of fraud, or to criminal penalties.

Effective date: The provision is effective for tax years ending after the date of enactment. For tax years beginning before January 1, 2004, the one-year period is increased to 18 months.

Procedural Requirements for Penalties [IRC §6751]

Act section 3306 requires that each notice imposing a penalty include the name of the penalty, the code section imposing the penalty, and a computation of the penalty.

The provision also requires the specific approval of IRS management to assess all noncomputer generated penalties unless excepted. This provision does not apply to failure to file penalties, failure to pay penalties, or to penalties for failure to pay estimated tax.

Effective date: The provision applies to notices issued and penalties assessed after December 31, 2000.

Personal Delivery of Penalty Notice [IRC §6672(b)(2)]

Act section 3307 permits in-person delivery, as an alternative to delivery by mail, of a preliminary notice that the IRS intends to assess a 100-percent penalty.

Effective date: The provision is effective on the date of enactment.

Abatement of Interest Disaster Areas [IRC §7508A]

Act section 3309 provides that taxpayers located in a presidentially declared disaster area don't have to pay interest on taxes due for the length of any extension for filing their tax returns granted by the IRS.

Effective date: The provision applies to disaster declared after December 31, 1997, for tax years beginning after December 31, 1997.

AUDIT AND COLLECTION ACTIVITIES

Collection Due Process (CDP) [IRC §6330]

Act section 3401 establishes formal procedures designed to ensure due process when the IRS seeks to collect taxes by levy (including by seizure). The due process procedures also apply after notice of a federal tax lien has been filed.

The IRS is required to notify the taxpayer that a notice of lien had been filed. During the 30-day period beginning with the mailing or delivery of that notification, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case.

Before the IRS can levy against a taxpayer's property, it will be required to provide the taxpayer with a "Notice of Intent to Levy," similar to that currently required under section 6331(d). The notice would not be required to itemize the property the IRS seeks to levy on. Service by registered or certified mail, return receipt requested, will be required.

Subject to the exceptions noted below, no levy could occur within the 30-day period beginning with the mailing of the Notice of Intent to Levy. During that 30-day period, the taxpayer may demand a pre-levy hearing before an appeals officer who generally has had no prior involvements with the taxpayer's case.

If a return receipt is not returned, the IRS may proceed to levy against the taxpayer 30 days after the Notice of Intent to Levy was mailed. The IRS must provide a hearing equivalent to the pre-levy hearing if later requested by the taxpayer. However, the IRS isn't required to suspend the levy process pending the completion of a hearing that is not requested within 30 days of the mailing of the notice.

An exception to the general rule prohibiting levies during the 30-day period applies in the case of state tax offset procedures, and in the case of jeopardy or termination assessments.

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child will be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and relevant family member. At the judicial hearing, the IRS will be required to demonstrate (1) that the requirement of any applicable law or administrative procedure to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debit exists.

Effective date: The provision is effective for collection actions initiated more than 180 days after the date of enactment.

Advisor-Client Privilege /IRC §7525/

Act section 3411 extends the current law attorney-client privilege of confidentiality to tax advice that's furnished to a client taxpayer before the IRS if that practice is subject to regulation under section 330 of Title 31, United States Code. Individuals subject to regulation under section 330 include attorneys, certified public accountants, enrolled agents, and enrolled actuaries. Tax advice means advice that's within the scope of authority for the individual's practice regarding matters under the Internal Revenue Code. The privilege of confidentiality may be asserted in any noncriminal tax proceeding before the IRS, as well as in noncriminal tax proceedings in the federal courts when the government is a party to the proceeding.

The privilege of confidentiality created by this provision will not apply to any written communication between a federally authorized tax practitioner and any director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).

A tax shelter for this purpose is any partnership, entity, plan, or arrangement a significant purpose of which is the avoidance or evasion of income tax. Tax shelters for which no privilege of confidentiality will apply include, but aren't limited to, those required to be registered as confidential corporate tax shelter arrangements under section 6111(d).

The provision allows taxpayers to consult with other qualified tax advisers in the same manner they currently may consult with tax advisors that are licensed to practice law. The provision does not modify the attorney-client privilege of confidentiality, other than to extend to other authorized practitioners. The privilege established by the provision applies only to the extent that communications would be privileged if they were between a taxpayer and an attorney. Accordingly, the privilege does not apply to any communication between a CPA, enrolled agent, or enrolled actuary and that individual's client (or prospective client) if the communication would not have been privileged between an attorney and the attorney's client. For example, information disclosed to an attorney for the purpose of preparing a tax return is not privileged under current law. That information would not be privileged under the provision whether it was disclosed to an **attorney, CPA, EA**, or enrolled actuary.

The privilege created by this provision may be waived in the same manner as the attorney-client privilege. For example, if a taxpayer or federally authorized tax practitioner discloses to a third party the substance of a communication protected by the privilege, the privilege for that communication and any related communications is considered to be waived to the same extent and in the same matter as the privilege would be waived if the disclosure related to any attorney-client communication.

Effective date: The provision is effect for communications made on or after the date of enactment.

Financial Status Audits [IRC §7602(e) & ILM 200311032]

Act section 3412 prohibits the IRS from using financial status or economic realty examination techniques to determine the existence of unreported income of any taxpayer unless the IRS has a reasonable indication that there is a likelihood of unreported income.

Effective date: The provision is effective on date of enactment.

Quashing Third-Party Summonses [IRC §7609(b)]

Act section 3415 generally expands the current third-party recordkeeper procedures to apply to all third-party summonses. Thus, the taxpayer whose liability is being investigated receives notice of the summons and is entitled to bring an action in the appropriate U.S. district court to quash the summons. As under the current third-party recordkeeper provision, the statute of limitations on assessment and collection is stayed during the litigation, and some kinds of summonses specified under current law aren't subject to these requirements.

Effective date: The provision applies to summonses served after the date of enactment.

IRS Contact of Third-Parties [IRC §7602(c)]

Act section 3417 provides that the IRS may not contact any person other than the taxpayer regarding the determination or collection of the tax liability of the taxpayer without providing reasonable notice to the taxpayer that contact with other persons may be made.

Effective date: The provision applies to contacts made after 180 days after the date of enactment.

Approval of Seizures

Currently, supervisory approval of liens, levies, or seizures is required only under certain circumstances. For example, a levy on a taxpayer's principal residence is permitted only on the written approval of the district director or assistant district director.

Effective date: The provision is effective for collection actions begun after the date of enactment, except for any action under the automated collection system the provision applies to actions initiated after December 31, 2000.

Levy Exemption Amounts

Act section 3431 increases the value of personal effects exempt from levy to \$6,250 and the value of books and tools exempt from levy to \$3,125. (These amounts were indexed for inflation as of January 2003 to **\$6,890** and **\$3,440** respectfully).

Effective date: The provision applies to levies issued after the date of enactment.

Release of Levies [IRC §6343(e)]

Act section 3432 requires IRSA to release as soon as is practicable a wage levy on agreement with the taxpayer that the tax is not collectible.

Effective date: The provision applies to levies imposed after December 31, 1999.

Levies During Refund Proceedings

Act section 3433 requires the IRS to withhold collection of liabilities that are the subject of a refund suit during the pendency of the litigation. The requirement applies only when refund suits can be brought without the full payment of the tax; that is, in the case of divisible taxes.

Collection by levy will be withheld unless jeopardy exists or the taxpayer waives the suspension of collection in writing (because collection will stop the running of interest and penalties on the tax liability). The IRS cannot start a civil action to collect a liability except in a proceeding related to the initial refund proceeding. The statute of limitations on collection is stayed for the period during which the IRS is prohibited from collecting by levy or otherwise.

Effective date: The provision applies to unpaid tax attributable to tax periods beginning after December 31, 1998.

Approval for Jeopardy Assessments

Act section 3434 requires IRS Chief Counsel review and approval before the IRS can make a jeopardy assessment, a termination assessment, or a jeopardy levy. If chief counsel's approval is not obtained, the taxpayer is entitled to obtain abatement of the assessment or release of the levy and, if the IRS fails to offer that relief, to appeal first to IRS Appeals under the new due process procedures for IRS collections And then to court.

Effective date: The provision applies to tax assessed and levies made after the date of enactment.

Property on Which Lien not Valid

Act section 3435 increases the dollar limit for purchases at a casual sale from \$250 to \$1,000, and further increases the dollar limit from \$1,000 to \$5,000 for mechanics lienors providing home improvement work for owner-occupied personal residences. Those amounts will be indexed for inflation. The Act also clarifies the superpriority

rules to reflect current banking practices, where a passbook-type loan may be made even though an actual passbook is not used.

Effective date: The provision is effective on date of enactment.

Levies on Retirement Plans

Act section 3436 provides an exception from the 10-percent early withdrawal tax for amounts withdrawn from an employer-sponsored retirement plan or an IRA that are subject to a levy by the IRS. The exception applies only if the plan or IRA is levied; it does not apply, for example, if the taxpayer withdraws funds to pay taxes in the absence of a levy, to release a levy on other interests.

Effective date: The provision is effective for distributions after December 31, 1999.

Sales of Seized Property

Act section 3441 prohibits the IRS from selling seized property for less than the minimum bid price. The Act provides that the sale of property for less than the minimum bid price would constitute an unauthorized collection action, which would permit a suit for civil damages.

Effective date: The provision applies to sales occurring after the date of enactment.

Administrative Procedures for Seizure

Act section 3444 codifies the IRS administrative procedures that require the IRS to investigate the status of property to be sold under section 6335.

Effective date: The provision is effective on date of enactment.

Seizures of Residences and Businesses

Act section 3445 prohibits the IRS from seizing any real property used as a residence by the taxpayer or any nonrental real property of the taxpayer used by any other individual as a residence to satisfy an unpaid liability of \$5,000 or less, including penalties and interest. The provision requires the IRS to exhaust all other payment options before seizing the taxpayer's business assets or principal residence. For this purpose, future income that may be derived by a taxpayer from the commercial sale of fish or wildlife under a specified state permit must be considered in evaluating other payment options before seizing the taxpayer's business assets. A levy is permitted on a principal residence only if a judge or magistrate of a U.S. district court approves (in writing) of the levy.

Effective date: The provision is effective on the date of enactment.

Agreement to Extend Statute of Limitations

Act section 3461 eliminates the provision of current law that allows the statute of limitations on collections, to be extended by agreement between the taxpayer and the IRS. Extensions of the statute of limitations on collection may be made as part of an installment agreement; the extension is only for the period of which the installment agreement by its terms extends beyond the end of the otherwise applicable 10-year period, plus 90 days.

The provision also requires that only each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations on assessment, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limit the extension to particular issues.

Effective date: The provision is effective for requests to extend the statute of limitations made after December 31, 1999. If in any request to extend the period of limitations on or before December 31, 1999, a taxpayer agreed to extend that period beyond the 10-year statute of limitations on collection, that extension will expire on the latest of the last day of the 10-year period, December 31, 2002, or the 90th day after the end of the term of the installment agreement related to the request.

Offers in Compromise [IRC §7122]

Act section 3462 expands the authority for the IRS to accept offers-in compromise.

The provision requires the IRS to develop and publish schedules of national and local allowances that will provide taxpayers entering into an offer-in-compromise with adequate means to provide for basic living expenses. The IRS is required to consider the facts and circumstances of a particular taxpayer's case in determining whether the national and local schedules are adequate for that particular taxpayer. The Act prohibits the IRS from rejecting an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer.

The Act prohibits the IRS from collecting a tax liability by levy (1) during any period that a taxpayer's offer-in-compromise for that liability is being processed, (2) during the 30 days following rejection of an offer, (3) during any period in which an appeal of the rejection of an offer is being considered, and (4) while an installment agreement is pending.

The Act requires that the IRS implement procedures to review all proposed IRS rejections of taxpayer offers-in-compromise and requests for installment agreements before the rejection being communicated to the taxpayer.

The Act provides that the IRS will adopt a liberal acceptance policy for offers-in-compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes.

Effective date: The provisions are generally effective for offers-in-compromise submitted after the date of enactment. The provision suspending levy action is effective for offers-in-compromise pending on or made after December 31, 1999.

Deficiency notice to show filing deadline [IRC §6213]

Act section 3463 requires the IRS to include on each deficiency notice the date determined by the IRS as the last day on which the taxpayer may file a petition with the Tax Court. The provision provides that a petition filed with the Tax Court by that date is treated as timely filed.

Effective date: The provision is effective for notices mailed after December 31, 1998.

Appeal Procedures [IRC §7123]

Act section 3465 codifies existing IRS procedures regarding early referrals to Appeals and the Collections Appeals Process. The provision also codifies the existing ADR procedures, as modified by eliminating the dollar threshold.

In addition, the IRS is required to establish a pilot program of binding arbitration for disputes of all sizes. Under the pilot program, both the taxpayer and the IRS must agree to “binding” arbitration. The Act requires the IRS to make Appeals officers available on a regular basis in each state, and consider videoconferencing of Appeals conferences for taxpayers seeking appeals in rural or remote areas.

Effective date: The provision is effective on date of enactment.

Debt Collection Practices [IRC §6103(1)(10)(B)]

Act section 3466 applies the restrictions relating to communication with the taxpayer/debtor and the prohibitions on harassing or abusing the debtor to the IRS.

Effective date: The provision is effective on date of enactment.

Availability on Installment Agreements [IRC §6159]

Act section 3467 requires to IRS to enter an installment agreement, at the taxpayer’s option, if: (1) the liability is \$10,000, or less (excluding penalties and interest); (2) within the previous five years, the taxpayer has not failed to file or to pay, nor entered an installment agreement under this provision; (3) if requested by the IRS, the taxpayer submits financial statements, and the IRS determines for full payment of the liability with three years; and (5) the taxpayer agrees to continue to comply with the tax laws and the terms of the agreement for the period (up to three years) that the agreement is in place.

Effective date: The provision is effective on date of enactment.

DISCLOSURES TO TAXPAYERS

Joint and Several Liability

In general, spouses who file a joint tax return are each fully responsible for the accuracy of the tax return and for the full liability.

Act section 3501 requires that the IRS establish procedures to alert married taxpayers of their joint and several liability on all appropriate tax publications and instructions and provide notification of an individual's right to relief under new code section 6015 in IRS Publication 1, "Your Rights as a Taxpayer."

Effective date: Procedures must be established as soon as practicable, but no later than 180- days after the date of enactment.

Taxpayer's Rights in IRS Interviews

Act section 3502 requires that the IRS rewrite **Publication 1, "Your Rights as a Taxpayer,"** to inform taxpayers more clearly of their rights to be represented at interviews with the IRS, and if the taxpayer is represented, that the interview may not proceed without the presence of the taxpayer's representative unless the taxpayer consents.

Effective date: The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Examination Selection

The IRS selects returns to be audited in a number of ways. Act section 3503 requires that IRS add to Publication 1, "Your Rights as a Taxpayer," a statement that sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. The statement must specify the general procedures used by the IRS, including whether taxpayers are selected for examination on the basis of information in the media or from informants.

Effective date: The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Appeals and Collection

Act section 3504 requires that no later than 180 days after the date of enactment, a description of the entire process from examination through collections, including the assistance available to taxpayers from the taxpayer advocate at various points in the process, be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

Effective date: The explanation must be included as soon as practicable, but no later than 180 days after the date of enactment.

Refund Disallowance

Act section 3505 requires the IRS to notify a taxpayer of the specific reasons for the disallowance (or partial allowance) of a refund claim.

Effective date: 180 days after the date of enactment.

Installment Agreements

A taxpayer entering into an installment agreement to pay tax liabilities must complete a Form 433-D that sets forth the installment amounts to be paid monthly and the total amount of tax due.

Act section 3506 requires the IRS to send every taxpayer in an installment agreement an annual statement of the initial balance owed, the payments made during the year, and the remaining balance.

Effective date: July 1, 2000

Change in Tax Matters Partner [IRC §6223]

In general, the tax treatment of items of partnership income, loss, deductions, and credits are determined at the partnership level in a unified partnership proceeding rather than in separate proceedings with each partner. In providing notice to taxpayers of partnership proceedings, the IRS relies on information furnished by the tax matters partner (TMP) of the partnership. The TMP is required to keep each partner informed of all administrative and judicial proceedings the partnership. Under some circumstances, the IRS may require the resignation of the incumbent TMP and designate another partner as the TMP of the partnership.

Act section 3507 requires the IRS to notify all partners of any resignation of the tax matters partner that is required by the IRS, and to notify the partners of any successor tax matters partner.

Effective date: The provision applies to selections of tax matters partners made by the IRS after the date of enactment.

THE 1996 TAXPAYER BILL OF RIGHTS II (TBOR2)

Taxpayer Bill of Rights 2 (Effective July 30, 1996)

TAXPAYER ADVOCATE AND TAXPAYER ASSISTANCE ORDERS

In 1996, the Taxpayer Bill of Rights 2 (TBOR 2) established the position of Taxpayer Advocate, which replaced the position of Taxpayer Ombudsman, created in 1979 by the IRS. The Taxpayer Advocate is appointed by and reports directly to the IRS commissioner.

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

Taxpayers can request that the taxpayer advocate issue a taxpayer assistance order (TAO) if the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are administered. A TAO may require that the IRS to release property of the taxpayer that has been levied on, or to cease any action, take any action as permitted by law, or refrain from taking any action regarding the taxpayer.

The Taxpayer Advocate is required to report annually to the House Ways and Means and Senate Finance Committees on objectives for the upcoming fiscal year. This report is required to be provided no later than June 30 of each calendar year and is to contain substantive analysis, in addition to statistical information.

The reports of the taxpayer advocate are submitted directly to the congressional committees without prior review or comment from the commissioner, secretary, any other officer or employee of the Treasury or the Office of Management and Budget.

TBOR II

- *Required the Advocate to issue two annual reports,*
- *Permitted a Tax Assistance Order (TAO) to require action by the IRS (Service) within a specified time frame,*
- *Allowed a TAO to be issued to provide affirmative relief for taxpayers, and*
- *Codified the modification and rescission limitations on TAO's.*

Office of Taxpayer Advocate

A new Office of Taxpayer Advocate has been created to assist taxpayers in dealing with the IRS. The Taxpayer Advocate replaces the Office of Taxpayer Ombudsman. The functions of the new office are to:

- Assist taxpayers in resolving problems with the IRS,
- Identify areas in which taxpayers have problems dealing with the IRS,
- Propose changes in IRS administrative practices that will mitigate those problems, and
- Identify potential legislative changes that may mitigate those problems.

Taxpayer Assistance Orders

Taxpayer Advocate has the authority to issue, oversee, and amend Taxpayer Assistance Orders [IRC §7802(d)].

Cancellation of Modification of Installment Agreement

IRS must notify taxpayers 30 days prior to terminating or changing an installment agreement, unless the Secretary feels collection of tax is in jeopardy [IRC §6159(b)(5)].

Expanded Authority to Abate Interest and Penalty

IRS has the authority to abate interest and penalties in more situations than they did before. *Example:*

IRS can abate interest incurred as a result of the loss of records by the IRS, IRS personnel transfers, extended illnesses, or extended leave [IRC §6404 (e)].

Tax court and Interest Abatement

Tax Court now has jurisdictional authority to abate interest [IRC §6404(g)].

Increased Interest-Free Period

Period between the date of assessment and the day interest begins to accrue has been increased from 10 calendar days to 10 business days (21 calendar days, provided that the total liability is less than \$100,000) [IRC §6601(e)(3)].

FTD Penalty Waived

Penalty for failure to make timely payroll deposits is waived for new employers who fail to deposit payroll taxes for the first quarter that they have employees, provided the tax return is filed by the due date [IRC §6656(c)].

MFS to MFJ and Balance Due

Payment of any balance due is no longer required on an amended return to change from married filing separate to married filing joint [IRC §6013(b)].

MFS and MFJ and IRS Disclosures

In addition, if there is a tax deficiency on a married filing joint return, and the taxpayers are no longer married or living together, the IRS must disclose what efforts have been made to collect the joint liability from the other taxpayer and the results [IRC §6103 (e)].

Lien Release

IRS can remove a lien prior to payment of the debt if:

- Filing of the lien was premature or not in accordance with the administrative procedures of the IRS.
- Taxpayer has entered into an installment agreement,
- Removal of the lien will facilitate collection of the tax, or
- Removal of the lien is in the best interest of the taxpayer and the government [IRC §6323(j)].

Levy Release

New levy laws allow for the return of property under the same circumstances as the withdrawal of a tax lien [IRC §6323(d)].

Exemption Amount Increased

The value of property exempt from levy has been increased. The exemption amount is \$2,500 for personal property and \$1,250 for books and tools of a trade. Both amounts are indexed for inflation [IRC §6334)].

Chief Counsel and OIC

A written opinion from the Office of Chief Counsel is no longer required for an offer-in-compromise when the tax forgiven is \$50,000 or less [IRC §7122)].

Verification and Information Returns

IRS must take reasonable steps to verify amounts reported on information returns. The IRS has the burden of producing information, which indicates a tax deficiency in addition to the information return [IRC §6201(d)].

Right to Sue: Fraudulent Information Return

A taxpayer can sue a person who willfully files a fraudulent information return [IRC §6201(d)].

Burden of Proof: Substantial Justification and Recovery of Legal Fees

IRS has the burden of proof to establish that its position was substantially justified. If IRS does not follow certain published guidelines, the taxpayer can recover legal fees [IRC §7430)].

Damage Amount Increased: Unauthorized Collection Action

Amount of damages a taxpayer can recover due to unauthorized collection actions is increased from \$100,000 to \$1,000,000 [IRC §6433(b)].

TFRP and Right to Recovery

Anyone subject to the Trust Fund Recovery Penalty under §6672 has the right to be informed of other persons who share in the liability and can sue such persons to recover any excess amounts paid by the taxpayer [IRC §6103(e)(9) and §6672(d)].

Exemption

Volunteer board members of tax-exempt organizations are exempt from the penalty [IRC §6672(e)].

Enrolled Agents as Third Party Recordkeepers

Enrolled Agents (EAs) are now included with attorneys and CPAs as third party recordkeepers. The IRS must follow special procedures for notifying a taxpayer before his or her records can be obtained from a third party recordkeeper [IRC §7609(a)(3)].

Retroactivity Regulations Disallowed

Regulations will now generally only apply to future events that take place after the issuance of the regulation [IRC §7805(b)].

Phone Numbers Required on Information Returns

Information returns must include the phone number of the payer in addition to the name and address [IRC §6401(d)].

Unidentified Remittance

IRS must notify the taxpayer within 60 days if they cannot identify the proper application of any payment.

Civil Damages if IRS Compromises in Exchange for Information

Taxpayer can recover civil damages if the IRS intentionally compromises a tax bill owed by the taxpayer's representative in exchange for information about the taxpayer [IRS §7435].

Annual Notices of Delinquency

IRS must issue a notice of tax delinquency at least annual [IRC §7524].

Form 8300

Form 8300, "Report of Cash Payments Over \$10,000 Received in a Trade or Business," information can be shared with other government agencies.

Written Request No Longer Required

A taxpayer no longer needs to make a written request to have someone else receive information relating to return.

Rewards From Amounts Collected

Rewards for information leading to the detection and punishment of tax law violations are to be paid out of amounts collected by reason of the information provided.

Privacy Delivery Services

Private delivery services that meet certain criteria can be used to meet the timely filing rule for the date of mailing. Prior to this new rule, only tax returns delivered by the U.S. Postal Service cloud qualify as filed on the date the return was postmarked [IRC §7502(f)].

FTP Penalty and SFRs

The failure to pay penalty can be applied to the tax due for substitute returns filed by the IRS for nonfilers [IRC §6651(g)].

Excise Tax and Charitable Organizations

An excise tax is imposed on charitable organizations that fail to meet certain guidelines in connection with excess benefits. The exempt organization must make its tax returns available for public inspection.

THE 1988 TAXPAYER BILL OF RIGHTS: THE ORIGINAL

Origin

The original Taxpayer Bill of Rights was from the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Provisions from the 1988 Taxpayer Bill of Rights:

Taxpayer has the right to have personal and financial information kept confidential by paid return preparers, representatives, and government employees [IRC §7431]. However, the IRS can share the information with other government agencies.

Information

Taxpayer has the right to know why the IRS is asking for certain information.

Representation

Taxpayer has the right to have an attorney, a certified public accountant, or an enrolled agent representative the taxpayer during an audit. The taxpayer does not have to be present at the audit interview unless there is an administrative summons issued to the taxpayer [IRC §7521(c)].

Audit Suspension

If the taxpayer goes to the audit without representation, the taxpayer at any time during the interview can request to have the audit suspended to allow the taxpayer the right to consultation [IRC §7521(b)(2)].

Audit Recording

Taxpayer can make an audio recording of an IRS interview provided advance notice is given. The IRS can also record the interview with advance notice [IRC §7521(a)].

Reasonable Time and Place

An IRS examination must take place at a reasonable time and place convenient to the taxpayer and the IRS [IRC §7521(a)].

Information Describing Rights

The IRS must furnish information describing the taxpayer's rights and obligations and the procedures for appeal, refund claims, and the collections when contacting the taxpayer about a tax deficiency or an audit [IRC §7521(b)(1)].

Recovering Litigation Expenses

Taxpayers can recover litigation expenses if the court agrees that the IRS position on a tax dispute was largely unjustified [IRC §7430].

Installment Agreement Right

Taxpayers have the right to make installment agreements with the IRS when certain financial conditions are met [IRC §6159(a)].

Lien Release

IRS must release a lien on property no later than 30 days after the tax has been paid. The taxpayer can recover damages if the IRS fails to release a lien in the time allotted, or fails to follow the rules regarding the collection of tax [IRC §7432)].

Levy Notice and Hold

IRS must give 30 days notice before placing a levy on the taxpayer's property. Banks must hold accounts for 21 days before surrendering levies to the IRS. Property that is generally exempt from levy includes:

- Necessary clothing and school books,
- Limited amount of personal belongings, furniture, business books and tools,
- Unemployment benefits, worker's compensation, welfare, certain disability and certain pension benefits,
- Income needed to pay court ordered child support,
- Mail,
- Weekly income equal to the standard deduction and personal exemptions divided by 52, and
- Main home unless collection of tax is in jeopardy or the district approves the levy [IRC §6334)].

Court Orders: Seizures and Access

IRS does not need a court order to seize property. However, a court order is needed for an IRS employee to gain access to the taxpayer's private premises or nonpublic areas of a business.

Penalty Cancellation

Taxpayer has the right to have penalties canceled due to erroneous advice provided in writing by an IRS employee [IRC §6404(f)].

Problem Resolution Office

The Problem Resolution Office of the IRS can handle tax problems that are not resolved through normal channels.

Production Quotas

The IRS is prohibited from imposing production quotas on IRS employees directly involved in the collection process.

Taxpayer Rights-Additional Statutory & Published Provisions

IRC §7605-Time & Place of Examination

The IRS (Service) will generally schedule the day or days for an examination during a normally scheduled workday of the Service. Also examinations are usually scheduled throughout the year without regard to seasonal fluctuations in the business of particular taxpayers or their representatives.

Treas. Reg. §301.7605-1(d)(1)-Place of Examination

The Service will make an initial determination regarding the place for the examination. This determination also includes a decision regarding the IRS district to which an examination will be assigned. Requests by taxpayers to transfer the place of the examination will be decided on a case-by-case basis.

Treas. Reg. §301.7605-1(d)(3)(ii)-Exception for Small Businesses

If an examination is scheduled by the Service at the taxpayer's place of business and the taxpayer represents to the Service in writing that conducting the examination at the place of business would essentially require the business to close or would unduly disrupt business operations, the Service, upon verification, will change the place of examination to a Service office within the district where the taxpayer's books, records and source documents are maintained.

Treas. Reg. §301.7605-1(d)(3)(iii)-Site Visitations

The Service is authorized to visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The Service will generally make the site visitation on a normal workday of the Service during the Service's normal duty hours.

Treas. Reg. §301.7605-1(e)(1)(i-vi)-Place of Examination Change Request

Generally the Service will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place of the examination after considering the following several factors:

- The location of the taxpayer's current residence;
- The location of the taxpayer's current principal place of business;
- The location of the taxpayer's books, records and source documents;
- The location at which the Service can perform the examination most efficiently;
- The Service resources available at the location to which the taxpayer has requested a transfer, and
- Other factors that indicate that conducting the examination at a particular location could pose undue inconvenience to the taxpayer.

IRC §7521(b)(2)-Right of Consultation

The Service is required to **immediately suspend a taxpayer interview** if such taxpayer clearly states to the examining officer (anytime during the interview) that he or she desires to consult with an attorney, CPA, EA or any other person permitted to represent the taxpayer before the IRS.

IRC §7521(c)-Representatives Holding a Power of Attorney (POA)

Any attorney, CPA, EA or any other person permitted to represent the taxpayer before the IRS, who is not disbarred or suspended from practice before the Service, and who has a written POA executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the IRS may not require a taxpayer to accompany the representative in the absence of an administrative summons. Such officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an IRS examination or investigation of the taxpayer.

IRC §7521(a)-Recording of Interviews

Any officer or employee of the IRS in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

Treas. Reg. §601.506-Notices to be Given to Recognized Representative

(a) Notice

Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative.

(b) Cases Where Taxpayer May be Contacted Directly

Where a recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, non-privileged information necessary to the examination, collection or investigation, the IRS employee conducting the examination, collection or investigation may request the permission of his/her immediate supervisor to contact the taxpayer directly for such information.

(2) Effect of Direct Notification

Permission to by-pass a recognized representation and contact a taxpayer directly does not automatically disqualify an individual to act as the recognized representative of a taxpayer in a matter. However, such

information may be referred to the Director of Practice (now the Office of Professional Responsibility) for possible disciplinary proceedings under Circular 230, 31 CFR Part 10.

RRA 98' §3705-Access to the Internal Revenue Service

The IRS must include the name, phone number and ID number of an IRS contact person on all manually generated correspondence. Other correspondence must also include a phone number that the taxpayer may call. In a phone or in-person interview, an IRS employee must provide his/her name and ID number to the taxpayer. The IRS help-line must offer to answer questions in Spanish. During normal business hours, callers must have the option to talk with a live person. Both provisions became effective January 1, 2000. Effective January 18, 1999 the IRS was required list phone numbers and addresses for the local IRS offices in the phone directory. IRS employees may use pseudonyms only with adequate justification and supervisory approval.

Publication 556-Examination of Returns (Fast Track Mediation)

The IRS now offers fast track mediation services to help taxpayers resolve many disputes resulting from:

- Examinations (audits),
- Offers in Compromise,
- Trust Fund Recovery Penalties, and
- Other Collection Actions

Fast Track Mediation is usually available for cases that are not docketed in any court proceeding and can take place as early as the Group Manager or Supervisor's conference. A trained Appeals Officer usually conducts or administers the mediation process.

Publication 5-Your Appeal Rights

Formal Protest

You have the right to request an appeal (formal protest) to the findings of the IRS should you not agree with some or all of the conclusions and decisions of the IRS agent or officer. The Appeals division is separate and independent of the IRS office asserting the action you disagree with.

Tax Court (Additional Judicial remedy)

Typically, subsequent to the issuance of a Statutory Notice of Deficiency (90-day letter) you have the right to petition the United States Tax Court (USTC). This Court may hear only certain type tax matters; such as income tax, estate tax, gift tax, certain excise taxes and certain penalties. The Court now has the requisite authority to hear TFRP (responsible person) cases, however not the related underlying tax liability.

Publication 1-Your Rights as a Taxpayer

Declaration of Taxpayer Rights

- Protection of your Rights: IRS employees are required to explain and protect your rights as a taxpayer throughout your contact with them.
- Privacy & Confidentiality: The IRS is required not to disclose to anyone the information you give them, except as authorized by law. You have the right to know why they are asking for information, how they intend to use it, and what happens if the taxpayer refuses to provide any requested information.
- Representation: You have the right to be represented by yourself or a person authorized to practice before the IRS, such as an Enrolled Agent, Certified Public Accountant or Attorney, with proper written authorization. The IRS is required to immediately stop and/or discontinue any interview should you desire to consult with an authorized representative. The interview must then be rescheduled.

**National Taxpayer Advocate Annual Report to Congress-Focus:
Taxpayer Rights (January 11, 2012)**

TAXPAYER BILL OF RIGHTS

The report urges Congress to codify a Taxpayer Bill of Rights that would clearly list the major rights and responsibilities of taxpayers. “The U.S. tax system is based on a social contract between the government and its taxpayers,” Olson wrote. “Taxpayers agree to report and pay the taxes they owe and the government agrees to provide the service and oversight necessary to ensure that taxpayers can and will do so.”

Most Taxpayers Don’t Know Their Rights: Over the past two decades, Congress has enacted three significant taxpayer rights’ bills, but the number of bills and the lack of publicity have muddled the message. The report describes a recent taxpayer survey in which 55 percent of respondents said they did not believe they had rights before the IRS and 61 percent did not know what their rights are.

“I believe taxpayers and tax administration will benefit from an explicit statement of what taxpayers have a right to expect from their government and what the government has a right to expect from its taxpayers,” Olson said.

10 Taxpayer Rights: The report recommends that Congress organize taxpayer rights under the following ten broad principles: (1) right to be informed; (2) right to be assisted; (3) right to be heard; (4) right to pay no more than the correct amount of tax; (5) right of appeal; (6) right to certainty; (7) right to privacy; (8) right to confidentiality; (9) right to representation; and (10) right to a fair and just tax system.

5 Taxpayer Responsibilities: To help taxpayers understand what the law requires of them, the report further recommends that Congress organize taxpayer responsibilities under the following five principles: (1) obligation to be honest; (2) obligation to be cooperative; (3) obligation to provide accurate information and documents on time; (4) obligation to keep records; and (5) obligation to pay taxes on time.

The report summarizes recommendations the Advocate has made in past reports to create additional taxpayer rights and recommends that those rights be incorporated into Taxpayer Bill of Rights legislation. “It has been 13½ years since we have had major taxpayer rights legislation,” Olson wrote. “Our laws have not kept pace with our notions of procedural fairness in 21st century tax administration, particularly given our tax system’s expanded and diverse taxpayer base and duties.”

OTHER KEY ISSUES ADDRESSED

Federal law requires the National Taxpayer Advocate to submit an Annual Report to Congress that identifies at least 20 of the most serious problems encountered by taxpayers and makes administrative and legislative recommendations to mitigate those problems. Overall, this year's report identifies 22 problems, provides updates on four previously identified issues, makes dozens of recommendations for administrative change, proposes 13 recommendations for legislative change, and analyzes the 10 tax issues most frequently litigated in the federal courts.

Among other things, the report contains:

- A comprehensive overview of the nearly 100-year history of the U.S. tax system, which details how the income tax expanded from a “class tax” to a “mass tax,” how the IRS has changed from focusing on personal, local service to automated, centralized processes, and how the mission of the IRS has expanded from pure tax collector to disbursing of federal benefits as well.
- An analysis of the IRS's current examination strategy that discusses the IRS's increasing use of automated procedures not technically classified as audits to adjust tax liabilities. The report argues that these procedures deprive taxpayers of traditional audit rights and make it difficult for taxpayers to discuss their cases directly with an IRS examiner.
- A research study on the impact of tax liens on taxpayer compliance behavior. The results suggest the overuse of liens may undermine tax collection by reducing payment compliance, reducing filing compliance, and reducing the amount of income earned (and thus the amount of tax due) by taxpayers against whom liens have been filed.
- A recommendation that Congress modify the circumstances under which the personal information of decedents, including their names, Social Security numbers, and dates of birth, are made available to the public shortly after their deaths. Such information is used by identity thieves to commit tax fraud.
- A “Most Serious Problem” discussing the IRS's policy change in applying key terms of the IRS's 2009 Offshore Voluntary Disclosure Program more than a year after the application deadline had passed. The report states that the policy change contravenes the IRS's written pledge that “under no circumstances will a taxpayer be required to pay a penalty greater than what he would otherwise be liable for under existing statutes.”
- An update on the IRS's progress in developing and implementing a system to register and test federal tax return preparers.

- A recommendation that Congress authorize the IRS to issue refunds in hardship cases during a government shutdown. When a government shutdown seemed imminent during the 2011 filing season, the IRS and the Treasury Department concluded that the IRS would have been legally barred from paying certain refunds or taking other actions that would benefit or minimize harm to taxpayers during the shutdown.

Your Rights as a Taxpayer

The first part of this publication explains some of your most important rights as a taxpayer. The second part explains the examination, appeal, collection, and refund processes. This publication is also available in Spanish.

THE IRS MISSION

PROVIDE AMERICA'S
 TAXPAYERS TOP QUALITY
 SERVICE BY HELPING THEM
 UNDERSTAND AND MEET
 THEIR TAX RESPONSIBILITIES
 AND BY APPLYING THE TAX
 LAW WITH INTEGRITY AND
 FAIRNESS TO ALL.

Declaration of Taxpayer Rights

I. Protection of Your Rights

IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.

II. Privacy and Confidentiality

The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information.

III. Professional and Courteous Service

If you believe that an IRS employee has not treated you in a professional, fair, and courteous manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to the IRS director for your area or the center where you file your return.

IV. Representation

You may either represent yourself or, with proper written authorization, have someone else represent you in your place. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.

You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examination, appeal, or collection personnel, provided you tell us in writing 10 days before the meeting.

V. Payment of Only the Correct Amount of Tax

You are responsible for paying only the correct amount of tax due under the law—no more, no less. If you cannot pay all of your tax when it is due, you may be able to make monthly installment payments.

VI. Help With Unresolved Tax Problems

The Taxpayer Advocate Service can help you if you have tried unsuccessfully to resolve a problem with the IRS. Your local Taxpayer Advocate can offer you special help if you have a significant hardship as a result of a tax problem. For more information, call toll free 1-877-777-4778 (1-800-829-4059 for TTY/TDD) or write to the Taxpayer Advocate at the IRS office that last contacted you.

VII. Appeals and Judicial Review

If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the Appeals Office to review your case. You may also ask a court to review your case.

VIII. Relief From Certain Penalties and Interest

The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. We will waive interest that is the result of certain errors or delays caused by an IRS employee.

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so

we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to the Appeals Office of IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, The IRS Collection Process, explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.

Your collection appeal rights are explained in detail in Publication 1660, Collection Appeal Rights.

Innocent Spouse Relief

Generally, both you and your spouse are each responsible for paying the full amount of tax, interest, and penalties due on your joint return. However, if you qualify for innocent spouse relief, you may be relieved of part or all of the joint liability. To request relief, you must file Form 8857, Request for Innocent Spouse Relief no later than 2 years after the date

on which the IRS first attempted to collect the tax from you. For example, the two-year period for filing your claim may start if the IRS applies your tax refund from one year to the taxes that you and your spouse owe for another year. For more information on innocent spouse relief, see Publication 971, Innocent Spouse Relief, and Form 8857.

Potential Third Party Contacts

Generally, the IRS will deal directly with you or your duly authorized representative. However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted.

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, has more information on refunds.

If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

Tax Information

The IRS provides the following sources for forms, publications, and additional information.

- **Tax Questions:** 1-800-829-1040 (1-800-829-4059 for TTY/TDD)
- **Forms and Publications:** 1-800-829-3676 (1-800-829-4059 for TTY/TDD)
- **Internet:** www.irs.gov
- **Small Business Ombudsman:** A small business entity can participate in the regulatory process and comment on enforcement actions of IRS by calling 1-888-REG-FAIR.
- **Treasury Inspector General for Tax Administration:** You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee by calling 1-800-366-4484 (1-800-877-8339 for TTY/TDD). You can remain anonymous.

