

## INTRODUCTION: Legislative Recommendations

Section 7803(c)(2)(B)(ii)(VIII) of the Internal Revenue Code (IRC) requires the National Taxpayer Advocate to include in her Annual Report to Congress, among other things, legislative recommendations to resolve problems encountered by taxpayers.

The chart immediately following this introduction summarizes congressional action on recommendations the National Taxpayer Advocate proposed in her 2001 through 2015 Annual Reports.<sup>1</sup> The National Taxpayer Advocate places a high priority on working with the tax-writing committees and other interested parties to try to resolve problems encountered by taxpayers. In addition to submitting legislative proposals in each Annual Report, the National Taxpayer Advocate meets regularly with members of Congress and their staffs and testifies at hearings on the problems faced by taxpayers to ensure that Congress has an opportunity to receive and consider a taxpayer perspective. The following discussion highlights several bills introduced during the 114th Congress relating to the National Taxpayer Advocate's proposals.

### TAXPAYER PROTECTION ACT OF 2016

On July 12, 2016, Senator Hatch introduced the Taxpayer Protection Act of 2016, which would enact several of the National Taxpayer Advocate's past proposals, including:<sup>2</sup>

- **Extending the time limit for contesting an IRS levy.**<sup>3</sup> This provision would amend IRC § 6343(b) to extend the time to return levied funds or proceeds from nine months to two years. It would also amend IRC § 6532(c) to extend the period within which a third party can bring a suit for return of levied funds or proceeds from nine months to two years.<sup>4</sup>
- **Individuals held harmless on improper levies on retirement plans.**<sup>5</sup> This provision would hold individuals harmless on improper levies on individual retirement plans.<sup>6</sup>
- **Return preparation programs for low income taxpayers.**<sup>7</sup> The legislation would establish a Community Volunteer Income Tax Assistance Matching Grant Program (VITA grant program). The VITA grant program would be administered in a manner that is substantially similar to the Community Volunteer Income Tax Assistance matching grants demonstration program established under Title I of Division D of the Consolidated Appropriations Act, 2008. In addition, the legislation would authorize the Secretary to promote the benefits of, and encourage the use of, tax preparation through the VITA program through the use of mass communications, referrals, and

1 An electronic version of the figure is available on the TAS website at [www.TaxpayerAdvocate.irs.gov/Reports](http://www.TaxpayerAdvocate.irs.gov/Reports). The figure lists all legislative recommendations the National Taxpayer Advocate has made since 2001 and identifies each section of the Internal Revenue Code (IRC) affected by the recommendations.

2 Taxpayer Protection Act of 2016, S. 3156, 114th Cong. (2016).

3 S. 3156, § 103, 114th Cong. (2016).

4 See National Taxpayer Advocate 2001 Annual Report to Congress 202-09 (Legislative Recommendation: *Return of Levy or Sale Proceeds*).

5 S. 3156, § 104, 114th Cong. (2016).

6 See National Taxpayer Advocate 2001 Annual Report to Congress 202-14 (Legislative Recommendation: *Reinstatement of Retirement Account*).

7 S. 3156, § 111, 114th Cong. (2016). On March 22, 2016, Representative Honda introduced the Volunteer Income Tax Assistance (VITA) Act, which contains the same provisions. See Volunteer Income Tax Assistance (VITA) Act, H.R. 4835, 114th Cong. (2016).

other means.<sup>8</sup> It would also encourage VITA grant recipients to refer eligible taxpayers to local or regional Low Income Taxpayer Clinics.<sup>9</sup> Finally, the legislation would allow the IRS to refer taxpayers to qualified VITA programs.<sup>10</sup>

- **Clarification of equitable relief from joint liability.**<sup>11</sup> This provision would clarify that the scope and standard of review for taxpayers seeking equitable relief from joint and several liability under IRC § 6015(f) is *de novo*.<sup>12</sup>
- **Modification of user fee requirements for installment agreements.**<sup>13</sup> This provision would waive the installment agreement fee for taxpayers whose adjusted gross incomes do not exceed 250 percent of the federal poverty level.<sup>14</sup>
- **Whistleblower reforms.**<sup>15</sup> This provision would amend IRC § 7623 to include anti-retaliation protection for tax whistleblowers.<sup>16</sup> It would also impose a penalty on whistleblowers for unauthorized disclosure of tax information.<sup>17</sup>
- **Notification to exempt organizations prior to revoking exempt status for failing to file information returns.**<sup>18</sup> This provision would amend IRC § 6033(j) to require the IRS to notify exempt organizations that have not filed an annual notice or return for two consecutive years that the IRS has no record of receiving a return or notice and that the organization's exemption will be revoked if it does not file by the next filing deadline.<sup>19</sup>
- **Single point of contact for identity theft victims.**<sup>20</sup> This provision would require the IRS to establish new procedures to ensure that any taxpayer whose return has been delayed or otherwise adversely affected due to identity theft has a single point of contact at the IRS throughout the processing of his or her case. The single point of contact would be required to track the taxpayer's

8 See National Taxpayer Advocate 2014 Annual Report to Congress 55-66 (Most Serious Problem: *VITA/TCE Funding: Volunteer Tax Assistance Programs Are Too Restrictive and the Design Grant Structure Is Not Adequately Based on Specific Needs of Served Taxpayer Populations*).

9 See National Taxpayer Advocate 2014 Annual Report to Congress, vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*); National Taxpayer Advocate 2007 Annual Report to Congress 551-53 (Legislative Recommendation: *Referral to Low Income Taxpayer Clinics*).

10 See National Taxpayer Advocate 2007 Annual Report to Congress 551-53 (Legislative Recommendation: *Referral to Low Income Taxpayer Clinics*).

11 S. 3156, § 113, 114th Cong. (2016).

12 See National Taxpayer Advocate 2011 Annual Report to Congress 531-36 (Legislative Recommendation: *Clarify that the Scope and Standard of Tax Court Determinations Under Internal Revenue Code Section 6015(f) is De Novo*).

13 S. 3156, § 114, 114th Cong. (2016).

14 See National Taxpayer Advocate 2006 Annual Report to Congress 141-56 (Most Serious Problem: *Collection Issues of Low Income Taxpayers*) (recommending the IRS implement an installment agreement (IA) user fee waiver for low income taxpayers and adopt a graduated scale for other IA user fees based on the amount of work required).

15 S. 3156, § 122, 114th Cong. (2016).

16 See National Taxpayer Advocate 2015 Annual Report to Congress 409-12 (Legislative Recommendation: *Whistleblower Program: Enact Anti-Retaliation Legislation to Protect Tax Whistleblowers*).

17 See National Taxpayer Advocate 2015 Annual Report to Congress 413-18 (Legislative Recommendation: *Whistleblower Program: Make Unauthorized Disclosures of Return Information by Whistleblowers Subject to the Penalties of IRC §§ 7431, 7213, and 7213A, Substantially Increase the Amount of Such Penalties, and Make Whistleblowers Subject to the Safeguarding Requirement of IRC § 6103(p)*).

18 S. 3156, § 144, 114th Cong. (2016).

19 See National Taxpayer Advocate 2011 Annual Report to Congress 444 (Most Serious Problem: *Status Update: The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*). The provision also requires the IRS to retroactively reinstate an exempt organization, without the organization reapplying, if it can demonstrate that it did not receive notification and it files a return or notice for the current year.

20 S. 3156, § 201, 114th Cong. (2016).

case from start to finish and coordinate with other specialized units to resolve case issues as quickly as possible.<sup>21</sup>

- **Notification of suspected identity theft.**<sup>22</sup> This provision would require the IRS to notify taxpayers of suspected identity theft, including employment-related identity theft.<sup>23</sup>

## TAXPAYER PROTECTION ACT OF 2016

On April 12, 2016, Representative Lewis introduced legislation, also entitled the Taxpayer Protection Act of 2016, which would enact several of the National Taxpayer Advocate's recommendations from her 2015 Annual Report, including:<sup>24</sup>

- **Repeal of suspension of period of limitations during the pending of an application for a Taxpayer Assistance Order (TAO).**<sup>25</sup> This provision would repeal IRC § 7811(d), which currently suspends the statute of limitations during the period beginning on the date of a taxpayer's TAO application and ending on the date of the National Taxpayer Advocate's decision with respect to such application as well as any period specified by the National Taxpayer Advocate in a TAO issued pursuant to the TAO application.<sup>26</sup>
- **Limitation on levies on retirement savings.**<sup>27</sup> This provision would amend IRC § 6334(a) to exempt from levy any individual's interest in a qualified retirement plan before the individual has attained normal retirement age (or 65 in the case of an individual retirement account or a plan that does not specify a normal retirement age) or after the attainment of retirement age (or 65) if the levy would create an economic hardship (within the meaning of IRC § 6343(a)(1)(D)) due to the financial condition of the taxpayer. The provision also contains an exception to the limitation on retirement plan levies for flagrant acts, which are situations where the IRS determines a taxpayer filed a fraudulent return or acted with the intent to evade or defeat any tax or its collection or payment.<sup>28</sup>
- **Tolling of limitation on levy recoveries for disabled taxpayers.**<sup>29</sup> This provision would amend IRC § 6343(b) to suspend the nine-month period of limitations for the IRS to return wrongfully levied proceeds during any period where the taxpayer is financially disabled (as defined in IRC § 6511(h)). It would also amend IRC § 6532(c)(1) to suspend the nine-month period for a third-party individual to file a civil suit for the return of wrongfully levied proceeds during any period where the individual is financially disabled (as defined in section 6511(h)).<sup>30</sup>

21 See National Taxpayer Advocate 2013 Annual Report to Congress 83 (Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers*).

22 S. 3156, § 205, 114th Cong. (2016).

23 See National Taxpayer Advocate 2011 Annual Report to Congress 61 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*).

24 Taxpayer Protection Act of 2016, H.R. 4912, 114th Cong. (2016).

25 H.R. 4912, § 202, 114th Cong. (2016).

26 See National Taxpayer Advocate 2015 Annual Report to Congress 316-28 (Legislative Recommendation: *Statute of Limitations: Repeal or Fix Statute Suspension Under IRC § 7811(d)*).

27 H.R. 4912, § 203, 114th Cong. (2016).

28 See National Taxpayer Advocate 2015 Annual Report to Congress 340-45 (Legislative Recommendation: *Levies on Retirement Accounts: Amend IRC § 6334 to Include a Definition of Flagrancy and Require Consideration of Basic Living Expenses at Retirement Before Levying on Retirement Accounts*).

29 H.R. 4912, § 204, 114th Cong. (2016).

30 See National Taxpayer Advocate 2015 Annual Report to Congress 368-75 (Legislative Recommendation: *Taxpayer Rights: Toll the Time Period for Financially Disabled Taxpayers to Request Return of Levy Proceeds to Better Protect Their Right to a Fair and Just Tax System*).

- **Extension of period to withdraw a frivolous submission.**<sup>31</sup> This provision would amend IRC § 6702(b)(3) to expand the notice period, from 30 days to 60 days, in which taxpayers may correct their returns and avoid application of the frivolous return penalty.<sup>32</sup>

This bill also contains several of the National Taxpayer Advocate's proposals from Annual Reports prior to 2015, including:

- **Repeal of rules relating to tax collection contracts.**<sup>33</sup> This provision would repeal the private debt collection provisions contained in IRC §§ 6306 and 6307.<sup>34</sup> The National Taxpayer Advocate had previously identified private debt collection as a most serious problem and recommended that these provisions be repealed.<sup>35</sup>
- **Repeal of partial payment requirement for submissions of offers-in-compromise.**<sup>36</sup> This provision would repeal the current partial payment requirement on submissions of offers-in-compromise under IRC § 7122(c).<sup>37</sup> In addition, this provision would add a new section to IRC § 7122 to apply any user fee for an offer-in-compromise to reduce the tax which is the subject of that offer.<sup>38</sup>
- **Taxpayer notification of suspected identity theft.**<sup>39</sup> This provision would require the IRS to notify taxpayers of suspected identity theft.<sup>40</sup>
- **Single point of contact for identity theft victims.**<sup>41</sup> Like the provision discussed above, this provision would require the IRS to establish new procedures to ensure that any taxpayer whose return has been delayed or otherwise adversely affected due to identity theft has a single point of contact at the IRS throughout the processing of his or her case. The single point of contact would be required to track the taxpayer's case from start to finish and coordinate with other specialized units to resolve case issues as quickly as possible.<sup>42</sup>

31 H.R. 4912, § 205, 114th Cong. (2016).

32 See National Taxpayer Advocate 2015 Annual Report to Congress 376-82 (Legislative Recommendation: *The Frivolous Return Penalty: Protect Good Faith Taxpayers by Expanding the Availability of Penalty Reductions, Establishing Specific Penalty Abatement Procedures, and Providing Appeal Rights*).

33 H.R. 4912, § 101, 114th Cong. (2016).

34 See Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act).

35 See National Taxpayer Advocate 2005 Annual Report to Congress 76-93 (Most Serious Problem: *Training of Private Debt Collection Employees*); National Taxpayer Advocate 2006 Annual Report to Congress 34-61, 458-62 (Most Serious Problem: *True Costs and Benefits of Private Debt Collection and Legislative Recommendation: Repeal Private Debt Collection Provisions*). For the National Taxpayer Advocate's concerns about the IRS's implementation of the current private debt collection program, see Most Serious Problem: *Private Debt Collection (PDC): The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*, *supra*.

36 H.R. 4912, § 206, 114th Cong. (2016).

37 See National Taxpayer Advocate 2006 Annual Report to Congress 507-19 (Legislative Recommendation: *Improve Offer in Compromise Eligibility*).

38 H.R. 4912, § 206, 114th Cong. (2016).

39 *Id.* at section 301.

40 See National Taxpayer Advocate 2011 Annual Report to Congress at 61 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*).

41 H.R. 4912, § 302, 114th Cong. (2016).

42 See National Taxpayer Advocate 2013 Annual Report to Congress at 83 (Most Serious Problem: *Identity Theft: The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers*).

- **Referrals to low income taxpayer clinics permitted.**<sup>43</sup> This provision would amend IRC § 7526(c) to allow IRS employees to refer taxpayers for advice and assistance to qualified low income taxpayer clinics receiving funding under this section.<sup>44</sup>
- **Regulation of tax return preparers.**<sup>45</sup> The National Taxpayer Advocate has recommended that Congress authorize the IRS to create an effective oversight and penalty regime for return preparers.<sup>46</sup> This provision would amend 31 U.S.C. § 330 to allow for the regulation of tax return preparers. It would also give the IRS the authority to sanction regulated tax return preparers and provide a definition of the term “tax return preparer.”

## STOLEN IDENTITY REFUND FRAUD PREVENTION ACT

The National Taxpayer Advocate has discussed the problems of identity theft and the IRS’s procedures for addressing it in several of her past Annual Reports.<sup>47</sup> On July 12, 2016, Senator Hatch introduced the Stolen Identity Refund Fraud Prevention Act, a bill dedicated to identity theft issues.<sup>48</sup> This bill would require the IRS, in consultation with the National Taxpayer Advocate, to develop and implement publicly available guidelines for management of cases involving stolen identity refund fraud in a manner that reduces the administrative burden on taxpayers who are victims of such fraud.<sup>49</sup> The bill would also require the IRS to notify taxpayers of suspected identity theft, including employment-related identity theft.<sup>50</sup> In addition, the bill would enhance the IRS’s Identity Protection Personal Identification Number (IP PIN) program and require the IRS, not later than July 1, 2019, to issue, upon request, an IP PIN to any requesting individual after the individual’s identity has been verified to the satisfaction of the IRS.<sup>51</sup>

43 H.R. 4912, § 303, 114th Cong. (2016).

44 See National Taxpayer Advocate 2007 Annual Report to Congress 551–53 (Legislative Recommendation: *Referral to Low Income Taxpayer Clinics*).

45 H.R. 4912, § 401, 114th Cong. (2016).

46 See, e.g., National Taxpayer Advocate 2009 Annual Report to Congress 41-69 (Most Serious Problem: *The IRS Lacks a Servicewide Return Preparer Strategy*); National Taxpayer Advocate 2008 Annual Report to Congress 423-26 (Legislative Recommendation: *The Time Has Come to Regulate Federal Tax Return Preparers*).

47 For a comprehensive history and discussion of the identity theft problem, see National Taxpayer Advocate 2015 Annual Report to Congress 180-87 (Most Serious Problem: *Identity Theft (IDT): The IRS’s Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*).

48 Stolen Identity Refund Fraud Prevention Act, S. 3157, 114th Cong. (2016).

49 S. 3157, § 101, 114th Cong. (2016).

50 *Id.* at section 104; see National Taxpayer Advocate 2011 Annual Report to Congress 61 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*).

51 S. 3157, § 202, 114th Cong. (2016).