

NATIONAL TAXPAYER ADVOCATE

# Purple Book

*Compilation of Legislative Recommendations  
to Strengthen Taxpayer Rights and  
Improve Tax Administration*

December 31, 2017



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1998 (RRA 98) was enacted only after a bipartisan commission known as the National Commission on Restructuring the Internal Revenue Service had conducted a broad assessment of IRS operations and made recommendations for reform.<sup>2</sup>

It has now been almost 20 years since the enactment of RRA 98, and over that period, we have had ample time to assess the impact of the changes made by these three taxpayer rights acts. Most changes have stood the test of time well, but some require tweaking. In addition, tax administration has changed in many ways, partly due to the increasing use of automation by the IRS and the increasing use of the internet and other digital services by taxpayers.

For these reasons, we are very much encouraged by the congressional interest in examining the current state of tax administration and developing legislation to improve it. This is an important undertaking.

Despite the lack of comprehensive tax administration legislation since RRA 98, Members of Congress have introduced hundreds of relevant bills, and the House and Senate tax-writing committees have favorably reported several significant pieces of legislation. These bills have generally proceeded on a bipartisan basis and have enjoyed broad support.

The recommendations included in this volume are drawn from many sources, including:

- The National Taxpayer Advocate's Annual Reports to Congress.
- The Taxpayer Bill of Rights Enhancement Act of 2017, sponsored by Senators Grassley and Thune.<sup>3</sup>
- The Strengthening Taxpayer Rights Act of 2017, sponsored by Congressman Doggett.<sup>4</sup>
- The Small Business Owners' Tax Simplification Act, sponsored by Congressman Chabot and Congresswoman Velazquez, the Chairman and Ranking Member, respectively, of the House Committee on Small Business.<sup>5</sup>
- The Taxpayer Protection Act of 2016, which the Senate Committee on Finance reported favorably under the leadership of Chairman Hatch.<sup>6</sup>
- The Taxpayer Protection Act of 2016, sponsored by Congressman Lewis.<sup>7</sup>
- The Taxpayer Rights Act of 2015, introduced simultaneously in the House by Congressman Becerra and in the Senate by Senator Cardin.<sup>8</sup>
- The Chairman's mark of a bill to prevent identity theft and tax refund fraud prepared by the staff of the Senate Committee on Finance under the leadership of Chairman Hatch.<sup>9</sup>
- The Tax Return Preparer Competency Act of 2015, sponsored by Congresswoman Black and Congressman Meehan.<sup>10</sup>

2 Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997).

3 Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Cong. (2017).

4 Strengthening Taxpayer Rights Act of 2017, H.R. 3340, 115th Cong. (2017).

5 Small Business Owners' Tax Simplification Act of 2017, H.R. 3717, 115th Cong. (2017).

6 Taxpayer Protection Act of 2016, S. 3156, 114th Cong. (2016). See also S. Rep. No. 114-298 (2016) (accompanying committee report).

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

8 Taxpayer Rights Act of 2015, H.R. 4128 and S. 2333, 114th Cong. (2015).

9 See J. COMM. ON TAX'N, *Description of the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud*, JCX-108-15 (Sept. 11, 2015).

10 Tax Return Preparer Competency Act of 2015, H.R. 4141, 114th Cong. (2015).

- A discussion draft of tax administration reform proposals prepared by the staff of the Senate Committee on Finance and released by Chairman Baucus in November 2013.<sup>11</sup>
- The Small Business Election Simplification Act, sponsored by Senators Franken, Snowe, and Enzi.<sup>12</sup>
- The Small Business Taxpayer Bill of Rights Act of 2012, sponsored by Congressman Johnson.<sup>13</sup>
- The Taxpayer Receipt Act, sponsored by Senators Nelson and Brown.<sup>14</sup>
- The Taxpayer Assistance Act of 2010, sponsored by Congressman Lewis and co-sponsored by 20 House colleagues.<sup>15</sup>
- The Taxpayer Assistance and Simplification Act of 2008, which the House of Representatives passed under the leadership of Chairman Rangel.<sup>16</sup>
- The Taxpayer Protection and Assistance Act of 2005, reported favorably by the Senate Committee on Finance under the leadership of Chairman Grassley.<sup>17</sup> In 2004, the full Senate passed a prior version of this legislation.
- The Taxpayer Protection and IRS Accountability Act of 2003, which the House of Representatives passed under the leadership of Chairman Thomas.<sup>18</sup> The original sponsor of this legislation was then-Congressman Rob Portman, who previously had served as co-chair of the National Commission on Restructuring the Internal Revenue Service.<sup>19</sup>

We believe most of the recommendations presented in this volume are non-controversial, common sense reforms that will strengthen taxpayer rights and improve tax administration. We hope the tax-writing committees and other Members of Congress find this compilation useful.

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11 Staff of Senate Committee on Finance, *Tax Administration Discussion Draft* (Nov. 20, 2013).

12 Small Business Election Simplification Act, S. 2271, 112th Cong. (2012).

13 Small Business Taxpayer Bill of Rights Act of 2012, H.R. 4375, 112th Cong. (2012).

14 Taxpayer Receipt Act, S. 437, 112th Cong. (2011).

15 Taxpayer Assistance Act of 2010, H.R. 4994, 111th Cong. (2010).

16 Taxpayer Assistance and Simplification Act of 2008, H.R. 5719, 110th Cong. (2008). See also H.R. Rep. No. 110584 (2008) (accompanying committee report).

17 Taxpayer Protection and Assistance Act of 2005, S. 832, 109th Cong. (2005) (incorporated into S. 1321 and reported favorably by the committee). See also S. REP. No. 109-336 (2006) (accompanying committee report); J. COMM. ON TAX'N, *Description of the Chairman's Modification to the Provisions of S. 1321, the "Telephone Excise Tax Repeal Act of 2005"* and S. 832, the "Taxpayer Protection and Assistance Act of 2005," JCX-28-06 (June 28, 2006). In 2004, the Senate Committee on Finance approved a similar version of the bill, and that version was ultimately approved by the full Senate. See Tax Administration Good Government Act, S. 882, 108th Cong. (2004) (incorporated into H.R. 1528, reported favorably by the committee and passed by the Senate). See also S. REP. No. 108-257 (2004) (accompanying committee report).

18 Taxpayer Protection and IRS Accountability Act of 2003, H.R. 1528, 108th Cong. (2003). See also H.R. REP. No. 108-61 (2003) (accompanying committee report). The Tax Administration Good Government Act (referenced above) was the Senate-passed version of this bill.

19 See Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997).



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Taxpayer Bill of Rights (or taxpayer rights more generally) serve as the guiding principles for effective tax administration.

If Congress adopts our recommendation to enact the Taxpayer Bill of Rights as IRC § 1, it may be codified as section 1(a) and the IRS mission statement may be codified as section 1(b).<sup>29</sup>

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<sup>29</sup> See Legislative Recommendation: *Enact the Taxpayer Bill of Rights As a Freestanding Provision in the Internal Revenue Code*, *supra*.



include the one-page breakdown when furnishing the taxpayer with a completed copy of the tax return, as required by IRC § 6107(a).

2. Amend IRC § 7523 to require the taxpayer receipt to contain an online link or a paper “ballot” where the taxpayer can “vote” on what he or she believes federal funds should be spent on and in what amounts.
3. Amend IRC § 7523 to require the IRS to publish the aggregate results of taxpayer “voting” no later than 30 days after the end of the calendar year.









**New York State Department of Taxation and Finance.** During 2008 and 2009, agents conducted nearly 200 targeted covert visits in which they posed as taxpayers and sought assistance in preparing income or sales tax returns. In testimony at an IRS Public Forum, the Acting Commissioner of the New York Department of Taxation and Finance testified that investigators found “an epidemic of unethical and criminal behavior.”<sup>38</sup> At one point, the Department reported that it had found fraud on about 40 percent of its visits, and it had made more than 20 arrests and secured 13 convictions.<sup>39</sup>

**IRS Study on EITC Noncompliance.** The IRS conducted a study to estimate compliance with EITC requirements during the 2006-2008 period. Among the findings of the study, unaffiliated unenrolled preparers (*i.e.*, non-credentialed preparers who are not affiliated with a national tax return preparation firm) were responsible for “the highest frequency and percentage of EITC overclaims.” The study found that half of the EITC returns prepared by unaffiliated unenrolled preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent of the amount claimed on the return.<sup>40</sup>

In 2002, before these studies were published, the National Taxpayer Advocate began recommending that Congress authorize the IRS to conduct preparer oversight based on her experience in private practice. Her proposal received widespread support from stakeholders and members of Congress. The Senate Committee on Finance twice approved legislation authorizing preparer oversight on a bipartisan basis under the leadership of Chairman Grassley and Ranking Member Baucus,<sup>41</sup> and on one occasion, the full Senate approved it by unanimous consent.<sup>42</sup> In 2005, the House Ways and Means Subcommittee on Oversight held a hearing at which representatives of five outside organizations expressed general support for preparer oversight.<sup>43</sup>

In 2009, the Commissioner of Internal Revenue concluded that the IRS had the authority under section 330 of Title 31 of the U.S. Code to impose minimum standards without statutory authorization. The IRS initiated an extensive series of hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate.<sup>44</sup> The IRS began to implement the program in 2011, but it was terminated after a U.S. district court rejected the IRS’s legal position, concluding it does not have the authority to impose preparer standards without statutory legislation.<sup>45</sup>

Since that time, Members of the House and Senate have introduced legislation that would provide the IRS with the statutory authorization to establish and enforce minimum standards. In the House, Congresswoman Black and former Congressman Becerra, both members of the Ways and Means Committee, have sponsored authorizing legislation.<sup>46</sup> In the Senate, Senators Wyden and Cardin sponsored legislation, and Chairman

38 Statement of Jamie Woodward, Acting Commissioner, New York Dept. of Taxation and Finance, before IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009), [http://ftp.irs.gov/pub/irs-utl/ny\\_department\\_of\\_tax\\_statement.pdf](http://ftp.irs.gov/pub/irs-utl/ny_department_of_tax_statement.pdf) (last visited Oct. 18, 2009).

39 *Id.*; see Tom Herman, *New York Sting Nabs Tax Preparers*, WSJ (Nov. 26, 2008).

40 IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 24-26 (Aug. 2014).

41 H.R. 1528 (incorporating S. 882), 108th Cong. § 141 (2004); S. 1321 (incorporating S. 832), 109th Cong. § 203 (2006).

42 H.R. 1528 (incorporating S. 882), 108th Cong. § 141 (2004).

43 The organizations were the American Bar Association, the American Institute of Certified Public Accountants (AICPA), the National Association of Enrolled Agents, the National Society of Accountants, and the National Association of Tax Professionals. See *Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 109th Cong. (2005).

44 See IRS Pub. 4832, *Return Preparer Review* (Dec. 2009).

45 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

46 See Tax Return Preparer Competency Act, H.R. 4141, 114th Cong. § 2 (2015) (Cong. Black) and Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 202 (2015) (Cong. Becerra). Cong. Becerra has since retired from Congress.















and wages on a quarterly basis on an electronically filed Form 941 would allow the IRS an opportunity to gather information for purposes of data matching in advance of the filing season.

The earlier availability of Forms W-2 and 1099-MISC via electronic filing would provide the IRS with real-time data on wages and withholding, without the delays and errors associated with transcribing data from paper-filed forms. When information about a taxpayer's wages and withholding is processed before the IRS processes a taxpayer's tax return, the IRS can match the data on the tax return with the data reported on the information returns. If there are significant disparities, the IRS can review the tax return more carefully before paying a refund. Similarly, the IRS could more quickly match wages and withholding reported on information returns against the employer's Forms 941. From the government's perspective, data matching reduces the revenue loss associated with unpaid employment taxes, improper payments, and stolen refunds. From the taxpayer's perspective, the IRS helps the legitimate taxpayer either avoid a refund delay or resolve a delay more quickly by spotting an IDT return before a refund is paid.

The potential benefits of earlier access to taxpayers' wages and withholding information are significant because of the magnitude of the IDT problem. The IRS estimates that at least \$14.59 billion in IDT tax refund fraud was attempted in calendar year 2015. It estimates that it prevented at least \$12.35 billion (85 percent) but paid at least \$2.24 billion (15 percent). Business IDT is a growing subset of the IDT problem. The IRS handled nearly three times as many business IDT cases in 2017 as it did in 2016, an increase of more than 10,000 cases. Yet in 2017, less than half of Forms 941 were filed electronically. Greater electronic filing of Forms 941 would allow the IRS to match Form 941 data against Form W-2 and Form 1099-MISC data to identify instances of potential business IDT fraud.

**Second:** Data submitted on paper returns must be manually entered into Social Security Administration (SSA) or IRS computer systems, and manual data entry necessarily produces transcription errors. When a transcription error on an information return or on an employer's Form 941 occurs, the IRS's document matching process will identify a disparity that may delay a refund or initiate an erroneous adjustment notice, causing needless hassle for the taxpayer and unnecessary work for the IRS.

**Third:** Manual data entry of information returns is much more expensive than electronic data processing. For example, the SSA reports a cost of \$0.53 to process each paper Form W-2, as compared with a cost of \$0.002 for each electronically filed Form W-2.<sup>65</sup>

The current threshold of 250 returns that triggers the requirement for electronic filing was established in 1989.<sup>66</sup> The electronic filing requirement applies to Form 1120, *U.S. Corporation Income Tax Return*, if a corporation files at least 250 required returns of any type during the calendar year in the aggregate (including Forms W-2, 1099-MISC, and 941). In light of the significant advances in technology and digital capability that have taken place since that time, the National Taxpayer Advocate believes the threshold should be reduced substantially.

There are still some employers for whom an electronic filing requirement would impose disproportionate burden. An elderly individual who pays one or several health aides and is required to file Form W-2s may not have the technological skills to file electronically without help. But a threshold of five should provide most of the benefits of electronic submission of these forms without imposing undue burden on very small employers.

65 See GAO, GAO-14-633, *Identity Theft: Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud* (Oct. 20, 2014).

66 Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 7713, 103 Stat. 2106, 2394 (1989) (codified as amended at 26 U.S.C. § 6011).

































Amend IRC § 6334 to define “flagrant conduct” as willful action (or failure to act) that is voluntarily, consciously, and knowingly committed in violation of any provision of chapters 1, 61, 62, 65, 68, 70, or 75, and which appears to a reasonable person to be a gross violation of any such provision.<sup>95</sup>

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95 H.R. 4912, 114th Cong. § 203 (2016) and S. 2333 and H.R. 4128, 114th Cong. §§ 306, 307 (2015) contain language that is generally consistent with these recommendations.

























































































**Recommendation**

Amend IRC § 7803(c)(2)(D) to clarify that the National Taxpayer Advocate has the responsibility to evaluate and take personnel actions with respect to all employees of the Office of the Taxpayer Advocate.

## #48 REPEAL STATUTE SUSPENSION UNDER IRC § 7811(d) FOR TAXPAYERS SEEKING ASSISTANCE FROM THE TAXPAYER ADVOCATE SERVICE

### Present Law

IRC § 7811(d) suspends the statutory period of limitations for any action with respect to which a taxpayer is seeking assistance from TAS, but only if the taxpayer submits a written application for assistance.<sup>154</sup>

### Reasons for Change

Suspension of the assessment or collection period disadvantages the taxpayer because it gives the IRS more time to take enforcement actions. If the IRS has caused a problem that the taxpayer is working with TAS to resolve, statute suspension makes little sense because it punishes the taxpayer and rewards the IRS. Further, there is no compelling reason for the suspension, as evidenced by the fact that the IRS itself has never implemented it. It is unnecessary to protect the government's interests because an application for TAS assistance does not prevent the IRS from taking enforcement action while the taxpayer is working with TAS. It is also impossible to administer using the IRS's existing computer systems.

Moreover, if IRC § 7811(d) were ever to be implemented, it would create an elective trap for the unwary. As noted above, it applies only when a taxpayer submits a written request for TAS assistance. The provision does not apply when taxpayers request TAS assistance by phone, which is the method by which most taxpayers seek TAS's assistance. Thus, this provision — apart from being unnecessary and unutilized — would produce disparate outcomes for taxpayers who, despite lacking any knowledge of this issue, contact TAS by different means.

### Recommendation

Repeal IRC § 7811(d).<sup>155</sup>

<sup>154</sup> Treas. Reg. § 301.7811-1(e)(4).

<sup>155</sup> For more detail, see National Taxpayer Advocate 2015 Annual Report to Congress 316-328 (Legislative Recommendation: *Repeal or Fix Statute Suspension Under IRC § 7811(d)*). H.R. 4912, 114th Cong. § 202 (2016) and H.R. 2171, 115th Cong. § 202 (2017) would repeal IRC § 7811(d). In response to an earlier proposal, H.R. 586, 107th Cong. § 224 (2001), H.R. 3991, 107th Cong., Title II § 204 (2002), H.R. 5548, 107th Cong. § 5 (2002), H.R. 5763, 107th Cong. § 104 (2002), H.R. 5728, 107th Cong. § 104 (2002), H.R. 1661, 108th Cong. § 314 (2003), S.882, 108th Cong. § 106 (2004), and H.R. 1528, 108th Cong. § 106 (2004) would have limited statute suspension to situations where the period would be extended by more than seven days.

## #49 ESTABLISH THE COMPENSATION OF THE NATIONAL TAXPAYER ADVOCATE BY STATUTE AND ELIMINATE ELIGIBILITY FOR CASH BONUSES

### Present Law

IRC § 7803 describes four positions in tax administration. Subsection (a) establishes the position of Commissioner of Internal Revenue. Subsection (b) establishes the position of Chief Counsel for the IRS. Subsection (c) establishes the position of National Taxpayer Advocate. Subsection (d) describes duties of the Treasury Inspector General for Tax Administration.<sup>156</sup>

The Commissioner of Internal Revenue and the Chief Counsel of the IRS hold positions that generally require them to act in accordance with the policy of the Executive Branch.

The National Taxpayer Advocate and the Treasury Inspector General for Tax Administration hold positions that, by statute, require them to present an independent perspective. IRC § 7803(c)(4)(A)(iii) requires the Office of the Taxpayer Advocate to notify taxpayers that its offices “operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.” Similarly, IRC § 7803(c)(2)(B)(iii) bolsters the National Taxpayer Advocate’s independence by requiring that her Reports to Congress be submitted directly to Congress “without any prior review or comment from . . . the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.”

Under the Inspector General Act of 1978, Inspector General offices must be “independent and objective units” and agency directors may not “prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”<sup>157</sup>

Pursuant to the Inspector General Act of 1978, as amended, the compensation for Inspector General positions established under the Act is “the rate payable for level III of the Executive Schedule under section 5314 of Title 5, United States Code, plus 3 percent.” An Inspector General “may not receive any cash award or cash bonus.” For 2018, the compensation provided under this provision is \$179,735.<sup>158</sup>

Pursuant to IRC § 7803(c)(1)(B)(i), the compensation of the National Taxpayer Advocate is “the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.” For 2018, the highest rate of basic pay established for the Senior Executive Service is \$189,600.<sup>159</sup> The rate fixed under 5 U.S.C. § 9503 (so-called “critical pay authority”) is variable and is capped at the salary paid to the Vice President of the United States. For 2018, the Vice President’s salary is \$243,500.<sup>160</sup> The National Taxpayer Advocate is eligible to receive cash bonuses.

<sup>156</sup> The position of Treasury Inspector General for Tax Administration is established in the Inspector General Act of 1978, as amended. 5 U.S.C. App., Inspector General Act of 1978, § 2(3)(B)(ii).

<sup>157</sup> 5 U.S.C. App., Inspector General Act of 1978, §§ 2 & 3.

<sup>158</sup> Exec. Order No. 13,819, 82 Fed. Reg. 61, 431 (Dec. 22, 2017), <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/pay-executive-order-2018-adjustments-of-certain-rates-of-pay.pdf>. Schedule 5 shows the salary at Level III of the Executive Schedule is \$174,500. The IG salary reflects the three percent addition provided by statute.

<sup>159</sup> *Id.*, Schedule 4.

<sup>160</sup> *Id.*

### Reasons for Change

In advocating for the interests of taxpayers both in individual cases and systemically, the National Taxpayer Advocate often must take positions that run contrary to policy decisions made by IRS management, including by the Commissioner of Internal Revenue, to whom she reports by statute.<sup>161</sup> Under the current compensation rules, pursuant to his evaluation of the National Taxpayer Advocate's performance for the preceding fiscal year, the Commissioner annually sets the compensation of the National Taxpayer Advocate and determines whether the National Taxpayer Advocate will receive a bonus and, if so, the amount of the bonus. The Commissioner's determination may affect the compensation of the National Taxpayer Advocate by tens of thousands of dollars.

Giving the Commissioner such significant control over the National Taxpayer Advocate's compensation places the National Taxpayer Advocate in a position where her statutory mission to advocate independently on behalf of taxpayers conflicts with her personal financial interests.

In enacting the Inspector General Act of 1978, Congress recognized that giving agency heads control over the compensation of inspectors general could undermine their independence, and it provided that inspectors general would be paid at a fixed rate that the head of the agency over which they have audit responsibility cannot change.

The same considerations apply to the position of National Taxpayer Advocate. To enable the National Taxpayer Advocate to focus on advocating for taxpayers without concern about financial retaliation for taking positions that may run counter to the IRS's corporate position, the compensation of the National Taxpayer Advocate should be fixed by statute and eligibility for cash bonuses should be eliminated; accordingly, the Commissioner would not be in a position to evaluate the National Taxpayer Advocate's performance of her statutory duties, which at times requires critical analysis of the IRS's activities.

### Recommendation

Amend IRC § 7803(c)(1)(B)(i) to set the compensation of the National Taxpayer Advocate at a fixed amount and to stipulate that the National Taxpayer Advocate may not receive any cash award or cash bonus.<sup>162</sup>

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<sup>161</sup> See IRC § 7803(c)(1)(B)(i).

<sup>162</sup> As a transition rule, we recommend that the prohibition against bonuses take effect immediately and the rate of pay of the incumbent National Taxpayer Advocate be frozen at its current level.

## Miscellaneous Provisions

### #50 AUTHORIZE INDEPENDENT CONTRACTORS AND SERVICE RECIPIENTS TO ENTER INTO VOLUNTARY WITHHOLDING AGREEMENTS WITHOUT RISK THEY WILL BE USED TO CHALLENGE WORKER CLASSIFICATION DETERMINATIONS

#### Present Law

Under IRC § 3402(p), the IRS is authorized to accept withholding agreements. Specifically, IRC § 3402(p)(3) authorizes the Secretary to promulgate regulations to provide for withholding from any type of payment that does not constitute wages<sup>163</sup> if the Secretary finds withholding would be appropriate and the payor and recipient of the payment agree to such withholding. However, the provision specifically states that the Secretary must find the withholding would be appropriate “under the provisions of [IRC chapter 24, Collection of Income Tax at Source on Wages].”

IRC chapter 24 addresses collection of taxes at the source with respect to employees (*e.g.*, wage withholding). Although current regulations provide that the Secretary may issue guidance by publication in the Internal Revenue Bulletin describing other payments for which withholding under a voluntary withholding agreement would be appropriate,<sup>164</sup> to date the only such guidance that has been issued is Notice 2013-77, dealing with dividends and other distributions by an Alaska Native Corporation.<sup>165</sup>

#### Reasons for Change

Unlike employees, whose wage payments are subject to federal income tax withholding, independent contractors are generally responsible for paying their own income taxes. Independent contractors are required to make four estimated tax payments during the year. However, some contractors fail to make estimated tax payments and face penalties under IRC § 6654. Other contractors have difficulty saving money and finish the year with substantial tax liabilities that they cannot afford to pay. As a result, they face additional penalties and interest charges, and they may face IRS collection action, including liens and levies.

The absence of withholding on payments to independent contractors also has a negative impact on revenue collection. IRS National Research Program studies show that tax compliance is substantially lower among workers whose income taxes are not withheld.<sup>166</sup>

This problem is increasing as more workers are choosing to work in the “sharing economy.” To reduce the risk that they will not save enough money to pay their taxes, some independent contractors would prefer that taxes be withheld throughout the year, as they are for employees. There is a legitimate debate about the circumstances under which withholding should be required. However, the National Taxpayer Advocate believes there should be no disagreement that workers and businesses should have the option to enter into *voluntary* withholding agreements when both parties agree to do so.

<sup>163</sup> Payments made when a voluntary withholding agreement is in effect are treated as if they are wages paid by an employer to an employee for purposes of the income tax withholding provisions and related procedural provisions of subtitle F of the IRC.

<sup>164</sup> See Treas. Reg. § 31.3402(p)-1(c).

<sup>165</sup> Notice 2013-77, 2013-50 I.R.B. 632.

<sup>166</sup> Government Accountability Office, *Timely Use of National Research Program Results Would Help IRS Improve Compliance and Tax Gap Estimates*, GAO-17-371 (Apr. 18, 2017), <https://www.gao.gov/products/GAO-17-371>.

For many businesses, withholding on payments to independent contractors will not impose additional burden. In addition to paying independent contractors, most large companies have full-time employees, such as administrative staff, so they already have procedures in place to withhold. Significantly, however, some businesses are reluctant to withhold due to concern that the IRS may use the existence of a withholding arrangement to challenge the worker classification arrangement. This concern would be addressed if the IRS is restricted from citing the existence of a voluntary withholding agreement as a factor in worker classification disputes. Indeed, the IRS could, on a case-by-case basis, provide a safe-harbor worker classification in which it affirmatively agrees not to challenge the classification of workers who are a party to such agreements at all, since these agreements will ensure the IRS collects the full amount of income taxes due.

### Recommendations

Amend IRC § 3402(p) to clarify that when voluntary withholding agreements are entered into by parties who are not in an employer-employee relationship, the IRS may not consider the existence of a voluntary withholding agreement as a factor in worker classification disputes. In addition, direct the Secretary to evaluate the benefits of agreeing not to challenge worker classification arrangements when a voluntary withholding agreement is in place.<sup>167</sup>

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<sup>167</sup> For language that is generally consistent with this recommendation, see Small Business Owners' Tax Simplification Act, H.R. 3717, 115th Cong. § 9 (2017).

## Additional Reference Materials

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
<b>Strengthen Taxpayer Rights</b>			
1	Enact the Taxpayer Bill of Rights As a Freestanding Provision in the Internal Revenue Code	NTA 2013 Annual Report 5-19; NTA 2011 Annual Report 493-518; NTA 2007 Annual Report 478-489	N/A
2	Require the IRS to Provide Annual Taxpayer Rights Training to Employees	NTA 2016 Annual Report 98-108; NTA 2013 Annual Report 51-60	<b>S. 2333</b> , 114th Cong. § 308 (2015); <b>H.R. 4128</b> , 114th Cong. § 308 (2015)
3	Codify the IRS Mission Statement	NTA 2016 Annual Report 15-16	N/A
4	Require the IRS to Provide Taxpayers with a Receipt Showing How Their Tax Dollars Are Being Spent	NTA 2011 Annual Report 469; NTA 2010 Annual Report 368	<b>H.R. 3855</b> , 114th Cong. § 2 (2015); <b>H.R. 3039</b> , 113th Cong. § 2 (2013); <b>S. 437</b> , 112th Cong. § 2 (2012); <b>H.R. 1527</b> , 112th Cong. § 2 (2012)
<b>Improve the Filing Process</b>			
5	Authorize the Volunteer Income Tax Assistance (VITA) Grant Program	NTA 2014 Annual Report 55-66; NTA 2002 Annual Report vii-viii	<b>S. 1</b> , 115th Cong. §11076 (2017); <b>S. 797</b> , 115th Cong. § 2 (2017); <b>H.R. 2901</b> , 115th Cong. § 2 (2017); <b>S. 193</b> , 115th Cong. § 4 (2017); <b>H.R. 605</b> , 115th Cong. § 4 (2017); <b>S. 3156</b> , 114th Cong. § 111 (2016) (reported by Sen. Fin. Comm.), see also <b>S. Rep. No. 114-298</b> , at 11-13 (2016); <b>H.R. 4835</b> , 114th Cong. § 4 (2016); <b>S. 2333</b> , 114th Cong. § 201 (2015); <b>H.R. 4128</b> , 114th Cong. § 201 (2015); <b>S. 996</b> , 114th Cong. § 4 (2015); <b>S. 1368</b> , 113th Cong. § 4 (2013); <b>H.R. 341</b> , 113th Cong. § 4 (2013); <b>H.R. 5719</b> , 110th Cong. § 7 (2008) (passed by House), see also <b>H.R. Rep. No. 110-584</b> , at 21-22 (2008)
6	Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers	NTA 2009 Annual Report 41-69; NTA 2008 Annual Report 423-426	<b>H.R. 4912</b> , 114th Cong. § 401 (2016); <b>S. 676</b> , 114th Cong. § 406 (2015); <b>S. 2333</b> , 114th Cong. § 202 (2015); <b>H.R. 4128</b> , 114th Cong. § 202 (2015); <b>S. 137</b> , 114th Cong. § 2 (2015); <b>H.R. 4141</b> , 114th Cong. § 2 (2015); <b>H.R. 1528</b> , 108th Cong. § 141 (2004) (passed by Senate); <b>S. 882</b> , 108th Cong. § 141 (2003) (reported by Sen. Fin. Comm.), see also <b>S. Rep. No. 108-257</b> , at 30-31 (2003)



LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
7	Require the IRS to Utilize Scannable Code or Similar Technology to Process Individual Income Tax Returns Prepared Electronically But Filed on Paper	NTA 2013 Annual Report vol. 2, 70, 91, & 96	<p><b>S. 606</b>, 115th Cong. § 205 (2017);</p> <p><b>S. 3157</b>, 114th Cong. § 205 (2016) (reported by Sen. Fin. Comm.), see also <b>S. Rep. No. 114-299</b>, at 20-21 (2016);</p> <p><b>S. 2736</b>, 113th Cong. § 4 (2014)</p>
8	Clarify that IRS Employees May Help Taxpayers Locate a Specific Low Income Taxpayer Clinic	NTA 2007 Annual Report 551-553	<p><b>H.R. 2171</b>, 115th Cong. § 303 (2017);</p> <p><b>H.R. 4912</b>, 114th Cong. § 303 (2016);</p> <p><b>S. 2333</b>, 114th Cong. § 201(d)(4) (2015);</p> <p><b>H.R. 4128</b>, 114th Cong. § 201(d)(4) (2015);</p> <p><b>H.R. 5719</b>, 110th Cong. § 6 (2008) (passed by House), see also <b>H.R. Rep. No. 110-584</b>, at 20-21 (2008)</p>
9	Extend the Time for Small Businesses to Make Subchapter S Elections	NTA 2010 Annual Report 410-411; NTA 2004 Annual Report 390-393; NTA 2002 Annual Report 246	<p><b>S. 711</b>, 115th Cong. § 7 (2017);</p> <p><b>H.R. 1696</b>, 115th Cong. § 7 (2017);</p> <p><b>H.R. 1</b>, 113th Cong. § 3606 (2014);</p> <p><b>S. 2271</b>, 112th Cong. § 2 (2012);</p> <p><b>H.R. 3629</b>, 109th Cong. § 2 (2005);</p> <p><b>H.R. 3841</b>, 109th Cong. § 302 (2005)</p>
10	Require Employers Filing More than Five Forms W-2, 1099-MISC, and 941 to File Electronically and Provide a Breakdown by Employee of the Amounts Reported on Form 941	N/A	N/A
11	Authorize the IRS to Work With Financial Institutions to Reverse Misdirected Deposits	NTA 2006 Annual Report 503-505	N/A
12	Revise the "Mailbox Rule" to Apply to Electronically Submitted Documents and Payments in the Same Manner As It Applies to Mailed Submissions	N/A	N/A
13	Amend IRC § 6654(c)(2) to Adjust Estimated Tax Payment Deadlines to Occur Quarterly	N/A	<b>H.R. 3717</b> , 115th Cong. § 2 (2017)
14	Harmonize Reporting Requirements for Taxpayers Subject to Both FBAR and FATCA By Eliminating Duplication and Excluding Accounts a U.S. Person Maintains in the Country Where He or She Is a <i>Bona Fide</i> Resident	NTA 2015 Annual Report 353-362	<p>Bills Pertaining to FATCA Reporting Requirements Repeal:</p> <p><b>S. 869</b>, 115th Cong. § 1 (2017);</p> <p><b>H.R. 2054</b>, 115th Cong. § 1 (2017);</p> <p><b>H.R. 2136</b>, 115th Cong. § 1 (2017);</p> <p><b>H.R. 5935</b>, 114th Cong. § 1 (2016);</p> <p><b>S. 663</b>, 114th Cong. § 1 (2015);</p> <p><b>S. 887</b>, 113th Cong. § 1 (2013)</p>

LR #	Tax Administration Legislative Recommendations	National Taxpayer Advocate (NTA) Annual Report References	Congressional Bill and Committee Report References
<b>Improve Assessment and Collection Procedures</b>			
15	Strengthen Taxpayer Protections in the Filing of Notices of Federal Tax Liens	NTA 2016 Annual Report 386-392; NTA 2014 Annual Report 396-403; NTA 2009 Annual Report 357-364	<b>S. 2333</b> , 114th Cong. § 301 (2015); <b>H.R. 4128</b> , 114th Cong. § 301 (2015); <b>S. 3355</b> , 112th Cong. § 301 (2012); <b>H.R. 6050</b> , 112th Cong. § 301 (2012); <b>H.R. 6439</b> , 111th Cong. § 2 (2010); <b>S. 3215</b> , 111th Cong. § 301 (2010); <b>H.R. 5047</b> , 111th Cong. § 301 (2010)
16	Codify the Rule That Taxpayers Can Request Equitable Relief Under IRC § 6015(f) Any Time Before Expiration of the Period of Limitations on Collection	N/A	<b>H.R. 3340</b> , 115th Cong. § 202 (2017); <b>S. 3156</b> , 114th Cong. § 113(a)(2) (2016) (reported by Sen. Fin. Comm.), <i>see also</i> <b>S. Rep. No. 114-298</b> , at 15-17 (2016); <b>S. 2333</b> , 114th Cong. § 303(a)(2) (2015); <b>H.R. 4128</b> , 114th Cong. § 303(a)(2) (2015)
17	Authorize the IRS to Release Levies That Cause Economic Hardship for Business Taxpayers	NTA 2011 Annual Report 537-543	<b>S. 2333</b> , 114th Cong. § 304(a) (2015); <b>H.R. 4128</b> , 114th Cong. § 304(a) (2015); <b>H.R. 4368</b> , 112th Cong. § 1 (2012)
18	Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Actions	N/A	<b>S. 1793</b> , 115th Cong. § 201(c) (2017); <b>S. 1578</b> , 114th Cong. § 301 (2015)
19	Protect Retirement Funds From IRS Levies in the Absence of “Flagrant Conduct” By a Taxpayer	NTA 2015 Annual Report 340-345; NTA 2006 Annual Report 527-530	<b>H.R. 2171</b> , 115th Cong. § 203 (2017); <b>H.R. 3340</b> , 115th Cong. § 204 (2017); <b>H.R. 4912</b> , 114th Cong. § 203 (2016); <b>S. 2333</b> , 114th Cong. §§ 306 & 307 (2015); <b>H.R. 4128</b> , 114th Cong. §§ 306 & 307 (2015)
20	Toll the Time Periods for Requesting the Return of Levy Proceeds While the Taxpayer or a Pertinent Third Party Is Financially Disabled	NTA 2015 Annual Report 368-375	<b>H.R. 2171</b> , 115th Cong. § 204 (2017); <b>H.R. 4912</b> , 114th Cong. § 204 (2016)
21	Require the IRS to Waive User Fees for Taxpayers Who Enter Into Low-Cost Installment Agreements and Evaluate the Potential Revenue and Compliance Costs of Future User Fee Increases	NTA 2017 Annual Report 307-313; NTA 2015 Annual Report 14-35; NTA 2007 Annual Report 66-82	<b>S. 1793</b> , 115th Cong. § 301 (2017); <b>S. 3471</b> , 114th Cong. § 504 (2016) (reported by Sen. Fin. Comm.) (low-income fee waiver provisions and limitation on future increase), <i>see also</i> <b>S. Rep. No. 114-375</b> , at 84 (2016); <b>S. 3156</b> , 114th Cong. § 114 (2016) (low-income fee waiver provisions and limitation on future increase), <i>see also</i> <b>S. Rep. No. 114-298</b> , at 17-19 (2016); <b>S. 1321</b> , 109th Cong. § 301 (2006); <b>H.R. 1528</b> , 108th Cong. § 101 (2004) (passed by Senate); <b>S. 882</b> , 108th Cong. § 101 (2003), <i>see also</i> <b>S. Rep. No. 108-257</b> , at 5-6 (2003)











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