

#46 AUTHORIZE THE OFFICE OF THE TAXPAYER ADVOCATE TO ASSIST CERTAIN TAXPAYERS DURING A LAPSE IN APPROPRIATIONS

Present Law

Article I of the Constitution provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”¹⁵⁰ The Anti-Deficiency Act implements this provision.¹⁵¹ Specifically, 31 U.S.C. § 1341(a)(1)(B) forbids any officer or employee of the United States government or of the District of Columbia government to involve his or her respective government employer in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. A significant exception to this rule is provided in 31 U.S.C. § 1342, which permits such government activity “for emergencies involving the safety of human life or the protection of property.”

Reasons for Change

Past IRS shutdown contingency plans have interpreted the exception under 31 U.S.C. § 1342 as applicable to activities necessary to safeguard human life or protect *federal government* property, but not the property of U.S. taxpayers. Thus, lien and levy activities carried out by automation could continue. During the 2013 shutdown, the IRS issued thousands of notices of levy on financial accounts of individuals and businesses, on wages, and on Social Security and other government benefits because these notices were pre-programmed into the IRS computer system.

Yet despite the requirement under IRC § 6343(a)(1)(D) that the IRS release any levy that creates an economic hardship for a taxpayer, no TAS employee, including the National Taxpayer Advocate, was authorized to work. As a result, taxpayers facing economic hardship were unable to obtain assistance from TAS to request or obtain release of these levies. Additionally, because cases that were in TAS’s inventory at the time of the shutdown could not be worked, taxpayers who had requested the assistance of the National Taxpayer Advocate and TAS immediately prior to the shutdown experienced significant hardship and irreparable injury.¹⁵²

Recommendation

Clarify that the emergency exception to the Anti-Deficiency Act for the protection of property includes taxpayer property as well as government property. Alternatively, clarify that the National Taxpayer Advocate may incur obligations in advance of appropriations for purposes of assisting taxpayers experiencing an economic hardship within the meaning of IRC § 6343(a)(1)(D) due to an IRS action or inaction, and that the IRS may incur obligations in advance of appropriations for purposes of complying with any Taxpayer Assistance Order issued pursuant to IRC § 7811.

150 U.S. CONST. Art. I, § 9, cl. 7.

151 Pub. L. No. 97-258, 96 Stat. 923 (1982).

152 The IRS has since revised its contingency plan to allow the National Taxpayer Advocate and some TAS employees to work during a shutdown but only if their work is necessary to protect government property; no consideration is given to allowing the National Taxpayer Advocate or TAS employees to work during a shutdown to safeguard human life or protect taxpayer property. See IRS, *Fiscal Year 2018 Lapsed Appropriations Contingency Plan (During the Non-Filing Season)*, https://www.treasury.gov/SitePolicies/Documents/FY2018-IRS-Lapse-in-Appropriations-Contingency-Plan_Non-Filing-12-6-17-Single-File.pdf (last visited Dec. 11, 2017).