

Legislative Recommendation #45**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.”¹ The Antideficiency Act is one of several statutes that implement this provision.² Specifically, 31 U.S.C. § 1341(a), among other things, prohibits any officer or employee of the United States government or the District of Columbia government from (i) making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation or (ii) involving 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. The Antideficiency Act contains an additional prohibition on the acceptance of voluntary services in 31 U.S.C. § 1342, except “for emergencies involving the safety of human life or the protection of property.”

IRC § 6343(a)(1)(D) requires the Secretary to release a levy and promptly notify the affected person when the Secretary has determined the levy “is creating an economic hardship due to the financial condition of the taxpayer.”

IRC § 7803(c)(2)(A) directs the Office of the Taxpayer Advocate to “assist taxpayers in resolving problems with the Internal Revenue Service,” among other things. IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) where a “taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.” A significant hardship includes “an immediate threat of adverse action” and “irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.” A TAO may require the Secretary “within a specified time period ... to release property of the taxpayer levied upon.”

REASONS FOR CHANGE

Lien and levy activities carried out by automation, which do not require the expenditure of additional appropriations, are permitted to continue during a lapse in appropriations. During both the 2018-2019 and 2013 shutdowns, 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’s computer systems before the shutdowns began.

Applicable IRC provisions include:

- IRC § 6343(a)(1)(D), which requires the IRS to release any levy that creates an economic hardship for a taxpayer; and
- IRC § 7811(b)(1), which explicitly authorizes the National Taxpayer Advocate to issue a TAO “to release property of the taxpayer levied upon” where the taxpayer is experiencing a significant hardship.

¹ U.S. CONST. art. I, § 9, cl. 7.

² Pub. L. No. 97-258, 96 Stat. 877, 923 (1982).

Despite these provisions, the IRS has not allowed IRS or TAS employees, including the National Taxpayer Advocate, to work these cases during a shutdown.³ When these activities are not recognized as exceptions to the Anti-Deficiency Act, taxpayers facing economic hardships are unable to obtain assistance from TAS to request or obtain releases of these levies.⁴ Additionally, when cases that were in TAS's inventory at the time of the shutdown cannot be worked, some taxpayers who requested the assistance of the National Taxpayer Advocate and TAS immediately prior to the shutdown will experience significant hardships and irreparable injuries.

RECOMMENDATION

- Clarify that (i) 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 (ii) the IRS may incur obligations in advance of appropriations for purposes of complying with any TAO issued pursuant to IRC § 7811.

3 See IRS SERP Alert 19A0017, Release of Levy and Release of Lien (Jan. 23, 2019) (“While there is a lapse in funding during the partial shutdown we are not authorized to take this action. We may do so once we are fully opened, so please call us back at that time. Please apologize to the taxpayer and explain we are not authorized to release the levy or lien due to the partial government shutdown. Explain that they may call us back after we are fully reopened.”).

4 For additional discussion of how TAS's statutory authority to assist taxpayers suffering or about to suffer significant hardships was undermined during a shutdown, see National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 79-91 (Area of Focus: *The IRS's Decision Not to Except Any TAS Employees During the Government Shutdown Resulted in Violations of Taxpayer Rights and Undermined TAS's Statutory Authority to Assist Taxpayers Suffering or About to Suffer Significant Hardship*) and National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 40-44 (*Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service*).