

**Legislative Recommendation #37****Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate****SUMMARY**

- *Problem:* To protect the independence of TAS, the tax code provides the National Taxpayer Advocate the authority to take independent personnel actions with respect to employees of local TAS offices. The tax code does not provide this authority with respect to national office TAS employees, yet national office TAS employees who advocate for systemic changes in IRS practices and policies are most likely to take positions in conflict with the IRS leadership and require personnel protection.
- *Solution:* Clarify that the National Taxpayer Advocate has the authority to take independent personnel actions with respect to all TAS employees.

**PRESENT LAW**

The IRS Restructuring and Reform Act of 1998 (RRA 98) included provisions to protect TAS's independence from other IRS functions. For example, IRC § 7803(c)(4)(A)(iii) requires local TAS offices to notify taxpayers that they “operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.” To bolster this independence, IRC § 7803(c)(2)(D) provides the National Taxpayer Advocate with the authority to “appoint” local taxpayer advocates in each state and to “evaluate and take personnel actions (including dismissal) with respect to any employee of any local office.”

The National Taxpayer Advocate's authority to make independent personnel decisions is discussed in the legislative history of RRA 98. The conference report states that the National Taxpayer Advocate “has the responsibility to evaluate and take personnel actions (including dismissal) with respect to *any local Taxpayer Advocate or any employee in the Office of the Taxpayer Advocate.*”<sup>1</sup> Thus, there is an inconsistency between the conference report and the statute. The conference report states the statute gives the National Taxpayer Advocate the authority to make independent personnel decisions regarding all TAS employees, while the statute confers that authority only regarding employees of TAS's local offices.

**REASONS FOR CHANGE**

IRC § 7803(c)(2)(A) assigns the National Taxpayer Advocate two principal responsibilities: (i) to advocate for taxpayers in specific cases (case advocacy) and (ii) to advocate for administrative and legislative changes to resolve problems that affect groups of taxpayers or all taxpayers (systemic advocacy). Although the conference report language indicates Congress intended to give the National Taxpayer Advocate independent personnel authority over employees engaged in both case advocacy and systemic advocacy functions, the statute as written only covers employees of local offices, who primarily are engaged in case advocacy. The National Taxpayer Advocate currently does not have independent personnel authority over TAS's senior leadership, TAS attorney-advisors, employees of TAS's systemic advocacy and research functions, and other national office employees, even though those employees are also charged with engaging in independent advocacy on behalf

<sup>1</sup> H.R. REP. NO. 105-599, at 214 (1998) (CONF. REP.) (emphasis added). The report states that the conference committee adopted the Senate amendment with respect to the National Taxpayer Advocate provisions, except as modified. H.R. REP. NO. 105-599, at 216 (1998) (CONF. REP.). The Senate bill and report contained the same inconsistency as the conference bill and report. See H.R. 2676, 105th Cong. § 1102 (as passed by the Senate, May 7, 1998); S. REP. NO. 105-174, at 23 (1998).

of taxpayers, have the same potential conflicts, and face the same potential retaliatory personnel actions by the IRS leadership that Congress sought to address in 1998.

The rationale for giving the National Taxpayer Advocate the authority to make independent personnel decisions for TAS's national office employees is, in key respects, even stronger than the rationale for giving her that authority for local office employees. National office employees primarily advocate for systemic change, which often places them in direct conflict with senior officials in other parts of the IRS.

This concern is not merely theoretical. In recent years, peer executives at the IRS have reviewed and approved performance ratings for senior TAS leaders. This creates the potential for TAS leaders perceived as “team players” to receive better performance reviews and bonuses than TAS leaders who are perceived to be more aggressive in seeking changes in IRS policies or actions. For the same reasons that it would be inappropriate for IRS leaders to evaluate and make salary and bonus determinations for employees of the Treasury Inspector General for Tax Administration, the IRS's ability to affect the salary or bonuses of TAS's national office employees has the potential to undermine TAS's independent advocacy.

## **RECOMMENDATION**

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