

## STRENGTHEN TAXPAYER RIGHTS

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### Legislative Recommendation #1

## Elevate the Importance of the Taxpayer Bill of Rights by Redesignating It as Section 1 of the Internal Revenue Code

### SUMMARY

- *Problem:* The IRS is arguably the federal agency that Americans fear the most. Without a court order, it can garnish a taxpayer's wages, levy against a taxpayer's bank account, and file a Notice of Federal Tax Lien against a taxpayer's property to collect an IRS-determined tax debt. Taxpayers fear the IRS may take these actions erroneously or without regard to taxpayer rights.
- *Solution:* Redesignate the Taxpayer Bill of Rights (TBOR) as Section 1 of the IRC. While partly symbolic, this change would send an important message to U.S. taxpayers and IRS employees alike that Congress expects IRS employees to respect taxpayer rights and considers them foundational for effective tax administration.

### PRESENT LAW

IRC § 7803(a)(3) requires the Commissioner to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title [the Internal Revenue Code], including –

- (A) *the right to be informed,*
- (B) *the right to quality service,*
- (C) *the right to pay no more than the correct amount of tax,*
- (D) *the right to challenge the position of the Internal Revenue Service and be heard,*
- (E) *the right to appeal a decision of the Internal Revenue Service in an independent forum,*
- (F) *the right to finality,*
- (G) *the right to privacy,*
- (H) *the right to confidentiality,*
- (I) *the right to retain representation, and*
- (J) *the right to a fair and just tax system.”*

### REASONS FOR CHANGE

Taxpayer rights serve as the foundation for effective tax administration. The U.S. tax system is frequently characterized as a system of “voluntary compliance.” While taxpayers ultimately may face penalties for noncompliance, our system relies in the first instance on the willingness of taxpayers to file returns on which they self-report their incomes (some of which is not reported to the IRS by third parties and is therefore difficult for the IRS to discover in the absence of self-reporting) and to pay the required tax.

In recent years, more than 165 million individuals and more than ten million business entities have filed income tax returns annually, and they are entitled to be treated with respect. Making clear that taxpayers possess rights is not only the right thing to do, but TAS research suggests that when taxpayers have confidence

the tax system is fair, they are more likely to comply voluntarily, which may translate into enhanced revenue collection as well.<sup>1</sup>

The National Taxpayer Advocate recommends the ten rights that make up the TBOR and that are codified in IRC § 7803(a)(3) be relocated and recodified as Section 1 of the IRC. Doing so would make a strong and important statement about the value Congress places on taxpayer rights.<sup>2</sup>

## RECOMMENDATION

- Amend § 1 of the IRC to read as follows (and renumber existing IRC §§ 1, 2, and 3 accordingly):

### SECTION 1. TAXPAYER BILL OF RIGHTS.

#### (a) Taxpayer Rights.

- (1) In discharging their duties and responsibilities, every officer and employee of the Internal Revenue Service shall act in accordance with taxpayer rights as afforded by other provisions of this title, including –
  - (a) the right to be informed,
  - (b) the right to quality service,
  - (c) the right to pay no more than the correct amount of tax,
  - (d) the right to challenge the position of the Internal Revenue Service and be heard,
  - (e) the right to appeal a decision of the Internal Revenue Service in an independent forum,
  - (f) the right to finality,
  - (g) the right to privacy,
  - (h) the right to confidentiality,
  - (i) the right to retain representation, and
  - (j) the right to a fair and just tax system.<sup>3</sup>

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1 See National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 33 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC\\_VOL-2-3.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-2-3.pdf); National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, at 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Research-Studies-Factors-Influencing-Voluntary-Compliance-by-Small-Businesses-Preliminary-Survey-Results.pdf>.

2 When we first proposed codifying TBOR in 2007, we recommended enacting ten taxpayer rights and five taxpayer responsibilities. The responsibilities included (i) the responsibility to be honest, (ii) the responsibility to be cooperative, (iii) the responsibility to provide accurate information and documents on time, (iv) the responsibility to keep records, and (v) the responsibility to pay taxes on time. National Taxpayer Advocate 2007 Annual Report to Congress 478 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc\\_2007\\_vol\\_1\\_legislativerec.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc_2007_vol_1_legislativerec.pdf). When Congress added the ten rights to IRC § 7803(a)(3), it did not include these taxpayer responsibilities.

3 The provisions of the TBOR were codified at IRC § 7803(a)(3). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, § 401(a), 129 Stat. 2242, 3117 (2015). During the drafting of the TBOR language, we understand staff of the Joint Committee on Taxation (JCT) raised concerns that if the TBOR were codified without limitation, some taxpayers might assert purported violations and seek remedies in administrative and litigated disputes, potentially requiring the IRS and the courts to adjudicate vague claims with no clear standards for resolution. After considering the JCT's concerns, the tax-writing committees ultimately settled on the language enacted as IRC § 7803(a)(3). To avoid reopening this issue, we are proposing to relocate the existing language in IRC § 7803(a)(3) virtually without change. We are recommending a minor refinement to the lead-in language that we think makes it read more clearly and does not substantially change the meaning. However, if the JCT believes our refinement does substantially change the meaning, the text of IRC § 7803(a)(3) could be redesignated as IRC § 1 with no change in language at all.

## Legislative Recommendation #2

# Require the IRS to Timely Process Claims for Credit or Refund

### SUMMARY

- *Problem:* When taxpayers file claims for credit or refund with the IRS, they expect the IRS to promptly process their claims and pay, deny, or audit them. However, there is no statutory requirement for the IRS to act on these claims, which can lead to extended processing delays and leave taxpayers with no recourse but to file suit in a U.S. district court or the U.S. Court of Federal Claims.
- *Solution:* Require the IRS to act on taxpayers' claims for credit or refund within three years of filing. If the IRS fails to take timely action, require the IRS to pay additional interest and, in the event of litigation, shift the burden of proof to the government.

### PRESENT LAW

Taxpayers can generally file a claim for credit or refund within the later of three years from the date the return was filed or two years from the date the tax was paid.<sup>1</sup> After taxpayers file a valid claim for credit or refund of an overpayment of tax, the IRS generally has 45 days to provide the refund before it must pay interest.<sup>2</sup> IRC § 6621 sets forth the applicable interest rates. Once a taxpayer files a refund claim, they can seek recovery in a U.S. district court or the U.S. Court of Federal Claims when the IRS disallows the claim or when six months have elapsed, whichever occurs first.<sup>3</sup> The burden of proof in these judicial proceedings generally rests with the taxpayer.<sup>4</sup>

The IRC prescribes various filing dates for tax returns and sets forth periods of limitation (*i.e.*, deadlines) by which the IRS can assess or collect tax.<sup>5</sup> The IRC also prescribes periods of limitation within which taxpayers may timely file claims for credit or refund, but it does not contain a reciprocal provision requiring the IRS to act on those claims.

### REASONS FOR CHANGE

Taxpayers filing claims for credit or refund with the IRS are seeking money to which they believe they are entitled. In the case of refunds, taxpayers may need timely access to the funds to cover basic living expenses or finance essential business operations. Taxpayers want and have a right to expect quick review and processing of their claims.

Surprisingly, the IRC does not require the IRS to process a claim for credit or refund or even to respond to the taxpayer. The IRS can simply ignore the claim. This odd result is a poster child for non-responsive government. It fails to meet the basic expectations expressed in the Taxpayer Bill of Rights, including the *rights to be informed, to quality service, to pay no more than the correct amount of tax, and to finality.*<sup>6</sup>

1 IRC § 6511.

2 IRC § 6611(e)(1), (e)(2).

3 IRC § 6532(a).

4 IRC § 7491.

5 See, e.g., IRC §§ 6072 (deadline for filing income tax returns); 6501 (statute of limitations on assessment); and 6502 (statute of limitations on collection).

6 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights/>. The rights contained in TBOR are also codified in IRC § 7803(a)(3).

Currently, claims for credit or refund can, and sometimes do, spend months, and even years, in administrative limbo within the IRS. Other than having to pay interest on the refund, no legal or economic incentive exists for the IRS to expeditiously review and process the claims.

If the IRS has taken no action on a refund claim within six months from the date of filing, the taxpayer may file an action for recovery in a U.S. district court or the U.S. Court of Federal Claims. However, litigation in these venues is time-consuming, complex, and costly. Taxpayers who have filed refund claims do not want to litigate; they simply want their money.

The National Taxpayer Advocate believes the IRC should require the IRS to process refund claims timely. This can be accomplished by requiring the IRS to act on claims for credit or refund consistent with the general assessment statute, which is within three years from the date of filing.<sup>7</sup> Permissible actions within three years would include:

- Allowing the claim (in whole or in part);
- Disallowing the claim (in whole or in part); or
- Auditing the claim and extending the three-year statute by mutual consent.

To ensure the IRS meets this requirement, there should be consequences for failing to do so. If the IRS fails to perform one of the above actions within three years from the filing of the claim, the IRC should require it to pay an additional five percent interest charge, in addition to the rate specified in IRC § 6621, on the portion of a claim ultimately allowed. Additionally, if the IRS fails to take one of the above actions within prescribed timeframes, the burden of proof in the event of litigation should shift to the Secretary as a further deterrent to delayed processing. The statute should also provide the IRS with the ability to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.<sup>8</sup> Regardless of whether the IRS timely acts on a claim for credit or refund, the claim should be valid beyond the three-year window, as is currently the case.

The combination of an explicit statutory requirement to process refund claims within a three-year period and corresponding negative consequences for failing to do so would protect taxpayers' rights. If the IRS is doing its job properly, these consequences should not come into play. It is hard to imagine why the IRS should ever need more than three years to process a claim (or extend the statute of limitations by mutual consent).

## RECOMMENDATIONS

- Amend IRC § 6402 to require the IRS to act on claims for credit or refund within three years by, among other things, allowing the claim (in whole or in part), disallowing the claim (in whole or in part), or auditing the claim and extending the three-year statute of limitations by mutual consent within three years from the date of the claim.
- Amend IRC § 6402 to give the IRS the authority to rescind a Notice of Claim Disallowance with the written consent of the taxpayer.
- Provide that if the IRS fails to act on a refund claim within three years, it must pay an additional five percent interest beyond the rate set forth in IRC § 6621 on the portion of a claim ultimately allowed and, in the event of litigation, the burden of proof will shift to the Secretary.

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<sup>7</sup> This three-year period for responding would essentially mirror the three-year statute of limitations for assessment established under IRC § 6501. As a legal matter, we think this is an appropriate fit. As a practical matter, we believe the IRS should process claims for refund or credit much more quickly, ideally within weeks. We recommend that expectation be set forth in legislative history.

<sup>8</sup> See, e.g., IRC § 6212(d) (rescission of a statutory notice of deficiency).