

STRENGTHEN TAXPAYER RIGHTS

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.¹

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.²

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.³

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; 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. 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.