

1,124 views | Sep 4, 2018, 04:51pm

What Congress Might Do On Taxpayer Rights And Tax Administration In The Next 120 Days



Dean Zerbe Contributor ⓘ

Taxes

I write about tax policy and how it affects business.



The House and the Senate tax-writing committees have been working on (and the House has passed) some small-ball bipartisan tax legislation that can be grouped into two parts: 1) provisions that address taxpayer rights and tax administration; and, 2) provisions that are making substantive

changes to the tax laws in areas such as retirement/401(k), education, etc. In addition, tax extenders (especially energy extenders) is in the conversation as well. There is a good possibility that Congress acts on this legislation (all, or in part) before the end of year.

For this article, a look at the taxpayer rights/administration legislation – and in a second article an overview of the substantive tax law changes being proposed.

The House

The House has passed a number of taxpayer rights/tax administration bills – primarily [HR 5444](#) The “Taxpayer First Act” and [HR 5445](#) The “21st Century IRS Act”. There are several good provisions in the bill – key provisions including:

IRS Appeals. The bill underscores the independence of IRS appeals – and limiting the ability of the IRS to deny a taxpayer the ability to go to IRS appeals. IRS appeals is vital for individuals and small and medium businesses as a low-cost avenue to challenge an IRS position – as my colleague at alliantgroup Kathy Petronchak noted in her first-rate [testimony](#) (on this and other issues) before the Ways and Means Committee. The legislation also provides that Appeals should not obtain legal assistance from Chief Counsel staff that were involved in the case and not involved in preparing the case for litigation. This is a good reform – but it would be nice to go further and bar Counsel staff who also were involved/assisted in an examination within the exam function to not be involved as well (ie the folks behind the scenes).

The House also provides that the taxpayer should have access to their administrative case file referred to Appeals by the IRS. A commonsense reform to say the least. It is hard for the taxpayer to argue against the IRS position when they don't know what the IRS position is. The House reform is a good start – and consideration should be given to requiring the IRS exam/collection functions to provide the file at least 10 days before the manager's conference (this will also limit the frustration of “new facts” being brought to appeals by the IRS without notice to the taxpayer. In addition, Congress should consider allowing the taxpayer access to the appeal case memorandum – the IRS gets it – why not the taxpayer?

Improved Service. The House proposal requires the Secretary in consultation with the National Taxpayer Advocate to develop a comprehensive strategy on online services, telephone call back, etc. While somewhat aspirational, it will be useful for the IRS to think long-term on these issues and also to have both the IRS and the Congress have an understanding of the budgetary requirements to meet certain taxpayer service goals – such as answering the phones timely and accurately.

MORE FROM FORBES

Innocent spouse. The House rightly clarifies that innocent spouses seeking equitable relief for joint liability should be subject to de novo review (as is common in tax cases) – instead of only for abuse of discretion standard (as some appellate courts have held). Good idea.

Third Party Contact. Congress has long-recognized that while the IRS needs to be able to contact third parties in some examinations of the taxpayer – that such contacts need to be subject to certain protections for the taxpayer because of the potential devastating impact on a taxpayer or taxpayer's business. Those protections are first found in Section 7602(c) – requiring advance notice before third party contacts are made. Congress wanted to ensure that the taxpayer had a reasonable right to provide/address/cure the information the IRS was seeking prior to a third party contact was made. In addition, Section 6103(k)(6) requires that a disclosure by IRS employees for investigative purposes can only be made if it is necessary to obtain information that is not otherwise reasonably available. Unfortunately, in practice, the IRS does not lose sleep on these protections (see the Taxpayer Advocate's [report](#) on the problems in this area). The IRS will send out a generic notice at the beginning of an audit noting that the IRS may make a third party contact.

The House requires the IRS to provide notice at least 45 days before the beginning of the period of contact of third parties – i.e. that the notice must be real and timely before contacts. This is certainly an important improvement. As the legislative process continues, hopefully policymakers will consider requiring the IRS to inform the taxpayer of the specific information that is being sought and give the taxpayer a reasonable time period (thirty days?) to provide the IRS the information it is seeking from the third party contact – thus possibly eliminating the need to make the third party contact. Better answer for the taxpayer and time-saving for the IRS.

Commissioner. The House proposed to change the name of the Commissioner of Internal Revenue to Administrator of Internal Revenue.

Advocate. The House bolsters the Taxpayer Advocate's authority by strengthening compliance with a Taxpayer Assistance Directive (TAD) issued by

the Advocate. Senior management needs to give proper focus to legitimate concerns raised by the Advocate as to taxpayer rights – especially as to individual cases.

Board. IRS Oversight Board is eliminated. The Senate will have its own views on this.

Identify theft – HR 5445 has some commonsense reforms on cyber security and identity theft/protection. The IRS to their credit has made very marked improvements in this area. When I speak – I would always ask CPA firms how many of their clients have suffered from tax-related identity theft – the numbers have fallen dramatically in the last year.

The Senate

The Senate has put forward its own package of reforms – “[Taxpayer First Act of 2018](#)” – sponsored by Chairman Hatch (R-UT) and Ranking Member Wyden (D-OR) as well as a companion [bill](#) authored by Senators Portman (R-OH) and Cardin (D-MD) – who have long been active in the area of tax administration.

The Hatch/Wyden bill contains some overlap with previously-passed legislation by the Committee as well as the House bill discussed above. Key provisions include: strengthening the return preparation programs for low-income taxpayers; good reforms on preventing identity theft; barring rehiring former IRS employees who were fired for misconduct (little worried that we needed a law for this . . .); authority to remove or transfer senior executives who fail in their performance or engage in serious misconduct; mandatory electronic filing for annual returns of exempt organizations -- great idea, will bolster transparency; bar the IRS engaging in political targeting; and, TIGTA report on IRS audit criteria

Whistleblowers. The Senate bill also includes two [provisions](#) championed by Senators Grassley (R-IA) and Wyden (D-OR) that are welcome changes to the IRS whistleblower program – allowing for more expansive communication between the IRS and whistleblowers as well as providing “anti-retaliation protections for tax whistleblowers. It will be good for Congress to adopt these two provisions

and also look at clarifying that the standard of review for whistleblower cases is de novo – just as both the House and Senate have proposed having de novo review for innocent spouses seeking equitable relief (the Tax court recently ruled that the standard of review in a whistleblower case is abuse of discretion – a high hurdle for whistleblowers to overcome).

Portman/Cardin. The legislation seeks to revitalize the IRS Oversight Board – renaming it the IRS Management Board – giving it clearer authorities and responsibilities. The Oversight Board has struggled for years with having insufficient members and a set focus. This will get a serious look. The legislation also puts an emphasis to improved training of IRS employees. Amen.

Other Portman/Cardin reforms include allowing for limited regulation of paid tax return preparers; creating a safe harbor for employer-only tip audits; streamline the process for corporations to make S corporation elections; strengthen the taxpayer assistance programs for low-income taxpayers; and, finally, reform of the IRS appeals process – in some respects similar to the House proposals discussed earlier including directing the IRS to give taxpayers access to all of their non-privileged case files prior to an appeals proceeding.

All-in-all the House and Senate bills provide a welcome step forward for taxpayer rights and tax administration. My hope is that time will be found on the Congressional calendar to move these forward and be included in November/December wrap-up.

After I wake up, feed my yellow lab and check the internet for updates on Nebraska football, I do two things: 1) help small and medium business owners (especially manufacturers, architects, engineers, computer software and agriculture) keep more of their tax dollars as Natio... MORE