TAXPAYER BILL OF RIGHTS II

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Introduction

Public Law 104-168, commonly known as the Taxpayer Bill of Rights 2, was signed into law by President Clinton on July 30, 1996.

This law contains numerous provisions which are intended to provide increased protections of taxpayer rights in complying with the Internal Revenue Code and in dealing with the Internal Revenue Service.

Purpose

This Publication is designed to provide you with a general overview of the provisions contained in the Taxpayer Bill of Rights 2 and is not intended to replace classroom training.

As IRS issues regulations concerning the specific provisions contained in this law, further training will be developed and delivered.

Contents

The Taxpayer Bill of Rights 2 contains the following sections:

Taxpayer Advocate

Establish Position

Establishes the position of Taxpayer Advocate replacing that of Taxpayer Ombudsman. The new position carries a higher level of independence, authority and responsibility.

The Office of Taxpayer Advocate is established concurrently.

The functions of the office are to:

- assist taxpayers resolve problems with the IRS;
- identify areas in which taxpayers have problems dealing with the IRS;
- propose changes in administrative practices of the IRS that will mitigate those problems; and
- identify potential legislative changes that may mitigate those problems.

Two annual reports to Congress are required:

- the first to report the objectives of the Taxpayer Advocate for the next calendar year, and
- the second to report on activities of the Taxpayer Advocate during the previous year.

Effective on the date of enactment.

Expansion of TAO Authority

Provides the Taxpayer Advocate with broader authority to take action for taxpayers with potential significant hardship conditions created by tax law administration.

A TAO (Taxpayer Assistance Order) may specify a time period in which that TAO must be followed.

Authority to modify or rescind a TAO is given only to the:

- Taxpayer Advocate;
- Commissioner of IRS; or
- Deputy Commissioner of IRS.

Written explanation of the reasons for the modification or rescission of a TAO must be provided to the Taxpayer Advocate.

Effective on the date of enactment.

Installment Agreements

Termination Notification

Requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating an installment agreement (excluding jeopardy conditions).

The notification must include an explanation of why the IRS intends to take the action.

Effective 6 months after the date of enactment

Administrative Review of Termination

Requires IRS to establish independent administrative review procedures of an installment agreement termination if taxpayers request such a review.

Effective 1-1-97.

Abatement of Interest and Penalties

Expand Authority to Abate Interest

Permits abatement of interest for any unreasonable error or delay by the IRS for managerial acts in addition to ministerial acts such as:

- loss of records by IRS;
- IRS personnel transfers;
- extended illnesses;
- extended personnel training; or
- extended leave.

Effective for taxable years beginning after the date of enactment.

Review of IRS Failure to Abate Interest

Grants the Tax Court jurisdiction over whether the IRS's failure to abate interest was an abuse of discretion.

An eligible taxpayer must meet certain net worth and size requirements (i.e. those with respect to awards of attorney fees).

The taxpayer must be eligible for the abatement and must bring the action within 180 days after the IRS mails its final determination.

Effective for abatement requests after the date of enactment.

Extension of Interest-Free Period

Extends the interest-free payment period for tax liabilities from 10 calendar days after notice and demand for payment to:

- 10 business days on accounts $100,000 and over, and
- 21 calendar days on accounts under $100,000.

Effective for notices issued after 12-31-96.

Abatement of Failure to Deposit Penalty

The failure to deposit penalty may be waived for an inadvertent failure to deposit any employment tax if:

- the depositing entity meets the net worth requirements applicable for awards of attorney's fees;

- the failure to deposit occurs during the first quarter a deposit was required; and

- the return for the employment tax was filed on or before the due date.

The deposit penalty may also be abated if the depositing entity inadvertently sends the deposit to the Secretary (of Treasury) instead of to the required government depository.

Effective on the date of enactment.

Joint Returns

Separate to Joint Return

Repeals the requirement of full payment of tax as a precondition to switching from married filing separately to married filing jointly.

Effective for taxable years beginning after the date of enactment.

Disclosure of Joint Return Collection Activities

Requires the disclosure of collection activities on a jointly filed return against an estranged spouse upon written request by the other spouse.

IRS is required to disclose in writing:

- whether IRS has attempted to collect from the other spouse,

- the general nature of the collection activities, and

- the amount, if any, collected.

The IRS may omit the current home address and business location of the former spouse.

Effective on the date of enactment

Studies of Joint and Several Liabilities

Mandates independent studies by Treasury and GAO to analyze:

- the effects of changing joint and several tax liability to the proportionate tax liability of each spouse,

- the effects of restricting tax collection to the tax allocations set out in a divorce decree (for returns filed prior to divorce),

- the effectiveness of current codified innocent spouse provisions, and

- the effect of considering community income of a new spouse exempt from levy for taxes incurred by a prior spouse.

The studies are due 6 months after the date of enactment.

Collection Activities

Withdrawal of Liens

Allows the withdrawal of a filed notice of tax lien if:

- the notice was filed prematurely or not in accordance with IRS procedures,

- the taxpayer has entered into an installment agreement to satisfy the liability on the notice of lien (unless the agreement provides otherwise),

- the withdrawal will facilitate collection of the tax, or

- the withdrawal would be in the best interests of both the taxpayer (as determined by the Taxpayer Advocate) and the Government.

The IRS must provide a copy of the withdrawal to the taxpayer and, upon written request of the taxpayer, to other specified institutions.

Effective on the date of enactment.

Return of Levied Property

IRS is allowed to return levied property, including money deposited in the Treasury, if the IRS determines that the:

- levy was premature or not in accordance with IRS procedures,
- taxpayer has entered into an installment agreement to satisfy the liability on the levy (unless the agreement provides otherwise),
- return of the property will facilitate collection of tax, or
- return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the Government.

Effective on the date of enactment.

Levy Exemption Modification

Increases the personal property exemption to $2,500, and $1,250 for books and tools of trade. These amounts are indexed for inflation after 1996.

Effective for levies issued after 12-31-96.

Offers-In-Compromise

For acceptances of offers in compromise, the liability threshold requiring a written Chief Counsel approval increases from $500 to $50,000.

Compromises below this threshold will be subject to continuing quality review.

Effective on the date of enactment.

Information Returns

Civil Damages for Fraudulent Filing

A person may bring civil actions for damages against persons filing fraudulent information returns (W-2, 1099, etc) purportedly for payments made to that person.

The action must be brought within the later of 6 years after the filing of the fraudulent document or 1 year after it would have been discovered.

The award is limited to the greater of $5,000 or the sum of actual damages, the costs of the action, and reasonable attorney's fees.

Effective for fraudulent information returns filed after enactment.

Requirement to Conduct Reasonable Investigations

In any court proceeding, if the taxpayer reasonably disputes an income item reported on an information return, and has fully cooperated with the IRS, the burden of producing reasonable and probative information concerning the deficiency as well as the information return itself is placed upon the IRS.

Effective on the date of enactment.

Litigation Costs and Attorneys' Fees

IRS Must Establish Substantial Justification

Shifts the burden of proof to the IRS to show substantial justification for its position against a taxpayer if the taxpayer has prevails in litigation.

If the IRS cannot show substantial justification, the taxpayer may then recover attorney's fees from the action.

If the IRS failed to follow its own published guidelines, it is presumed not to have substantial justification.

Effective for proceedings commenced after the date of enactment.

Increase Limit on Attorney's Fees

Increases the allowable statutory rate recoverable by prevailing parties for attorney's fees from $75 per hour to $110 per hour and is indexed for inflation after 1996.

Effective for proceedings commenced after date of enactment.

Failure to Agree to Extension

A taxpayer's failure to agree to an extension of the statute of limitations for assessment will not be considered in determining whether the taxpayer has exhausted all administrative remedies.

The taxpayer may thus be awarded attorney's fees (having met the test for the exhaustion of administrative remedies) without having signed such an agreement.

Effective for proceedings commenced after date of enactment

Award of Litigation Costs

Eliminates the present-law restrictions on awarding attorney's fees in all declaratory judgment proceedings.

Effective for proceedings commenced after date of enactment

Unauthorized Collection Activities

Increase Recovery Limit

Increases the award ceiling against the United States from $100,000 to $1 million, for recovery of civil damages for reckless or intentional disregard of guidelines by IRS employees in connection with the collection of a taxpayer's Federal tax.

Effective for unauthorized actions occurring after the date of enactment.

Court Discretion to Reduce Award

Permits (but does not require) a court discretion to reduce an award for civil damages if the taxpayer has not exhausted administrative remedies.

Effective for proceedings commenced after the date of enactment.

Penalty for Failure to Pay Trust Fund Taxes

Preliminary Notice Requirement

Except for jeopardy conditions, precludes assessment of a Trust Fund Recovery Penalty unless a notice has been mailed to the taxpayer advising of the IRS's intent to assess the penalty.

This notice must precede any notice and demand for payment by at least 60 days.

In the case of an imminent tolling of the assessment statute, the mailing of this notice preserves the assessment statute for 90 days after mailing or, if there is a timely protest, 30 days after a final determination by the IRS.

Effective for proposed assessments made after 6-30-96.

Disclosure of Information When Multiple Persons Responsible for Penalty

Requires the IRS, in writing, to disclose to anyone determined to be a responsible person for the trust fund recovery penalty:

- the name(s) of any other person(s) determined to be liable for the penalty,
- any related collection activity, and
- amounts, if any, collected.

Requests for information must be received in writing.

Failure by the IRS to follow this provision does not absolve any individual from any liability for this penalty.

Effective on the date of enactment.

Right of Contribution from Multiple Responsible Parties

Allows a person held liable for the penalty to recover (as state law permits) from other persons held liable for the penalty (but who have not paid the penalty) an amount equal to the excess over the proportionate share paid.

The proceeding to recover must be entirely separate from any proceeding involving IRS's collection efforts.

Effective for penalties assessed after the date of enactment

Volunteer Board Members of Tax-Exempt Organizations

Clarifies that the penalty will not be imposed on volunteer, unpaid members of any board of trustees or directors of tax-exempt organizations to the extent they are:

- solely serving in an honorary capacity,
- not participating in day-to-day or financial activities of the organization, and
- do not have actual knowledge of the failure to pay over the trust funds.

The provision does not absolve all responsible persons from liability.

The IRS must develop and make available better information concerning members of tax-exempt organizations potential liability for the penalty.

Effective on the date of enactment.

Summonses

Enrolled Agents Included as Third-Party Recordkeepers

Adds enrolled agents as third party recordkeepers. This allows the taxpayer to challenge a summons issued to an enrolled agent.

Effective for summonses issued after the date of enactment.

Designated Summonses

Requires that issuance of a designated summons regarding a corporation's tax return must first be reviewed by Regional Counsel.

The use of designated summonses is further restricted to corporations being examined as part of the Coordinated Examination Program (CEP) or its successor.

Effective for summonses issued after the date of enactment.

Annual Reporting to Congress

Treasury is required to report annually to the Congress on the number of designated summonses issued during the preceding 12 months.

Effective for 1997.

IRS Misconduct

Unauthorized Enticement of Information Disclosure

Provides for a civil penalty against the United States if an officer or employee of the IRS compromises the determination of or collection of tax liability of the taxpayer's representative in exchange for information concerning the taxpayer.

The amount recoverable is limited to $500,000 or the sum of:

- actual economic damages sustained by the taxpayer, and

- the costs of the action.

Effective for actions taken after the date of enactment.

Annual Report to Congress

IRS is required to report annually to Congress on misconduct.

The report must identify by Region and function the nature of the misconduct or complaint and include:

- number of employees reprimanded, terminated or prosecuted;

- instances dismissed because of a finding that proper procedures were followed; and

- those initiated but not yet resolved.

The first report is due by June 1, 1997.

Notice and Information Reporting

Required Notice to Taxpayers of Certain Payments

Requires the IRS to make reasonable efforts to contact taxpayers if it is unable to associate a payment received from the taxpayer with a balance owed by the taxpayer.

Notification must be provided within 60 days after receipt of the payment.

Effective on the date of enactment.

Annual Reminders for Delinquent Accounts

Requires the issuance of an annual reminder notice of liability to delinquent taxpayers.

Failure to receive a timely, annual reminder notice does not affect the tax liability.

Applies to calendar years after 1996.

Disclosure of Returns on Cash Transactions

Permanently extends IRS's authority to disclose information contained on Form 8300 (reporting cash transactions of over $10,000) to Federal, State, local and foreign government agencies.

Disclosure to these agencies is permitted only for civil, criminal, and regulatory purposes, not for tax administration.

Having access to the information, these agencies are then governed by Federal disclosure laws.

Effective on the date of enactment.

Phone Numbers on Information Returns

Requires that information returns contain the payor's telephone number in addition to the payor's name and address.

Payors may provide the phone number of a department with the relevant information.

The phone number requirement applies to payee statements reporting the following:

- payments of $600 or more in the course of a trade or business;

- payments for services of $600;

- direct sales of $5,000 or more;

- payments of dividend, interest, unemployment compensation, mortgage interest,royalties, or patronage dividends;

- broker information;

- cash receipts of more than $10,000;

- foreclosures or abandonments of security; and

- exchanges of partnership interests.

Effective for statements required to be furnished after 12-31-96, without regard to extensions.

Miscellaneous Provisions

Relief from Retroactive Application

Temporary and proposed regulations issued by the Treasury Department generally must have an effective date no earlier than the date:

- of publication in the Federal Register, or

- on which any notice describing the regulation contents is issued to the public.

Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate.

The prohibition on retroactive regulations does not apply to:

- any regulation filed or issued within 18 months of enactment of a new law,

- a legislative grant authorizing the IRS to prescribe the effective date of a regulation for a new law,

- temporary or proposed regulations issued to prevent abuse,

- temporary, proposed, or final regulations issued to correct a procedural defect in the issuance of a regulation, and

- any regulation relating to internal Treasury policies, practices, or procedures.

Effective for regulations relating to statutory provisions enacted after the date of enactment.

Private Delivery Services Qualify for Timely-Mailing/ Timely-Filing

The IRS is authorized to extend the "timely mailed is timely filed" rule to designated private delivery services.

A delivery service may be designated only if the service:

- is available to the general public;
- is at least as timely, on a regular basis, as the U.S. Mail;
- satisfies recordkeeping criteria; and
- meets any additional criteria the IRS prescribes.

The IRS is given similar authority to treat services provided by a designated private delivery service as the equivalent of U.S. certified or registered mail.

Effective on the date of enactment.

Disclosure to Designee of Taxpayer

Deletes the requirement that a taxpayer's request for disclosure to a designee be in writing and allows IRS to adopt alternatives to the written request requirement as it moves to a paperless system.

Since reasonable restrictions will be imposed on the form in which a taxpayer's request is made, in no event will IRS accept an unconfirmed verbal request.

Effective on the date of enactment.

Reporting on Netting of Interest

Requires that Treasury conduct a study of:

- how the netting of interest on overpayments and underpayments is being accomplished, and
- administrative implications of global netting.

The report is due no later than 6 months after the date of enactment.

Rewards for Information on Tax Law Violations

Clarifies that the IRS may pay rewards for information relating to civil tax violations as well as criminal.

The particular reward would be funded from the amount collected by reason of the information provided.

An annual report on the rewards program is required.

Effective 6 months after the date of enactment.

Undercover Operations Extension

Reinstates the IRS's authority, which expired on 12/31/91, to fund an undercover operation from the income generated from such operation (churning authority) until 1-1-2001.

Annual reporting requirements on undercover operations are expanded.

Effective on the date of enactment.

Penalties for Failure to File and Pay Tax

Treatment of Substitute Returns

The penalties for failure to file a tax return and pay tax apply to substitute returns in the same manner as those penalties apply to voluntary filed delinquent returns.

A substitute return will now be treated as a return filed by the taxpayer.

Effective for any return with a due date after the date of enactment.

Tax-Exempt Organizations

Intermediate Sanctions for Certain Tax-Exempt Organizations

Penalty excise taxes may now be imposed as an intermediate sanction when a Code 501(c)(3) or 501(c)(4) organization engages in an "excess benefit transaction".

The excise taxes are imposed on "disqualified persons" who improperly benefit from the transactions and on organization managers who knowingly participate.

A "disqualified person" is defined in Code Sec. 4958(f)(1) as any individual who is in a position to exercise substantial authority over an organization's affairs.

An "excess benefit transaction" is defined in new Code Sec. 4958(c) as transactions in which a disqualified person engages in a non-fair-market-value transaction with an organization or receives unreasonable compensation.

Generally effective for excess benefit transactions occurring on or after 9/14/95.

Private Inurement Prohibition

The Code Sec. 501(c)(3) prohibition against private inurement applies explicitly to nonprofit organizations described in Code Sec. 501(c)(4): civic leagues, social welfare organizations, and certain employee charitable organizations.

An organization described in Code Sec. 501(c)(4) is eligible for tax-exempt status only if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Generally effective for inurements occurring on or after 9/14/95.

Additional Reporting Requirements

Filers of Form 990, Return of Organization Exempt From Tax) must now disclose the amount of taxes that the organization paid during the year under Code Secs.:

- 4911, excess expenditures to influence legislation;

- 4912, disqualifying lobbying expenditures;

- 4955, political expenditures; and

- new 4958, excess benefit transactions.

Organizations are also required to disclose the amount of any excess benefit tax paid by a disqualified person.

Tax-Exempts Must Produce Returns

Public inspection rules are liberalized.

Organizations generally must comply with written or in-person taxpayer requests.

Organizations need not comply if the documents requested are widely available or IRS determines upon application by the organization that the organization was subject to harassment.

The penalty for willful failure to allow public inspection is increased to $5,000.

Effective for requests made on or after the 60th day after IRS first issues regulations.

Penalties for Failure to File Form 990

The penalty to file Form 990, or for failure to include all required information on Form 990 is increased depending on the organization's gross receipts.

For organizations with annual gross receipts $1 million or less, the penalty is $20 for each day the failure continues, with a maximum amount, per return, of $10,000, or 5 per cent of the organization's gross receipts, which ever is less.

For organizations with annual gross receipts in excess of $1 million, the penalty is $100 per day, with a maximum of $50,000.

Effective for returns of tax years ending on or after the date of enactment.