



Taxpayer First Act

HR 3151

The President signed into law the *Taxpayer First Act* aimed at protecting taxpayers from tax-related identity theft by expanding to all taxpayers the ability to obtain an Identity Protection Personal Identification Number (IP PIN), establishing an independent office of appeals, provisions to exempt low-income people from the IRS's private debt collection program and other measures to improve overall IRS customer service.

TITLE I—PUTTING TAXPAYERS FIRST

Subtitle A—Independent Appeals

Establishment of IRS Independent Office of Appeals

This provision codifies the requirement of an independent administrative appeals function at the IRS. This will ensure that generally all taxpayers are able to access the administrative review process, allowing for their cases to be heard by an independent decision maker. The provision also provides for notice and protest procedures as well as additional Congressional oversight for taxpayers precluded from using the administrative review process.

The Independent Office of Appeals will be under the direction and oversight of a newly appointed Chief of Appeals, an official who is required to have experience in a broad range of federal tax law controversies and management of large service organizations. The provision also ensures that staff working in the Independent Office of Appeals generally do not receive advice from the Office of Chief Counsel employees working on the case prior to its referral for administrative review. Further, the provision provides taxpayers access to the case against them. This provision would require the IRS to provide certain individual and business taxpayers with their case files, if requested, no less than 10 days prior to the start of any dispute resolution process.

Subtitle B—Improved Service

Comprehensive Customer Service Strategy

Within one year of enactment, the IRS is required to develop and submit to Congress a comprehensive customer service strategy. The strategy must address how the IRS intends to provide assistance to taxpayers that is secure, designed to meet reasonable taxpayer expectations, and adopts appropriate best practices of customer service provided in the private sector, including online services, telephone call back services and training of employees providing customer services.

The strategy must also establish metrics and benchmarks for measuring the IRS' success in implementing this strategy.

Low-Income Exception for Offer in Compromise

The IRS is authorized to enter into an offer-in-compromise (OIC) agreement with a taxpayer to settle a tax debt at a lower amount than what the taxpayer generally owes. Generally, when proposing an OIC to the IRS, the taxpayer must pay an application fee and provide an initial non-refundable lump sum payment. The IRS has the authority to waive these payments. Typically, the IRS does not require taxpayers certified as low-income, defined as those with incomes below 250 percent of the federal poverty level, to include the application fee and initial payment.

This provision codifies the existing low-income exception with respect to any user fee or upfront partial payment imposed with respect to any OIC.

Subtitle C—Sensible Enforcement

Structuring Transactions

The Bank Secrecy Act (BSA) mandates reporting and record keeping requirements, including the reporting of currency transactions exceeding \$10,000, to assist federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. To circumvent these reporting requirements, individuals sometimes structure (also known as “structuring”) cash transactions to fall below the \$10,000 reporting threshold. Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, or income earned legally to evade the payment of taxes. Structuring (or attempts to structure) to evade the reporting and record-keeping requirements is subject to both civil and criminal penalties.

Before seizing property, the IRS must now show probable cause that funds are believed to have been structured to avoid BSA reporting requirements, are derived from an illegal source or are connected to another criminal activity. This provision also provides important procedural protections for individuals, including a post-seizure hearing within 30 days of the seizure.

Interest Received in Action to Recover Seized Property

If a court determines the federal government should return funds, including interest to an individual whose funds were seized by the IRS based on allegations of structuring, any interest paid by the federal government with respect to such funds will be exempt from income tax.

Clarification of Equitable Relief from Joint Liability

In general, when married couples file joint tax returns, each spouse is jointly and severally liable for the tax that should be reported on the return. However, under certain circumstances, the tax code provides relief for certain innocent spouses from joint liability.

This provision clarifies that the Tax Court has jurisdiction to redetermine equitable claims for relief from joint liability. It also clarifies that the standard of review for such relief by the Tax Court shall be conducted on a de novo basis, meaning that the Tax Court would take a fresh look at the case without taking previous decisions into account. The review would be based on the administrative record and any newly discovered or previously unavailable evidence. The provision also clarifies the request for equitable relief for any portion of unpaid tax must be made before the expiration of the 10-year collection period under §6502.

Modification of Third-Party Summons

A John Doe summons is one that does not identify the person with respect to whose liability the summons is issued. Under current law, the IRS is authorized to issue a John Doe summons as part of an investigation of a specific, unidentified person or group or class of persons whose identity is not ascertainable.

This provision seeks to clarify the IRS' authority to issue John Doe summonses by emphasizing that the IRS must narrowly tailor such a summons to seek only information that pertains to the failure (or potential failure) of the person or group of persons to comply with federal tax law. This provision is consistent with the current IRS manual, which states that a John Doe summons may not be used for the purposes of a "fishing expedition."

Private Debt Collection

Congress directed the IRS to establish a program that refers certain inactive tax receivable accounts to private collection agencies. The statute also specifies certain types of cases that are not eligible for referral to private collection agencies; however, the IRS didn't have a process in place to exclude low-income individuals from being referred for private collection.

This provision creates two additional categories of cases not eligible for referral to private collection agencies: (1) taxpayers whose income is substantially derived from supplemental security income benefits or disability insurance benefit payments or (2) taxpayers with an adjusted gross income of 200 percent of the applicable poverty level and below.

The provision also alters the definition of inactive tax receivables that can be assigned to private debt collection agencies to those in which more than two years has passed since assessment of the tax debt and limits installment agreements between the taxpayer and private debt collection agencies to seven years.

Modification of Authority to Issue Designated Summons

The IRS may issue designated or related summonses to examine the tax liability of certain corporations. A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination. This has the effect of extending a limitations period on the IRS making an assessment against the corporation.

This provision requires that prior to issuing a designated summons, the commissioner of the relevant operating division of the IRS and the Chief Counsel must review and provide written approval of the summons. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. The provision also requires that the IRS certify in any subsequent judicial proceedings that reasonable request for the information were made.

Access to Tax Returns and Tax Return Information

Generally, returns and return information are confidential and cannot be disclosed unless authorized by the Internal Revenue Code. This provision prohibits a person, other than an officer or employee of the IRS, from examining books and records as part of an examination other than for the sole purpose of serving as an expert. This provision also ensures that only IRS employees or the Office of Chief Counsel are able to question a witness under oath.

Subtitle D—Organizational Modernization

Office of the National Taxpayer Advocate

The Office of the Taxpayer Advocate is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate (NTA) reports directly to the IRS Commissioner. Taxpayer Advocate Directives (TADs) allow the NTA to identify systemic problems and issue directives mandating changes to IRS tax administration or other processes unless the IRS Commissioner or Deputy Commissioner modifies or rescinds the order. The NTA's authority to issue TADs is pursuant to a delegation of authority from the IRS Commissioner. The NTA is required to submit reports directly to the House Committee on Ways and Means and the Senate Committee on Finance.

This provision strengthens TADs by requiring a response from the IRS Commissioner or Deputy Commissioner and clarifying the time required for such a response. This provision also makes other changes to the NTA's responsibilities. It requires the NTA to report to Congress any TADs not addressed by the IRS, reduces the number of "most serious problems" included in the NTA Annual Report to Congress from "more than 20" to ten, requires the IRS to provide statistical support to the NTA upon request to the extent practicable and requires the NTA to coordinate research efforts with the Treasury Inspector General for Tax Administration (TIGTA). The provision also clarifies the salary for the NTA.

Modernization of IRS Organizational Structure

The *Restructuring and Reform Act of 1998* directed the IRS Commissioner to restructure the IRS by eliminating or substantially modifying the three-tier geographic structure (national, regional, and district) and replacing it with an organizational structure that features operating units serving groups of taxpayers with similar needs.

This provision requires the Treasury Department to submit to Congress by Sept. 30, 2020, a comprehensive written plan to redesign the organization of IRS. The Act requires the plan to: (a) streamline the structure of the agency including minimizing the duplication of services and responsibilities; (b) best position IRS to combat cybersecurity and other threats to IRS; and (c) address whether the Criminal Division of IRS should report directly to the Commissioner.

Beginning one year after the date on which the plan is submitted to Congress, a requirement that the IRS's organizational structure feature operating units serving groups of taxpayers with similar needs, will cease to apply.

Subtitle E—Other Provisions

VITA and Community Return Preparation Services

Through the Volunteer Income Tax Assistance (VITA) Program, the IRS partners with IRS-certified volunteer organizations to provide free tax return filing assistance to low-income populations, persons with disabilities, taxpayers with limited English proficiency and other underserved communities.

This provision codifies the VITA program by permanently authorizing the VITA matching grant program to support the maintenance and expansion of VITA programs. The Secretary of the Treasury, unless otherwise provided by specific appropriation, may allocate from otherwise appropriated funds up to \$30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting low-income taxpayers and members of underserved populations. Additionally, the provision allows the IRS to use mass communications and other means to promote the benefits and encourage the use of the program.

Low-Income Taxpayer Clinics

Even though the Code currently permits the IRS to provide up to \$6 million per year in matching grants to low-income taxpayer clinics that assist low-income taxpayers with representation and controversies with the IRS, CFR §3101.106(a) prohibits Treasury Department personnel from referring taxpayers to qualified low-income taxpayer clinics for advice and assistance.

This provision will allow Treasury Department personnel to advise taxpayers of the availability of, and eligibility requirements for receiving, advice and assistance from qualified low-income taxpayer clinics that receive funding from the IRS, and to provide location and contact information for such clinics.

Closure of Taxpayer Assistance Centers

The IRS is required to provide public notice, including by non-electronic means, to affected taxpayers 90 days prior to the closure of a Taxpayer Assistance Center (TAC). The notice must include information on alternative forms of assistance available for affected taxpayers and the date of the proposed closure. The IRS also must notify Congress and provide the reasons for the closure.

Seizure and Sale of Perishable Goods

Under current law, the IRS may seize and sell a taxpayer's property on the same day if the IRS deems it to be "perishable." Perishable goods are defined as those that (1) are liable to perish, (2) become greatly reduced in price or value by keeping, or (3) cannot be kept without great expense to the IRS. Deeming property as "perishable" also allows the IRS to forgo minimum bid requirements, which can lead to seized property being sold for significantly less than a normal auction would allow.

This provision limits the IRS' ability to seize a taxpayer's property and hold a same-day auction to only property that is liable to perish. Property that is greatly reduced in price or value by being held or that cannot be held without great expense would no longer be eligible to be sold on the same day by deeming it "perishable."

Whistleblower Reforms

Individuals who submit information leading to detection of underpayment of tax or to detection, trial, and punishment of persons guilty of violating internal revenue laws, may file a claim for an award.

This provision allows the IRS to exchange information with whistleblowers where doing so would be helpful to an investigation. It also requires IRS to notify whistleblowers of the status of their claims at certain points in the review process and authorizes, but does not require, IRS to provide status updates at other times upon written request of the whistleblower. To protect taxpayer privacy, it would prohibit whistleblowers from disclosing public information they receive from IRS under penalty of law. In addition, the provision amends the tax code to extend anti-retaliation provisions to IRS whistleblowers similar to those that are provided to whistleblowers under the *False Claims Act* and the *Sarbanes-Oxley Act*.

Customer Service Information

This provision instructs the IRS to provide the following information over the telephone, while taxpayers are on hold with an IRS call center: information about common tax scams, direction to the taxpayer on where and how to report such activity, and tips on how to protect against identity theft and tax scams.

Misdirected Tax Refund Deposits

This provision directs the IRS to establish procedures for taxpayers to report instances where they did not receive an anticipated electronic fund transfer or a refund was erroneously delivered to the wrong taxpayer, and also to ensure the IRS will recover the erroneous refunds and deliver them to the correct taxpayer.

TITLE II–21ST CENTURY IRS

Subtitle A–Cyber Security and Identity Protection

Public-Private Partnership

This provision codifies recent efforts of the IRS, through the Security Summit, to foster a partnership aimed at combatting identity theft tax refund fraud (IDTTRF) with public and private stakeholders. Congress intends that these proactive efforts to protect taxpayers and combat IDTTRF continue to be a priority of the IRS.

Electronic Tax Administration Advisory Council (ETAAC)

This provision seeks to codify the changes made to ETAAC’s charter by requiring ETAAC to study and make recommendations to the Secretary of the Treasury regarding methods to prevent IDTTRF.

Information Sharing

In 2016, the Security Summit, a partnership of the IRS, state tax agencies, and the private sector tax industry to address tax refund fraud caused by identity theft, created an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC). The ISAC enables the IRS and the states to work together with external third parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues.

This provision provides for the limited sharing of specified return information, such as IP address and the speed at which the return was filed, with paid return preparers who are members of the ISAC. The proposal also requires the Secretary of the Treasury to develop metrics for measuring the success of the ISAC in detecting and preventing IDTTRF.

Compliance by Contractors

This provision puts in place additional confidentiality safeguards on return information provided to contractors. Effective for disclosures made after Dec. 31, 2022, this provision provides that the IRS is unable to provide taxpayer information to any contractors or other agents of a federal, state, or local agency unless the contractor has safeguards in place to protect the confidentiality of return information and agrees to conduct on-site compliance reviews every three years. The federal, state, or local agency is required to submit a report of its findings to the IRS and certify annually that such contractors and other agents are in compliance with the requirements to safeguard the confidentiality of federal returns and return information.

Identity Protection Personal Identification Numbers (IP PIN)

Currently, the IP PIN program fails to protect victims whose identities have been stolen but have not yet had their tax account compromised. This provision requires the IRS to set up a program under which any concerned taxpayer—regardless of state of residence—can request an IP PIN to use in filing a return. The bill expands voluntary access to IP PINs nationwide over five years.

Single Point of Contact for Tax-Related Identity Theft Victims

This provision establishes a single point of contact within the IRS for any taxpayer who is a victim of identity theft. The single point of contact will be responsible for tracking the taxpayer’s case to completion and coordinating with other units to resolve the taxpayer’s issues as quickly as possible. This provision is intended to address concerns over the lack of continuity of assistance when taxpayers are victims of tax related identity theft.

Notification of Suspected Identity Theft

Often identity theft and refund fraud victims may be unaware that their identity has been used fraudulently or, when they are aware, may not be fully informed of the outcome of their case.

This provision requires the IRS to notify a taxpayer if there has been any suspected unauthorized use of a taxpayer's identity or that of the taxpayer's dependents, if an investigation has been initiated and its status, whether the investigation substantiated any unauthorized use of the taxpayer's identity and whether any action has been taken (such as a referral for prosecution). The unauthorized use of the identity of an individual includes the unauthorized use of the individual's identity to obtain employment. Furthermore, when an individual is charged with a crime, the IRS must notify the victim as soon as possible, giving such victims the ability to pursue civil action against the perpetrators.

IRS Management of Stolen Identity Cases

This provision requires that the IRS, in consultation with the National Taxpayer Advocate, develop and implement publicly available caseworker guidelines that reduce the burdens for IDTTRF victims as they work with the IRS to sort out their tax affairs. The guidelines may include procedures to reduce the amount of time victims would have to wait to receive their tax refunds, the number of IRS employees with whom victims would need to interact, and the timeframe within which the issues related to the IDTTRF should be resolved.

Increased Penalty for Improper Disclosure or Use of Information by Return Preparers

This provision imposes an increased monetary penalty for the disclosure of taxpayer identity information by a return preparer in cases where such information is used in an identity theft crime, whether or not related to the filing of a tax return. This provision is intended to provide a strong incentive for tax preparers to secure client records, thereby decreasing the likelihood of those records being stolen by identity theft criminals.

The civil penalty for the unauthorized disclosure or use of information by tax return preparers is increased from \$250 to \$1,000 for cases in which the disclosure or use is made in connection with a crime relating to the misappropriation of another person's taxpayer identity. The calendar year limitation is also increased from \$10,000 to \$50,000. The calendar year limitation is applied separately with respect to disclosures or uses made in connection with taxpayer identity theft.

This provision also increases the criminal penalty for knowing or reckless conduct to \$100,000 in the case of disclosures or uses in connection with taxpayer identity theft.

Subtitle B—Development of Information Technology

Management of IRS Information Technology

This provision seeks to strengthen IRS accountability for the billions of taxpayer dollars annually spend on developing and maintaining IRS information technology (IT) systems. This provision codifies the position of the IRS' Chief Information Officer (CIO) and establishes clear roles and responsibilities for the CIO. This provision also mandates that the IRS develop and implement an IT strategic plan, in alignment with the overall goals of the IRS, to ensure adequate consideration and planning for the IRS' long-term IT needs. The IRS also must finish its plans for the completion of the Customer Account Data Engine (CADE 2) and have a third party independently verify and validate planning for CADE 2 and Enterprise Case Management system(s) generally within a year.

Internet Platform for Form 1099 Filings

The IRS is required to develop an internet portal that facilitates the filing of Forms 1099 with the IRS by taxpayers. The internet portal is to be modeled after a Social Security Administration (SSA) system that allows individuals to file Forms W-2 with SSA. The website will provide taxpayers with access to resources and guidance provided by the IRS, and allow taxpayers to prepare, file, and distribute Forms 1099, and create and maintain taxpayer records.

IRS Technology Positions

The *Revenue Reconciliation Act of 1998* provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay (SCP) authority. The purpose of the SCP authority was to provide the IRS with a management tool to quickly recruit and retain employees with high levels of expertise in technical or professional fields critical to the success of IRS's restructuring efforts. The authority was originally authorized for 10 years and extended twice.

This provision reauthorizes SCP authority for the IRS but only with respect to IT positions. Such authority ends on Sept. 30, 2025.

Subtitle C—Modernization of Consent-Based Income Verification System

Disclosure of Taxpayer Information

The Income Verification Express Service (IVES) is a program run by the IRS, which is used to verify a taxpayer's income. The program is most often used when a taxpayer is applying for a mortgage and the mortgage lender is seeking to verify the taxpayer's income.

This provision authorizes the IRS to develop an automated system to receive these forms in lieu of the current system, which relies on the forms to be sent to the IRS via secure fax. Additionally, the provision authorizes the IRS to charge a separate user fee over a two-year period on all IVES requests to fund the development of the new system.

Limit on Re-Disclosures of Consent-Based Disclosures

This provision limits tax return information redisclosures by the taxpayer's designee to only those redisclosures to which the taxpayer has expressly consented. The persons designated by the taxpayer to receive return information must not use the information for any purpose other than the express purpose for which consent was granted and must not disclose return information to any other person without the express permission of, or request by, the taxpayer.

Subtitle D—Expanded Use of Electronic Systems

Electronic Filing of Returns

Currently, under §6011(e)(2)(A) the IRS can only require individuals filing more than 250 returns to file them electronically. This is a different rule than the current rule under §6011(e)(3) requiring tax return preparers who reasonably expect to file more than 10 returns to file electronically.

This provision eventually would lower that 250-return threshold to 10 or more returns. This requirement would be phased in between the years 2019 and 2021. For calendar years before 2021, the threshold is 250 then drops to 100 in 2021 and to 10 for years after 2021.

In the case of a partnership, the applicable number is 200 in the case of calendar year 2018, 150 in the case of calendar year 2019, 100 in the case of calendar year 2020, then drops to 50 in calendar year 2021.

This provision also authorizes the IRS to waive the requirement that a federal income tax return prepared by a tax return preparer be filed electronically in cases where the tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

Uniform Standards for the Use of Electronic Signatures

This provision requires the IRS to publish regulations and other guidelines that would allow for electronic signatures to be used to request taxpayer return information for the purposes of disclosures to a practitioner or to execute a power of attorney.

Payment of Taxes by Debit and Credit Cards

Currently, the IRS cannot accept credit and debit card payments for taxes directly due to a restriction on the payment of fees charged by the card issuer. As a result, the IRS must use a third-party processor to accept credit and debit card payments.

This provision allows the IRS to directly accept credit and debit card payments for taxes, provided that the fee is paid by the taxpayer. The IRS is directed to seek to minimize these fees when entering into contracts to process credit and debit cards.

Authentication of Users of IRS E-Services Accounts

In the past, unscrupulous tax return preparers have used the IRS' suite of electronic services (e-Services) to perpetrate tax refund fraud. The provision requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

Subtitle E—Other Provisions

Repeal of Certain Tax Compliance Procedures and Reports.

The *Revenue Reconciliation Act of 1998* included a provision requiring the IRS to develop procedures and produce an annual report for streamlining compliance with the tax code. This new provision repeals that provision so that IRS resources instead can be directed to help prevent IDTTRF.

Comprehensive Training Strategy

This provision directs the IRS to submit a comprehensive training strategy to streamline current training processes, develop annual training on taxpayer rights, improve technology-based training and better focus on fair resolution of taxpayer disputes to Congress within one year.

TITLE III—MISCELLANEOUS PROVISIONS

Subtitle A—Reform of Laws Governing Internal Revenue Service Employees

Prohibition on IRS Rehiring Certain Fired Employees

This provision prohibits the IRS Commissioner from rehiring any employee of the IRS who has been involuntarily separated for misconduct.

Notification of Unauthorized Inspection or Disclosure of Return Information

A taxpayer shall be notified by the Secretary of the Treasury if any disciplinary or adverse action is taken against an IRS employee or employee of any other federal or state agency for unauthorized inspection or disclosure with respect to the taxpayer's information.

Subtitle B—Provisions Relating to Exempt Organizations

Mandatory E-Filing by Exempt Organizations

In general, only the largest and smallest tax-exempt organizations are required to file their annual information returns electronically. Tax-exempt organizations that have assets of \$10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to electronically file their Form 990-PF information returns. Organizations that file Form 990-N (i.e., the e-postcard) also must electronically file.

This provision extends the requirement to file electronically to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872, Political Organization Report of Contributions and Expenditures. The provision also requires that the IRS make the information provided on the forms available to the public as soon as practicable in a machine-readable format.

Notice Required Before Revocation of Tax-Exempt Status

Charities and other nonprofits automatically lose their tax-exempt status if they do not file annual information returns for three consecutive years. Once revoked, the organization must refile for exempt status.

This provision requires the IRS to notify an organization after the organization's second consecutive failure to file an information return to give the organization time to file an information return and prevent their tax-exempt status from being revoked.

Subtitle C—Revenue Provision

Increased Penalty for Failure to File

Taxpayers are subject to penalties for failure to file tax returns by the due date, subject to extensions and exceptions for reasonable cause. While the penalty is typically based on a percentage of the amount of tax required to be shown on the return, a minimum penalty applies equal to the lesser of \$205 (indexed for inflation) or 100 percent of the amount required to be shown on the return.

This provision increases the penalty to \$330 for returns required to be filed after Dec. 31, 2019.