Strengthen Taxpayer Rights

#1 ENACT THE TAXPAYER BILL OF RIGHTS AS A FREESTANDING PROVISION IN THE INTERNAL REVENUE CODE

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*."

This provision was enacted as part of the Protecting Americans from Tax Hikes (PATH) Act in 2015.[20] Previously, the National Taxpayer Advocate had recommended that Congress enact a Taxpayer Bill of Rights (TBOR) containing these ten provisions,[21] and the IRS itself adopted these rights as the "Taxpayer Bill of Rights" in June 2014.[22]

Reasons for Change

Notwithstanding widespread use of the phrase "Taxpayer Bill of Rights," it is not clear whether the 2015 legislation provided these rights to taxpayers. Some observers believe the statutory requirement that the Commissioner must ensure IRS employees "act in accord with" the TBOR necessarily implies that a failure of an IRS employee to act in accord with taxpayer rights constitutes a violation of a taxpayer's legal protections.

20 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, § 401(a) (2015) (incorporating the Protecting Americans from Tax Hikes Act of 2015, known as the "PATH Act").

21 National Taxpayer Advocate 2014 Annual Report to Congress 275-310 (Legislative Recommendation: *Codify the Taxpayer Bill of Rights and Enact Legislation that Provides Specific Taxpayer Protections*); National Taxpayer Advocate 2011 Annual Report to Congress 493-518 (Legislative Recommendation: *Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights*); National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*).

22 IRS, IR-2014-72, IRS Adopts *"Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov, in Publication 1* (June 10, 2014).

Other observers believe the fact that the statutory language focuses on the Commissioner's responsibilities means taxpayers do not themselves possess these rights.[23]

Congress should clarify that U.S. taxpayers possess these ten rights, because taxpayer rights should serve as the foundation for the U.S. tax system. While the IRS possesses significant enforcement authority, our system relies on taxpayers to file tax returns on which they self-declare their income (much of which is not reported to the IRS and is therefore difficult for the IRS to discover in the absence of self-reporting) and to pay the required tax. Clarifying that taxpayers possess these 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 should translate into enhanced revenue collection.[24]

For these reasons, we believe the TBOR should be the first provision in the IRC.

Recommendation

Codify the Taxpayer Bill of Rights as IRC § 1 (and renumber subsequent sections accordingly).

23 *See* Alice G. Abreu & Richard K. Greenstein, *Embracing the TBOR*, 2017 Tax Notes Today 1281–1307 (Nov. 27, 2017) (discussing the various interpretations of the TBOR).

24 National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

#2 REQUIRE THE IRS TO PROVIDE ANNUAL TAXPAYER RIGHTS TRAINING TO EMPLOYEES

Present Law

IRC § 7803(a)(3) requires the Commissioner of Internal Revenue to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights" that are provided by the IRC and that include the ten fundamental taxpayer rights adopted by the IRS as the Taxpayer Bill of Rights.

IRC § 7803(c)(2) describes the functions of the Office of the Taxpayer Advocate.

Reasons for Change

Notwithstanding the requirement imposed by IRC § 7803(a)(3), IRS training materials incorporate taxpayer rights information inconsistently and insufficiently. The Taxpayer Advocate Service reviewed IRS training courses and found that some courses covered topics related to taxpayer rights but made no reference to the fundamental rights adopted by the IRS, other courses sent mixed messages to employees about when taxpayer rights apply, and still other courses failed to include any taxpayer rights information at all.

The IRS currently requires all employees to take annual trainings, known as Mandatory Briefings, on topics such as ethics, unauthorized access of taxpayer accounts, and anti-discrimination laws. Although the Taxpayer Advocate Service prepared materials to be used in a Mandatory Briefing on the Taxpayer Bill of Rights, the IRS has declined to provide a Mandatory Briefing on the topic.

Requiring all IRS employees to take annual training on taxpayer rights will assist the IRS in complying with IRC § 7803(a)(3), which requires that the Commissioner of Internal Revenue ensure that IRS employees are familiar with and act in accord with taxpayer rights.

Recommendations

Amend IRC § 7803(c)(2)(C) to require the National Taxpayer Advocate to develop training for all IRS employees on taxpayer rights, including information about the Taxpayer Advocate Service. Amend IRC § 7803(c)(2)(C) to require the Commissioner of Internal Revenue to establish procedures to provide for this training to be delivered to all IRS employees annually.[25]

25 The Taxpayer Rights Act of 2015, S. 2333 and H.R. 4128, 114th Cong. § 308 (2015), contains language that is generally consistent with this recommendation.

#3 CODIFY THE IRS MISSION STATEMENT

Present Law

The IRS Restructuring and Reform Act of 1998 directed the IRS to revise its mission statement "to place a greater emphasis on serving the public and meeting taxpayers' needs."[26] In response, the IRS adopted the following mission statement: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *by applying the tax law* with integrity and fairness to all" (emphasis added). In 2009, with no public discussion, the IRS quietly made a profound change to its mission statement, which now reads: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all" (emphasis added).

Reasons for Change

There are three shortcomings inherent in the current IRS mission statement.

First, the shift in tone and emphasis, from "apply" to "enforce," has significant consequences. If a tax agency views its primary mission as "enforcing" the tax laws, it is likely to design its procedures and focus its resources on taking action against the relatively small number of taxpayers it views as noncompliant. By so doing, it may neglect to provide sufficient service and support to maintain and strengthen voluntary compliance among the overwhelming majority of taxpayers who are fully or substantially compliant, and thereby risk lower levels of compliance on their part. Even focusing solely on the small noncompliant taxpayer population, a mix of enforcement and education is likely to be most effective in improving compliance. The phrase "applying the tax law" is broad enough to encompass enforcement while also encompassing non-coercive compliance strategies.

Second, the current mission statement does not acknowledge that the IRS today has two lines of business — collector of revenue and administrator of benefits. In recent decades, the tax code has been increasingly used to promote various social and economic policies through the mechanism of tax credits and other tax expenditures. Taking an enforcement-oriented approach toward these inherently complex provisions, instead of one based on taxpayer service and education supplemented by problem identification and understanding of the root causes of noncompliance, can deter eligible taxpayers from claiming benefits to which they are legally entitled and prevent ineligible taxpayers from understanding what they did wrong. An agency's strategies and goals are established to further the agency's mission, so a more nuanced and accurate mission statement is likely to lead to better outcomes.

Third, the IRS adopted the Taxpayer Bill of Rights in 2014,[27] and Congress enacted its provisions into law in 2015.[28] Accordingly, the mission statement should similarly be updated to make clear that taxpayer rights serve as the foundation for effective tax administration.

Recommendation

Codify the IRS mission statement to make clear that (1) the mission of the IRS is to provide U.S. taxpayers with top quality service to help them understand and meet their tax responsibilities and to apply the tax law with integrity and fairness to all; (2) the IRS is both the tax collector and a benefits administrator; and (3) the

26 Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685, 690 (1998).

27 IR-2014-72, *IRS Adopts "Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov, in Publication 1* (June 10, 2014).

28 IRC § 7803(a)(3).

Taxpayer Bill of Rights (or taxpayer rights more generally) serve as the guiding principles for effective tax administration.

If Congress adopts our recommendation to enact the Taxpayer Bill of Rights as IRC § 1, it may be codified as section 1(a) and the IRS mission statement may be codified as section 1(b).[29]

29 *See* Legislative Recommendation: *Enact the Taxpayer Bill of Rights As a Freestanding Provision in the Internal Revenue Code, supra*.

#4 REQUIRE THE IRS TO PROVIDE TAXPAYERS WITH A RECEIPT SHOWING HOW THEIR TAX DOLLARS ARE BEING SPENT

Present Law

IRC § 7523 requires the IRS to include pie-shaped graphs showing the relative sizes of major outlay categories and major income categories in its instructions for Forms 1040, 1040A, and 1040EZ. In the 2016 Form 1040 instruction booklet, for example, the IRS published graphs on page 102 for fiscal year 2015.

Reasons for Change

Taxpayers will have greater faith in government if they understand how they are taxed and how their tax dollars are spent. Because taxpayers have a right to be informed, the IRS should educate each taxpayer about how the government raises money, how the government spends money, and how that particular taxpayer contributed to both. Current rules do not do an adequate job of achieving these objectives.

Congress enacted the requirement to include pie charts in the Form 1040 instructions booklet more than 25 years ago.[30] At that time, taxpayers filed their tax returns on paper, so the instructions booklet was widely available and used. Today, more than 85 percent of individual income tax returns are filed electronically,[31] and the instructions booklet is much less visible. In addition, the categories of outlays are presented at a very high level, and the public would benefit from additional detail. Further, a published pie chart cannot provide personalized information regarding the taxpayer's own contributions, such as the taxpayer's marginal tax rate, effective tax rate, and tax benefits claimed.

Once taxpayers are given a clear picture regarding federal receipts, federal spending, and their own contributions to that financial picture, and to further public education about taxation and federal spending, taxpayers should be given an opportunity to voice their opinions about how tax dollars should be spent in the future. This could be achieved by inviting taxpayers to "vote" on their tax returns regarding how much and on what the government should spend its money and by requiring the IRS to report the results of that "voting."

The "voting" would, of course, be non-binding. But this exercise in public engagement would help Americans gain a better understanding of the connection between the federal taxes they pay and the federal benefits they receive. As a consequence, it also has the potential to improve civic morale, increase tax compliance, and make the national dialogue over looming fiscal policy choices more productive as well.

Recommendations

1. Amend IRC § 7523 to require the IRS to provide each taxpayer with a "taxpayer receipt" that shows, on a single page, how federal dollars are spent and the taxpayer's own contributions in the form of taxes paid and tax benefits claimed. The IRS should develop these receipts in collaboration with TAS. For taxpayers who use tax software to self-prepare their returns, this requirement may be satisfied if the IRS requires e-file providers to include a page displaying the one-page breakdown at the end of the return preparation process as part of the *Authorized IRS* e-file *Providers* rules.[32] For taxpayers who use paid preparers, the requirement may be satisfied by requiring the preparer to

30 IRC § 7523 applies to instruction booklets prepared for taxable years beginning after 1990.

31 *See* https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-september-1-2017.

32 *See* Rev. Proc. 2007-40, 2007-1 C.B. 1488, and IRS Pub. 3112, *IRS e-file Application and Participation* (Rev. 4-2017).

include the one-page breakdown when furnishing the taxpayer with a completed copy of the tax return, as required by IRC § 6107(a).

2. Amend IRC § 7523 to require the taxpayer receipt to contain an online link or a paper "ballot" where the taxpayer can "vote" on what he or she believes federal funds should be spent on and in what amounts.
3. Amend IRC § 7523 to require the IRS to publish the aggregate results of taxpayer "voting" no later than 30 days after the end of the calendar year.