

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*).