

#45 REQUIRE THE IRS TO ADDRESS THE NATIONAL TAXPAYER ADVOCATE’S COMMENTS IN FINAL RULES

Present Law

IRC § 7805(f) requires the Secretary of Treasury to submit certain proposed or temporary regulations to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment regarding the impact the regulation may have on small businesses and to discuss any response to such comments in the preamble to the final regulations. Yet despite the fact that the National Taxpayer Advocate is required by IRC § 7803(c)(2)(A) to assist taxpayers in resolving problems with the IRS and to identify administrative and legislative solutions, there is no comparable provision that requires the Secretary to seek comments from the National Taxpayer Advocate on proposed or temporary regulations or to discuss any response to such comments in the preamble to the final regulations.

Reasons for Change

By requiring the IRS to solicit comments from the SBA and to respond to the comments, tax administration benefits because the agency is required to consider and respond to the SBA’s concerns about the impact of regulations on small businesses. Similarly, tax administration would benefit if the IRS were required to consider and respond to the National Taxpayer Advocate’s concerns about the impact of regulations on taxpayer rights and taxpayer burden. While the National Taxpayer Advocate currently provides comments to the IRS on an informal basis, a requirement that the IRS provide a written, public response would ensure the agency considers the National Taxpayer Advocate’s comments carefully, and would be informative for the public and interested stakeholders.

Recommendation

Amend IRC § 7805 to require the IRS to submit proposed or temporary regulations to the National Taxpayer Advocate for comment within a reasonable time and to address any such comments in the preamble to the final rule.¹⁴⁹

¹⁴⁹ For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 37-39 (Special Focus: *Provide the National Taxpayer Advocate the Authority to Hire Independent Counsel, Comment on Regulations, and File Amicus Briefs in Litigation Raising Taxpayer Rights Issues*); National Taxpayer Advocate 2011 Annual Report to Congress 573-581 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*); and National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*). S. 1598, 114th Cong. § 404 (2017) would generally adopt this recommendation, except that it requires the IRS to solicit comments from the National Taxpayer Advocate before publication.