#47 AUTHORIZE THE OFFICE OF THE TAXPAYER ADVOCATE TO ASSIST CERTAIN TAXPAYERS DURING A LAPSE IN APPROPRIATIONS

Present Law

Article I of the Constitution provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”\(^\text{142}\) The Anti-Deficiency Act implements this provision.\(^\text{143}\) Specifically, 31 U.S.C. § 1341(a)(1)(B) forbids any officer or employee of the United States government or of the District of Columbia government to involve his or her respective government employer in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. A significant exception to this rule is provided in 31 U.S.C. § 1342, which permits such government activity “for emergencies involving the safety of human life or the protection of property.”

Internal Revenue Code section 7803(c) established the Office of the Taxpayer Advocate to “assist taxpayers in resolving problems with the Internal Revenue Service,” among other things.\(^\text{144}\) IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) where a “taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.”\(^\text{145}\) Significant hardship includes “an immediate threat of adverse action” and “irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.”\(^\text{146}\)

Reasons for Change

Past IRS shutdown contingency plans have interpreted the exception under 31 U.S.C. § 1342 as applicable to activities necessary to safeguard human life or protect the property of the federal government, but not to protect the property of U.S. taxpayers. Thus, lien and levy activities carried out by automation can continue. During both the 2018 and 2013 shutdowns, the IRS issued thousands of notices of levy on financial accounts of individuals and businesses, on wages, and on Social Security and other government benefits because these notices were pre-programmed into the IRS’s computer systems before the shutdown began.

Yet despite the requirement under IRC § 6343(a)(1)(D) that the IRS release any levy that creates an economic hardship for a taxpayer, and the explicit charge in IRC § 7811(b)(1) that the National Taxpayer Advocate may issue a TAO “to release property of the taxpayer levied upon” where the taxpayer is experiencing significant hardship, no IRS or TAS employee, including the National Taxpayer Advocate, was excepted to work these

\(^{142}\) U.S. CONST. Art. I, § 9, cl. 7.  
\(^{144}\) IRC § 7803(c)(2)(A)(i).  
\(^{145}\) IRC § 7811(a)(1)(A).  
\(^{146}\) IRC § 7811(a)(2)(A) and (D).
cases during a shutdown. As a result, taxpayers facing economic hardship were unable to obtain assistance from TAS to request or obtain release of these levies. Additionally, because cases that were in TAS’s inventory at the time of the shutdown could not be worked, some taxpayers who had requested the assistance of the National Taxpayer Advocate and TAS immediately prior to the shutdown experienced significant hardship and irreparable injury.

**Recommendations**

Clarify that the emergency exception to the Anti-Deficiency Act for the protection of property includes taxpayer property as well as government property. Alternatively, clarify that (i) the National Taxpayer Advocate may incur obligations in advance of appropriations for purposes of assisting taxpayers experiencing an economic hardship within the meaning of IRC § 6343(a)(1)(D) due to an IRS action or inaction and (ii) the IRS may incur obligations in advance of appropriations for purposes of complying with any TAO issued pursuant to IRC § 7811.

---

147 See IRS SERP Alert #19A0017, Release of Levy and Release of Lien (Jan. 23, 2019) (“While there is a lapse in funding during the partial shutdown we are not authorized to take this action. We may do so once we are fully opened, so please call us back at that time. Please apologize to the taxpayer and explain we are not authorized to release the levy or lien due to the partial government shutdown. Explain that they may call us back after we are fully reopened.”).

148 For additional discussion of how TAS’s statutory authority to assist taxpayers suffering or about to suffer significant hardship was undermined during a shutdown, see National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 79-91 and preface to National Taxpayer Advocate 2018 Annual Report to Congress.

149 The IRS has since revised its contingency plan to allow the National Taxpayer Advocate and Local Taxpayer Advocates (LTAs) to check mail and process taxpayer payments outside of the filing season. See IRS Fiscal Year 2019 Lapsed Appropriations Contingency Plan (Non-Filing Season - December 831, 2018) (Nov. 29, 2018). If a shutdown occurs during the filing season (Jan. 1 – Apr. 30, 2019), additional TAS employees are excepted to open mail and process payments. See IRS Fiscal Year 2019 Lapsed Appropriations Contingency Plan (Tax Year 2018 Filing Season) (Jan. 15, 2019).