Taxpayers' Rights and IRS Obligations Before and After The 1988 Taxpayers' Bill of Rights

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Abstract

Greater protection for taxpayers is an idea whose time has finally arrived. The greater protection provided by the Taxpayer Bill of Rights, included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) is a good start in consumerism but it does have significant limitations. Surprisingly, along with the greater protection taxpayers have under the new law comes even more accountability by taxpayers to the Internal Revenue Service. This article addresses these new protections, their limitations and the new accountabilities by taxpayers to the IRS.

Introduction

On November 10, 1988, President Reagan signed into law the Technical and Miscellaneous Revenue Act (TAMRA). Subchapter J of this Act contains provisions dealing with taxpayer rights and procedures in dealing with the Internal Revenue Service. This somewhat controversial "Taxpayers' Bill of Rights" is of questionable impact. This paper analyzes the changes which will result from its implementation.

Historical Perspective

Taxpayers' rights first came to the Forefront in the late 1970's and early 1980's. On June 2, 1981, the Senate held its first hearing regarding such legislation. The Senate hearings focused on the alleged abusive tactics of the Internal Revenue Service, primarily in the area of collections.(1) Initially, there was not sufficient interest or support to generate legislation. Then, in the middle 1980's operational quality and accuracy slipped badly at the IRS. Newspapers carried reports of major computer failure and alleged shredding of returns and a host of other operational problems. These factors, together with the rapidity of changes in the tax laws, created the environment necessary for favorable action on a Taxpayer Rights Bill.

In February 1987, Senator David Pryor, Chairman of the Senate Finance Subcommittee on Private Retirement Plans and Oversight of the IRS, again proposed a Taxpayers' Bill of Rights to remedy what he perceived as intimidation and arm twisting by the IRS.

The Senate Finance Committee held hearings on the proposed legislation in April and June of 1987. The Internal Revenue Service initially opposed the legislation. Internal Revenue Commissioner, Lawrence Gibbs, believed that it was unnecessary because he claimed that the incidence of abuse by the IRS was rare when considered in view of the magnitude of the task the Service had to accomplish. Commissioner Gibbs pledged to "make the service flexible enough to admit mistakes and to make the necessary corrections."(2) He also asserted that much of what was contained in the proposed legislation was already contained within the IRS's current practices. Commissioner Gibbs and other top IRS officials were successful in delaying this legislation as it was not included in the Revenue Act of 1987.

However, on October 22, 1988, a modified version of Senator Pryor's previously proposed Bill of Rights was passed by Congress. The most significant modification to the earlier bill was the elimination of Senator Pryor's proposed shift of the burden of proof in tax cases from the taxpayer to the IRS. It was generally believed that placing the burden upon the IRS would severely undermine the Service's ability to collect taxes and may have discouraged taxpayers from maintaining good records.(3)

Provisions in the Taxpayers' Bill of Rights

The Taxpayers' Bill of Rights addresses many diverse issues. The following is a brief description of the significant provisions contained in this legislation.

The first provision, contained in Act Section 6227, requires the Internal Revenue Service to prepare a simple and non-technical statement describing the rights of the taxpayers and the obligations of the IRS. In effort, the Act requires that Publication 1 of the IRS, "Your Rights As A Taxpayer" be revised. The revision is to include an explanation of (1) the taxpayers rights during an examination of a return, (2) the procedures for appealing administration decisions of the IRS, (3) the process for filing and prosecuting complaints or claims for refunds, and (4) IRS procedures and taxpayer rights in response to assessments, levies, liens, and other enforced collection actions. This notice of rights must be sent to every taxpayer contacted concerning determination of collection of tax.(4)

Another provision is a preparer penalty for improper disclosure. Section 6712(3) of the Code provides for a $250.00 penalty for each disclosure up to a maximum of $10,000.00 per calendar year for paid tax preparers who disclose or use any information obtained through the preparation of tax returns. The Act also provides a criminal penalty for these same acts which will only apply when the preparer "knowingly or recklessly" discloses or uses such information.(5)

In regard to taxpayer interviews, the Act provides several new safeguards. Act Section 6228 requires that the Internal Revenue Service schedule examinations at a reasonable time and place. The Act further requires that the IRS shall publish regulations for determining a reasonable time and place for interviews. The new law allows taxpayers to make audio recordings of interviews if they make their request in advance. The taxpayer is further entitled to representation by anyone currently authorized to do so pursuant to IRS Circular 230. It is no longer required that the taxpayer be present except in the case of an Administrative Summons. All of the provisions relating to taxpayer interviews except the one concerning a reasonable time and place for examinations are excluded for criminal investigations.(6)

The new law amends Code Section 6404(f) to require the abatement of any penalty or addition to tax attributable to erroneous advice from the IRS. This provision only applies if the advice was in writing, specifically requested, and the taxpayer provided sufficient and adequate information to the IRS employee providing the advice.(7)

New Code Section 7521 requires that all tax due notices or deficiency notices described in Sections 6155, 6303, and 6212 contain a description of the basis for the notice and the amount of tax due along with any interest, additions to tax, and penalties. However, failure by the Service to provide this information will not invalidate the notice.(8)

Code Section 7811 gives the head of the Problems Resolution Office, the Taxpayer Ombudsman, the authority to issue a Taxpayers' Assistance Order when the taxpayer is suffering a significant hardship due to the way the tax laws are being administered. A Taxpayers' Assistance Order may require the IRS to release levied property or refrain from taking certain collection or assessment actions.(9)

Amended Code Section 7802(c) creates an Office and a Commissioner for Taxpayer Services. This office will provide such services as walk-in and telephone information and taxpayer educational services and will participate in the design and production of tax forms. The Assistant Commissioner will report to Congress regarding the quality of the Agency's taxpayer services.(10)

Section 7805(e) requires that all Temporary Regulations be issued simultaneously as Proposed Regulations and the Temporary Regulations may not remain in effect for more than three (3) years. The new law also requires that the Small Business Administration be solicited to comment on the impact of the new regulations on small businesses.(11)

Act Section 6231 prohibits the IRS from using records of tax enforcement results to evaluate employees involved in collection activities and their immediate supervisors. The law also prohibits the IRS from imposing production quotas or goals for collection personnel.(12)

Code Section 6159 allows the Internal Revenue Service to enter into an installment payment agreements with taxpayers. The statute further provides that the agreements may not be altered or terminated by the IRS unless (1) the taxpayer provides inaccurate or incomplete information, (2) the taxpayer fails to make installment when due, (3) the taxpayer fails to respond to a reasonable request by the IRS for updated financial information, or (4) the IRS determines that the collection of the tax is in jeopardy. The IRS may also alter or modify an agreement if the financial condition of the taxpayer has changed significantly.(13)

Code Section 6331(d) extends the time period required on a Notice to Levy on a taxpayer's property to thirty (30) days prior to seizure. Code Section 6332(c) requires banks to wait twenty-one (21) days after receiving an IRS Notice of Lien before releasing the funds to the IRS.(14)

Further, Code Section 6334 establishes as exempt from levy, wages in an amount equal to the taxpayer's standard deduction plus his total deduction for personal exemptions. Exemptions from levy for fuel, provisions, furniture, and personal effects are set at $1,550.00 for 1989 and $1,650.00 for 1990. Exemptions for books and tools used in a trade or business are set at $1,050.00 for 1989 and $1,100.00 for 1990.(15)

Code Section 6343 provides that a lien must be released of (1) the liability has been satisfied or is unenforceable, (2) releasing the levy would facilitate collection of the tax, (3) the taxpayer enters into an installment agreement, (4) the levy is creating an economic hardship, or (5) the fair market value of the levied property exceeds the liability and a partial release would not hinder collection of the tax.(16)

Section 6335(f) permits the owner of seized property to request that the IRS sell it within sixty (60) days and the IRS must comply unless it determines that it is not in the best interest of the government.(17)

The new law also expands the types of exempt property to include several public assistance payments, property whose fair market value is less than the costs of levy and sale, and a taxpayer's principal residence unless the District Director or his assistant approves such levy.(18)

Pursuant to Internal Revenue Code Section 7429, jeopardy levies are subject to administrative and judicial appeal. This law applies to levies that are made with less than thirty (30) days notice. Code Section 7424(b) provides that a taxpayer may file suit within ninety (90) days after the taxpayer has requested the IRS review. The Court has twenty (20) days to determine whether the jeopardy assessment or levy is appropriate.(19)

New Internal Revenue Code Section 6326 requires the IRS to prepare regulations pertaining to administrative reviews of notice of liens within 180 days of TAMRA's enactment. The new law further requires the IRS to issue a special certificate of release within fourteen (14) days, if practicable, when a lien is filed in error. The special certificate must indicate that the lien was filed in error.(20)

Code Section 7430 provides that where the taxpayer is the prevailing party, he may be entitled to recover reasonable costs and fees in litigation and administrative proceedings with the IRS. The taxpayer, however, must provide that the IRS was not substantially justified in their position.(21)

Under Code Section 7433, a taxpayer may sue the IRS for reckless or intentional disregard of a tax law or regulation. Total recovery under this provision is limited to $100,000. Code Section 7432 also allows a taxpayer to bring a claim when the IRS wrongfully fails to release a lien. In this case, the taxpayer may recover actual damages plus costs. Both types of civil suits must be brought in the District Court within two (2) years.(22)

Finally, Internal Revenue Code Section 6213 is amended and several new code provisions are added to expand the Tax Court jurisdiction in several areas. The Tax Court now has jurisdiction over premature assessments, enforcement of refunds, review of sales of seized property, interest on court-determined deficiencies, and modifications of estate tax decisions.(23)

There has been some degree of skepticism over the impact of the Taxpayers' Bill of Rights. Many feel there is little change from existing practices. Following is a chart comparing the current laws and practices with new law.

Conclusion

There is considerable disagreement concerning the impact that the Taxpayers' Bill of Rights will have on taxpayers and the IRS. Some believe that its impact will be minimal and victims of IRS abuses will still have few remedies available, while others believe the impact will be significant.

The law is substantially weaker than the original proposal. As indicated in the chart, many of the provisions merely codify existing practices and other provisions ultimately leave decisions up to the discretion of the IRS.

With its weaknesses, the Taxpayers' Bill of Rights contains significant improvements. Taxpayers will be better informed as to their rights and IRS procedures through the "Notice of Taxpayers' Rights." Taxpayers' rights relating to recordings and representa-tion at interviews, though not increased significantly, are now statutorily guaranteed. Taxpayers' rights in regard to IRS levies are expanded by guaranteeing the taxpayer more time to act on a notice of levy. Finally, the right to bring suit against the IRS, though difficult to accomplish, grants the taxpayer some recourse in extreme situations.

The Taxpayers' Bill of Rights should make a difference. The codification of existing and new practices in conjunction with the development of regulations in many areas should result in a more uniform application of these practices. Although the IRS is charged with developing many of the regulations, and has some discretion in their application, the regulations will create standards by which all taxpayers will be treated.

Ultimately, the IRS will determine how successful the Bill will be. Although, few of the provisions contain sanctions for IRS non-compliance, it behooves the IRS to comply. Congress has illustrated their intent to hold the IRS accountable. Failure by the IRS to promote this Bill of Rights would most certainly result in additional legislation containing more stringent taxpayer rights and sanctions against the IRS.

References

1. Wayne Saubert and Cherie J. O'Neil, "The New Taxpayer Bill of Rights," *Taxes - The Tax Magazine* 67 (April 1989): 212.
2. Leonard Wiener, "Restraining Overeager IRS Agents," *U.S. News & World Report*, 104 (May 1987): 62.
3. Standard Federal Tax Reports, "Taxpayer Bill of Rights Provides New Safeguards," *Tax Focus* 76 (May 10, 1989): 1.
4. Standard Federal Tax Reports, *Technical and Miscellaneous Revenue Act of 1988 - Law and Explanation*, (Chicago, Illinois: Commerce Clearing House, Inc., 1988), p. 83.
5. Ibid., p. 100
6. Ibid., p. 84.
7. Ibid., p. 85.
8. Ibid., p. 87-88.
9. Ibid., p. 86.
10. Ibid., p. 89.
11. Ibid., p. 87.
12. Ibid.
13. Ibid., p. 88.
14. Ibid., p. 89.
15. Ibid., p. 90.
16. Ibid., p. 91-92.
17. Ibid.
18. Ibid., p. 91.
19. Ibid., p. 92.
20. Ibid., p. 94.
21. Ibid., p. 94.
22. Ibid., p. 97-99.
23. Ibid., p. 101-102.
24. Prentice Hall Federal Taxes, *A Complete Guide to the Technical and Miscellaneous Revenue Act of 1988* (Paramus, N.J.: Prentice Hall, Inc., 1988), p. 234.
25. Ibid.
26. Ibid.
27. Ibid., p. 235.
28. Benson S. Goldstein, "The Omnibus Taxpayer Bill of Rights Act, *The National Public Accountant* 34 (Feb. 1989): 21.
29. Prentice Hall Federal Taxes, p. 236.
30. Ibid.
31. Ibid.
32. Goldstein, p. 23.
33. Prentice Hall Federal Taxes, p. 237.
34. Ibid., p. 238.
35. Ibid.
36. Ibid.
37. Ibid., p. 239.
38. Ibid.
39. Ibid.
40. Ibid.
41. Ibid., p. 240.
42. Ibid.
43. Ibid., p. 241.
44. Ibid.
45. Ibid., p. 242.
46. Ibid., 243.
47. Ibid., 244.

Bibliography

1. Coppinger, Walter T. "The Taxpayer Bill of Rights." *The Tax Advisor* (May 1989): 297-305.
2. Goldstein, Benson S., "The Omnibus Taxpayer Bill of Rights Act." *The National Public Accountant* 34 (February 1989): 20-24.
3. Jones, Kaplin S. and Schleef, Joan E. "Taxpayer Bill of Rights Requires More IRS Disclosure and Expands Civil Remedies." *Taxation for Accountants* 42 (March 1989): 180-184.
4. Kafka, Gerald A. "Taxpayer Bill of Rights Expands Safeguards and Civil Remedies," *The Journal of Taxation* 70 (January 1989): 4-9.
5. Prentice Hall Federal Taxes. *A Complete Guide to the Technical and Miscellaneous Revenue Act of 1988.* Paramus, N.J.: Prentice Hall, Inc., 1988.
6. Saubert, R. Wayne and O'Neil, Cherie J. "The New Taxpayer Bill of Rights." *Taxes - The Tax magazine* 67 (April 1989): 211-222.
7. Standard Federal Tax Reports. "Taxpayer Bill of Rights Provides New Safeguards." *Tax Focus* 76 (May 10, 1989): 1-4.
8. Standard Federal Tax Reports. *Technical and Miscellaneous Revenue Act of 1988 - Law and Explanation.* Chicago, Illinois: Commerce Clearing House, Inc., 1988.
9. "We Need to Enact a Taxpayers' Bill of Rights." *Nations Business* 75 (June 1987): 71.
10. Wiener, Leonard. "Restraining Overeager IRS Agents." *U.S. News & World Report* 104 (May 1987): 62.

Provision	Current Practice	New Law	Change
Disclosure of Taxpayer's Rights	No disclosure is required but current IRS policy provides most information during the audit and collection process.(24)	The IRS must provide a notice of taxpayers' rights to every taxpayer it contacts regarding the determination or collection of tax.	Taxpayers will consistently be informed earlier and more completely.
Preparer Penalties	Preparers are subject to criminal penalties of $1,000 and/or one year in prison for disclosing information obtained in tax preparation.(25)	Preparers are subject to civil penalties of $250 per occurrence - maximum of $10,000 and criminal penalties of $1000 and/or one year in prison for disclosing information obtained in tax preparation.	Penalties for tax preparers to include civil.
Taxpayer Interview	(a) The determination of time and place of interviews is up to the IRS.(26)	(a) Requires interviews to take place at a reasonable time and place to be determined by the IRS.	Codification of current practice with adoption of reasonableness standard.
	(b) IRS policy allows audio recordings of interviews if prearranged.(27)	(b) The taxpayer is entitled to make audio recordings of interviews if requested in advance.	Codification of current practice.
	(c) An eligible representative acting under a written power of attorney may represent a taxpayer during an interview.(28)	(c) Taxpayers have the right to consult with and be represented by an eligible representative. The IRS cannot require the taxpayers' presence without an administrative summons.	Taxpayers will be allowed to refuse to attend interviews except under administrative summons.
Taxpayer reliance on IRS advice	The taxpayer may be subject to penalties and additions to tax although he relied on IRS advice.(29)	If the IRS advice is in writing, specifically requested, and based on complete and accurate information, the taxpayer cannot be charged penalties or additions to tax.	The taxpayer can rely on written advice from the IRS under certain circumstances. However, the IRS is not required to provide written advice.

Provision	Current Practice	New Law	Change
Administrative Notices	Generally, explanations but no basis for penalties are included on deficiency notices.(30)	The basis for and amount of tax, interest, penalties, and additional amounts must be included in certain notices.	Certain notices should include more information concerning the basis for penalties, etc. However, no penalty to IRS for excluding.
Taxpayer Assistance Orders	Problem Resolution Office helps taxpayers settle problems, but no power to issue Taxpayer Assistance Orders.(31)	The Taxpayer Ombudsman may issue Taxpayer Assistance Orders to stop liens and specified collection and assessment actions when undue hardships are created.	Taxpayer may find immediate relief from hardship created by IRS application of tax laws, however, still at the discretion of the IRS.
Assistant Commissioner for Taxpayer Services	Taxpayer services are included under the Assistant Commissioner for returns processing.(32)	Created a separate IRS office and Assistant Commissioner to solely deal with taxpayer services and report to Congress on these services.	Separate office to concentrate on taxpayer services under the guidance of Congress.
Time Limits on Temporary Regulations	Temporary Regulations remain in effect indefinitely.(33)	Temporary Regulations will be limited to a 3-year life and the Small Business Administration will be asked to comment on all new regulations.	Limits life of Temporary Regulations and insures input from Small Business.
Evaluation of Collection Personnel	It is against IRS policy to evaluate collection employees based on collection results or production quotas.(34)	Prohibits IRS from evaluating collection employees based on collection results or production quotas.	Codifies existing practice.
Installment Payment Agreements	The IRS may enter into Installment Payment Agreements and may change or terminate such arrangements as it deems necessary.(35)	Provides the IRS with statutory authority for making installment agreements for payments of tax and establishes criteria for when the IRS may change or terminate such agreements.	Codifies existing practice with some specific guidelines still at IRS discretion.

Provision	Current Practice	New Law	Change
IRS Levies	(a) IRS was required to give 10 days prior to levying on taxpayers property.(36)	(a) IRS must given 30 days' notice of intention to levy property and banks must wait 21 days before releasing liened funds.	Notice of lien extended 20 days and delay established on liened bank accounts.
	(b) Exemptions for fuel, provisions, furniture, and personal effects of $1,500.(37)	(b) Exemptions for fuel, provisions, furniture, and personal effects increased to $1,650 by 1990.	Increased exemption by $150.
	(c) Exemption for books and tools $1,000.(38)	(c) Exemptions for books and tools increased to $1,100 for 1990.	Increased exemptions by $100.
	(d) Exempt property: clothing, school books, certain pensions, child support payments, unemployment benefits, workers compensation, some disability payments.(39)	(d) Exempt property under current practice plus some public assistance payments, payments under the Job Training Partnership Act, and in some cases, the principal residence.	Expands exempt property.
	(e) Wages exempt from levy set at $75 for the taxpayer plus $25 for each dependent per week.(40)	(e) Exempt wages set at the taxpayers standard deduction plus total personal exemption.	Increases exempt wages.
	(f) Liens may be released by the district director if the taxpayer posts a bond, enters into an escrow arraignment, assigns wages, enters into an installment agreement, or pays off the IRS's interest.(41)	(f) Liens may also be released when the statute of limitations expires, when the levy is creating an economic hardship, or when a partial release will not hinder tax collection.	Increased occasions for release of liens, but still up to IRS discretion.
	(g) Sale of liened property up to IRS discretion.(42)	(g) Taxpayer may request sale of liened property within 60 days. IRS must comply unless it determines it would not be in the best interest of government.	Still ultimately at IRS discretion.

Provision	Current Practice	New Law	Change
Jeopardy Levy Procedures	(a) Jeopardy Assessment procedures are subject to administrative review.(43)	(a) Both Jeopardy Assessment procedures and Jeopardy Levies are subject to administrative review.	Expands administrative reviews to Jeopardy Levies.
	(b) Taxpayer must file suit within 30 days to contest a Jeopardy Assessment or Levy.(44)	(b) Taxpayer must file suit within 90 days to contest a Jeopardy Assessment or Levy.	Time to file suit expanded.
Appeal of Tax Liens	No provision.	The IRS must issue a certificate of release within 14 days, if practicable indicating erroneous lien was filed in error.	Certificate of Release helps to repair damage created by lien.
Recovery of Costs and Fees	A taxpayer is entitled to recover litigation costs and fees if the IRS was not substantially justified in their position.(45)	A taxpayer is entitled to recover both litigation and administrative costs and fees if the IRS is not substantially justified in their position.	Expands the recovery of costs and fees to administrative costs.
Civil Suits Against IRS	No statutory authority to sue the U.S. Government.(46)	Taxpayers may bring civil suits against the IRS for (1) failure to release a lien or (2) reckless or intentional disregard for tax laws and regulations.	Gives taxpayers right to bring civil suits in certain instances.
Tax Court Jurisdiction	The District Court has jurisdiction over challenges of premature assessments, orders of refund, challenges of seized property, modification of estate tax decisions and interest determinations.(47)	The Tax Court and the District Court now has jurisdiction over these areas.	Expansion of Tax Court jurisdiction.