

H.R. 3220, the Preserving Taxpayers' Rights Act

H.R. 3220 helps ensure IRS audits are more effective and efficient for taxpayers and the IRS by ensuring taxpayer rights are protected by curtailing certain IRS litigation tactics during an audit and guaranteeing taxpayers' right to appeal their cases to the independent Office of Appeals. It would also prevent the IRS from outsourcing audits of confidential taxpayer information to private law firms or other contractors.

In recent years, certain IRS litigation tactics have 1) denied taxpayers access to administrative resolution of tax disputes, 2) prejudiced taxpayers' right to a fair and impartial hearing with the IRS Office of Appeals or in the courts, and 3) needlessly extended audits for compliant taxpayers.

Rather than focusing on the correctness of a taxpayer's return and resolving disagreements efficiently, unnecessary litigation postures can corrode the cooperative relationships between taxpayers and the IRS, impede transparent interaction, decrease efficiency, raise costs, and increase uncertainty for both taxpayers and the IRS.

The vast majority of tax issues are resolved administratively, either by the IRS Examination Division or the Office of Appeals, which is an independent function charged with providing a fair and impartial resolution of tax controversies following an audit. The IRS Restructuring and Reform Act of 1998 requires the IRS Commissioner to ensure the availability of an independent appeals function.

H.R. 3220 addresses the following litigation tactics the IRS has used to deny or delay taxpayer access to Appeals:

Issuing a statutory notice of deficiency ("90-day letter") without first issuing a 30-day letter, which provides the taxpayer the opportunity to resolve its case with Appeals before filing a Tax Court petition.

- The bill provides a statutory right to review by Appeals, in most cases before the issuance of a notice of deficiency.

Designating a case for litigation, thereby precluding access to Appeals or the Competent Authority process, even though other similarly taxpayers are afforded those opportunities.

- The bill restricts the IRS's ability to designate cases for litigation to listed tax shelter transactions.

Using a designated summons to request information obtainable through other means, which suspends the statute of limitations and delays access to Appeals.

- The bill requires written approval by the Commissioner of the Large Business & International Division of the IRS as well as Division Counsel of the Office of Chief Counsel and that such written approval be attached to the summons.
- The bill requires that the Secretary bear the burden of demonstrating that the taxpayer did not reasonably cooperate with reasonable requests for witnesses, information, documents, meetings, and interviews.

IRS hiring of a law firm to participate in an audit of a taxpayer.

- The bill prohibits the taking of testimony and examination of books and witnesses by outside contractors.

H.R. XXXX, the Preserving Taxpayers' Rights Act
Section-by-Section Summary

Section 1. Short Title, Etc.

Names the bill The Preserving Taxpayers' Rights Act.

Section 2. Ensuring Taxpayer Right to Appeal

This section provides a statutory right for a taxpayer to have its case reviewed by the Internal Revenue Service Office of Appeals ("Appeals") prior to the issuance of the notice of deficiency ("90-day letter").

This section provides that a 90-day letter shall not be issued unless the taxpayer has first received a letter of proposed deficiency ("30-day letter") that explains the basis for the proposed adjustment and provides the taxpayer the opportunity to request a hearing with Appeals.

The Secretary of the Treasury ("Secretary") is authorized to limit access to Appeals in cases involving identified frivolous tax positions.

An exception is provided for cases designated for litigation, subject to new conditions on designating cases for litigation.

This section requires the IRS to issue a 30-day letter in any case where 60 days or less remain on the statute of limitations provide the taxpayer simultaneously agrees to extend the statute for a period of 12 months.

Section 3. Appeals Dispute Resolution Procedures

This section allows the Secretary to issue regulations for taxpayers to request consideration by Appeals of issues included in a 30-day or 90-day letter regardless of whether the taxpayer has filed a petition in Tax Court, a claim for refund, or a suit in district court or the United States Court of Federal Claims.

Exceptions are provided for frivolous tax positions or cases designated for litigation.

Section 4. Restriction on Secretarial Authority to Designate Cases for Litigation

This section restricts the circumstances under which the IRS can designate a case for litigation to listed transactions. It also restricts the ability of the IRS to offer settlement terms that preclude a taxpayer's access to Appeals to listed transactions.

Section 5. Modification of Authority to Issue Designated Summons

This section provides that the issuance of any designated summons with respect to a taxpayer's return be preceded by a review and written approval of such issuance by the IRS Large Business and International Division Commissioner and the Division Counsel of the Office of Chief Counsel justifying a designated summons, and that this written approval be attached to the designated summons when issued to the taxpayer.

This section also places the burden of proof on the Secretary to show in a judicial enforcement proceeding for a designated summons (or any related summons) that the taxpayer did not reasonably cooperate with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews.

Section 6. Limitation on Access to Non-IRS Employees to Returns and Return Information Acquired by Summons

This section prohibits a person other than an officer or employee of the IRS to receive any books, papers, records, or other data, other than for the sole purpose of serving as an expert.

This section prohibits a person other an officer of employee of the IRS or the Office of Chief Counsel to question a witness under oath.

.....
(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R.

To amend the Internal Revenue Code of 1986 to preserve taxpayers' rights to administrative appeal of deficiency determinations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Missouri introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to preserve taxpayers' rights to administrative appeal of deficiency determinations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Preserving Taxpayers’ Rights Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this bill is as follows:

Sec. 1. Short title, etc.

Sec. 2. Ensuring taxpayer right to appeal.

- Sec. 3. Appeals dispute resolution procedures.
- Sec. 4. Restriction on Secretarial authority to designate cases for litigation.
- Sec. 5. Modification of authority to issue designated summons.
- Sec. 6. Limitation on access of non-Internal Revenue Service employees to returns and return information.

1 **SEC. 2. ENSURING TAXPAYER RIGHT TO APPEAL.**

2 (a) IN GENERAL.—Subsection (a) of section 6212 of
3 the Internal Revenue Code of 1986 is amended—

4 (1) by striking “IN GENERAL.—If the Sec-
5 retary” and inserting “IN GENERAL.—

6 “(1) AUTHORIZATION.—If—
7 “(A) the Secretary”,

8 (2) by striking “44, he is authorized” and in-
9 serting “44, and

10 “(B) the requirements of paragraph (2)
11 have been met with respect to such deficiency,
12 the Secretary is authorized”, and

13 (3) by adding at the end the following new
14 paragraph:

15 “(2) OPPORTUNITY FOR ADMINISTRATIVE RE-
16 VIEW IN THE OFFICE OF APPEALS.—

17 “(A) IN GENERAL.—The requirements of
18 this paragraph are met with respect to a defi-
19 ciency if, prior to the issuance of the notice of
20 deficiency under paragraph (1)—

21 “(i) the taxpayer has been issued a
22 letter of proposed deficiency that explains
23 the basis for the determination of defi-

1 ciency and allows the taxpayer an oppor-
2 tunity for administrative review in the In-
3 ternal Revenue Service Office of Appeals,
4 and

5 “(ii) either—

6 “(I) the time provided in such
7 letter for requesting administrative re-
8 view in the Internal Revenue Service
9 Office of Appeals has expired and the
10 taxpayer has not made such request,
11 or

12 “(II) such Office of Appeals offi-
13 cially concluded the administrative re-
14 view process with respect to such defi-
15 ciency.

16 “(B) FRIVOLOUS TAX POSITIONS.—The
17 Secretary is authorized to issue regulations lim-
18 iting the application of subparagraph (A) in
19 cases involving solely the failure or refusal to
20 comply with the tax laws because of moral, reli-
21 gious, political, constitutional, conscientious, or
22 similar grounds, or for other positions listed as
23 frivolous under section 6702(c).

24 “(C) CASES DESIGNATED FOR LITIGA-
25 TION.—Subparagraph (A) shall not apply in the

1 case of issues designated for litigation in ac-
2 cordance with section 7124, and the taxpayer's
3 right to administrative review in the Internal
4 Revenue Service Office of Appeals as provided
5 in this paragraph shall not otherwise be de-
6 nied.”.

7 (b) OPPORTUNITY FOR APPEAL IF FEWER THAN 60
8 DAYS REMAIN ON STATUTE OF LIMITATIONS.—Section
9 6212 of the Internal Revenue Code of 1986 is amended
10 by adding at the end the following new subsection:

11 “(e) OPPORTUNITY FOR APPEAL IF FEWER THAN 60
12 DAYS REMAIN ON STATUTE OF LIMITATIONS.—In the
13 case of any issues relating to a potential deficiency with
14 respect to which 60 days or fewer remain in the period
15 applicable under section 6501, if the taxpayer agrees to
16 the extension of such period by 12 months, the Secretary
17 shall issue a letter of proposed deficiency described in sub-
18 section (a)(2)(A)(i) allowing the taxpayer an opportunity
19 for administrative review of such issues in the Internal
20 Revenue Service Office of Appeals before a notice of defi-
21 ciency is issued under this section. Rules similar to the
22 rules of subsection (a)(2)(B) shall apply for purposes of
23 this subsection.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to notices of deficiency issued after
3 the date of the introduction of this Act.

4 **SEC. 3. APPEALS DISPUTE RESOLUTION PROCEDURES.**

5 Subsection (a) of section 7123 of the Internal Rev-
6 enue Code of 1986 is amended to read as follows:

7 “(a) REFERRAL TO APPEALS PROCEDURES.—The
8 Secretary shall prescribe procedures by which any tax-
9 payer may request—

10 “(1) early referral of 1 or more unresolved
11 issues from the examination or collection division to
12 the Internal Revenue Service Office of Appeals, or

13 “(2) consideration by such Office of Appeals of
14 issues included in—

15 “(A) a letter of proposed deficiency de-
16 scribed in section 6212(a)(2)(A),

17 “(B) a notice of deficiency pursuant to sec-
18 tion 6212, whether or not the taxpayer has filed
19 a petition with the Tax Court pursuant to sec-
20 tion 6213(a), or

21 “(C) a claim for refund, whether or not the
22 taxpayer has filed suit in a district court or the
23 United States Court of Federal Claims with re-
24 spect to the issues included in such claim or re-
25 fund.

1 Such regulations may limit such procedures in cases
2 involving solely the failure or refusal to comply with
3 the tax laws because of moral, religious, political,
4 constitutional, conscientious, or similar grounds, or
5 for other positions listed as frivolous under section
6 6702(c). Such procedures shall not be available in
7 the case of issues designated for litigation in accord-
8 ance with section 7124, and the taxpayer's right to
9 administrative review in the Internal Revenue Serv-
10 ice Office of Appeals as provided in section
11 6212(a)(2) shall not otherwise be denied.”.

12 **SEC. 4. RESTRICTION ON SECRETARIAL AUTHORITY TO**
13 **DESIGNATE CASES FOR LITIGATION.**

14 (a) IN GENERAL.—Chapter 74 of the Internal Rev-
15 enue Code of 1986 is amended by redesignating section
16 7124 as section 7125 and by inserting after section 7123
17 the following new section:

18 **“SEC. 7124. RESTRICTION ON SECRETARIAL AUTHORITY TO**
19 **DESIGNATE CASES FOR LITIGATION.**

20 “(a) IN GENERAL.—The Secretary may designate
21 issues arising from the examination or collection division
22 for litigation, and not permit the taxpayer to request con-
23 sideration of such issues by the Internal Revenue Service
24 Office of Appeals under section 7123(a), only to the extent

1 such issues relate to listed transactions (as defined in sec-
2 tion 6707A(c)(2)).

3 “(b) SETTLEMENT.—In offering terms under a set-
4 tlement agreement for purposes of the resolution of any
5 issues arising from the examination or collection division,
6 the Secretary may offer terms that preclude the taxpayer
7 from requesting consideration of such issues by the Office
8 of Appeals under section 7123(a) only to the extent such
9 issues relate to listed transactions (as defined in section
10 6707A(c)(2)).”

11 (b) CLERICAL AMENDMENT.—The table of sections
12 for chapter 74 of the Internal Revenue Code of 1986 is
13 amended by striking the item relating to section 7124 and
14 inserting the following new items:

“Sec. 7124. Restriction on Secretarial authority to designate cases for litigation.

“Sec. 7125. Cross references.”

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to the designation of issues for liti-
17 gation, and offers of settlement terms, after the date of
18 the introduction of this Act.

19 **SEC. 5. MODIFICATION OF AUTHORITY TO ISSUE DES-**
20 **IGNATED SUMMONS.**

21 (a) IN GENERAL.—Paragraph (1) of section 6503(j)
22 of the Internal Revenue Code of 1986 is amended by strik-
23 ing “coordinated examination program” and inserting “co-
24 ordinated industry case program”.

1 (b) DESIGNATED SUMMONS.—Clause (i) of section
2 6503(j)(2)(A) of the Internal Revenue Code of 1986 is
3 amended to read as follows:

4 “(i) the issuance of such summons is
5 preceded by a review and written approval
6 of such issuance by the Large Business
7 and International Division Commissioner
8 and the Division Counsel of the Office of
9 Chief Counsel (or their successors)—

10 “(I) which clearly establishes
11 that the taxpayer did not reasonably
12 cooperate with reasonable requests by
13 the Secretary for witnesses, docu-
14 ments, meetings, and interviews, and

15 “(II) which is attached to such
16 summons.”.

17 (c) BURDEN OF PROOF.—Subsection (j) of section
18 6503 of the Internal Revenue Code of 1986 is amended
19 by adding at the end the following new paragraph:

20 “(4) BURDEN OF PROOF.—In any court pro-
21 ceeding described in paragraph (3), the Secretary
22 shall bear the burden of proving that the corporation
23 described in paragraph (1) did not reasonably co-
24 operate with reasonable requests by the Secretary

1 for witnesses, documents, meetings, and inter-
2 views.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to summonses issued after the date
5 of the introduction of this Act.

6 **SEC. 6. LIMITATION ON ACCESS OF NON-INTERNAL REV-**
7 **ENUE SERVICE EMPLOYEES TO RETURNS**
8 **AND RETURN INFORMATION.**

9 (a) IN GENERAL.—Section 7602 of the Internal Rev-
10 enue Code of 1986 is amended by adding at the end the
11 following new subsection:

12 “(f) LIMITATION ON ACCESS OF PERSONS OTHER
13 THAN INTERNAL REVENUE SERVICE OFFICERS AND EM-
14 PLOYEES.—No person other than an officer or employee
15 of the Internal Revenue Service shall be designated under
16 section 6103(n) to receive any books, papers, records, or
17 other data obtained pursuant to this section, other than
18 for the sole purpose of serving as an expert, and no person
19 other than an officer or employee of the Internal Revenue
20 Service or the Office of Chief Counsel may question a wit-
21 ness under oath whose testimony was obtained pursuant
22 to this section.”.

23 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendment made by this section shall
3 take effect on the date of the enactment of this Act.

4 (2) APPLICATION TO CONTRACTS IN EFFECT.—
5 The amendment made by this section shall apply to
6 any contract in effect under section 6103(n) of the
7 Internal Revenue Code of 1986, pursuant to tem-
8 porary Treasury Regulation section 301.7602–1T
9 proposed in Internal Revenue Bulletin 2014–28,
10 Treasury Regulation section 301.7602-1(b)(3), or
11 any similar or successor regulation, that is in effect
12 on the date of the enactment of this Act.