

The Taxpayer First Act Changes IRS Powers in Ways Important to Your Civil and Criminal Tax Clients



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On July 1, 2019, President Trump signed the Taxpayer First Act (“Act”), which includes a host of important expanded taxpayer protections ranging from adjustments to criminal tax seizures, to John Doe summonses, to the creation of an Independent Office of Appeals, to smaller changes to innocent spouse relief, and changes to offers and collections. The Act pays for the expected revenue impact by raising the minimum Section 6651 penalty imposed on taxpayers who fail to file a return from \$205 to \$330.

Changes to the IRS’s Ability to Seize Assets in Money Structuring Cases

When seizing assets under the civil forfeiture laws for violations of Section 5324 (money structuring), the IRS may now only seize assets where the property derives from an illegal source or the funds were structured for the purposes of concealing the violation of a criminal law or regulation, other than a violation of Section 5234.

The Act requires that probable cause that a taxpayer evaded financial reporting requirements before any seizure, and provide notice of that seizure to the affected taxpayer explaining that the taxpayer has the right to a post-seizure hearing within 30 days after the asset seizure. If the IRS fails to show that required probable cause, the seizure will be rescinded. There is an extendable 30-day deadline for the court to make its finding in that regard.

The IRS may file a request with “a court of competent jurisdiction” for a single 30-day extension of the notice requirement, but only if the IRS can establish probable cause of an imminent threat to national security or personal safety necessitating such an extension.

If the taxpayer wins its challenge and the funds are returned with interest, Congress has inserted a new Section 139H, which provides that such interest is not included in that taxpayer’s gross income.

Narrowing of the Use of John Doe Summonses

The use of John Doe summonses issued under Section 7609(f) has been modified with a requirement that such summonses shall not be issued unless the information sought is “narrowly tailored” to information that pertains to the failure or potential failure of the person or group or class of persons to comply with the internal revenue laws. It is unclear as to what harm Congress sought to prevent here, since in my experience from prosecuting such summonses, the requests made were narrowly tailored to uncover relevant information, and where the scope was too broad given the third party’s available information, the response scope was modified by negotiation or litigation.

Creation of an Independent Office of Appeals

An Independent Office of Appeals (“IOA”) has been created in place of the current Office of Appeals, to resolve federal tax controversies without litigation, and doing so on a basis that is fair and impartial to both the Government and the taxpayer. The goal is to promote a consistent application and interpretation of the federal tax laws which promotes voluntary compliance with the federal tax laws, and which enhances public confidence in the integrity and efficiency of the IRS. All taxpayers will have the right to take a matter to the IOA. The IOA will be headed by a Chief of Appeals who reports to the IRS Commissioner.

If a taxpayer who has received a Notice of Deficiency requests an appeal to the IOA and is denied, that taxpayer must receive a written notice which provides a detailed description of the facts involved, the basis for the decision to deny the request, a detailed explanation of how the decision applies to the facts, and describes the procedures for protesting the decision to deny the request for appeal to the IOA. This provision does not apply to frivolous taxpayer positions. The IRS Commissioner will annually report to Congress on the number and categorical reasons for any such denials.

Where a taxpayer takes an appeal to IOA, the taxpayer will have access to the nonprivileged portions of the IRS case file no later than 10 days before the conference date, where that conference occurs after July 1, 2020.

Changes to IRS Whistleblower Protections

IRS whistleblower protections have increased to align those provisions with those already in existence at other government agencies, and requires that IRS investigators communicate with whistleblowers to keep them updated on the status of the investigation.

Innocent Spouse Relief

The Act provided for greater protection for innocent spouses by granting expanded access to equitable relief including through the IRS itself where an innocent spouse lacks the ability to seek relief under the current procedures but where it is inequitable to hold the innocent spouse liable. The expanded protections also allow for a de novo review of any denial by the Tax Court which shall make its determination not only upon the administrative record, but also by consideration of newly-discovered or previously unavailable evidence.

Offers and Collections Changes Including Limits Upon Private Collection Companies

The Act waives initial payment and application fees when applying under the Offer in Compromise program for taxpayers not exceeding 250% of the applicable poverty level. The Act also asserts a ban on the use of private collection companies for low income taxpayers (those with an AGI below 200% of the applicable poverty level), and bars such collection companies from collecting against taxpayers whose income substantially consists of disability insurance benefits.

Mandatory E-filing by Exempt Organizations

The Act requires mandatory e-filing by tax-exempt organizations and notice before revocation of tax-exempt status for failure to file.

The IRS Must Develop a Written Comprehensive Customer Service Strategy

Congress has mandated that the IRS develop a written comprehensive customer service strategy by July 1, 2020, which includes a plan to provide taxpayer assistance via secure methods and which adopt customer service best practices of the private sector by including online services, telephone call back services, and employee customer service training, with proposals to improve customer service over the short term (current year), medium term (3-5 years), and long term (10 years). The strategy will also consider where IRS services can be co-located in other government offices. The strategy will set forth a plan to update the Internal Revenue Manual (IRM) with such initiatives, and establish benchmarks for measuring progress towards that strategy. The IRM additions must be published by July 1, 2021.

