

**DESCRIPTION OF THE CHAIRMAN’S MARK
OF S. 1321,
THE “TELEPHONE EXCISE TAX REPEAL ACT OF 2005”
AND S. 832,
THE “TAXPAYER PROTECTION AND ASSISTANCE ACT OF 2005”**

Scheduled for Markup
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INTRODUCTION

The Senate Committee on Finance has scheduled a markup of S. 1321, the “Telephone Excise Tax Repeal Act of 2005” and S. 832, the “Taxpayer Protection and Assistance Act of 2005” for June 28, 2006. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman’s Mark of S. 1321 and S. 832.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman’s Mark of S. 1321, the “Telephone Excise Tax Repeal Act of 2005” and S. 832, the “Taxpayer Protection and Assistance Act of 2005”* (JCX-25-06), June 26, 2006.

I. REPEAL OF THE TELEPHONE EXCISE TAX

A. Repeal Excise Tax on Communications Services

Present Law

The Internal Revenue Code of 1986 (the “Code”) imposes a three-percent Federal excise tax on amounts paid for communications services. Communications services are defined as “local telephone service,” “toll telephone service,” and “teletypewriter exchange service.”² The person paying for the service (i.e., the consumer) is liable for payment of the tax. Service providers are required to collect the tax; however, if a consumer refuses to pay, the service provider is not liable for the tax and is not subject to penalty for failure to collect if reasonable efforts to collect have been made. Instead, the service provider must report the delinquent consumer’s name and address to the IRS, which then must attempt to collect the tax.³

Local telephone service is defined as the provision of voice-quality telephone access to a local telephone system that provides access to substantially all persons having telephone stations constituting a part of the local system.⁴

Toll telephone service (which is essentially long distance telephone service) is defined as voice quality communication for which (1) there is a toll charge that varies with the distance and elapsed transmission time of each individual call and payment for which occurs in the United States, or (2) a service (such as a wide area telephone service, or “WATS”) which, for a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), entitles the subscriber to an unlimited number of telephone calls to or from an area outside the subscriber’s local system area.

Telephone companies have historically collected excise tax on a toll telephone service even if the toll charge on such service does not vary with both distance and elapsed transmission time. However, in several recent cases, the Courts of Appeals held that the Federal excise tax on communications services does not apply to long distance (i.e., toll telephone) services sold at flat

² Sec. 4251. “Teletypewriter exchange service” refers to a data system that provides access from a teletypewriter or other data station to a teletypewriter exchange system and the privilege of intercommunication by that station with substantially all persons having teletypewriter or other data stations in the same exchange system. While it is understood that the system to which the definition was initially intended to apply is no longer in use, the definition may fit other services provided now or that may be provided in the future.

³ In general, the amount of tax is based on the sum of charges for taxable services included in the bill. If the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the tax base with respect to each such group is the sum of all items within that group. The tax on any remaining items not included in any such group is based on the charge for each item separately. Sec. 4254(a).

⁴ The access to substantially all persons having telephone stations constituting a part of the local system is sometimes referred to as access to the public switched telephone network.

per-minute rates for interstate, intrastate, and international calls. The courts concluded that the excise tax did not apply because a flat per-minute rate does not vary with both distance and transmission time as required by the statute.⁵ In response to these court decisions, the Internal Revenue Service issued a notice that directs telephone companies to cease collecting and paying over tax on long distance services and bundled services that are billed after July 31, 2006.⁶ The Federal excise tax on local-only telephone service remains in effect.

Description of Proposal

The proposal repeals the excise tax on communications services in its entirety.

Effective Date

The proposal applies to amounts paid pursuant to bills rendered more than 90 days after the date of enactment.

⁵ See, e.g., *Reese Bros. v. United States*, 2006 U.S. App. LEXIS 11468 (3d Cir. May 9, 2006); *Fortis v. United States*, U.S. App. LEXIS 10749 (2d Cir. Apr. 27, 2006); *American Bankers Insurance Group v. United States*, 408 F.3d 1328 (11th Cir. 2005); *Office Max, Inc. v. United States*, 428 F.3d 583 (6th Cir. 2005); *Nat'l R.R. Passenger Corp. v. United States*, 431 F.3d 374 (D.C. Cir. 2005).

⁶ Notice 2006-50, 2006-50 I.R.B. 1141 (May 26, 2006). The notice defines long distance services as “telephonic quality communications with persons whose telephones are outside the local telephone system of the caller.” Bundled services are defined as “local and long distance services provided under a plan that does not separately state the charge for the local telephone services.”

II. TAXPAYER PROTECTION AND ASSISTANCE

A. Low-Income Taxpayer Clinics

Present Law

The Code provides that the Secretary is authorized to provide up to \$6 million per year in matching grants to certain low-income taxpayer clinics.⁷ Eligible clinics are those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language (“controversy clinics”). No clinic can receive more than \$100,000 per year.

A “controversy clinic” includes (1) a clinical program at an accredited law, business, or accounting school, in which students represent low-income taxpayers, or (2) an organization described in section 501(c) which either represents low-income taxpayers as described above or provides referrals to qualified representatives. A low-income taxpayer is an individual whose income does not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

Description of Proposal

The proposal authorizes \$10 million in matching grants for low-income taxpayer return preparation clinics (“return preparation clinics”). Return preparation clinics are clinics that provide routine tax return preparation and filing services to low-income taxpayers for not more than a nominal fee. Under the proposal, return preparation clinics eligible to receive grants include eligible educational institutions as defined in section 529(e)(5) and organizations described in section 501(c).

The proposal prohibits the use of grants for overhead expenses at both controversy clinics and return preparation clinics. The proposal also authorizes the IRS to use mass communications, referrals, and other means to promote the benefits and encourage the use of low-income controversy clinics and return preparation clinics.

The authorization of \$6 million for controversy clinics under present law is also increased to \$10 million.

Effective Date

The proposal is effective for grants made after the date of enactment.

⁷ Sec. 7526.

B. Enrolled Agents

Present Law

Treasury Department Circular No. 230 provides rules relating to practice before the Internal Revenue Service (the “IRS”) by attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others.

Description of Proposal

The proposal permits the Secretary to promulgate regulations to regulate the conduct of enrolled agents in regard to their practice before the IRS, and to permit enrolled agents meeting the Secretary’s qualifications to use the credentials or designation “enrolled agent,” “EA,” or “E.A.”

Effective Date

The proposal is effective on the date of enactment.

C. Regulation of Federal Tax Return Preparers

Present Law

The Secretary is authorized to regulate the practice of representatives of persons before the Treasury.⁸ The Secretary is also authorized to suspend or disbar from practice before the Treasury a representative who is incompetent, who is disreputable, who violates the rules regulating practice before the Treasury, or who (with intent to defraud) willfully and knowingly misleads or threatens the person being represented (or a person who may be represented). The rules promulgated by the Secretary pursuant to this proposal are contained in Circular 230. In general, the preparation and filing of tax returns (absent further involvement) has not been considered within the scope of the Circular 230 provisions.

Description of Proposal

The proposal expands the Secretary's authority to regulate the practice of representatives before the Treasury to include individuals preparing Federal tax returns and other submissions to the IRS for compensation ("compensated preparers"). The Secretary is required to issue regulations no later than one year after the date of enactment establishing eligibility requirements for compensated preparers. Practitioners authorized to practice before the IRS that are subject to oversight under regulations in effect on the date of enactment of the proposal are excluded from the regulations establishing eligibility requirements for compensated preparers.

The proposal requires the Secretary to develop and administer an examination to establish the competency of compensated preparers. Under the proposal, the examination shall be designed to test the preparer's knowledge of technical tax issues, including the earned income credit, and the ethical standards for the preparation of tax returns. The proposal authorizes the Secretary to contract for both the development and administration of the examination.

Under the proposal, the compensated preparer regulations shall also require compensated preparers to renew their eligibility every three years. As part of this renewal, compensated preparers shall be required to establish completion of continuing education requirements in a manner set forth by the Secretary in regulations. Compensated preparers failing to meet the eligibility requirements are subject to suspension or termination.

The proposal also establishes the Office of Professional Responsibility within the IRS under the supervision and direction of the Director, an official reporting directly to the Commissioner, IRS. The Director, Office of Professional Responsibility will be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service, or, if higher, at a rate fixed under the critical pay authority established under section 9503 of title 5.

The proposal authorizes the Secretary to appoint administrative law judges to conduct hearings of any action by the Office of Professional Responsibility to impose sanctions on

⁸ 31 U.S.C. sec. 330.

compensated preparers and other representatives practicing before the Treasury. Under the proposal, hearing records shall be open to the public. In addition, the Office of Professional Responsibility shall make public information regarding any sanction imposed on a representative, including the identity of the representative and the conduct which gave rise to the sanction.

Under the proposal, the Secretary may impose fees for the registration and renewal of compensated preparers. Such fees shall be made available to the Office of Professional Responsibility for the purpose of reimbursing the costs of administering and enforcing the rules and regulations regulating practice before the Treasury.

The proposal also provides that the Secretary shall conduct a public awareness campaign to encourage taxpayers to use competent professionals in the preparation of their tax returns and other Federal tax matters. The public awareness campaign shall be conducted in a manner to inform the public of the registration requirements imposed on compensated preparers and the general requirement that preparers must sign the return and provide their registration number on the return.

The proposal also increases the penalties on tax return preparers who fail to sign a return or fail to provide an identifying number on a return from \$50 to \$500 per return. In addition, amounts collected from the imposition of penalties under sections 6694 and 6695 or under the regulations promulgated under section 330 of title 31 shall be directed to the Office of Professional Responsibility for the administration of the public awareness campaign. The proposal also permits the Secretary to use any funds specifically appropriated for earned income credit compliance to improve compliance with the rules regulating practice before the Treasury.

Effective Date

The proposal is effective on the date of enactment.

D. Regulation of Refund Anticipation Loan Facilitators

Present Law

The Secretary is authorized to regulate the practice of representatives of persons before the Treasury.⁹ The Secretary is also authorized to suspend or disbar from practice before the Treasury a representative who is incompetent, who is disreputable, who violates the rules regulating practice before the Treasury, or who (with intent to defraud) willfully and knowingly misleads or threatens the person being represented (or a person who may be represented). The rules promulgated by the Secretary pursuant to this proposal are contained in Circular 230. In general, the preparation and filing of tax returns (absent further involvement) has not been considered within the scope of these Circular 230 proposals.

Section 6103 generally provides that return and return information are confidential and cannot be disclosed unless authorized by title 26. The definition of return information is very broad, and includes, among other things, information with respect to the determination of the existence or possible existence of liability of any person for any penalty under the Code.

Description of Proposal

The proposal requires the annual registration with the Secretary of refund loan facilitators. A refund loan facilitator is any person who originates the electronic submission of income tax returns for another person and, in connection with the electronic submission, solicits, processes, or otherwise facilitates the making of a refund anticipation loan to the individual taxpayer on whose behalf the tax return is submitted. The annual registration shall include the name, address, and TIN of the refund loan facilitator applicant and a schedule of the applicant's fees for such year.

The proposal requires refund loan facilitators to disclose to taxpayers, both orally and in writing, that they may file an electronic tax return without applying for a refund anticipation loan and the cost of filing such an electronic return compared to the cost of the refund anticipation loan. In addition, the proposal requires refund loan facilitators to disclose to taxpayers all fees and interest charges associated with a refund anticipation loan and provide a comparison with fees and interest charges associated with other types of consumer credit, as well as fees and interest charges for similar refund anticipation loans. Refund loan facilitators also must disclose to taxpayers the expected time within which tax refunds are typically paid based on different filing options, the risk that the full amount of the refund may not be paid or received within the expected time, and additional costs the taxpayer may incur in connection with the refund anticipation loan if the tax refund is delayed or not paid.

In addition to the above disclosure requirements, refund loan facilitators must disclose to taxpayers whether the refund anticipation loan agreement includes a debt collection offset arrangement. Debt collection offsets are arrangements between refund loan facilitators and a taxpayer's creditor to offset the taxpayer's expected refund against an outstanding liability owed

⁹ 31 U.S.C. sec. 330.

to the creditor. The Secretary is authorized to require refund loan facilitators to disclose any other information deemed necessary.

The proposal amends the Code to permit the Secretary to impose monetary penalties on refund loan facilitators who fail to meet the registration or disclosure requirements, unless such failure was due to reasonable cause. The penalty for failure to register is not to exceed the gross income derived from all refund anticipation loans during the period the refund loan facilitator was not registered. The penalty for failure to disclose the information required by the proposal is not to exceed the gross income derived from all refund anticipation loans with respect to which the refund loan facilitator failed to provide the required disclosure information.

The proposal also amends the privacy rules under the Code to permit the Secretary to disclose the name of any person with respect to whom a penalty has been imposed for failing to meet the registration or disclosure requirements of the proposal.

The proposal provides that the Secretary shall conduct a public awareness campaign to educate the public on the costs associated with refund anticipation loans, including the costs as compared to other forms of credit. The public awareness campaign shall be conducted in a manner that educates the public on making sound financial decisions with respect to refund anticipation loans. Amounts collected from the imposition of penalties on refund loan facilitators shall be directed to the IRS for the administration of the public awareness campaign.

Effective Date

The proposal is effective on the date that is one year after the date of enactment.

E. Taxpayer Access to Financial Institutions

Present Law

A large number of individual taxpayers do not have bank accounts. Because of this, these taxpayers are unable to participate fully in electronic filing, because the IRS cannot electronically transmit their tax refunds to them.

Description of Proposal

The proposal authorizes the Secretary of the Treasury to award demonstration project grants (totaling up to \$10 million) to eligible entities to provide tax preparation assistance in connection with establishing an account in a Federally insured depository institution for individuals that do not have such an account. Entities eligible to receive grants are: tax-exempt organizations described in section 501(c)(3), Federally insured depository institutions, State or local governmental agencies, community development financial institutions, Indian tribal organizations, Alaska native corporations, native Hawaiian organizations, and labor organizations.

Under the proposal, the recipient of a grant may not use more than six percent of the total amount of such grant for administrative purposes. For each fiscal year in which a grant is awarded, the Secretary is required to submit a report to Congress describing the amount of grants distributed and the activities funded.

The proposal also requires the Secretary to conduct a study of the implementation of a program to deliver tax refunds through debit cards or other electronic means. The proposal requires the Secretary to submit a report to Congress on the results of such study no later than one year after the date of enactment.

Effective Date

The proposal is effective on the date of enactment.

F. Use of Practitioner Fee

Present Law

The United States Tax Court (“Tax Court”) is authorized to impose a fee of up to \$30 per year on practitioners admitted to practice before the Tax Court.¹⁰ These fees are to be used to employ independent counsel to pursue disciplinary matters.

Description of Proposal

The proposal provides that Tax Court fees imposed on practitioners also are available to provide services to *pro se* taxpayers (i.e., a taxpayer representing himself) that will assist such taxpayers in controversies before the Court. For example, fees could be used for programs to educate *pro se* taxpayers on the procedural requirements for contesting a tax deficiency before the Tax Court.

Effective Date

The proposal is effective on the date of enactment.

¹⁰ Sec. 7475.