110TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 110–84

TAXPAYER PROTECTION ACT OF 2007

APRIL 16, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 1677]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1677) to amend the Internal Revenue Code of 1986 to enhance taxpayer protections and outreach, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Protection Act of 2007".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FAMILY BUSINESS TAX SIMPLIFICATION.

(a) IN GENERAL.—Section 761 (defining terms for purposes of partnerships) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) QUALIFIED JOINT VENTURE.—

"(1) IN GENERAL.—In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

"(A) such joint venture shall not be treated as a partnership,

"(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

"(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

"(2) QUALIFIED JOINT VENTURE.—For purposes of paragraph (1), the term 'qualified joint venture' means any joint venture involving the conduct of a trade or business if—

"(A) the only members of such joint venture are a husband and wife,

"(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

"(C) both spouses elect the application of this subsection.".

(b) NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) Subsection (a) of section 1402 (defining net earnings from self-employment) is amended by striking ", and" at the end of paragraph (15) and inserting a semicolon, by striking the period at the end of paragraph (16) and inserting "; and", and by inserting after paragraph (16) the following new paragraph:

"(17) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.".

(2) Subsection (a) of section 211 of the Social Security Act (defining net earnings from self-employment) is amended by striking "and" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting "; and", and by inserting after paragraph (15) the following new paragraph:

"(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 3. TAXPAYER NOTIFICATION OF SUSPECTED IDENTITY THEFT.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7529. NOTIFICATION OF SUSPECTED IDENTITY THEFT.

"If, in the course of an investigation under section 7206 (relating to fraud and false statements) or 7207 (relating to fraudulent returns, statements, or other documents), the Secretary determines that there was or may have been an unauthorized use of the identity of the taxpayer or dependents, the Secretary shall—

"(1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination, and

"(2) if any person is criminally charged by indictment or information under either of such sections, notify such taxpayer as soon as practicable of such charge.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7529. Notification of suspected identity theft.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations made after the date of the enactment of this Act.

SEC. 4. EXTENSION OF TIME FOR RETURN OF PROPERTY FOR WRONGFUL LEVY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY.—Subsection (b) of section 6343 (relating to return of property) is amended by striking "9 months" and inserting "2 years".

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking "9 months" and inserting "2 years", and

(2) in paragraph (2) by striking "9-month" and inserting "2-year".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 5. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

"(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

"(A) the amount of money returned by the Secretary on account of such levy, and

"(B) interest paid under subsection (c) on such amount of money, may be deposited into such individual retirement plan or any other individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

"(2) TREATMENT AS ROLLOVER.—If amounts are deposited into an individual retirement plan under paragraph (1) not later than the 60th day after the date on which the individual receives the amounts under paragraph (1)—

"(A) such deposit shall be treated as a rollover described in section 408(d)(3)(A)(i),

"(B) to the extent the deposit includes interest paid under subsection (c), such interest shall not be includible in gross income, and

"(C) such deposit shall not be taken into account under section 408(d)(3)(B). For purposes of subparagraph (B), an amount shall be treated as interest only to the extent that the amount deposited exceeds the amount of the levy.

"(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

"(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after the date of the enactment of this Act.

SEC. 6. CLARIFICATION OF IRS UNCLAIMED REFUND AUTHORITY.

Section 6103(m)(1) (relating to tax refunds) is amended by inserting ", and through any other means of mass communication," after "media".

SEC. 7. PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.

(a) IN GENERAL.—Subsection (f) of section 6011 (relating to promotion of electronic filing) is amended by adding at the end the following new paragraph:

"(3) PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.—

"(A) IN GENERAL.—In carrying out any program under this subsection, the Secretary shall not provide a debt indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory.

"(B) REFUND ANTICIPATION LOAN.—For purposes of this paragraph, the term 'refund anticipation loan' means a loan of money or of any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund.

"(C) IRS DEBT INDICATOR.—For purposes of this paragraph, the term 'debt indicator' means a notification provided through a tax return's acknowledgment file that a refund will be offset to repay debts for delinquent Federal or State taxes, student loans, child support, or other Federal agency debt.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations after the date of the enactment of this Act.

SEC. 8. PROHIBITION ON MISUSE OF DEPARTMENT OF THE TREASURY NAMES AND SYMBOLS.

(a) IN GENERAL.—Subsection (a) of section 333 of title 31, United States Code, is amended by inserting "internet domain address," after "solicitation," both places it appears.

(b) PENALTY FOR MISUSE BY ELECTRONIC MEANS.—Subsections (c)(2) and (d)(1) of section 333 of such Code are each amended by inserting "or any other mass communications by electronic means," after "telecast,".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations occurring after the date of the enactment of this Act.

SEC. 9. EITC OUTREACH.

(a) IN GENERAL.—Section 32 (relating to earned income) is amended by adding at the end the following new subsection:

"(n) NOTIFICATION OF POTENTIAL ELIGIBILITY FOR CREDIT AND REFUND.—

"(1) IN GENERAL.—To the extent possible and on an annual basis, the Secretary shall provide to each taxpayer who—

"(A) for any preceding taxable year for which credit or refund is not precluded by section 6511, and

"(B) did not claim the credit under subsection (a) but may be allowed such credit for any such taxable year based on return or return information (as defined in section 6103(b)) available to the Secretary, notice that such taxpayer may be eligible to claim such credit and a refund for such taxable year.

"(2) NOTICE.—Notice provided under paragraph (1) shall be in writing and sent to the last known address of the taxpayer.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 10. MODIFICATION OF RULES PERTAINING TO FIRPTA NONFOREIGN AFFIDAVITS.

(a) IN GENERAL.—Subsection (b) of section 1445 (relating to exemptions) is amended by adding at the end the following:

"(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

"(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

"(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

"(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

"(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.".

(b) QUALIFIED SUBSTITUTE.—Subsection (f) of section 1445 (relating to definitions) is amended by adding at the end the following new paragraph:

"(6) QUALIFIED SUBSTITUTE.—The term 'qualified substitute' means, with respect to a disposition of a United States real property interest—

"(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

"(B) the transferee's agent.".

(c) EXEMPTION NOT TO APPLY IF KNOWLEDGE OR NOTICE THAT AFFIDAVIT OR STATEMENT IS FALSE.—

(1) IN GENERAL.—Paragraph (7) of section 1445(b) (relating to special rules for paragraphs (2) and (3)) is amended to read as follows:

"(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

"(A) if—

"(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

"(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

"(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.".

(2) LIABILITY.—

(A) NOTICE.—Paragraph (1) of section 1445(d) (relating to notice of false affidavit; foreign corporations) is amended to read as follows:

"(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

"(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

"(B) in the case of—

"(i) any transferor's agent—

"(I) such agent has actual knowledge that such affidavit is false, or

"(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

"(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false, such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.".

(B) FAILURE TO FURNISH NOTICE.—Paragraph (2) of section 1445(d) (relating to failure to furnish notice) is amended to read as follows:

"(2) FAILURE TO FURNISH NOTICE.—

"(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

"(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.".

(C) CONFORMING AMENDMENT.—The heading for section 1445(d) is amended by striking "OR TRANSFEREE'S AGENTS" and inserting ", TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions of United States real property interests after the date of the enactment of this Act.

SEC. 11. DISCLOSURE OF PRISONER RETURN INFORMATION TO FEDERAL BUREAU OF PRISONS.

(a) IN GENERAL.—Subsection (k) of section 6103 (relating to disclosure of certain return and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

"(10) DISCLOSURE OF CERTAIN RETURN INFORMATION OF PRISONERS TO FEDERAL BUREAU OF PRISONS.—

"(A) IN GENERAL.—Under such procedures as the Secretary may prescribe, the Secretary may disclose to the head of the Federal Bureau of Prisons any return information with respect to individuals incarcerated in Federal prison whom the Secretary has determined may have filed or facilitated the filing of a false return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

"(B) RESTRICTION ON REDISCLOSURE.—Notwithstanding subsection (n), the head of the Federal Bureau of Prisons may not disclose any information obtained under subparagraph (A) to any person other than an officer or employee of such Bureau.

"(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information received under this paragraph shall be used only for purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility.

"(D) ANNUAL REPORT.—In each of the calendar years 2007 through 2010, the Secretary shall submit to Congress and make publicly available a report on the filing of false and fraudulent returns by individuals incarcerated in Federal and State prisons. Such report shall include statistics on the number of false and fraudulent returns associated with each Federal and State prison.

"(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2010.".

(b) RECORDKEEPING.—Paragraph (4) of section 6103(p) is amended by striking "(k)(8)" both places it appears and inserting "(k)(8) or (10)".

(c) EVALUATION BY TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Paragraph (3) of section 7803(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting "; and", and by adding at the end the following new subparagraph:

"(C) not later than December 31, 2009, submit a written report to Congress on the implementation of section 6103(k)(10).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to disclosures made after December 31, 2007.

(2) ANNUAL REPORT.—Section 6103(k)(10)(D) of the Internal Revenue Code of 1986 (relating to annual reports), as added by this section, shall apply to reports submitted after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 1677, as amended, includes provisions to enhance taxpayer protections and outreach.

SUMMARY

Effective for taxable years beginning after December 31, 2006, the bill provides for certain family business simplification. Effective for determinations made after the date of enactment, if the IRS determines in the course of an investigation relating to either (1) fraud or false statements, or (2) fraudulent returns, statements, or other documents, that there was or may have been unauthorized use of a taxpayer's identity, the bill provides that the IRS notify the taxpayer of such determination and any criminal charges brought against any person in connection with such unauthorized use. Effective for levies made after the date of enactment and levies made on or before the date of enactment, provided the applicable nine-month period has not expired as of the date of enactment, the bill extends from nine months to two years the time limits for returning money and the monetary proceeds from the sale of property that has been wrongfully levied upon, and for the period for bringing a civil action for wrongful levy, respectively. Effective for levied amounts and interest thereon returned to individuals after the date of enactment, the bill holds individuals harmless on the improper levy on an individual retirement plan. Effective on the date of enactment, the bill allows the IRS to use any means of mass communication, including the internet, to notify taxpayers of undelivered refunds. Effective with respect to determinations made after the date of enactment, the bill prohibits the IRS from providing a Debt Indicator to any person with respect to a refund anticipation loan determined by the Secretary to be predatory. The bill prohibits the misuse of Department of the Treasury names and symbols. Effective after the date of enactment, the bill expands IRS notice requirements relating to EIC outreach. Effective after the date of enactment, the bill also permits disclosure to officers and employees of the Federal Bureau of Prisons of return information with respect to prisoners whom the Secretary has determined may have filed or facilitated the filing of false or fraudulent tax returns. Finally, the bill provides that, under the Foreign Investment in Real Property Tax Act, sellers of certain property have the option

of providing a nonforeign affidavit to an intermediary, who in most cases will be the person responsible for closing the transaction.

B. Background and Need for Legislation

Oversight of IRS' administration of the tax laws often requires legislative action to provide taxpayer protections and facilitate IRS operations. The IRS, in administering the Federal tax laws, needs additional tools to assist and reach out to taxpayers. The internet also provides an opportunity for unscrupulous individuals to attempt to use the tax system to further criminal activities. The bill provides additional taxpayer protections and bolsters the outreach efforts of the IRS.

C. Legislative History

Background

H.R. 1677 was introduced in the House of Representatives on March 26, 2007, and was referred to the Committee on Ways and Means.

Subcommittee action

The Subcommittee on Oversight of the Committee on Ways and Means conducted a hearing on Earned Income Tax Credit outreach on February 13, 2007, and took testimony from invited witnesses. The Subcommittee also held a hearing on March 20, 2007, on IRS operations, tax gap, and the filing season.

Committee action

The Committee on Ways and Means marked up the bill on March 28, 2007, and ordered the bill, as amended, favorably reported.

II. EXPLANATION OF THE BILL

A. Family Business Tax Simplification (Sec. 2 of the Bill and Sec. 761 of the Code)

PRESENT LAW

Under present law, a partnership is defined to include a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate or a corporation (sec. 7701(a)(2)).[1] A partnership is treated as a pass-through entity, and income earned by the partnership, whether distributed or not, is taxed to the partners. The income of a partnership and its partners is determined under subchapter K of the Code. An election not to be subject to the rules of subchapter K is provided for certain partnerships that meet specified criteria (i.e., the partnership is for investment purposes only, is for the joint production, extraction or use of property but not for selling services or property produced or extracted, or is used by securities dealers for short periods to underwrite, sell or distribute securities). Other-

[1] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

wise, the rules of subchapter K apply to a venture that is treated as a partnership for Federal tax purposes.

In the case of an individual with self-employment income, the income subject to self-employment tax is the net earnings from self-employment (sec. 1402(a)). Net earnings from self-employment is the gross income derived by an individual from any trade or business carried on by the individual, less the deductions attributable to the trade or business that are allowed under the self-employment tax rules. If the individual is a partner in a partnership, the net earnings from self-employment generally include his or her distributive share (whether or not distributed) of income or loss from any trade or business carried on by the partnership.

REASONS FOR CHANGE

The Committee is concerned that certain business ventures whose sole members are a husband and wife filing a joint return may be subject to unnecessary complexity under present law.[2] In the situation in which the spouses share all items of income, gain, loss, deduction and credit from the venture, the venture should not be required to file a partnership return if each of the two spouses' income can be accurately recorded on Schedule C (or F, in the case of a farm) filed with the joint return. The reported income would be the same on the joint return, whether or not a partnership return is filed. Further, the Committee is concerned that if only one spouse is treated as having net earnings from self-employment from the venture, when in fact both spouses materially participate in it, then both spouses (not just one) should be treated as having net earnings from self-employment from the venture in accordance with their respective interests. In this situation, both spouses, not just one, should receive credit for the appropriate net earnings from self-employment for purposes of Social Security benefits.

EXPLANATION OF PROVISION

The provision generally permits a qualified joint venture whose only members are a husband and wife filing a joint return not to be treated as a partnership. A qualified joint venture is a joint venture involving the conduct of a trade or business, if (1) the only members of the joint venture are a husband and wife, (2) both spouses materially participate in the trade or business, and (3) both spouses elect to have the provision apply.

Under the provision, a qualified joint venture conducted by a husband and wife who file a joint return is not treated as a partnership for Federal income tax purposes. All items of income, gain, loss, deduction and credit are divided between the spouses in accordance with their respective interests in the venture. Each spouse takes into account his or her respective share of these items as a sole proprietor. Thus, it is anticipated that each spouse would account for his or her respective share on the appropriate form, such as Schedule C. The provision is not intended to change the determination under present law of whether an entity is a partner-

[2] See National Taxpayer Advocate, FY 2002 Annual Report to Congress, "Married Couples as Business Co-owners," (Rev. 12–2002), at 172, recommending a similar change for this reason as well as other reasons.

ship for Federal income tax purposes (without regard to the election provided by the provision).

For purposes of determining net earnings from self-employment, each spouse's share of income or loss from a qualified joint venture is taken into account just as it is for Federal income tax purposes under the provision (i.e., in accordance with their respective interests in the venture). A corresponding change is made to the definition of net earnings from self-employment under the Social Security Act. The provision is not intended to prevent allocations or reallocations, to the extent permitted under present law, by courts or by the Social Security Administration of net earnings from self-employment for purposes of determining Social Security benefits of an individual.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2006.

B. TAXPAYER NOTIFICATION OF SUSPECTED IDENTITY THEFT (SEC. 3 OF THE BILL AND NEW SECTION 7529 OF THE CODE)

PRESENT LAW

Section 6103 provides that returns and return information are confidential and may not be disclosed by the Internal Revenue Service ("IRS"), other Federal employees, State employees, and certain others having access to the information except as provided in the Code.[3] The definition of "return information" is very broad and includes any information gathered by the IRS with respect to a person's liability or possible liability under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.[4] Thus, information gathered by the IRS in connection with an investigation of a person for an offense under the Code, such as fraud, is return information of the person being investigated and is subject to the confidentiality restrictions of section 6103.

REASONS FOR CHANGE

Identity theft is a growing concern for the Committee. Identity thieves can use a taxpayer's identity, or the identity of their dependents, including their social security numbers, to file fraudulent

[3] Sec. 6103(a).

[4] Sec. 6103(b)(2). Return information is

- a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
- any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and
- any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

Return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

tax returns and obtain fraudulent refunds, The Committee believes it is important for the IRS to promptly notify a taxpayer of potential identity theft so that the taxpayer can take preventive measures to prevent the misuse of his identity.

EXPLANATION OF PROVISION

The provision provides that if, in the course of an investigation under section 7206 (relating to fraud and false statements) or section 7207 (relating to fraudulent returns, statements or other documents), the Secretary determines that there was or may have been an unauthorized use of any information relating to the identity of the taxpayer or dependents, the Secretary shall (1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination and (2) if any person is criminally charged by indictment or information under either of such sections, notify such taxpayer as soon as practicable of such charge.

EFFECTIVE DATE

The provision applies to determinations made after the date of enactment.

C. EXTENSION OF TIME LIMIT FOR RETURN OF PROPERTY FOR WRONGFUL LEVY (SEC. 4 OF THE BILL AND SECS. 6343 AND 6532 OF THE CODE)

PRESENT LAW

The IRS is authorized to return property that has been wrongfully levied upon.[5] In general, monetary proceeds from the sale of levied property upon, or an amount equal to the amount of money levied upon, may be returned within nine months of the date of the levy.

Generally, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in levied property may bring a civil action for wrongful levy in a district court of the United States.[6] Generally, an action for wrongful levy must be brought within nine months from the date of levy.[7] However, if a claim for a return of property is made to the IRS, the nine-month period is extended for the shorter of a period of 12 months from the date of filing of such request or six months from the date of mailing of an IRS notice of disallowance of such request.[8]

REASONS FOR CHANGE

The Committee understands that in many cases the time period for bringing an action may be insufficient for third parties to discover a wrongful or mistaken levy and seek to remedy it. Accordingly, the Committee believes it is appropriate to provide for a longer period of time within which a person may contest a wrongful IRS levy.

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[5] Sec. 6343.
[6] Sec. 7426(a)(1).
[7] Sec. 6532.
[8] Sec. 6532(c)(2).

EXPLANATION OF PROVISION

The provision extends from nine months to two years the period for returning money and the monetary proceeds from the sale of property that has been wrongfully levied upon.

The provision also extends from nine months to two years the period for bringing a civil action for wrongful levy.

EFFECTIVE DATE

The provision is effective with respect to: (1) levies made after the date of enactment and (2) levies made on or before the date of enactment provided that the nine-month period has not expired as of the date of enactment.

D. Individuals Held Harmless on Improper Levy on Individual Retirement Plan (Sec. 5 of the Bill and Sec. 6343 of the Code)

PRESENT LAW

Distributions from an individual retirement arrangement ("IRA") made on account of an IRS levy are includible in the gross income of the individual under the rules applicable to the IRA subject to the levy. Thus, in the case of a traditional IRA, the amount distributed as a result of a levy is includible in gross income except to the extent such amount represents a return of nondeductible contributions (i.e., basis). In the case of a Roth IRA, earnings on a distribution are excludable from gross income if the distribution is made: (1) after the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA and (2) after attainment of age 59½ or on account of certain other circumstances. Amounts withdrawn from an IRA due to a levy are not subject to the 10-percent early withdrawal tax, regardless of whether the amount is includible in income.

Present law provides rules under which the IRS returns amounts subject to an incorrect levy. For example, amounts withdrawn from an IRA pursuant to a levy are returned to the individual owning the IRA in the case of a wrongful levy or if the levy was not in accordance with IRS administrative procedures. In the case of a wrongful levy, the IRS is required to pay interest on the amount returned to the individual at the overpayment rate. The IRS is not required to pay interest if the levy was not in accordance with IRS administrative procedures.

Present law does not provide special rules to allow an individual to recontribute to an IRA amounts withdrawn from an IRA pursuant to a levy and later returned to the individual by the IRS (or interest thereon). Thus, if an individual wishes to contribute such returned amounts to an IRA, the contribution is subject to the normally applicable rules for IRA contributions.

REASONS FOR CHANGE

IRA assets provide an important source of retirement income for many Americans. Under present law, if the IRS improperly levies on an IRA, the individual owning the IRA may not be made whole, even if the IRS returns the amount levied, with interest, because the individual may lose the opportunity to have those funds accu-

mulate on a tax-favored basis until retirement. The Committee believes that improper levies should not reduce retirement income security for IRA owners. Thus, the Committee bill provides that IRA funds that are withdrawn pursuant to an improper IRS levy and returned by the IRS may be recontributed to the IRA.

EXPLANATION OF PROVISION

Under the provision, an individual is able to recontribute to an IRA amounts withdrawn pursuant to a levy and returned by the IRS (and any interest thereon) within 60 days of receipt by the individual, without regard to the normally applicable limits on IRA contributions and rollovers. The provision applies to levied amounts returned to the individual because the levy (1) was wrongful or (2) is determined to be premature or otherwise not in accordance with administrative procedures. The recontribution may be made to the same IRA or to any other individuated retirement plan (other than an endowment contract) to which a rollover from the IRA levied upon is permitted. That is, the recontribution may be made to the same IRA or to an IRA of the same type.

Under the provision, the IRS is required to pay interest on amounts returned to the individual at the overpayment rate in the case of a levy that is determined to be premature or otherwise not in accordance with administrative procedures (as well as in the case of a wrongful levy under present law). Interest paid by the IRS on the amount returned to the individual is excludable from gross income if the interest is contributed to an IRA under the provision. An amount contributed to an IRA under the provision will only be treated as interest paid by the IRS to the extent the total amount contributed under the provision exceeds the amount of the levy.

Any tax attributable to an amount distributed from an IRA by reason of a levy is abated if the amount is recontributed to an IRA pursuant to the provision.

EFFECTIVE DATE

The provision is effective for levied amounts (and interest thereon) returned to individuals after the date of enactment.

E. CLARIFICATION OF IRS UNCLAIMED REFUND AUTHORITY (SEC. 6 OF THE BILL AND SEC. 6103 OF THE CODE)

PRESENT LAW

When the IRS is unable to find a taxpayer due a refund, present law provides that the IRS may use "the press or other media" to notify the taxpayer of the refund. Section 6103(m) allows the IRS to give the press taxpayer identity information for this purpose. Taxpayer identity includes, among other items, name and mailing address.[9]

The IRS believes that the current statutory framework of "press and other media" does not permit disclosures via the Internet on the IRS website (www.irs.gov). The legislative history of the present-law provision does not address the meaning of "press and other media." At the time enactment of section 6103(m) in 1976,

[9] Sec. 6103(b)(6).

the press (newspapers and periodicals) and other traditional media were the only means available for the IRS to distribute undelivered refund information to the public. Thus, the IRS interprets the term "other media" to exclude the Internet.

REASONS FOR CHANGE

In November 2006, the IRS announced that the IRS is seeking 95,746 taxpayers whose income tax refund checks could not be delivered.[10] These checks are worth a total of approximately $92.2 million. It is the understanding of the Committee that the current method of notifications, by newspaper, is ineffective. The Committee believes that the IRS should be able to use any method of mass communication, including the Internet, to reach a taxpayer who is due a refund.

EXPLANATION OF PROVISION

The provision allows the IRS to use any means of "mass communication," including the Internet, to notify the taxpayer of an undelivered refund.

EFFECTIVE DATE

The provision is effective on the date of enactment.

F. PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS (SEC. 7 OF THE BILL AND SEC. 6011 OF THE CODE)

PRESENT LAW

A refund anticipation loan is a loan made by a commercial lender to a taxpayer based on the refund the taxpayer expects to receive. The loan is a private contract between the taxpayer and a commercial lender. The Code does not regulate the making of refund anticipation loans, but Consumer groups, the Commissioner of the IRS, and the National Taxpayer Advocate all have raised concerns over the high interest rates and fees associated with such loans.[11]

Certain tax practitioners that file returns electronically and financial institutions may obtain a Debt Indicator from the IRS for their customer taxpayers. A Debt Indicator facilitates the making of refund anticipation loans because it tells whether or not a taxpayer has any scheduled offsets against a claimed refund. Thus, a Debt Indicator reduces the lender's risk of making a refund anticipation loan because it informs the Iender whether the taxpayer's refund will be paid or reduced for certain debts.

REASONS FOR CHANGE

The Committee understands that the majority of refund anticipation loans are made to low-income families, including EIC claimants. The Committee also understands that the providers of refund anticipation loans often charge exorbitantly high fees and interest rates for such loans, at times in excess of 100 percent. The Com-

[10] Internal Revenue Service, IRS Has Refund for 85,476 Taxpayers Whose Checks Could Not Be Delivered (IR–2006–178, November 16, 2006).

[11] See e.g., National Taxpayer Advocate, 2005 Annual Report to Congress, Publication 2104 (Rev. 12–2005), at 162.

mittee is concerned that these high-cost, short-term loans unfairly siphon millions of dollars from low-income taxpayers. Moreover, the Committee is concerned that Debt Indicators are being used as a means to enable these predatory refund anticipation loans to taxpayers. The Committee believes that the Department of the Treasury should not be facilitating predatory refund anticipation loans by reducing the lender's risk of making such loans. Thus, the Committee believes that prohibiting Debt Indicators with respect to predatory refund anticipation loans will decrease the viability of such loans and provide additional protection to taxpayers.

EXPLANATION OF PROVISION

The provision prohibits the Secretary from providing a Debt Indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory. Under the provision, a refund anticipation loan is any loan of money or any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund. For purposes of the provision, a Debt Indicator means a notification provided to a tax practitioner or financial institution pursuant to a program or procedure that a taxpayer's refund will be reduced or offset to repay debts for delinquent Federal or State taxes, student loans, child support, or other Federal agency debt.

EFFECTIVE DATE

The provision is effective for determinations made after the date of enactment.

G. PROHIBITION ON MISUSE OF DEPARTMENT OF THE TREASURY NAMES AND SYMBOLS (SEC. 8 OF THE BILL AND SEC. 333 OF TITLE 31)

PRESENT LAW

Section 333 of Title 31 of the United States Code prohibits the use, in connection with advertisements, solicitations, and other business activities, of the words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices, or subdivisions of the Department, including the IRS) in a manner which could reasonably be interpreted as conveying a connection with or approval by the Depai linent of the Treasury (or one of its bureaus, offices, or subdivisions) in the absence of such connection or approval.

The provision provides for a civil penalty of not more than $5,000 per violation (or not more than $25,000 in the case of a broadcast or telecast). In addition, the provision provides a criminal penalty of not more than $10,000 (or not more than $50,000 in the case of a broadcast or telecast) or imprisonment of not more than one year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation is made without regard to the use of a disclaimer of affiliation with the Federal Government.

The IRS recently issued warnings to taxpayers about Internet sites that resemble the official IRS site:

Taxpayers may be confused by the proliferation of Internet sites that contain some form of the Internal Revenue Service name or IRS acronym with a .com, .net, .org or other designation in the address instead of .gov. Since many of these sites also bear a striking resemblance to the real IRS site, taxpayers may be misled into thinking that the site they have accessed is indeed the official IRS government site. These sites are not the official IRS Web site and have no connection to the official IRS site or to the IRS.[12]

The IRS also warned consumers of an ongoing Internet scam in which consumers receive an e-mail informing them of a Federal tax refund.[13] The e-mail claims to be from the IRS and directs the consumer to a link (often resembling the IRS website) that requests personal and financial information. The practice is called "phishing" for information. Once the information is obtained, it could be used in identity theft and stealing a taxpayer's financial assets.

REASONS FOR CHANGE

The Committee is aware of, and is particularly concerned about, Internet domain names and websites that misuse the Department of Treasury and Internal Revenue Service names and abbreviations. The use of an Internet domain name or website in this manner is misleading and confusing to taxpayers who may believe that they will access, or may have accessed, the official Department of the Treasury or IRS Internet sites. In addition, the Committee is aware of the use of e-mail, purporting to be from the IRS, and websites resembling the IRS website to obtain personal or financial information from taxpayers. The Committee believes such practices should be subject to significant penalties to deter such conduct and that the statute should be clarified accordingly.

EXPLANATION OF PROVISION

The provision clarifies that "phishing," misleading websites, and other misleading mass communications by electronic means using the name or symbols of the Department of the Treasury (or its components), are subject to the civil penalty of $25,000 per violation and criminal penalty of $50,000 per violation. The provision reaffirms that the use of the words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or subdivisions of the Department, including the IRS) in an Internet domain name is misleading and covered by section 333 of Title 31 of the United States Code.

EFFECTIVE DATE

The provision is effective for violations occurring after the date of enactment.

[12] Internal Revenue Service, IRS Urges Caution about Internet Sites that Resemble the Official IRS Site (IR–2007–58, March 13, 2007).
[13] Id.

H. Earned Income Credit Outreach (Sec. 9 of the Bill and Sec. 32 of the Code)

PRESENT LAW

In general

Low and moderate-income taxpayers may be eligible for the refundable earned income credit ("EIC").[14] Generally, the amount of the EIC is based on the presence and number of qualifying children in the taxpayer's family, as well as on adjusted gross income ("AGI") and earned income.[15] Other rules also apply.

Three separate schedules apply in computing the taxpayer's EIC: (1) one schedule for taxpayers with no qualifying children; (2) one schedule for taxpayers with one qualifying child; and (3) one schedule for taxpayers with more than one qualifying child.[16]

The EIC generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum EIC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. All income thresholds are adjusted annually for inflation.

Wage withholding

In general, the Code requires employers to withhold income tax on wages paid to employees, including wages and salaries of employees or elected officials of Federal, State, and local government units. Withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee. The Code also requires that employers report wage withholding information annually to the IRS and their employees (e.g., Form W–2 and Form W–3).[17]

EIC outreach and assistance

Pre-tax return filing

The IRS has developed an outreach effort to inform taxpayers potentially eligible for the EIC and their employers about the EIC and how to claim the credit. One such public notice, contained in

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[14] The EIC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is payable to the taxpayer as a direct transfer payment. Under an advance payment system, eligible taxpayers may elect to receive a portion of the credit in their paychecks, rather than waiting to claim a refund on their tax return filed by April 15 of the following year.

[15] Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the taxpayer's net self-employment earnings.

[16] In general, a child is a qualifying child of a taxpayer if the child satisfies each of three tests: (1) the child has the same principal place of abode as the taxpayer for more than one-half of the taxable year; (2) the child has a specified relationship to the taxpayer; and (3) the child has not yet attained a specified age. A tie-breaking rule applies if more than one taxpayer claims a child as a qualifying child.

[17] Information returns, such as Form W–2, are returns within the meaning of section 6103(b)(1).

IRS Notice 797 (Rev. 12–2006), explains the EIC, its eligibility rules, and how to claim the credit. In addition, the IRS works with employers, community groups and other stakeholders to inform eligible taxpayers of the EIC. The IRS also helps taxpayers below certain income levels compute their Federal income tax liability, including the amount of EIC, if any.

Post-tax return filing

The IRS sends out notice letters addressed to taxpayers who it has identified as potentially eligible for the EIC in the immediately prior taxable year.

The notice letters are different depending on the presence of a qualifying child or children in the taxpayer's household. If the IRS identifies a taxpayer with one or more qualifying children as potentially eligible for the EIC, the notice letter informs the taxpayer that IRS records indicate that: (1) the taxpayer's income falls in the eligible range to receive the EIC; (2) the taxpayer has one or more dependents who may be an EIC qualifying child; and (3) the taxpayer did not claim the EIC for the applicable taxable year on his or her return filed with the IRS. If the IRS identifies a taxpayer without qualifying children as potentially eligible for the EIC, the notice letter informs the taxpayer that IRS records indicate that: (1) the taxpayer's income falls in the eligible range to receive the EIC and (2) the taxpayer did not claim the EIC for the applicable taxable year on his or her return filed with the IRS.

In all cases, the notice letters ask the taxpayers to complete an "EIC Eligibility Check-Sheet" and, if the check-sheet indicates eligibility for the EIC, to return it to the IRS. The EIC Eligibility Check-Sheet requests the taxpayer to provide all the information necessary to determine EIC eligibility. The EIC Eligibility Check-Sheet is completed under penalty of perjury by the taxpayer (and the taxpayer's spouse in the case of a joint return). The IRS reviews the information submitted by the taxpayer and either: (1) sends any applicable refund within eight weeks (net of any other amounts the IRS is required to collect), or (2) sends an explanation to the taxpayer stating why the taxpayer does not qualify for the EIC.

The notice letters also provide information to help eligible taxpayers correctly claim the EIC in future taxable years.

Under present law, these notice letters are sent by the IRS only to individuals who have filed a tax return for the applicable taxable year. The absence of the taxpayer's filed tax return, notwithstanding the receipt by the IRS of return information or an information return (e.g., Form W–2 indicating wage withholding on the taxpayer) from the taxpayer's employer does not trigger a notice letter to the taxpayer.

Limitations on credits and refunds

Under section 6511, a claim for credit or refund of overpayment of tax with respect to which a return must be filed must be made within the later of: (1) three years from the time the return was filed or (2) two years from the time the tax was paid. If no return was filed by the taxpayer, then the applicable time period ends two years after the tax was paid.

REASONS FOR CHANGE

The Committee believes that all taxpayers who are eligible for the EIC should receive it. The IRS estimates that 20–25 percent of taxpayers eligible for the EIC do not claim the credit. The IRS needs to enhance its efforts to identify and contact taxpayers who are eligible for the EIC, particularly in the case of taxpayers who have had taxes withheld on their wages but who have not filed a tax return. In some instances, taxpayers who have incomes below tax filing thresholds and may not realize that they are eligible for the EIC. The Committee realizes that improving EIC outreach is an important component in ensuring that those who are eligible can claim the credit.

EXPLANATION OF PROVISION

The provision requires that the IRS expand its notice requirements relating to potential eligibility for the EIC. Specifically, the IRS is required to provide annually, and to the extent possible,[18] notice to all taxpayers who have been identified based on return or return information as being potentially eligible for the EIC in any taxable year for which a claim for credit or refund is not barred by the limitation period under section 6511. Such notice must be in writing, address all open tax years, and be sent to the last known address of such taxpayers: (1) who did not file a claim for the EIC for such taxable year, and (2) who the IRS identified as potentially eligible for the EIC for such taxable year based on a return or return information (as defined in sec. 6103(b)).

Upon receipt of this notice letter, the taxpayer who had filed a return for the applicable taxable years would complete the applicable EIC Eligibility Check-Sheet for each of the applicable taxable years. It is anticipated that this Check-Sheet would ask for all the information relating to the taxpayer's eligibility for the EIC (e.g., earned income, AGI, presence and number of qualifying children, and taxpayer identification numbers). If eligible for the EIC, in one or more of the applicable taxable years, the taxpayer would return the EIC Eligibility Check-Sheet to the IRS for any refund (including wages withheld by the taxpayer's employer). In the case of taxpayers who had not filed a return for the applicable taxable years, the IRS will expand its outreach efforts to notify them of the EIC and any unclaimed withholdings.

EFFECTIVE DATE

The provision is effective on the date of enactment.

[18] It is anticipated that the type of available return information and available IRS resources will affect the IRS' ability to issue the additional notice letters contemplated under this provision.

I. CLARIFICATION OF REPORTING REQUIREMENTS ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS (SEC. 10 OF THE BILL AND SEC. 1445 OF THE CODE)

PRESENT LAW

In general, nonresident aliens and foreign corporations are not taxed on capital gains.[19] However, such foreign persons must take into account gains and losses from the disposition of an interest in United States real property ("USRPI"), as if such persons were engaged in a trade or business in the United States during the taxable year, and such gain or loss were effectively connected with such trade or business.[20]

Although tax is imposed upon such dispositions on a net basis, in the case of any disposition of a USRPI by a foreign person, the transferee is generally required to deduct and withhold a tax equal to ten percent of the amount realized.[21] The transferee is exempt from this withholding requirement if:

1. In general, if the transferred interest is not a USRPI;
2. The transferee receives a "qualifying statement" from the Secretary of the Treasury (or his delegate) that states that the transferor is exempt from the tax on the disposition of the USRPI or has reached agreement with the Secretar for payment of such tax, and that any withholding tax has been satisfied or secured;
3. The USRPI is acquired by the transferee for use by him as a residence and the amount realized does not exceed $300,000; or
4. The transferor furnishes to the transferee an affidavit by the transferor stating, under penalties of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person. However, this rule does not apply if the transferee has actual knowledge that such affidavit is false or if the transferee receives a notice from a transferor's agent or a transferee's agent that such affidavit is false, or if the transferee fails to meet the Secretary's requirement that the transferee furnish a copy of such affidavit to the Secretary.[22] Regulations require the transferee to retain the transferor's affidavit until the end of the fifth taxable year following the taxable year in which the transfer takes place.[23]

In certain circumstances, agents may be liable for some or all of the withholding tax. In general, if the transferor's agent or the transferee's agent has actual knowledge that the affidavit is false, then such agent is required to notify the transferee pursuant to regulations.[24] An agent that is required to notify the transferee pursuant to regulations yet fails to do so is under the same duty to deduct and withhold that the transferee would have been under

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[19] Nonresident aliens present in the United States for a period or period aggregating 183 days or more during a taxable year are taxed at a flat 30 percent on their net U.S. source capital gains. Sec. 871(a)(2).
[20] Sec. 897(a)(1).
[21] Sec. 1445(a).
[22] Sec. 1445(b).
[23] Treas. Reg. sec. 1.1445–2(b)(3).
[24] Sec. 1445(d)(1).

if such agent had properly given such notice.[25] However, an agent's liability under these circumstances is limited to the amount of the agent's compensation from the transaction.[26]

In the case of a real estate transaction, a "real estate reporting person" is required to file an information return and to furnish certain written statements to customers.[27] A real estate reporting person means the person (including any attorney or title company) responsible for closing the transaction, if there is such a person.[28]

REASONS FOR CHANGE

The Committee believes that U.S. persons generally are hesitant to provide their social security numbers to persons with whom they do not have an ongoing business relationship. The Committee believes that offering transferors of USRPIs the option of providing nonforeign affidavits solely to the person responsible for closing the transaction should better protect the social security numbers of transferors and provide assurance to transferors that their private information will be secure.

EXPLANATION OF PROVISION

The provision provides an alternate procedure with respect to the nonforeign affidavit. Under this procedure, in lieu of furnishing a nonforeign affidavit to the transferee, a transferor may furnish such affidavit to a "qualified substitute." Such qualified substitute is then required to furnish a statement to the transferee stating, under penalties of perjury, that the qualified substitute has such affidavit in his or her possession. With respect to a disposition of a USRPI, the term "qualified substitute" means (1) the person, including any attorney or title company, responsible for closing the transaction, other than the transferor's agent, and (2) the transferee's agent.

This exemption does not apply if the transferee or qualified substitute has actual knowledge that such affidavit or statement is false, if the transferee or qualified substitute receives a notice from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or if the transferee or qualified substitute fails to meet a regulatory requirement that the transferee or qualified substitute furnish a copy of such affidavit or statement to the Secretary.

Moreover, if the transferor's agent, the transferee's agent, or the qualified substitute has actual knowledge that the affidavit or statement is false, then such agent or qualified substitute is required to notify the transferee. As under present law, the time and manner of such notice is to be specified by regulations. An agent or qualified substitute that is required to notify the transferee pursuant to regulations yet fails to do so has the same duty to deduct and withhold that the transferee would have had if such agent or qualified substitute had properly given such notice. An agent's or

[25] Sec. 1445(d)(2)(A).
[26] Sec. 1445(d)(2)(B).
[27] Sec. 6045(e)(1). There is an exception to this requirement for a sale or exchange of a residence for $250,000 or less ($500,000 if the seller is married), if certain conditions are met. Sec. 6045(e)(5).
[28] If there is no such person, then the real estate reporting person with respect to that transaction is either the mortgage lender, seller's broker, buyer's broker, or other person designated under regulations, in that order. Sec. 6045(e)(2).

qualified substitute's liability under these circumstances is limited to the amount of the compensation that such agent or qualified substitute derives from the transaction.

The Secretary of the Treasury is required to prescribe such regulations as may be necessary or appropriate to carry out this provision. It is intended that such rules will require the qualified substitute and transferee to retain the documentation for a period commensurate with the period required under the present-law regulations.

EFFECTIVE DATE

The provision is effective for dispositions after the date of enactment.

J. DISCLOSURE OF PRISONER RETURN INFORMATION TO FEDERAL BUREAU OF PRISONS (SEC. 11 OF THE BILL, SEC. 6103(k)(10) of the Code)

PRESENT LAW

Section 6103 provides that returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Code.[29] A "return" is any tax or information return, declaration of estimated tax, or claim for refund required by, or permitted under, the Code, that is filed with the Secretary by, on behalf of, or with respect to any person.[30] "Return" also includes any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

The definition of "return information" is very broad and includes any information gathered by the IRS with respect to a person's liability or possible liability under the Code.[31] However, data in a form that cannot be associated with, or otherwise identify, directly or indirectly a particular taxpayer is not "return information" for section 6103 purposes.

Section 6103 contains a number of exceptions to the general rule of confidentiality, which permit disclosure in specifically identified

[29] Sec. 6103(a).
[30] Sec. 6103(b)(1).
[31] Sec. 6103(b)(2). Return information is:

- a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
- any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement, and
- any closing agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement.

circumstances when certain conditions are satisfied.[32] For example, the IRS is permitted to make investigative disclosures to the third parties to the extent such disclosure is necessary in obtaining information which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, the amount to be collected or with respect to the enforcement of any other provision of the Code.

None of the exceptions permit the IRS to refer the tax-related misconduct of specific inmates to prison officials for imposition of administrative sanctions against such individuals. The IRS does publicize information from prosecutions which has been made part of the public record of such proceedings.

REASONS FOR CHANGE

The Committee believes it is appropriate to allow the IRS to better coordinate its efforts to combat tax fraud in prisons through the sharing of information and to alert prison officials of possible fraudulent activity going on within their facilities. In 2004, the IRS identified 18,000 false prisoner returns claiming $68 million in refunds. The IRS was able to stop the issuance of 78 percent of these refunds.[33] The schemes ranged from false wage and self-employment reports to complex transactions involving outside co-conspirators, stolen identities, and sophisticated financial transactions to disguise the true source of funds.

The Committee recognizes the sensitivity associated with the disclosure of return information. The Committee believes that it is an appropriate and cautious first step to allow disclosure of certain taxpayer-specific return information to the Federal Bureau of Prisons on a trial basis, while providing general notification to the State prisons through the issuance of a statistical annual report by the IRS on a prison-by-prison basis. The Committee notes that the IRS can continue to share, with both Federal and State prisons, general information that cannot be associated with a particular taxpayer consistent with section 6103(b)(2) of the Code.

EXPLANATION OF PROVISION

The provision permits disclosure to officers and employees of the Federal Bureau of Prisons of return information with respect to prisoners whom the Secretary has determined may have filed or facilitated the filing of false or fraudulent tax returns. The Secretary may disclose only such information as is necessary to permit effective tax administration with respect to prisoners. The provision also requires the IRS to publish an annual report containing statistics relating to the number of false and fraudulent returns associated with each Federal and State prison and such other informa-

[32] Sec. 6103(c)–(o). Such exceptions include disclosures by consent of the taxpayer, disclosures to State tax officials, disclosures to the taxpayer and persons having a material interest, disclosures to Committees of Congress, disclosures to the President, disclosures to Federal employees for tax administration purposes, disclosures to Federal employees for nontax criminal law enforcement purposes and to the Government Accountability Office, disclosures for statistical purposes, disclosures for miscellaneous tax administration purposes, disclosures for purposes other than tax administration, disclosures of taxpayer identity information, disclosures to tax administration contractors and disclosures with respect to wagering excise taxes.

[33] Statement of Nancy J. Jardini, Chief, Criminal Investigation, Internal Revenue Service, Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means (June 29, 2005).

tion as the Secretary deems appropriate.[34] The provision terminates after December 31, 2010.

The Treasury Inspector General for Tax Administration is to report to Congress on the implementation of the provision not later than December 31, 2009. It is expected that such report will include a description of how the provision has been implemented, an analysis of the effectiveness of the disclosures in preventing or reducing Federal tax fraud by prisoners, and such other information as the Inspector General deems appropriate.

EFFECTIVE DATE

In general, the proposal is effective for disclosures made after December 31, 2007. The requirement for the IRS to provide an annual report is effective for reports submitted after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 1677, the "Taxpayer Protection Act of 2007."

The bill, H.R. 1677, as amended, was ordered favorably reported by voice vote (with a quorum being present). The Committee accepted an amendment by Congressman Ramstad to permit disclosure to officers and employees of the Federal Bureau of Prisons of return information with respect to prisoners whom Secretary has determined may have filed or facilitated the filing of false or fraudulent tax returns. The Committee accepted an amendment by Congressman Thompson that provides that, under the Foreign Investment in Real Property Tax Act, sellers of certain property have the option of providing a nonforeign affidavit to an intermediary, who in most cases will be the person responsible for closing the transaction.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 1677 as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2007–2017:

[34] It is assumed that the report will include, to the extent possible, the most current data available.

ESTIMATED REVENUE EFFECTS OF A MODIFICATION TO H.R. 1677, THE "TAXPAYER PROTECTION ACT OF 2007"

[Fiscal Years 2007–2017, in millions of dollars]

Provision	Effective	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007–12	2007–17
A. Family Business Tax Simplication—Allow Both Spouses in a Sole Proprietorship to Pay Social Security and Medicare Taxes [1]	tyba 12/31/06						Negligible revenue effect							
B. Taxpayer Notification of Suspected Identity Theft	dma DOE						No revenue effect							
C. Extension of time for Return of Property for Wrongful Levy	[2]						Negligible revenue effect							
D. Individuals Held Harmless on Wrongful Levies on IRAs	lartia DOE						Negligible revenue effect							
E. Clarification of IRS Unclaimed Refund Authority	DOE						No revenue effect							
F. Prohibition on IRS Debt Indicators for Predatory Refund Anticipation Loans	dma DOE						No revenue effect							
G. Prohibition on Misuse of Department of Treasury Names and Symbols [3]	voa DOE						No revenue effect							
H. Earned Income Credit Outreach	DOE	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]
I. Modification of Rules Pertaining to FIRPTA Non Foreign Affidavits	doUSrpia DOE	[4]	−1	−1	−1	−2	−2	−2	−2	−2	−2	−2	−7	−17
J. Disclosure of Prisoner Return Information to Federal Bureau of Prisons and Annual Statistical Report on Fraudulent Activity in State and Federal Prisons (sunset 12/31/10)	Dma 12/31/07 & rsa DOE			[5]	[5]	[5]							1	1

K. Increase in Penalty for Bad Checks and Money Orders	comora DOE	2	2	2	2	2	2	2	2	2	2	2	12	22
Net total	2	1	1	1	[6]	[4]	[4]	[4]	[4]	[4]	[4]	6	6	

[1] The estimate does not include any outlay effects, which will be provided by the Congressional Budget Office.

[2] Levies made after the date of enactment and levies made on or before the date of enactment provided that the nine-month period has not expired as of the date of enactment.

[3] The provision reaffirms that misleading internet domain names using the names of the Department of the Treasury or associated agencies are subject to present law penalties and clarifies that mass communications by electronic means are subject to the higher civil/criminal penalties under present law ($25,000/$50,000)

[4] Loss of less than $500,000.

[5] Gain of less than $500,000.

[6] Negligible revenue effect.

Legend for ''Effective'' column: comora = checks or money orders received after; DOE = date of enactment; doUSrpia = dispositions of United States real property interests after; dma = determinations made after; Dma = disclosures made after; lartia = levied amounts returned to individuals after; rsa = reports submitted after; tyba = taxable years beginning after voa = violations occurring after.

Note: Details may not add to totals due to rounding. Date of enactment is assumed to be July 1, 2007.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

H.R. 1677—Taxpayer Protection Act

Summary: H.R. 1677 would make several changes to tax law. It would allow the Internal Revenue Service (IRS) to disclose the return information of federal inmates to the head of the Federal Bureau of Prisons in certain circumstances and it would modify reporting requirements on dispositions of U.S. real property interests. It also would prohibit the IRS from giving providers of refund anticipation loans debt indicators if the providers are deemed predatory. The bill also would simplify tax reporting for couples who operate a joint business venture, prohibit the misuse of Treasury names and symbols on the Internet, and require the IRS to notify taxpayers who may be eligible for the earned income tax credit (EITC).

The Joint Committee on Taxation (JCT) estimates that enacting H.R. 1677 would decrease revenues by less than $500,000 in 2007, by $6 million over the 2007–2012 period, and by $16 million over the 2007–2017 period. The Congressional Budget Office (CBO) estimates that enacting the bill could increase federal revenues and direct spending as a result of the collection of additional civil and criminal penalties assessed for misuse of Treasury names and symbols. CBO estimates, however, that any additional revenues and direct spending that would result from the penalty provisions would not be significant. CBO also estimates that implementing the bill would cost $2 million to $3 million annually, subject to appropriation of the necessary amounts.

JCT reviewed the tax provisions of the bill and determined that they contain no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the non-tax provisions of H.R. 1677 and determined that they contain no intergovernmental mandates as defined in UMRA. Those provisions would impose no costs on state, local, or tribal governments. CBO has also determined that the non-tax provisions of H.R. 1677 contain a private-sector mandate as defined in the UMRA. The bill would prohibit anyone from using words, abbreviations, titles, or letters associated with the Department of the Treasury (or one of its bureaus, offices, or subdivisions) as a part of an Internet domain address in a manner which could be reasonably interpreted as conveying the false impression that the domain address is connected to or authorized by the department. Based on in-

formation from government and industry sources, CBO expects the total direct cost of the mandate would fall below the annual threshold established by UMRA ($131 million in 2007, adjusted annually for inflation) in the first five years the mandate is in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of the bill over the 2007–2017 period is shown in the following table. The budgetary impact of this legislation falls within function 800 (general government).

	By fiscal year, in millions of dollars—												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007–2012	2007–2017
CHANGES IN REVENUES													
Estimated Revenues	*	−1	−1	−1	−2	−2	−2	−2	−2	2	−2	−6	−16
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	3	3	3	2	2	2	2	2	2	2	13	23
Estimated Outlays	0	3	3	3	2	2	2	2	2	2	2	13	23

* = loss of less than $500,000.

Notes: Numbers may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO and JCT assume that the bill will be enacted by July 1, 2007.

Revenues and direct spending

The legislation would make several tax law changes related to taxpayer protection. CBO and JCT estimate that enacting H.R. 1677 would reduce revenues by less than $500,000 in 2007, by $6 million over the 2007–2012 period, and by $16 million over the 2007–2017 period.

H.R. 1677 would amend reporting requirements on dispositions of U.S. real estate. When foreign citizens sell their holdings of U.S. real estate, they are subject to income tax withholding under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Currently, the seller must identify that he or she is a U.S. citizen in order to avoid the requirement that the buyer withhold some payments from the seller and remit them to the Treasury as tax withholding. The bill would give the seller the option to give proof of identity to an intermediary. JCT estimates that this provision would reduce compliance with the tax laws and result in a revenue loss of less than $500,000 in 2007, $7 million over the 2007–2012 period, and $17 million over the 2007–2017 period.

The bill would authorize the IRS to disclose an individual's tax return to the head of the Federal Bureau of Prisons if the IRS believes that an incarcerated individual may have filed a false return. JCT estimates that this provision, which would be in effect for three years, would increase revenues by $1 million over the 2009–2011 period and would have no impact after 2011.

The bill also would require the IRS to notify taxpayers of potential eligibility for the EITC. Taxpayers would be informed that they may be eligible for the EITC if they did not claim the credit for any preceding year (unless certain limitations apply) and their returns show that they are potentially eligible. JCT estimates that this would reduce revenues and increase outlays by less than $500,000 in total over the 2007–2017 period.

H.R. 1677 would establish a new federal crime for the misuse of Treasury names and symbols on the Internet. The bill also would apply and increase civil and criminal penalties (that are already levied on misuse of Treasury names in other mediums) to such Internet misuse. Enacting the provision could increase federal revenues and direct spending as a result of the collection of additional civil and criminal penalties. (Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation.) CBO estimates, however, that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

Additionally, H.R. 1677 would simplify tax filing for married couples who file jointly and who both participate in a joint business venture. Under current law, such couples are required to file a partnership income tax return and divide income from the venture between the spouses according to their respective interests in the venture. Under the proposal, couples would each report their share of income on Form 1040, Schedule C as income from a sole proprietorship.

There is anecdotal evidence that some couples who operate joint ventures may already use Schedule C (intended to be used only by sole proprietors) and attribute all the income from the joint venture to one spouse. That attribution could affect the Social Security taxes the couple pays as well as the benefits they receive. JCT has determined that the proposal would have a negligible effect on revenues.

Social Security benefits are calculated by a formula that is based on lifetime earnings. Some people may also collect benefits based on their spouses' lifetime earnings. Depending on each couple's full earnings history, a change in which spouse reports income could raise or lower the combined benefit the couple would receive. Because of limited data on the earnings of the couples potentially affected by this change, CBO cannot determine whether the proposal would raise or lower spending in the Social Security program, but any such effect is likely to be small.

Spending subject to appropriation

H.R. 1677 would require the IRS to notify any taxpayer that the agency determines has been a victim of identify theft and when any criminal charges have been filed. The bill also would require, to the extent possible, that the IRS annually provide written notice to taxpayers who may qualify for an earned income tax credit or refund. In addition, H.R 1677 would allow the IRS to share prisoners' tax information with prison officials over the next three years if necessary to investigate fraudulent tax filings. Under the bill, the IRS would report to the Congress on the effectiveness of this information sharing program. Based on information from the IRS, and assuming the appropriation of the necessary amounts, CBO estimates that implementing those provisions would cost $2 million to $3 million annually.

Intergovernmental and private-sector impact: JCT reviewed the tax provisions of the bill and determined that they contain no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act. CBO has reviewed the non-tax provisions and determined that they contain no intergovernmental mandates as defined in UMRA. Those provisions would impose no costs on state, local, or tribal governments.

However, CBO has determined that the non-tax provisions of H.R.1677 contain a private-sector mandate as defined in UMRA. The bill would prohibit anyone from using words, abbreviations, titles, or letters associated with the Department of the Treasury (or one of its bureaus, offices, or subdivisions) as a part of an Internet domain address in a manner which could be reasonably interpreted as conveying the false impression that the domain address is connected to or authorized by the department.

The costs of the mandate would be the expenditures incurred to bring the Internet domain address into compliance added to any loss of net income associated with those changes. Current law already prohibits the use of words or symbols related to the department of Treasury in connection with advertisements, solicitations, or other business activities in such a manner. Based on information from government and industry sources, CBO expects the total direct cost of the mandate would fall below the annual threshold es-

tablished by UMRA ($131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Revenues: Emily Schlect; Federal Spending: Matthew Pickford and Sheila Dacey; Impact on State, Local, and Tribal Governments: Teri Gullo; Impact on the Private Sector: Amy Petz.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

E. PAY-GO Rule

In compliance with clause 10 of the rule XXI of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 1677, as reported: the provisions of the bill affecting revenues have the net effect of increasing the deficit or reducing the surplus for either: (1) the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year; and (2) the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . . "), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the revenue provisions of the bill contain no Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Clause 5 of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart C—Refundable Credits

* * * * * * *

SEC. 32. EARNED INCOME.

(a) * * *

* * * * * * *

(n) NOTIFICATION OF POTENTIAL ELIGIBILITY FOR CREDIT AND REFUND.—

(1) IN GENERAL.—To the extent possible and on an annual basis, the Secretary shall provide to each taxpayer who—

(A) for any preceding taxable year for which credit or refund is not precluded by section 6511, and

(B) did not claim the credit under subsection (a) but may be allowed such credit for any such taxable year based on return or return information (as defined in section 6103(b)) available to the Secretary,

notice that such taxpayer may be eligible to claim such credit and a refund for such taxable year.

(2) NOTICE.—Notice provided under paragraph (1) shall be in writing and sent to the last known address of the taxpayer.

* * * * * * *

Subchapter K—Partners and Partnerships

* * * * * * *

PART III—DEFINITIONS

* * * * * * *

SEC. 761. TERMS DEFINED.

(a) * * *

* * * * * * *

(f) QUALIFIED JOINT VENTURE.—

(1) IN GENERAL.—In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

(2) QUALIFIED JOINT VENTURE.—For purposes of paragraph (1), the term "qualified joint venture" means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

[(f)**]** *(g)* CROSS REFERENCE.—

For rules in the case of the sale, exchange, liquidation, orreduction of a partner's interest, see sections 704(b) and 706(c)(2).

* * * * * * *

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

* * * * * * *

SEC. 1402. DEFINITIONS.

(a) The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) * * *

* * * * * * *

(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply**[**, and**]***;*

(16) the deduction provided by section 199 shall not be allowed**[**.**]***; and*

(17) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.

* * * * * * *

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

* * * * * * *

Subchapter A—Nonresident Aliens and Foreign Corporations

* * * * * * *

SEC. 1445. WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.

(a) * * *

(b) EXEMPTIONS.—

(1) * * *

* * * * * * *

[(7) SPECIAL RULES FOR PARAGRAPHS (2) AND (3).—Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

[(A) if—

[(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

[(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

[(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.]

(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

* * * * * * *

(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

* * * * * * *

(d) LIABILITY OF TRANSFEROR'S AGENTS [OR TRANSFEREE'S AGENTS], *TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES*.—

[(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

[(A) the transferor furnishes the transferee an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

[(B) in the case of—

[(i) any transferor's agent

[(I) such agent has actual knowledge that such affidavit is false, or

[(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

[(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,

such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

[(2) FAILURE TO FURNISH NOTICE.—

[(A) IN GENERAL.—If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold that the transferee would have had if such agent had complied with paragraph (1).

[(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.]

(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) FAILURE TO FURNISH NOTICE.—

(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(6) QUALIFIED SUBSTITUTE.—The term "qualified substitute" means, with respect to a disposition of a United States real property interest—

(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

(B) the transferee's agent.

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

Subchapter A—Returns and Records

* * * * * * *

PART II—TAX RETURNS OR STATEMENTS

* * * * * * *

Subpart A—General Requirement

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) * * *

* * * * * * *

(f) PROMOTION OF ELECTRONIC FILING.—

(1) * * *

* * * * * * *

(3) PROHIBITION ON IRS DEBT INDICATORS FOR PREDATORY REFUND ANTICIPATION LOANS.—

(A) IN GENERAL.—In carrying out any program under this subsection, the Secretary shall not provide a debt indicator to any person with respect to any refund anticipation loan if the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are predatory.

(B) REFUND ANTICIPATION LOAN.—For purposes of this paragraph, the term "refund anticipation loan" means a loan of money or of any other thing of value to a taxpayer secured by the taxpayer's anticipated receipt of a Federal tax refund.

(C) IRS DEBT INDICATOR.—For purposes of this paragraph, the term "debt indicator" means a notification provided through a tax return's acknowledgment file that a refund will be offset to repay debts for delinquent Federal or State taxes, student loans, child support, or other Federal agency debt.

* * * * * * *

Subchapter B—Miscellaneous Provisions

* * * * * * *

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * * * *

(k) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION FOR TAX ADMINISTRATION PURPOSES.—

(1) * * *

* * * * * * *

(10) DISCLOSURE OF CERTAIN RETURN INFORMATION OF PRISONERS TO FEDERAL BUREAU OF PRISONS.—

(A) IN GENERAL.—Under such procedures as the Secretary may prescribe, the Secretary may disclose to the head of the Federal Bureau of Prisons any return information with respect to individuals incarcerated in Federal prison whom the Secretary has determined may have filed or facilitated the filing of a false return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

(B) RESTRICTION ON REDISCLOSURE.—Notwithstanding subsection (n), the head of the Federal Bureau of Prisons

may not disclose any information obtained under subparagraph (A) to any person other than an officer or employee of such Bureau.

(C) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information received under this paragraph shall be used only for purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility.

(D) ANNUAL REPORT.—In each of the calendar years 2007 through 2010, the Secretary shall submit to Congress and make publicly available a report on the filing of false and fraudulent returns by individuals incarcerated in Federal and State prisons. Such report shall include statistics on the number of false and fraudulent returns associated with each Federal and State prison.

(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2010.

* * * * * * *

(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media*, and through any other means of mass communication,* for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), ⟦(k)(8)⟧ *(k)(8) or (10)*, (l)(1), (2), (3), (5), (10), (11), (13), (14), or (17) or (o)(1), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or 7(A)(ii), or (l)(6), (7), (8), (9), (12), (15), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (l)(16), (18), (19), or (20) shall, as a condition for receiving returns or return information—

(A) * * *

* * * * * * *

(F) upon completion of use of such returns or return information—

(i) * * *

(ii) in the case of an agency described in subsections 2 (h)(2), (h)(5), (i)(1), (2), (3), (5) or (7), (j)(1), (2), or (5), ⟦(k)(8)⟧ *(k)(8) or (10)*, (l)(1), (2), (3), (5), (10), (11), (12), (13), (14), (15), or (17), or (o)(1), the Government Accountability Office, or the Congressional Budget Office, either—

(I) * * *

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CHAPTER 64—COLLECTION

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Subchapter D—Seizure of Property for Collection of Taxes

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PART II—LEVY

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SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) * * *

(b) RETURN OF PROPERTY.—If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

(1) * * *

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Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of [9 months] *2 years* from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

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(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of—

(A) the amount of money returned by the Secretary on account of such levy, and

(B) interest paid under subsection (c) on such amount of money,

may be deposited into such individual retirement plan or any other individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

(2) TREATMENT AS ROLLOVER.—If amounts are deposited into an individual retirement plan under paragraph (1) not later than the 60th day after the date on which the individual receives the amounts under paragraph (1)—

(A) such deposit shall be treated as a rollover described in section 408(d)(3)(A)(i),

(B) to the extent the deposit includes interest paid under subsection (c), such interest shall not be includible in gross income, and

(C) such deposit shall not be taken into account under section 408(d)(3)(B).

For purposes of subparagraph (B), an amount shall be treated as interest only to the extent that the amount deposited exceeds the amount of the levy.

(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

(4) INTEREST.—Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.

CHAPTER 66—LIMITATIONS

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Subchapter D—Periods of Limitation in Judicial Proceedings

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SEC. 6532. PERIODS OF LIMITATION ON SUITS.

(a) * * *

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(c) SUITS BY PERSONS OTHER THAN TAXPAYERS.—

(1) GENERAL RULE.—Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of **[**9 months**]** *2 years* from the date of the levy or agreement giving rise to such action.

(2) PERIOD WHEN CLAIM IS FILED.—If a request is made for the return of property described in section 6343(b), the **[**9-month**]** *2-year* period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

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CHAPTER 77—MISCELLANEOUS PROVISIONS

SEC. 7529. NOTIFICATION OF SUSPECTED IDENTITY THEFT.

If, in the course of an investigation under section 7206 (relating to fraud and false statements) or 7207 (relating to fraudulent returns, statements, or other documents), the Secretary determines that there was or may have been an unauthorized use of the identity of the taxpayer or dependents, the Secretary shall—

(1) as soon as practicable and without jeopardizing such investigation, notify the taxpayer of such determination, and

(2) if any person is criminally charged by indictment or information under either of such sections, notify such taxpayer as soon as practicable of such charge.

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CHAPTER 80—GENERAL RULES

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Subchapter A—Application of Internal Revenue Laws

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SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) * * *

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(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(3) OTHER RESPONSIBILITIES.—The Treasury Inspector General for Tax Administration shall—

(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code; **[**and**]**

(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1)**[**.**]***; and*

(C) not later than December 31, 2009, submit a written report to Congress on the implementation of section 6103(k)(10).

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SECTION 211 OF THE SOCIAL SECURITY ACT

SELF-EMPLOYMENT

SEC. 211. For the purposes of this title—

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) * * *

* * * * * * *

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); **[**and**]**

(15) The deduction under section 162(l) (relating to health insurance costs of self-employed individuals) shall not be allowed**[**.**]***; and*

(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.

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SECTION 333 OF TITLE 31, UNITED STATES CODE

§ 333. Prohibition of misuse of Department of the Treasury names, symbols, etc

(a) GENERAL RULE.—No person may use, in connection with, or as a part of, any advertisement, solicitation, *internet domain address,* business activity, or product, whether alone or with other words, letters, symbols, or emblems—

(1) * * *

* * * * * * *

in a manner which could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, *internet domain address,* business activity, or product is in

any manner approved, endorsed, sponsored, or authorized by, or associated with, the Department of the Treasury or any entity referred to in paragraph (1) or any officer or employee thereof.

* * * * * * *

(c) CIVIL PENALTY.—

(1) * * *

(2) AMOUNT OF PENALTY.—The amount of the civil penalty imposed by paragraph (1) shall not exceed $5,000 for each use of any material in violation of subsection (a). If such use is in a broadcast or telecast, *or any other mass communications by electronic means,* the preceding sentence shall be applied by substituting "$25,000" for "$5,000".

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(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—If any person knowingly violates subsection (a), such person shall, upon conviction thereof, be fined not more than $10,000 for each such use or imprisoned not more than 1 year, or both. If such use is in a broadcast or telecast, *or any other mass communications by electronic means,* the preceding sentence shall be applied by substituting "$50,000" for "$10,000".

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