



**Legislative Bulletin.....April 15, 2008**

**Contents:**

**H.R. 5719**—Taxpayer Assistance and Simplification Act

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**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$61 million over ten years

**Effect on Revenue:** \$41 million net increase over eleven years

**Total Change in Mandatory Spending:** \$247 million net decrease over eleven years

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 1

**Number of Bills Without Committee Reports:** 1

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 5719—Taxpayer Assistance and Simplification Act (*Rangel, D-NY*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, April 15<sup>th</sup>, subject to a closed rule (H.Res. 1102), which neither makes nor allows any amendments.

**Summary:** In addition to provisions that would impose additional restrictions on Health Savings Accounts (HSAs) and prohibit the Internal Revenue Service (IRS) from using the private sector to help collect tax debts, H.R. 5719 contains an assortment of miscellaneous tax-code provisions regarding tax compliance, as summarized below. Some of these provisions have already passed the House in 2007 as part of H.R. 1677 and H.R. 3056.

To see the RSC Legislative Bulletin on H.R. 1677, go here:  
[http://www.house.gov/hensarling/rsc/doc/LB\\_041707\\_suspensions.doc](http://www.house.gov/hensarling/rsc/doc/LB_041707_suspensions.doc).

To see the RSC Legislative Bulletin on H.R. 3056, go here:  
[http://www.house.gov/hensarling/rsc/doc/lb\\_101007\\_taxcollectors.doc](http://www.house.gov/hensarling/rsc/doc/lb_101007_taxcollectors.doc).

Highlights of H.R. 5719 are as follows:

- Tax Preparer Liability. This provision would modify the penalty on the understatement of a taxpayer's liability by a paid tax return preparer (increased recently by Public Law 110-28) so that return preparers could more easily avoid penalty through proper explanation and justifications of their actions on behalf of the taxpayer. *Saves taxpayers \$22 million over ten years.*
- Removal of Cell Phone Substantiation. This provision would eliminate the special requirements for individuals to keep detailed records of calls made on employer-provided cell phones to substantiate the business use (and thus the tax deductibility) of such devices. *Saves taxpayers \$237 million over ten years.*
- Withholding Delay. Delays by one year (from December 31, 2010 to December 31, 2011) the date after which a three-percent withholding requirement would become effective on certain government payments to persons providing qualifying property or services to such government (any level of government, including federal, state, and local). Payments subject to the three-percent withholding include any payment made in connection with a government voucher or certificate program that functions as a payment for property or services (such as many agriculture programs). *Saves taxpayers \$316 million over ten years.*
- Elderly and Disabled Programs Tax Liability. This provision would make the fiscal administrators of state and local government programs liable for paying the employment taxes on amounts paid by government programs to in-home care workers providing care to elderly and disabled persons. *Negligible revenue effect.*
- Low-Income Taxpayer Clinics. This provision would allow IRS employees to refer taxpayers needing assistance with tax cases to qualified low-income taxpayer clinics and would increase the ceiling for authorized matching-fund grants to such clinics from \$6 million a year to \$10 million a year. *Negligible revenue effect and a \$40 million authorization increase over ten years.*
- Volunteer Income Tax Assistance Program. Creates a new \$10-million-a-year matching-funds program for the development, expansion, or continuation of volunteer income tax assistance programs. *No revenue effect and a \$100 million authorization over ten years (though CBO only scores this new program at \$3 million in the first year and \$2 million a year thereafter).*

- Earned Income Tax Credit Notification. This provision would direct the IRS to expand its annual notice requirements relating to potential eligibility for the Earned Income Tax Credit (EITC)—and its possible refundability—to all potentially eligible taxpayers (“to the extent possible”), regardless of whether they have filed a tax return for the applicable tax year, and as long as the time limitation for claiming the credit has not expired (three years from the time the relevant tax return was filed, two years from the time the related tax was paid, or, if no tax return was filed by the taxpayer, then two years after the tax was paid). Such notices would have to be in writing and mailed to the taxpayer’s last known address. *No revenue effect.*

In current law, low-income taxpayers can be eligible for the refundable EITC, based primarily on the number of children in the taxpayer’s family, adjusted gross income, and earned income. The EITC generally equals a specified percentage of earned income up to a maximum dollar amount (over a certain income range and diminishing to zero over a specified phase-out range). For more on the EITC, go to this webpage:

<http://www.irs.gov/individuals/article/0,,id=96456,00.html>.

- IRS Debt Indicators for Predatory Loans. This provision would prohibit the Secretary of the Treasury from providing a debt indicator to any person with respect to any refund anticipation loan when the Secretary determines that the business practices of such person involve refund anticipation loans and related charges and fees that are “predatory” (not defined in the bill). In other words, this provision would seek to make it harder for so-called predatory lenders to reduce their risk in making refund anticipation loans. A “debt indicator” is defined in the bill as a notification provided to a tax practitioner or financial institution that a taxpayer’s refund will be offset to repay debts for delinquent federal or state taxes, student loans, child support, or other federal agency debt. A “refund anticipation loan” is defined in the bill as a “loan of money or any other thing of value to a taxpayer secured by the taxpayer’s anticipated receipt of a federal tax refund.” *No revenue effect.*
- Study on Electronic Delivery of Tax Refunds. This provision would direct the Secretary of the Treasury, in consultation with the National Taxpayer Advocate, to study and report to Congress on the feasibility of delivering tax refunds on debit cards, prepaid cards, and other electronic means. *No revenue effect.*
- Return of Wrongly Seized Property. This provision would extend, from nine months to two years, the period for:
  - The IRS to return money and the proceeds from the sale of property that has been wrongfully levied; and
  - The wronged taxpayer to bring a civil action for wrongful levy.*Negligible revenue effect.*
- Wrongful Levy on Individual Retirement Accounts. This provision would allow an individual to retribute to an Individual Retirement Account (IRA) the amounts withdrawn pursuant to a wrongful or premature IRS levy and returned by the IRS (plus interest) within 60 days of receipt by the individual, regardless of the current-law limits on IRA contributions and rollovers. Interest paid under this provision would be

excludable from gross income for tax purposes, once deposited in an IRA, and the returned amounts would not yield any new income tax (if deposited in an IRA).

*Negligible revenue effect.*

- Notification of Suspected Identity Theft. This provision would direct the Secretary of the Treasury, if (in the course of an investigation relating to tax fraud, false statements, fraudulent tax returns, or other fraudulent tax-related documents) he believes that there may have been unauthorized use of the identity of a taxpayer or his dependents, to notify the taxpayer (“as soon as practicable and without jeopardizing such investigation”). The Secretary would also have to notify the taxpayer of any criminal charge that was the result of the investigation. In current law, information gathered by the IRS in connection with a tax-fraud investigation is subject to confidentiality restrictions. *No revenue effect.*
- Prohibition on Private-Sector Debt Collectors for the IRS. This provision would strike the authority for the IRS to enter into, extend, or renew contracts for tax collection with private entities, retroactive to contracts signed on or after March 1, 2008. Contracts in effect before this date would remain in force, as long as they have not been altered since March 1, 2008. Under current law, the IRS may use private debt collection companies to contact taxpayers who owe any tax and to arrange payment of such tax liabilities. The IRS is currently authorized to pay these collection companies (up to 25% of the amount collected) and to reserve another 25% of the collections for collection enforcement activities at the IRS.

This provision would also affirmatively deem as void any such tax collection contract entered into on or after March 1, 2008. *Reduces revenues by \$552 million over ten years and reduces mandatory spending by \$261 million over those same ten years.*

NOTE: According to the Republican staff of the Ways & Means Committee, the IRS has contracted with private debt collectors only to collect smaller tax-debts when the amount owed is not in question (i.e. when the taxpayer has filed a correct tax return). The IRS does not use private tax collectors to collect larger tax-debts or when the amount of tax liability is in question.

- IRS Unclaimed Refunds. This provision would allow the IRS to use any means of “mass communication” to notify taxpayers of undelivered refunds. In current law, when the IRS is unable to find a taxpayer due a tax refund, the IRS can use “the press or other media” to notify the taxpayer of the refund. The IRS has interpreted this definition to exclude the Internet. *No revenue effect.*
- Misuse of Treasury Names and Symbols. This provision would clarify that any electronic mass communication (including “phishing,” misleading domain names, etc.) that could reasonably be interpreted as falsely conveying a connection to, or approval by, the Treasury Department (or any of its parts), are subject to the current-law civil penalty of \$25,000 per violation and criminal penalty of \$50,000 per violation, presently applicable to broadcasts and telecasts. The provision would also clarify that the use of the words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (or any of its parts) in an Internet domain name is covered by

the current-law prohibition against such misuse in general. (Disclaimers that the private entity is not affiliated with the IRS do **not** relieve such entities from liability under this provision.) *No revenue effect.*

- **HSA Substantiation.** This provision would require the “substantiation” of all Health Savings Accounts (HSA) transactions from an independent third party, to ensure that money withdrawn from an HSA pays for qualified medical expenses. Specifically, the section would make the income tax deduction associated with HSA contributions contingent on substantiation of all withdrawals, beginning in 2011. This oversight of every single account transaction would make HSAs similar to Flexible Spending Arrangements (FSAs), an earlier consumer-driven health care model. The provision also would require HSA trustees to annually report expenses not substantiated. **See the “Conservative Concerns” section below.** *Costs taxpayers \$308 million over eight years.*
- **Tax Treatment of Employees of Foreign Subsidiaries of U.S. Companies.** This provision would impose employment taxes on employers for wages paid for services performed by employees of foreign subsidiaries of U.S. parent companies under U.S. government contracts. In other words, this provision would treat certain non-American employers as if they were American employers. *Costs taxpayers \$860 million over eleven years and increases mandatory spending by \$14 million over those same eleven years.*
- **Corporate Estimated Tax Timing Gimmick.** This provision would increase the estimated tax payments that certain corporations must remit to the federal government. Under current law, corporations with assets of at least \$1 billion must make equally divided estimated tax payments for each quarter. This legislation would increase the payment due for the third quarter of 2013 by 0.25 percentage points. The payment due for the fourth quarter of 2013 would be reduced accordingly so that the corporations pay no net increase in estimated payments in 2013. This provision is merely a revenue timing shift, a gimmick used to comply with the House’s PAYGO rules, yet could have real-world implications, as it forces certain companies to pay more of their tax payments earlier. *No net revenue effect beyond fiscal year 2014, but would force corporations to pay \$147 million in additional tax payments in FY2013 instead of FY2014.*

**RSC Bonus Fact:** Treasury Benefits Tax Counsel Tom Reeder testified before the House Ways & Means Committee last week that 8.4% of HSA account holders self-declare at least some portion of their distributions as *taxable* income.

**Committee Action:** On April 8, 2008, H.R. 5719 was introduced and referred to the Ways & Means Committee, which, on the subsequent day, marked up the bill and ordered it reported to the full House by a party-line vote of 23-17.

**Possible Conservative Concerns:** Some conservatives have expressed concerns about the HSA substantiation provision. In addition to increased inconvenience for account holders, introducing a new step of independent “substantiation” may well increase costs for banks and account

administrators, who are likely to either pass these costs onto employers and/or consumers, or to exit the HSA space altogether.

The Joint Committee on Taxation would not reveal whether its estimate of increased revenues from this provision comes from reducing fraud or from a reduced number of HSAs in the marketplace—or both. Additionally, some conservatives have noted the lack of consistent data quantifying the problem of HSAs being used for non-qualified expenditures.

Some conservatives may also be concerned at the application of FSA procedures to HSAs. The Internal Revenue Code makes clear that FSA accounts are held by *employers*, while HSA funds remain exclusively the property of the *employee*. This distinction explains why unused FSA funds in an employee's account at the time of departure revert back to the employer, while HSA funds always remain with the employee, and remain portable from job to job and into retirement. Some conservatives may be concerned about the potential implications of transferring a “substantiation” system designed for employer-owned FSAs to individually-owned HSAs—both in terms of the legal liabilities placed on employers and administrators to verify transactions, and the restrictions placed on individuals to control their HSA account dollars.

Some conservatives may also be concerned that H.R. 5719 would eliminate a successful program that the IRS has used to collect smaller tax-debts, debts that the IRS has said it would not otherwise be cost-effective to try to collect. Additionally, some conservatives may be concerned at the motivation behind this provision—limiting the ability for the federal government to use private contractors and increasing the use of government-union-only services.

**The scores for the HSA substantiation provision and the IRS debt collection provision almost perfectly offset each other, thus one could argue that this bill would require individual HSA-account-holders to use third parties to get their promised tax benefits in order to pay for preventing the IRS from using third parties for debt collection.**

Some conservatives may be concerned at the bill's expansion of the IRS' outreach effort on the Earned Income Tax Credit. In the past, conservatives have expressed concerns about the notion of the IRS as tax advisor and about the EITC itself (because of its refundability and its ability to turn taxpayers into welfare benefit recipients). Additionally, some conservatives may be concerned about the private-sector mandate on Internet domain names.

Some conservatives may also be concerned at the provision imposing employment taxes on employers for wages paid for services performed by employees of foreign subsidiaries of U.S. parent companies under U.S. government contracts—thus treating certain non-American employers as if they were American employers.

Lastly, some conservatives may be concerned at the ongoing use of a corporate tax-timing shift, which some Members would regard as a budget gimmick to meet PAYGO rules.

**Administration Position:** The Administration has issued a Statement of Administration Policy (SAP), indicating that the President's senior advisers would recommend that he veto the bill,

based on the HSA and IRS private debt-collection provisions. To read the SAP, visit this webpage: <http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr5719-r.pdf>.

**Cost to Taxpayers:** The Joint Committee on Taxation and CBO estimate that H.R. 5719 would increase revenues by \$75 million over six years and by \$41 million over eleven years. The bill would decrease mandatory spending by \$119 million and \$247 million, respectively, over the same timeframes. Lastly, the bill would increase authorizations by \$61 million over ten years.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, among other things, the bill would treat certain non-American employers as American employers for employment tax purposes and would require that the government directly do more of its own tax-debt collection, rather than contract it out to the private-sector.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes, there is one private-sector mandate: the prohibition from anyone using words, abbreviations, titles, or letters associated with the Treasury Department (or its components) 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 (regardless of whether it features a disclaimer that the private entity is not affiliated with the IRS).

CBO notes that “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.”

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** House Report 110-584, which presumably contains an earmark/limited tax benefit/limited tariff benefit statement, was not available at press time.

**Constitutional Authority:** House Report 110-584, which presumably contains a constitutional authority statement, was not available at press time.

**Outside Organizations:** A partial list of organizations opposing the HSA substantiation provision includes:

- America’s Health Insurance Plans;
- Business Roundtable;
- Credit Union National Association;
- Financial Services Roundtable;
- HSA Council (part of the American Bankers Association);
- International Franchise Association;
- National Association of Health Underwriters;
- National Association of Manufacturers;
- National Federation of Independent Business;
- National Restaurant Association;
- National Retail Federation;



- National Taxpayers Union; and
- U.S. Chamber of Commerce.

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