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RECENT LEGISLATIVE ACTIVITY

by Martha A. Sabol

Taxpayers Benefit from Bipartisan Focus on Taxpayers' Rights: The IRS Restructuring and Reform Act¹

"The IRS Restructuring and Reform Act is truly historic legislation. With the reforms in this legislation, a new day will dawn for taxpayers in their relations with the Agency. With this legislation, we have sought to create an Agency that has a reputation for service, civility and fairness in the treatment of taxpayers." William Roth, Jr., Chairman of the Senate Committee on Finance.²

The IRS Reform and Restructuring Act is expected to cost \$12.9 billion over the next ten years and will encompass seventy-four new rights for taxpayers. However, as exciting as it is to see such promised change, there is an enormous amount of work that lies ahead. The problems abounding in the IRS have taken years to develop, and it will take years to "clean house" and enact these changes in order to see the results of the reform. In the meantime, taxpayers can be confident that in creating reform standards, U.S. lawmakers will continue to focus on the rights of all Americans. The three year turnaround, from initial study to

the President's signature of the Act into law, serves as an example of the results that are possible when laws are created with the rights of Americans in mind.

Congress Creates Commission to Build Taxpayer Confidence

It is no secret that United States taxpayers have lost faith in our tax system. In a recent poll conducted in the U.S. Chamber of Commerce's publication, *Nation's Business*, half of the respondents to a "Where I Stand" poll said they felt they had been treated unfairly or abused by IRS agents.³ A majority of the respondents also indicated that they believed they could not effectively challenge an IRS ruling in court or in the appeals process, and 96% of the respondents felt that the IRS was not taxpayer friendly.⁴ In the interest of repairing this system, Congress created the National Commission on Restructuring the IRS in 1996. The Commission was made up of seventeen members and professional staff who examined the IRS for one year and developed a comprehensive report on changes needed at the IRS. The report was issued on June 25, 1997, and was the

basis of legislation introduced in the 105th Congress by the Commission's co-chairmen, Representative Portman and Senator Kerry. On November 5, 1997, the House overwhelmingly approved the third version of the IRS Reform Bill in a 426-4 vote. The Bill called for an "Oversight Board" which would be given the power to recommend an IRS Commissioner and approve his or her actions. In addition, the Bill included provisions to strengthen the Taxpayer Advocate and provide additional rights to taxpayers, including a shift of the burden of proof to the IRS in civil tax disputes.

The IRS Calls for Its Own Reform From the Top Down

In January 1998, IRS commissioner Charles O. Rossotti ordered the largest overhaul of the IRS in 45 years. Under his plan, the Commissioner agreed to reorganize the agency into "taxpayer service organizations" developed to serve the specific needs of: (1) the individual taxpayer, (2) small businesses and the self-employed, (3) large corporations, and (4) pension plans, non-profits, and state and local governments. Rossotti announced his plan to the Senate Finance Committee in response to President Clinton's effort to invoke change prior to the Senate's reworking of the IRS Reform Bill. The proposal focused on the shrinking of the IRS national office and in making the Agency more taxpayer-friendly.

In March 1998, Vice President Gore

released his own IRS restructuring plan, entitled "Reinventing Service at the IRS." Calling for IRS field executives to be granted authority to issue one-day emergency tax refunds in taxpayer hardship cases, as well as for the implementation of better technology to answer taxpayers' questions faster and more accurately, the plan was written with input from front-line IRS workers and taxpayers on how to improve IRS service.

The result of these efforts by Vice President Gore and the employees of the IRS was a complete revamping of Customer Service and Information Technology. Their changes included the following: expanded and improved telephone service to make communication with the Agency more convenient and reliable; increased telephone service hours to sixteen hours per day/six days per week; improved call answering capacity to allow more calls to be answered on the callers' first attempts; developed a helpful IRS home page with taxpayer information and instructions on filling out forms; implemented an IRS e-mail system to allow taxpayers to communicate online with IRS representatives; expanded electronic filing abilities; improved problem-solving efforts; composed more reader-friendly notices and instructions for taxpayers; and established Citizen Advocacy Panels to provide taxpayers with an independent voice. "This task force has helped the IRS rediscover its last name - service," said Gore, who released the report with Treasury Secretary Robert Rubin and IRS

Commissioner Charles Rossotti.

"Like every taxpayer, I am outraged by the reports of abuses by the IRS," President Clinton said in his State of the Union speech. "Tonight I challenge the Senate that as your first order of business, pass our bipartisan package of IRS reform now."

The Senate Finance Committee Hears Directly From Taxpayers About IRS Abuse

"The goal of the Senate Finance Committee hearings is to lay the groundwork for legislation that will improve oversight of the Agency, better protect taxpayers from unfair treatment, and change the IRS' internal culture," announced William Roth, Jr., Senate Finance Committee Chairman, in an opening statement during the first of four days of Senate hearings on IRS abuse. In January 1998, the Finance Committee heard directly from taxpayers, tax collectors, tax practitioners, small business owners and innocent spouses on the troubling problem of taxpayer abuse in the IRS. As a result of these disturbing hearings, the Senate's Reform Act, which passed by a 97-0 voice vote on May 6, 1998, looked to restructure the top management of the IRS to make it more consumer friendly and more accountable. The Act, like Congress' Reform Bill, established an IRS Oversight Board and allowed for the shift of the burden of proof in most tax court cases from the taxpayer to the IRS. The Act allowed innocent spouses to distance themselves from the mistakes of their spouses on joint tax

returns, and allowed the Joint Committee on Taxation to oversee the complexity of the Internal Revenue Code in all tax legislation.

Bipartisan Support for Tax Reform

By this time, the House and the Senate had passed their own individual Acts to reform the IRS. As a result, a House-Senate conference committee was assigned to resolve the differences and come up with a final version to be approved by the House and Senate. Using the House and Senate Acts and the IRS restructuring plans developed by the Commissioner and Vice President Gore, the conference committee quickly agreed to a final version and submitted it in the form of a Conference Report, which was approved by the House on June 25, 1998 and later by the Senate on July 10, 1998. "The final conference report takes the best features from the House and Senate versions of the IRS Reform Acts and provides greater protection for taxpayers," said Congressman Rob Portman.

Taxpayers Benefit from the IRS Restructuring and Reform Act of 1998

The IRS reform legislation is the most complete restructuring plan ever enacted in the Internal Revenue Service and is based on taxpayers' rights. Taxpayers can expect to see changes in the way the IRS oversees and regulates the Agency and its actions, the way it makes its employees accountable for

their actions, and the way it treats taxpayers.

Increased Oversight of IRS Activities Will Ensure Taxpayers Fair Representation

The Reform Act contains new laws that promise to increase oversight of the Agency's actions and, as a result, create more IRS accountability. Taxpayers will benefit from these initiatives by being assured of fair and impartial representation in tax dispute cases. For example:

1. A nine-member Oversight Board will be established and staffed with six members from the private sector, the Secretary of the Treasury, the IRS Commissioner and an IRS employee. The purpose of the Board is to create a new direction for the Agency and review and approve all of its strategic plans. It will oversee law enforcement and collection activities, as well as have access to information in order to identify and solve taxpayer problems more quickly. The Board will also be accessible to taxpayers, allowing them to air their complaints and give suggestions for improving IRS service.

2. Additional power will be given to the Commissioner to recruit, hire, train and fire employees. This oversight ability will allow the Commissioner to staff the IRS with the most effective, service-minded employees in order to meet the objectives of the Reform Act.

3. Prior to 1998 tax law, the Commissioner appointed a Taxpayer Advocate who was assigned to assist taxpayers in resolving their IRS

problems. The Reform and Restructuring Act, however, calls for a more independent Taxpayer Advocate, now deemed the National Taxpayer Advocate. The candidate is selected by the Treasury Secretary, who receives input from the Commissioner and the Oversight Board, and cannot be an employee or officer of the IRS for two years prior to the appointment, or for five years thereafter. In addition, the new law expands taxpayers' ability to request a Taxpayer Assistance Order from National Taxpayer Advocate if the taxpayer is suffering a substantial hardship as a result of IRS actions.

4. The Office of Chief Inspector will be restructured into a new position called the Treasury Inspector General for Tax Administration; the resulting reporting relationship with the Treasury Department will eliminate the mismanagement and conflict of interest that occurred with the Chief Inspector reporting to the IRS.

As a result of these changes in IRS administration, taxpayers can be assured of impartial representation in tax disputes.

Holding IRS Employees Accountable for Their Actions Will Curb Abuse

The Reform Act holds IRS employees accountable for all of their actions. New standards will give the IRS power to terminate an employee for the following actions: perjury; falsifying or destroying documents to cover up for an employee's mistakes; willful failure to obtain the required

approval signatures on documents authorizing the seizure of a taxpayer's home or property; assault or battery of a taxpayer or other IRS employee; or any violation of a taxpayer's civil rights. The Reform Act holds all IRS employees and managers accountable for their actions in collection cases, and provides that all IRS correspondence to taxpayers must contain a contact name and phone number for questions or concerns regarding the correspondence.

New Standards Guarantee Taxpayers Fair Treatment

The Reform Act promises improved service and care, to be provided through these newly created standards:

1. Under the previous law, when a tax liability was determined, the IRS was presumed correct and the burden of proof fell on the taxpayer to prove otherwise. The Reform Act promises to change this standard and shift the burden of proof to the IRS in most court proceedings. If the taxpayer introduces credible evidence, complies with all substantiation requirements, maintains adequate records and cooperates with the IRS in examinations after July 22, 1998, the IRS will carry the burden of proof on any issue of fact. In addition, the IRS will carry the burden of proof when it uses statistical information from unrelated taxpayers to reconstruct a taxpayer's income. This change in the law will allow the taxpayer to enter disputes as an innocent party.

Some tax advisors are weary of the

shift because it may cause the IRS to conduct more intrusive audits since the Agency will be required to collect more information in building their case against the taxpayer.

2. Innocent spouses will be treated more fairly by allowing them to separate themselves from the mistakes of their divorced or separated spouses. As a result of reform, an innocent spouse who is divorced, legally separated or living apart from the spouse with whom a joint return was filed will be responsible only for additional taxes on their own income and not their spouse's.

3. The attorney-client privilege will be extended to allow a taxpayer's discussions with accountants, tax practitioners, enrolled agents and actuaries, and anyone who is authorized to practice before the IRS to be kept as confidential as discussions with their attorneys. This new provision of the Reform Act may be asserted in any non-criminal tax proceeding before the IRS or in the federal courts. It does not apply, however, to any written documents between a corporation and tax practitioner regarding the development of a tax shelter.

4. The Tax Payer Advocate will be authorized under the new plan to work directly with taxpayers; this change provides an additional service contact within the IRS.

5. Qualification for more taxpayer-friendly collection options, such as Installment Agreements and Offers in Compromises, will be easier under the new Reform Act.

6. The standards by which taxpayer property can be seized will be significantly changed by the Reform Act. Taxpayers will be given thirty days to request a hearing before the IRS seizes any property, and supervisors will be held accountable for appropriateness of liens, levies and seizures. Lastly, the IRS will not be capable of seizing a taxpayer home to satisfy an unpaid liability of less than \$5,000, and they will be required to obtain a court order prior to the seizure of a taxpayer's home. The law applies to collection actions beginning after January 18, 1999

7. The Reform Act provides improvements in the area of interest and penalty charges. The IRS is required to provide sufficient notice to the taxpayer, which is defined as being within eighteen months after the taxpayer files his return. If the IRS fails to notify the taxpayer within this time period, interest and penalty charges will be suspended. In the year 2004, the IRS must provide notice within twelve months. The "failure to pay" penalty will be reduced by one half while the taxpayer is paying off a tax liability in an installment agreement. Small businesses can designate deposits for each payroll period to prevent escalating penalty charges. Each penalty and interest notice must include details as to how the penalty and interest were computed, and any non-computer generated penalty charges must be approved by management.

8. Previous laws provided taxpayers recovery for costs and legal fees if they

prevailed against the IRS when the government's position was not "substantially justified." The Reform Act includes new laws that are even more favorable to taxpayers: the hourly rate cap for attorney fees will increase; taxpayers will be able to sue for up to \$100,000 in damages as a result of an IRS employee's negligence, such as ignoring the Internal Revenue Code or Regulations when collecting tax; and, lastly, taxpayers can sue for up to \$1 million in damages for an IRS employee's violation of bankruptcy laws regarding automatic stays or discharges.

Congressman Rob Portman believes that, "taken as a whole, this package of IRS reforms will make a real difference for every American taxpayer. The IRS will never be popular, but it should be fair, efficient and accountable as a result of enactment of this Act."

President Clinton Endorses the Reform Plan

On July 22, 1998, President Clinton signed the IRS Restructuring and Reform Act. In a formal statement, he said that "This reform will help my effort to create an IRS that respects American taxpayers and respects their values." Vice President Al Gore, in commenting on the newly signed Bill, stated "With the President's Taxpayers' Bill of Rights and the hard work of the Senate, Congress and the IRS over the past two years, this Bill will expand the efforts already in place to redesign, re-energize and reinforce the IRS for the 21st Century."

Endnotes

¹ Because of the complexity of the new laws and its provisions, all taxpayers should consult with their tax advisors for specific advice as to how the law may impact their individual tax status.

² William Roth, Jr., Chairman of the

Senate Committee on Finance, *Roth Release on Senate Approval of IRS Reforms*, Press Release 105-373, July 9, 1998.

³ See U.S. Chamber of Commerce, *NATION'S BUSINESS*, December 1997.

⁴ See *id.*

