Ways and Means advances IRS modernization bills

The House Ways and Means Committee on April 11 unanimously approved 12 bipartisan bills calling for changes to the Internal Revenue Service’s organizational structure, enhancements to its information technology and cybersecurity operations, revisions to its enforcement policies, and improvements in customer service, all in an effort to make the agency more efficient and taxpayer-friendly.

It is our goal to build a ‘taxpayer first’ IRS that works for taxpayers, not against them,” Ways and Means Committee Chairman Kevin Brady, R-Texas, said in his opening statement.

The overall tone of the mark-up was collaborative, although Democratic taxwriter Earl Blumenauer of Oregon voiced concerns over Republican-driven funding cuts at the IRS in recent years and their effects on its efficiency, and some other Democrats lamented that GOP leaders were not as open to minority input in drafting the tax cut legislation that moved through Congress at the end of 2017.

Brady, for his part, emphasized comity, telling the panel that “[t]his collection of targeted, bipartisan solutions will help address problems that many Americans struggle with. By passing these bills, we can take meaningful action to improve the lives of all taxpayers.”

The Ways and Means package, if enacted into law, would mark the first significant overhaul of IRS operations since the enactment of the IRS Restructuring and Reform Act of 1998. Legislative language, Joint Committee on Taxation descriptions, and revenue estimates for the proposals are available on the Ways and Means Committee website. URL: https://waysandmeans.house.gov/event/ways-and-means-to-hold-markup-2/

Taxpayer First Act

The Taxpayer First Act (H.R. 5444), introduced by Ways and Means Oversight Subcommittee Chairman Lynn Jenkins, R-Kan., and subcommittee ranking member John Lewis, D-Ga., lays out a path forward for reorganizing the IRS and makes taxpayer-friendly changes in the areas of enforcement, appeals, and customer service.

Organizational issues: The legislation does not propose specific changes to the IRS’s organizational architecture. Rather, it would require the Service to submit to Congress by September 30, 2020, a comprehensive written plan to revamp the agency’s structure in a way that emphasizes taxpayer service, streamlines operations (including the elimination of duplicative services and responsibilities), and positions the agency to address cybersecurity issues and other operational threats.

The legislation does, however, include targeted organizational proposals that would:

- Make changes to the Office of the National Taxpayer Advocate (NTA) and its interactions with IRS leadership. For example, it would give more heft to Taxpayer Advocate Directives (which the NTA issues to identify systemic problems at the IRS and mandate changes to tax administration or other processes) by requiring IRS leadership to respond to those directives, clarifying the time period for issuing a response, and requiring the NTA to inform Congress of any directives not honored by the IRS.
- Eliminate the IRS Oversight Board, a nine-member body that was created in the 1998 restructuring legislation to oversee the Service’s administration of federal tax laws, but which has been ineffective in the last few years due to lack of a quorum.
- Change the title of “Commissioner of the Internal Revenue Service” to “Administrator of the Internal Revenue Service” to emphasize the IRS leader’s role as administering the Internal Revenue Code. (”Deputy Commissioner” titles likewise would be redesignated as “Deputy Administrator.”)

Enforcement: The legislation would also limit the IRS’s authority to seize property of taxpayers who are suspected of “structuring” financial transactions to avoid Bank Secrecy Act, which requires information reporting on cash transactions over $10,000. Although the Bank Secrecy Act provision was intended to target cash-based criminal activity, several House taxwriters have argued in recent years that some taxpayers – particularly small businesses – who have legitimate reasons for engaging in frequent cash transactions may unwittingly appear to be structuring their transactions and could become subject to asset forfeiture without ever committing a crime.
Under the bill, the Service would be required to show probable cause that the funds in a suspected structuring transaction are derived from an illegal source or connected with other criminal activity. If a court determines that the government should return funds and interest to an individual whose funds were seized based on a structuring allegation, the interest payment would be exempt from tax.

Other enforcement-related provisions in the legislation would:

- Clarify the standard of review by the Tax Court for equitable relief from understatement or underpayment of taxes on a jointly filed return;
- Clarify the IRS’s authority to issue a “John Doe” summons by providing that the summons must be narrowly tailored to seek only information that pertains to the failure or potential failure of an individual or group to comply with federal tax law;
- Exempt delinquent taxpayers from the IRS’s private debt collection program if their income falls below 250 percent of the federal poverty level;
- Revise the rules regarding notice of third-party contacts to ensure that taxpayers are aware that the IRS will contact third parties – including friends, neighbors, and clients – closer to the time that those contacts are made;
- Require that a designated summons be reviewed and approved (in writing) by the highest-level IRS employee in the relevant operating division and the relevant division counsel in the Office of Chief Counsel; and
- Prohibit individuals outside of the IRS from examining a taxpayer’s returns and return information other than for the sole purpose of serving as an expert witness.

**Appeals process:** The legislation would strengthen taxpayer rights during the appeals process by codifying the IRS Independent Office of Appeals, providing additional congressional oversight over decisions to withhold certain taxpayers from the administrative review process, and requiring the IRS to provide taxpayers with their case files before the start of any dispute resolution process (rather than requiring taxpayers to obtain this information through a Freedom of Information Act request).

**Customer service:** Under the legislation, the IRS would be required to develop and submit to Congress a comprehensive customer service strategy that lays out how the agency intends to provide assistance for taxpayers (including customer service training for IRS employees), incorporates best practices from the private sector, and establishes benchmarks for measuring success in its implementation.

The bill also would assist lower-income taxpayers by codifying and making permanent the current-law Free File Program and providing a low-income exception for payments otherwise required in connection with the submission of an offer-in-compromise.

**Tax Court:** The legislation would make Tax Court judges subject to the same grounds for disqualification as judges of other federal courts. It also would change certain titles and terminology currently used within the Tax Court to make them consistent with their usage elsewhere in the federal court system and repeal deadwood provisions related to the Board of Tax Appeals (the predecessor of the Tax Court).

**21st Century IRS Act**

The 21st Century IRS Act (H.R. 5445), sponsored by Ways and Means members Mike Bishop, R-Mich., and Suzan DelBene, D-Wash., seeks to modernize the Service’s information technology systems – an issue that has taken on increased urgency as the agency prepares to implement the massive tax cut legislation enacted at the end of 2017 – as well as hold the IRS accountable for the taxpayer dollars it spends on designing and maintaining those systems. It also aims to expand the use of electronic systems for interactions between taxpayers and the Service.

In addition, the legislation includes a number of provisions aimed at enhancing the IRS’s cybersecurity infrastructure, preventing identity theft, and providing assistance to taxpayers who have been victims of identity theft.

**Systems modernization:** Proposals to overhaul the Service’s information technology infrastructure would address:

- **Information technology management:** The legislation would codify the position of the IRS’s chief information officer, establish clear roles and responsibilities for that position, and require the IRS to develop and implement an information technology strategic plan that aligns with the agency’s overall goals. It also
would require the Service to have a third party independently verify and validate its plans for completing the Customer Account Data Engine 2 and Enterprise Case Management systems within a year of enactment.

- **Online accounts and portals:** The IRS would be required to develop robust, secure online accounts for taxpayers and their preparers by 2023. The increased availability of online taxpayer support would be in addition to the traditional telephone and in-person support services the agency currently provides. The IRS also would be required to develop a process for the secure acceptance of tax forms and supporting documentation in an electronic format.

- **Internet platform for Form 1099 filings:** The legislation would require the IRS to develop an internet portal to facilitate electronic filing of Forms 1099. The portal would be modeled after a system that the Social Security Administration uses to facilitate filings of Forms W-2.

- **Consent-based income verification:** The legislation would authorize the IRS to develop an automated system for submitting forms under its Income Verification Express Service program and to charge a separate user fee over a two-year period to fund the development of the new system.

- **Redisclosure of consent-based disclosures of return information:** The legislation would limit tax return information redisclosures by a taxpayer's designee to only those redisclosures to which a taxpayer has expressly consented.

**Expanded use of electronic systems:** The legislation includes a number of provisions to increase electronic filing of tax returns, promote the use of electronic signatures for authorization of certain taxpayer disclosure authorizations, and allow payment of taxes by credit and debit cards.

- **Electronic return filing:** The legislation would require a taxpayer that files 10 or more returns with the IRS to file them electronically. (Under current law, the electronic filing requirement applies to taxpayers that file more than 250 returns). This provision would be phased in and includes an exception for tax preparers in geographic areas with limited or no internet access.

- **Standards for electronic signatures:** The IRS would be required to develop standards and other guidelines that would allow for the use of electronic signatures to request taxpayer return information for purposes of disclosures to a practitioner or to execute a power of attorney.

- **Credit and debit card payments:** The legislation would allow the IRS to directly accept credit and debit card payments for tax debts (instead of working with a third-party processor) but would require taxpayers to pay the fees charged by the card issuer.

**Cybersecurity and identity protection:** On the cybersecurity front, the bill includes proposals to:

- Codify recent IRS efforts to foster a public-private partnership to combat identity theft tax refund fraud;
- Modify the charter of the Electronic Tax Administration Advisory Committee (which was created as part of the 1998 IRS restructuring law to advise the IRS on improving electronic tax administration) to reflect committee’s new focus on identity theft tax refund fraud;
- Direct the IRS to participate in an identity theft tax refund fraud information sharing and analysis center with state and private sector partners; and
- Prohibit the IRS from providing taxpayer information to contractors or agents of a federal, state, or local agency unless the contractor has safeguards in place to protect the confidentiality of return information and agrees to conduct on-site compliance reviews every three years.

**Additional reform measures**

In addition to these two broad proposals, House taxwriters also approved a series of targeted reform measures that would:

- Require all tax-exempt organizations that are required to file a Form 990 with the IRS to submit their returns electronically and make them available to the public in a machine-readable format. (Mandatory electronic filing currently applies only to tax-exempt organizations that have assets greater than $10 million and those that file more than 250 returns with the IRS.) A transition rule would allow the IRS to delay implementation of this requirement by up to two years for certain smaller organizations. (H.R. 5443, sponsored by Ways and Means member Mike Kelly, R-Pa., and Rep. Stephanie Murphy, D-Fla.)
- Require the IRS to establish a program that would allow any taxpayer to request an Identity Protection Personal Identification Number (IP PIN), a six-digit number issued by Treasury that is included with a tax return for authentication purposes. Currently, a taxpayer can be assigned an IP PIN only if the IRS determines
that the taxpayer is at risk of having his or her identity stolen. (H.R. 5437, sponsored by Ways and Means members Erik Paulsen, R-Minn., and Suzan DelBene, D-Wash.)

- Establish a single point of contact within the IRS for any taxpayer who is a victim of identity theft. (H.R. 5439, sponsored by Ways and Means members Jim Renacci, R-Ohio, and John Lewis, D-Ga.)

- Amend the Tariff Act of 1930 to require US Customs and Border Protection to develop a system to ensure that personally identifiable information (such as Social Security Numbers and passport numbers) that is routinely captured on international shipping manifests when an individual moves overseas is not disclosed to the public. (H.R. 4403, sponsored by Rep. Jeff Denham, R-Calif., and Ways and Means member Bill Pascrell, D-N.J.)

- Require the Social Security Administration to issue a new Social Security Number to an infant or child under the age of 14 if the child’s parent or guardian can show that the originally issued Social Security card was stolen while in the mail. (H.R. 1512, sponsored by Ways and Means members Kenny Marchant, R-Texas, Bill Doggett, D-Texas, Jason Smith, R-Mo., and Earl Blumenauer, D-Ore.)

- Require the Social Security Administration to develop a user-funded system to match the name, Social Security Number, and date of birth of an individual submitted by a permitted user (generally a financial institution or service provider) against the Social Security Administration’s records. (H.R. 5192, sponsored by Ways and Means members Carlos Curbelo, R-Fla., and Kenny Marchant, R-Texas, along with Reps. Kyrsten Sinema, D-Ariz., and Randy Hultgren, R-III.)

- Restrict the IRS’s ability to sell “perishable” goods it acquires in certain civil asset forfeitures by specifically limiting the definition of “perishable” to property that is liable to perish. Under current law this definition also applies to property that is likely to lose value rapidly and property that cannot be kept without great expense to the IRS. (H.R. 5446, sponsored by Rep. Drew Ferguson, R-Ga., and Ways and Means member Joseph Crowley, D-N.Y.)

- Make the Volunteer Income Tax Assistance (VITA) Program permanent. (H.R. 2901, sponsored by Ways and Means members Carlos Curbelo, R-Fla., and Danny Davis, D-Ill.)

- Allow IRS employees to provide information to taxpayers about the availability of and eligibility requirements for low-income taxpayer clinics. (H.R. 5438, sponsored by Ways and Means members George Holding, R-N.C., and John Lewis, D-Ga.)

- Require the IRS to provide advance notice when it plans to close a walk-in Taxpayer Assistance Center. (H.R. 5440, sponsored by Reps. Karen Handel, R-Ga., and Tom O’Halleran, D-Ariz.)

**House floor votes ahead**

The Ways and Means Committee-approved bills are expected to receive votes on the House floor the week of April 16, coinciding with this year’s income tax filing deadline of April 17. It was unclear at press time whether Republican leaders plan to move all 12 bills separately or combine them into one or more larger packages. Also unclear is whether any of the measures will be open to amendment.

Senate GOP leaders have not indicated when or if they intend to take up the House measures or pursue a separate IRS reform package of their own.

**Kautter weighs in**

When asked about the Ways and Means-passed IRS reform package at a Senate Finance Committee hearing April 12, IRS Acting Commissioner David Kautter characterized it as “by and large a constructive piece of legislation” but added that he would propose changes to: (1) require electronic filing for all business and information tax returns, (2) require the IRS to establish online taxpayer accounts, and (3) codify the IRS’s mission, with a focus on taxpayer service.

Kautter said he believes the IRS generally has the tools it needs to enforce tax law and assist taxpayers – which he emphasized should not be viewed as mutually exclusive – but he also advocated for increased funding, with oversight.

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