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Taxpayer Protection and IRS Accountability Act of 2003, H.R. 1528, and Tax Administration Good Government Act, S. 882

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Summary

The House of Representatives and the Senate have passed different versions of H.R. 1528, a bill whose provisions primarily relate to tax administration and taxpayer safeguards. On June 19, 2003, the House passed H.R. 1528, the Taxpayer Protection and IRS Accountability Act of 2003, by a vote of 252-170. On May 19, 2004, the Senate passed an amended version of the bill by unanimous consent. The Senate amendment replaced the language in the House-passed bill with the reported version of S. 882, the Tax Administration Good Government Act. Both versions of H.R. 1528 contain similar provisions, but there are differences between the two. This report briefly summarizes the contents of the House and Senate versions of H.R. 1528.

The House of Representatives and the Senate have each passed versions of H.R. 1528, a bill that primarily addresses tax administration and taxpayer safeguards. The House passed H.R. 1528, the Taxpayer Protection and IRS Accountability Act of 2003, by a vote of 252 to 170 on June 19, 2003. The Senate passed an amended version of the bill by unanimous consent on May 19, 2004. The Senate amendment replaced the language in the House-passed bill with the reported version of S. 882, the Tax Administration Good Government Act. The two versions of H.R. 1528 include many of the same provisions, but significant differences do exist.

This report will briefly summarize both versions of H.R. 1528. Under each subject heading, provisions that are in both versions will be mentioned, followed by provisions that are only in the House version, and then the provisions that are only in the Senate version. Title VII of the House version made clerical changes to the applicability of federal-state agreements dealing with unemployment assistance. These changes are outdated in light of P.L. 108-26, the Unemployment Compensation Amendments of 2003, and are omitted. Additionally, section 310 (Suspension of Tax-Exempt Status of Terrorist Organization) of the House version is omitted because an identical provision was enacted in P.L. 108-121, the Military Family Tax Relief Act of 2003.

Penalty and Interest Reforms House — Title I; Senate — Title II

Both versions. Both versions of H.R. 1528 address penalty and interest reform. Both versions include a similar provision that would simplify the calculation of the penalty for failure to pay estimated tax and would increase the safe harbor (although by different amounts) under which no penalty is imposed. Another proposal that is similar in both versions would liberalize the rules under which interest owed by taxpayers is abated, including the abatement of interest owed on an underpayment attributable to erroneous IRS written advice. Both versions would clarify and expand the use of cash deposits that taxpayers may make in order to suspend the accrual of interest on potential underpayments. Other provisions would liberalize the use of interest netting by individuals (the Senate’s provision would apply to all taxpayers), modify and increase the penalty for making frivolous tax submissions, and clarify when the highest penalty applies for failing to make a timely tax deposit.

House version. The House version would convert the penalty for failure to pay estimated tax to an interest charge on the unpaid balance. The House version would also allow individual taxpayers who receive interest from the IRS because they overpaid their taxes and the IRS was slow to refund the overpayment to exclude the interest from income. Another House proposal would permit the IRS to waive the penalty for a first-time failure to pay tax owed or file a return if the failure was due to an unintentional minor error and the penalty would be disproportionate to the amount owed.

Senate version. The Senate version would increase the threshold under which corporations do not have to make estimated tax payments and would increase the threshold under which corporations may base the amount owed on either the current year’s tax liability or the previous year’s tax liability, as opposed to just the former. It would also extend the rule that inclusion of an IRS telephone number in certain communications with taxpayers meets the notification requirement relating to interest and penalty calculations. The Senate version would also make permanent the rule that the IRS has eighteen months to notify a taxpayer of an unpaid tax liability before the accrual of certain penalties and interest is suspended, and would add “gross misstatements” to the list of provisions to which the suspension rules do not apply.

Tax Administration Reforms House — Titles II, III, V, VI; Senate — Title I

Both versions. Both versions of the bill include provisions related to tax administration. Under both versions, the IRS would be able to enter into installment agreements for less than the full amount of the tax owed. Another proposal would extend the amount of time from nine months to two years during which the IRS may return money that has been wrongfully levied upon. Also, if the IRS wrongfully levied upon an IRA account, the taxpayer would be able to redeposit to the account. Both versions would stop the suspension of the statute of limitations during review by the National Taxpayer Advocate (NTA) when the NTA’s review was less than seven days. Both versions would also require the IRS to include an explanation on certain forms and publications of the consequences of failing to file for a refund within the statute of limitations period.

Both versions would allow 501(c) and (d) organizations involved in a controversy with the IRS over the determination of their exempt status to seek declaratory judgements regarding that status — current law is restricted to 501(c)(3) organizations. Other provisions would allow earlier disclosure of information about securities to be auctioned by the Treasury Department, permit the IRS to regulate the conduct of enrolled agents, and change the bookkeeping of fees paid by the IRS to Financial Management Service. The requirement that certain offers-in-compromise be supported by a written opinion from the Office of Chief Counsel would be repealed, as would two of the reasons for which IRS employees are automatically terminated (the late filing of refund returns and employee versus employee assault or battery). Both versions of the bill would increase funding to low-income taxpayer clinics, although by different amounts.

House version. The House version would permit taxpayers who file electronic returns and pay electronically to have until April 30th to file their returns. The National Taxpayer Advocate would be permitted to appoint counsel that reports solely to him or her. Another proposal would require that the IRS make certain fuel tax refunds by electronic transfer. The House version would allow a joint venture whose only members are husband and wife filing a joint return to choose not to be treated as a partnership for income tax purposes. Other provisions would require that the Treasury Department conduct a study of the IRS's use of liens and levies and would allow state-based health insurance coverage to qualify for the refundable health insurance credit.

Additionally, the House version contains several reporting provisions applicable to the Treasury Inspector General for Tax Administration (TIGTA). TIGTA would be required to address the most common complaints against IRS employees, annually publish statistics on the awards of costs and attorneys fees in IRS administrative and court proceedings, issue an annual report on penalty abatements, and study whether the IRS would better communicate with taxpayers if the agency used such methods as e-mail. The House version would also extend the Joint Committee on Taxation's annual reporting requirement concerning the IRS to 2009.

Senate version. The Senate version contains numerous provisions not found in the House version. The Senate version would make two changes to the installment agreement program: (1) waive the user fee if the taxpayer agreed to make automatic installment payments and (2) grant the IRS the authority to terminate an agreement if the taxpayer was late in making a required tax deposit or filing a return. Another proposal would allow states to offset federal tax refunds owed to non-residents in order to collect past-due income tax debts from those individuals. The Senate version would also make several changes to the powers of the IRS Oversight Board, such as adding requirements that the board approve the selection, evaluation, and compensation of senior executives and approve the use of critical pay authority. Another provision would prevent the discharge in bankruptcy of the penalty for failure to collect and pay over tax or the attempt to evade tax, and would clarify that payroll agents are subject to the penalty. Other proposals would create a permanent IRS disaster response team, address the treatment of exempt organizations who receive support from Indian tribal governments, and require that at least two members of the electronic commerce advisory group be representatives from the consumer advocacy community.

The Senate version includes several provisions related to electronic filing. Under the Senate version, a commercial return preparation service participating in the Free File

program would only be allowed to cross-market its services to a taxpayer if he or she agreed to it. The Senate version would authorize grants for programs intended to establish accounts for taxpayers without bank accounts so that they may receive refunds electronically. It would also allow the IRS to lower the threshold number of returns under which paid tax return preparers must file electronically and expand the types of returns that must be electronically filed by them.

Another proposal in the Senate version would require that certain paid tax return preparers register annually with the IRS, with passing an annual exam and meeting standards of conduct as prerequisites to registering. Additionally, a program would be established for the registration with the IRS of all providers of refund anticipation loans to individuals. The Senate version would also authorize that grants be made to low-income taxpayer return preparation clinics. Other provisions would make the combined federal-state employment tax reporting program permanent, add a civil penalty for the failure to report an interest in a foreign financial account, increase the minimum penalty for bad checks, and repeal the application of the below-market loan rules for certain loans made to qualified continuing care facilities.

The Senate version would require several reports, including an annual report on IRS performance measures. Additionally, reports would be required on the proposals to modify Schedules L and M-1, the implementation of an accelerated tax refund program, taxpayer record-keeping requirements, and IRS accounts receivable. The Senate version would also change some reporting requirements, such as reducing the National Taxpayer Advocate's annual required reports from two to one and repealing certain TIGTA reporting requirements. Additionally, a joint task force would be set up to study and provide recommendations on the use of offers-in-compromise by the IRS.

Confidentiality and Disclosure

House — Titles IV and V; Senate — Title IV

Both versions. Both versions of H.R. 1528 address matters relating to confidentiality and disclosure of taxpayer return and information. Both versions would prohibit the disclosure of a taxpayer's address and identification number as part of the publically-available summaries of accepted offers-in-compromise. They would require that the forms used by taxpayers to consent to the IRS sharing information with a third party include a warning that taxpayers should not sign blank forms and would address procedures to ensure the consent is used for its proper purpose. Taxpayer representatives would not be subjected to examination without special IRS supervisory approval merely because of whom they represent. Both versions would require the IRS notify taxpayers whose returns had been illegally browsed by IRS employees. Another proposal would require federal, state, and local agencies to conduct on-site reviews of contractors' compliance with federal confidentiality standards (the House version would require an annual review, while the Senate version would require a review every three years).

Both versions would allow a former spouse to make an oral, as opposed to written, request to find out about collection activities relating to a joint return. Another proposal would clarify that the IRS does not have to comply with the church-audit procedures when sending out educational materials about the requirements for tax-exempt organizations. The IRS would be allowed to use any means of mass communication to notify taxpayers

of undelivered refunds. Both versions would expand present law regarding disclosure in emergency situations to include local law enforcement agencies. Also, state officials would have expanded access to tax information of tax-exempt 501(c) organizations.

House version. The House version would only allow the disclosure in judicial and administrative proceedings of a nonparty's return or return information that is directly related to resolution of the issue in the proceeding, and would require reasonable effort be made to notify the nonparty of the disclosure. The House version would permit the National Taxpayer Advocate to authorize employees to withhold information provided by a taxpayer from the IRS and the Department of Justice and to issue disclosure guidance that will supercede provisions in the Internal Revenue Manual in certain situations.

Senate version. A provision that is only in the Senate version would remove the application of the confidentiality rules to returns and return information once the information has been publically disclosed in a proper manner. The Senate version would clarify that a taxpayer's identity may be disclosed to law enforcement agencies investigating terrorist activities. It would also clarify that agents of the Treasury Department may identify themselves, their affiliation, and the nature of their investigation when contacting third parties. The Senate version would permit the IRS to disclose to a person required to provide a taxpayer identification number whether the information matches records maintained by the IRS. It would also make the rule covering disclosure of Form 8300 (relating to disclosure of certain currency transactions) uniform with provisions in Title 31.

Tax Court Modernization

House — Title III; Senate — Title III

Both versions. Both versions of the bill would extend the jurisdiction of the Tax Court to hear all appeals of due process cases involving collection matters and would clarify that the Tax Court may apply the doctrine of equitable recoupment.

House version. The House version contains no other provisions.

Senate version. Provisions in the Senate version would clarify that special trial judges may hear certain small employment tax cases and that the Tax Court may impose a fee for any case commenced by filing a petition. The Senate version would also allow the fees imposed on Tax Court practitioners to be used to provide services to pro se taxpayers. It would address issues related to Tax Court judges' pension and compensation, such as equalizing their compensation and benefits with U.S. District Court judges. The Tax Court would also be able to establish, subject to various requirements, its own personnel system. Additionally, the Senate version would equalize the treatment of such things as terms, salary, and benefits between special trial judges of the Tax Court and magistrate judges of Article III courts.

Simplification

Senate — Title V

Both versions. There are no provisions contained in both versions.

House version. The House version of the bill does not include any provisions.

Senate version. The Senate version would make the definition of “qualifying child” uniform for purposes of the dependency exemption, child credit, earned income tax credit, dependent care credit, and head of household filing status. The Senate version would also remove several obsolete or little-used provisions from the tax code.

Revenue Raisers

House — Title V; Senate — Title VI

Both versions. Both versions would extend the authorization for IRS user fees to September 30, 2013.

House version. The House version contains no other provisions.

Senate version. Many of the revenue raisers in the Senate version relate to abusive tax shelters. These include the addition of a penalty for failing to include information regarding reportable transactions (including listed transactions) with a return or statement and a penalty on understatements attributable to reportable transactions (including listed transactions) with significant tax avoidance purposes. The Senate version would modify existing penalties for promoting tax shelters, maintaining investor lists, and having an understatement of tax liability on a return prepared by a paid tax return preparer. It would replace current law requiring the registration of tax shelters with a provision requiring that material advisors file an information return for any reportable transaction.

Other provisions relating to tax shelters include the removal of tax shelter communications from the taxpayer-practitioner confidentiality protection and changes to the definition of “substantial understatement” for corporate taxpayers. Also under the Senate version, deducting interest on underpayments attributable to undisclosed reportable transactions and listed transactions would be prohibited. The Senate version would modify existing law to expand the circumstances under which injunctions for activities involving tax shelters may be issued. Other proposals would permit the Treasury Secretary to censure and fine individuals practicing before it, extend the period of time the IRS has to assess taxes relating to undisclosed listed transactions, and authorize the appropriation of \$300 million to combat abusive tax avoidance transactions.

Revenue raisers in the Senate version that are not related to tax shelters include a proposal to require that a corporation’s chief executive officer sign a declaration that the corporation’s income tax return complies with the law. Another would confirm that the Treasury Department may make rules that treat corporations filing consolidated returns differently from those filing separate returns. The Senate version would also increase various criminal tax penalties, clarify the situations in which payments of fines and penalties to a government are nondeductible, and deny a business deduction for the payment of punitive damages.