

**DESCRIPTION OF H.R. 3724, A BILL TO AMEND
THE INTERNAL REVENUE CODE OF 1986 TO PREVENT
THE COMMISSIONER OF THE INTERNAL REVENUE SERVICE
FROM REHIRING ANY EMPLOYEE WHO WAS INVOLUNTARILY
SEPARATED FROM SERVICE FOR MISCONDUCT**

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by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
of the
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3724, a bill to amend the Internal Revenue Code of 1986 to prohibit the Internal Revenue Service from rehiring an employee who was involuntarily separated from service for misconduct. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3724, A Bill to Amend the Internal Revenue Code Of 1986 To Prevent The Commissioner of the Internal Revenue Service From Rehiring Any Employee Who Was Involuntarily Separated From Service For Misconduct* (JCX-19-16), April 12, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Prohibition on Rehiring Former Employees Who Were Involuntarily Separated for Misconduct

Present Law

Employees of the Internal Revenue Service are subject to rules governing Federal employment generally,² as well as rules of conduct specific to Department of the Treasury and Internal Revenue Service. Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.³

The Code⁴ provides that the Commissioner of the Internal Revenue Service has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons,⁵ including determination and designation of posts of duty.

The IRS Restructuring and Reform Act of 1998 (the “Restructuring Act”)⁶ requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under titles VI or VII of the Civil Rights Act of 1964, title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer

² Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

³ Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 735. 5 CFR 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; 31 CFR Part 0, Department of the Treasury Employee Rules of Conduct.

⁴ Sec. 7803(a).

⁵ Sec. 7804.

⁶ Pub. L. No. 105-206, sec. 1203(b), July 22, 1998.

representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Internal Revenue Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to take an official action, such as an audit, or delay or fail to take official action with respect to a taxpayer for political purposes or for the purpose of extracting personal gain or benefit.

The Act provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. The Treasury Inspector General ("IG") is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the IG's annual report to Congress.

Explanation of Provision

An employee of the Internal Revenue Service who is involuntarily separated due to misconduct under subchapter B of Chapter 80 of the Code, under chapters 43 or 75 of title 5 of the United States Code, or section 1203 of the IRS Restructuring Act of 1998, cannot be reemployed by the Internal Revenue Service.

Effective Date

The proposal is effective with respect to any employee removed from employment before, on or after the date of enactment.

B. Estimated Revenue Effect of the Proposal

The proposal is estimated to have a negligible effect on Federal fiscal year budget receipts for the period 2016-2026. The extent to which the proposal may increase or decrease Federal outlays for the same period 2016-2026 has not been estimated. In accordance with section 402 of the Budget Act, the Congressional Budget Office has jurisdiction to estimate the effect on direct or discretionary spending.