

**DESCRIPTION OF H.R. 5445,
THE “21st CENTURY IRS ACT”**

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5445, the “21st Century IRS Act.” 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. 5445, the “21st Century IRS Act”* (JCX-12-18), April 10, 2018. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

TITLE I – CYBER SECURITY AND IDENTITY PROTECTION

1. Public-private partnership to address identity theft refund fraud

Present Law

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit group members identified and agreed to share more than 20 data components relating to Federal and State returns to improve fraud detection and prevention. For example, group members are sharing computer device identification data tied to the return's origin, as well as the improper or repetitive use of the numbers that identify the internet address from where the return originates.² Tax software providers agreed to enhance identity requirements and strengthen validation procedures for new and returning customers to protect their accounts from theft. Along with the IRS, 40 State departments of revenue, and 21 tax industry members have signed onto a Memorandum of Understanding regarding roles, responsibilities and information sharing pathways among the IRS, States and industry.³

Description of Proposal

The proposal requires the Secretary to work collaboratively with the public and private sectors to protect taxpayers from identity theft refund fraud.

Effective Date

The proposal is effective on the date of enactment.

2. Recommendations of Electronic Tax Administration Advisory Committee regarding identity theft and refund fraud

Present Law

The IRS Reform and Restructuring Act of 1998 (“RRA98”) authorized the Electronic Tax Administration Advisory Committee (“ETAAC”). ETAAC was to provide input to the IRS on electronic tax administration. ETAAC’s responsibilities involve researching, analyzing, and making recommendations on a variety of electronic tax administration issues. Pursuant to RRA98, ETAAC reports to Congress annually concerning:

- IRS progress on reaching its goal to electronically receive 80 percent of tax and information returns;
- Legislative changes assisting the IRS in meeting the 80 percent goal;

² Internal Revenue Service, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud* (June 2016) at p. 3. https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf.

³ *Ibid.*

- Status of the IRS strategic plan for electronic tax administration; and
- Effects of e-filing tax and information returns on small businesses and the self-employed.

According to the latest annual report, ETAAC members come from State departments of revenue, large tax preparation companies, solo tax practitioners, tax software companies, financial services industry and low income and consumer advocacy groups.⁴

Description of Proposal

The proposal requires ETAAC to study (including through organized public forums) and make recommendations to the Secretary regarding methods to prevent identity theft and refund fraud.

Effective Date

The proposal is effective on the date of enactment.

3. Information Sharing and Analysis Center

Present Law

Information Sharing and Analysis Center

The Security Summit, formed in 2015, is a partnership of the IRS, State tax agencies, and the private-sector tax industry to address tax refund fraud caused by identity theft. In 2016, the Security Summit created an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (“ISAC”).⁵ The ISAC is a secure, web-based way for States, industry and the IRS to share and exchange information. The ISAC enables the IRS and the States to work together with external third parties to serve as an early warning system for tax refund fraud, identity theft schemes, and cybersecurity issues. MITRE Corporation, a contractor, hosts, maintains, and facilitates the web-based leads reporting and information sharing process for the ISAC.

Confidentiality and disclosure of return information

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.⁶ The definition of return information is very broad and generally includes any information received or collected by the IRS with respect to liability under the Code

⁴ Electronic Tax Administration Advisory Committee, Publication 3415, *Annual Report to Congress* (June 2017), <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

⁵ Internal Revenue Service, *2016 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud* (June 2016) https://www.irs.gov/pub/newsroom/6_2016_security_summit_report.pdf.sec.

⁶ Sec. 6103(a).

of any person for any tax, penalty, interest or offense. The term “return information” includes, among other items:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, **or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense . . . (emphasis added)**⁷

There are several exceptions to the general rule of confidentiality. Such exceptions include provisions to permit disclosures to State tax administration officials, for IRS employees and officers to make investigative disclosures, and rules to allow one authorized party to disclose to another authorized party with the permission of the Commissioner.⁸

The IRS exchanges confidential information with State tax agencies under the authority of section 6103(d). The disclosures are made pursuant to written request from the head of the State tax agency, which designates the State tax officials who can receive the information. The information can only be used for State tax purposes, not for general State civil or criminal law enforcement. The State officials can redisclose the information to other officers and employees of the State tax agency, the agency's legal representative, or the agency's contractors (but only for State tax administration purposes). The IRS uses this authority to alert State tax administration officials to tax refund fraud schemes.

IRS officers and employees may disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of Title 26. Such disclosures are to be made only in such situations and under such conditions as the Secretary may prescribe by regulation.⁹ This provision generally cannot be used to provide confidential return information on an industry-wide basis to alert return preparers to potential fraud schemes.

Under the Treasury regulations, returns or return information that have been obtained by a Federal, State, or local agency, or its agents or contractors, in accordance with section 6103 (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the second recipient).¹⁰ The

⁷ Sec. 6103(b)(2)(A).

⁸ Sec. 6103(d) (disclosures to States), 6103(k)(6)(investigative disclosures) and the Treasury regulations under sec. 6103(p)(2)(B).

⁹ Sec. 6103(k)(6); Treas. Reg. sec. 301.6103(k)(6)-1.

¹⁰ Treas. Reg. sec. 301.6103(p)(2)(B)-1.

disclosure must be approved by the Commissioner of the IRS. The second recipient may receive only such returns or return information as authorized by the provision of section 6103 applicable to such recipient and only for a purpose authorized by and subject to any conditions imposed by section 6103, including applicable safeguards.

Preparer disclosure penalties

The Code provides for a civil penalty for a tax return preparer who (i) discloses any information furnished to the preparer for, or in connection with, the preparation of such return or (ii) uses such information for any purpose other than to prepare or assist in preparing any such return.¹¹ There is a corresponding criminal penalty under section 7216 of the Code for knowing or reckless conduct. The same exceptions from the imposition of the criminal penalty apply for purposes of the civil penalty. In general, the penalty does not apply for disclosures permitted by the Code or pursuant to an order of a court. Further, the penalty does not apply to the use of information in the preparation of, or in connection with the preparation of State and local tax returns and declarations of estimated tax of the person to whom the information relates. The Code also permits the Secretary to provide additional exceptions through regulations. The Secretary has prescribed by regulation the circumstances not involving tax preparation in which disclosure and use of a taxpayer's information by a tax return preparer is permitted.

Penalties for the unauthorized disclosure or inspection of return information

The unauthorized disclosure of a return or return information is a felony punishable by fine of up to \$5,000, five years imprisonment or both. Unauthorized inspection is a misdemeanor, punishable by a fine of up to \$1,000, one year imprisonment, or both.

Description of Proposal

ISAC participation and performance metrics

The proposal provides that the Secretary may participate in an information sharing and analysis center. The purpose of such participation is to centralize, standardize and enhance data compilation and analysis to facilitate sharing actionable data and information with respect to identity theft tax refund fraud. The proposal requires the Secretary to develop metrics for measuring the success of such center in detecting and preventing identity theft tax refund fraud.

Disclosure of return information to certain ISAC participants

In general

The proposal authorizes the disclosure of specified return information to ISAC participants that have entered into a written information sharing agreement with the Secretary. Under such procedures and subject to such conditions as the Secretary may prescribe, the Secretary may disclose specified return information to specified ISAC participants if such disclosure is in furtherance of effective Federal tax administration relating to the following: (1)

¹¹ Sec. 6713.

the detection or prevention of identity theft tax refund fraud; (2) validation of taxpayer identity; (3) authentication of taxpayer returns; or (4) the detection or prevention of cybersecurity threats to the IRS.

Terminology

Specified ISAC participant

The term “specified ISAC participant” means any person designated by the Secretary as having primary responsibility for a function performed by the ISAC and any return preparer (or other person) subject to section 7216 and which is a participant in the ISAC. A person is only a specified ISAC participant if such person has entered into a written information sharing agreement with the Secretary. The information sharing agreement must set forth the terms and conditions for the disclosure of information to such person, including the requirements imposed on such person for the protection and safeguarding of such information. The information sharing agreement must require that recipients of return information under the proposal are required to affirmatively report to the Treasury Inspector General for Tax Administration any unauthorized access or disclosure of information and any breaches of any system holding the information.

Specified return information

For purposes of the proposal, the term “specified return information” means, in the case of a return filed electronically which is in connection with a case of potential identity theft tax refund fraud, return information related to the electronic filing characteristics of such return. Such characteristics include: internet protocol address, device identification, email domain name, speed of completion, method of authentication, refund method, and such other return information relating to the electronic filing characteristics of such return as the Secretary may prescribe. In addition, with respect to a return prepared by a tax return preparer in connection with a case of potential identity theft refund fraud, “specified return information” also includes identifying information with respect to such tax return preparer, including the preparer taxpayer identification number (“PTIN”) and electronic filer identification number (“EFIN”) of such preparer.

With respect to a return for which identity theft refund fraud has been confirmed by the Secretary (pursuant to such procedures as the Secretary may provide), “specified return information” also includes the name and taxpayer identification number of the taxpayer as it appears on the return, and any bank account and routing information provided for making a refund in connection with such return.

Finally, in the case of any cybersecurity threat to the IRS, information similar to that associated with cases of potential identity theft refund fraud (e.g. electronic characteristics and preparer identifying information) are considered specified return information with respect to such threat.

Restriction on use of disclosed information

Any return information received by a specified ISAC participant under the proposal is to be used only for the purposes of and to the extent necessary in (1) performing the function the

person is designated to perform with respect to the ISAC, (2) facilitating authorized disclosures to return preparers who are specified ISAC participants, and (3) facilitating disclosures authorized under section 6103(d) to State tax authorities who are participants in the ISAC. Return information received by specified ISAC participants who are return preparers is treated for purposes of section 7216 as information furnished to such person for, or in connection with, the preparation of a return of tax.

Data protection, safeguards, penalties

As noted above, to be a specified ISAC participant, the person must enter into an information sharing agreement that includes, among other responsibilities, requirements for the protection and safeguarding of information received under the proposal. The return information disclosed under the proposal is subject to such protections and safeguards as the Secretary may require by regulations, other guidance, or written information sharing agreement. Recipients of return information under the proposal are subject to civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information.

Effective Date

The proposal is generally effective on the date of enactment. The disclosure provisions are effective for disclosures made on or after the date of enactment.

4. Compliance by contractors with confidentiality safeguards

Present Law

Section 6103 permits the disclosure of returns and return information to State agencies, as well as to other Federal agencies for specified purposes. Section 6103(p)(4) requires, as a condition of receiving returns and return information, that State agencies (and others) provide safeguards as prescribed by the Secretary of the Treasury by regulation that are necessary or appropriate to protect the confidentiality of returns or return information.¹² It also requires that a report be furnished to the Secretary at such time and containing such information as prescribed by the Secretary regarding the procedures established and utilized for ensuring the confidentiality of returns and return information.¹³ After an administrative review, the Secretary may take such actions as are necessary to ensure these requirements are met, including the refusal to disclose returns and return information.¹⁴

¹² Sec. 6103(p)(4)(D).

¹³ Sec. 6103(p)(4)(E).

¹⁴ Sec. 6103(p)(4) (flush language) and (7); Treas. Reg. sec. 301.6103(p)(7)-1.

Under present law, employees of a State tax agency may disclose returns and return information to contractors for tax administration purposes.¹⁵ These disclosures can be made only to the extent necessary to procure contractually equipment, other property, or services, related to tax administration.¹⁶

The contractors can make redisclosures of returns and return information to their employees as necessary to accomplish the tax administration purposes of the contract, but only to contractor personnel whose duties require disclosure.¹⁷ Treasury regulations prohibit redisclosure to anyone other than contractor personnel without the written approval of the IRS.¹⁸

By regulation, all contracts must provide that the contractor will comply with all applicable restrictions and conditions for protecting confidentiality prescribed by regulation, published rules or procedures, or written communication to the contractor.¹⁹ Failure to comply with such restrictions or conditions may cause the IRS to terminate or suspend the duties under the contract or the disclosures of returns and return information to the contractor.²⁰ In addition, the IRS can suspend disclosures to the State tax agency until the IRS determines that the conditions are or will be satisfied.²¹ The IRS may take such other actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied.²²

Description of Proposal

The proposal requires that a State, local, or Federal agency conduct on-site reviews every three years of all of its contractors or other agents receiving Federal returns and return information. If the duration of the contract or agreement is less than three years, a review is required at the mid-point of the contract. The purpose of the review is to assess the contractor's efforts to safeguard Federal returns and return information. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by

¹⁵ Sec. 6103(n) and Treas. Reg. sec. 301.6103(n)-1(a). "Tax administration" includes "the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws or related statutes (or equivalent laws and statutes of a State)..." Sec. 6103(b)(4).

¹⁶ Treas. Reg. sec. 301.6013(n)-1(a). Such services include the processing, storage, transmission or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services for purposes of tax administration.

¹⁷ Treas. Reg. sec. 301.6103(n)-1(a) and (b). A disclosure is necessary if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically accomplished without such disclosure. Treas. Reg. sec. 301.6103(n)-1(b). The regulations limit the quantity of information to that needed to perform the contract.

¹⁸ Treas. Reg. sec. 301.6103(n)-1(a).

¹⁹ Treas. Reg. sec. 301.6103(n)-1(d).

²⁰ Treas. Reg. sec. 301.6103(n)-1(d)(1).

²¹ Treas. Reg. sec. 301.6103(n)-1(d)(2).

²² Treas. Reg. sec. 301.6103(n)-1(d).

the Secretary. Under the proposal, the State, local, or Federal agency is required to submit a report of its findings to the IRS and certify annually that such contractors and other agents are in compliance with the requirements to safeguard the confidentiality of Federal returns and return information. The certification is required to include the name and address of each contractor or other agent with the agency, the duration of the contract, and a description of the contract or agreement with the State, local, or Federal agency.

The proposal does not apply to contracts for purposes of Federal tax administration.

This proposal does not alter or affect in any way the right of the IRS to conduct safeguard reviews of State, local, or Federal agency contractors or other agents. It also does not affect the right of the IRS to initially approve the safeguard language in the contract or agreement and the safeguards in place prior to any disclosures made in connection with such contracts or agreements.

Effective Date

The proposal is effective for disclosures made after December 31, 2022.

5. Report on electronic payments

Present Law

The Secretary is not currently required by Congress to examine expansion of electronic fund transfers.

Description of Proposal

Not later than two years after the date of the enactment, the Secretary, or the Secretary's designee, in coordination with the Bureau of Fiscal Service and the Internal Revenue Service, and in consultation with private sector financial institutions, is required to submit a written report to Congress describing how the IRS can utilize new payment platforms to increase the number of tax refunds paid by electronic funds transfer. The report is required to consider the interests of reducing identity theft tax refund fraud, reducing the IRS's costs in delivering tax refunds, the costs and any associated fees charged to taxpayers (including monthly and point-of-service fees) to access their tax refunds, the impact on individuals who do not have access to financial accounts or institutions, and ensuring payments are made to accounts that comply with the Bank Secrecy Act²³ and the USA PATRIOT Act of 2001.²⁴ The report is required to include legislative recommendations necessary to accomplish these goals.

Effective Date

The proposal is effective on the date of enactment.

²³ The Bank Secrecy Act, 31 U.S.C. secs. 5311-5332.

²⁴ Pub. L. No. 107-56.

TITLE II – DEVELOPMENT OF INFORMATION TECHNOLOGY

1. Management of IRS information technology

Present Law

The Code describes duties and responsibilities for the Commissioner, the Chief Counsel, and the Office of the Taxpayer Advocate of the IRS.²⁵ It does not presently enumerate duties and responsibilities of an IRS Chief Information Officer (“IRS CIO”).

Also, the Code does not explicitly provide for development and implementation of a multiyear strategic plan for the information technology needs of the IRS, and does not require verification and validation of major acquisitions of information technology by the IRS, including the Customer Account Data Engine 2 (“CADE 2”) and the Enterprise Case Management System.

Description of Proposal

Under the proposal, the Administrator²⁶ of the IRS will appoint an IRS CIO. The Administrator and the Secretary will act through the IRS CIO with respect to the development, implementation, and maintenance of information technology for the IRS. The IRS CIO will be responsible for the development, implementation, and maintenance of information technology for the IRS, for ensuring that the information technology of the IRS is secure and integrated, for maintaining operational control of all information technology for the IRS, for acting as the principal advocate for the information technology needs of the IRS, and for consulting with the Chief Procurement Officer of the IRS to ensure that the information technology acquired for the IRS is consistent with the strategic plan.

The IRS CIO will also be responsible for developing and implementing a multiyear strategic plan for the information technology needs of the IRS. This plan should include performance measures of such technology and its implementation, and a plan for an integrated enterprise architecture of the information technology of the IRS. It should take into account the resources needed to accomplish such a plan, as well as planned major acquisitions of information technology by the IRS, including CADE 2 and the Enterprise Case Management System. The plan should also align with the needs and strategic plan of the IRS. The IRS CIO will review and update this plan at least once a year, taking into account the development of new information technology and the needs of the IRS.

Under the proposal, the Administrator of the IRS will develop plans for each phase except phase one of CADE 2 and enter into a contract with an independent reviewer to verify and validate implementation plans developed for each phase except phase one of CADE 2 and for the Enterprise Case Management System. Furthermore, the Chief Procurement Officer of the IRS is directed to regularly consult with the IRS CIO and to identify all significant IRS

²⁵ Sec. 7803.

²⁶ “Administrator” is used in lieu of “Commissioner” to reflect the proposed change made in HR 5444, the “Taxpayer First Act.”

information technology acquisitions in excess of \$1,000,000, providing written notification to the IRS CIO of each such acquisition in advance of acquisition.

Effective Date

The proposal is generally effective on the date of enactment.

The verification and validation of phase two of CADE 2 and the Enterprise Case Management System are to be completed within one year after the date of enactment. The development of plans for all subsequent phases of CADE 2 should be completed within one year after the date of enactment and the verification and validation of each phase should be completed within one year after the date on which the plan for such phase was completed.

2. Development of online accounts and portals

Present Law

The Code does not expressly provide for the development of individualized online accounts.

Description of Proposal

Under the proposal, the Secretary will develop secure, individualized online accounts to provide services to taxpayers and their designated return preparers, including, for example, obtaining taxpayer information, making payment of taxes, sharing documentation, and addressing and correcting issues. The Secretary will also develop a process for accepting returns of tax and supporting documentation in electronic format. These electronic services should be a supplement to, and not a replacement for, other services provided by the IRS to taxpayers, including face-to-face taxpayer assistance and services provided by phone. They should also comply with applicable security standards and guidelines.

The IRS will formulate a plan for development of online accounts and report the plan to Congress within a year of enactment. The IRS should consider as part of this plan, the feasibility of taxpayers addressing and correcting issues through such accounts, and whether access to these accounts should be restricted in any way.

Effective Date

Not later than one year after the date of enactment, the Secretary will submit to Congress a written report describing the plan for development of online accounts.

The Secretary will make every reasonable effort to make secure individualized online accounts available to taxpayers by December 31, 2023.

3. Internet platform for Form 1099 filings

Present Law

The Code does not presently require the IRS to make available an internet platform for the preparation or filing of information returns, such as the series, Form 1099.

Description of Proposal

The proposal requires the Secretary of the Treasury (or his or her delegate) to make available, by January 1, 2023, an internet website or other electronic medium (the “website”), with a user interface and functionality similar to the Business Services Online Suite of Services provided by the Social Security Administration.²⁷ The website will allow persons, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and maintain a record of completed and submitted Forms 1099. The Secretary is required to ensure that the services provided on the website are not a replacement for services currently provided by the IRS, and that the website comply with applicable security standards.

Effective Date

The proposal is effective on the date of enactment.

²⁷ Available at <http://www.ssa.gov/bsowelcome.htm>.

TITLE III – MODERNIZATION OF CONSENT-BASED INCOME VERIFICATION SYSTEM

1. Disclosure of taxpayer information for third-party income verification

Present Law

Disclosure of return information with consent of the taxpayer

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by Title 26.²⁸ Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.²⁹ A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate: (1) the taxpayer's taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year(s) covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

Income Verification Express Service (IVES)

Mortgage lenders and others in the financial community use the IRS's Income Verification Express Service (IVES) to confirm the income of a borrower during the processing of a loan application.³⁰ Customers of IVES fax to a specified IRS office a signed Form 4506-T ("Request for Transcript of Tax Return") or Form 4506T-EZ ("Short Form Request for Individual Tax Return Transcript"). The IRS provides three types of transcript information as part of the IVES program: (1) a return transcript; (2) Form W-2 ("Wage and Tax Statement") transcript information; and (3) Form 1099³¹ transcript information.

²⁸ Sec. 6103(a).

²⁹ Treas. Reg. sec. 301.6103(c)-1. The regulations also specify the requirements for a nonwritten request for information or consent to disclosure to allow a third party to provide information or assistance relating to the taxpayer's return or to a transaction or other contact between the taxpayer and the IRS.

³⁰ Internal Revenue Service, Income Verification Express Service, <https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service> (February 26, 2018).

³¹ There are various Forms 1099: Form 1099-B, Proceeds From Broker or Barter Exchange Transactions; Form 1099-DIV, Dividends and Distributions; 1099-INT, Interest Income; 1099-MISC, Miscellaneous Income; 1099-OID, Original Issue Discount; or 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

The IRS imposes a \$2.00 fee for each transcript requested. The requested transcript information is delivered to a secure mailbox on the IRS's e-Services electronic platform, generally within two to three business days.

To participate in the IVES program, companies must register and identify employees to act as agents to receive transcripts on the company's behalf.³² According to the Form 13803 (“Application to Participate in the Income Verification Express Services (IVES) Program”), the IRS conducts a suitability check on the applicant and all the principals listed on the application to determine the applicant's suitability to be an IVES participant. After an applicant passes the suitability check and the IRS completes processing the application, the IRS notifies the applicant of acceptance to participate in the program.

Description of Proposal

As noted above, the current IVES program requires that transcript information requests be submitted to the IRS by fax and then the transcripts are furnished electronically to a secure mailbox. After a specified time period, the proposal requires the Secretary (or his delegate) to implement a qualified disclosure program that is fully automated, accomplished through the Internet; and through which disclosures are accomplished in as close to real-time as is practicable. The program is to comply with applicable security standards and guidelines. The term “qualified disclosure” means a disclosure made pursuant to section 6103(c) to a person seeking to verify the income of a taxpayer who is a borrower in the process of a loan application. “Qualified disclosure” is intended as a reference to the types of disclosures made under the current IVES program.

To cover the costs of implementing such a program, for a two-year period beginning six months after the date of enactment, the Secretary is authorized to assess and collect a fee for qualified disclosures at such rates as the Secretary determines are sufficient to cover the costs related to implementing the program, including the costs of any necessary infrastructure or technology. Such fees are in addition to any other fee assessed and collected for such disclosures. The amounts received from the fees assessed and collected are to be deposited in and credited to an account solely for the purpose of carrying out the activities associated with implementing the qualified disclosure program. Not later than one year after the close of the two-year period, the Secretary is required to implement the program.

Effective Date

The proposal is effective on the date of enactment.

³² Applicants also must choose one or more of the reasons listed on the form as the basis for using the IVES program: mortgage services, background check, credit check, banking service, licensing requirement, or other (must be specified).

2. Limit redisclosures and uses of consent-based disclosures of tax return information

Present Law

In general

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.³³ Under section 6103(c), a taxpayer may designate in a request or consent to the disclosure by the IRS of his or her return or return information to a third party. Treasury regulations set forth the requirements for such consent.³⁴ The Treasury regulations require that the taxpayer sign and date a written consent. At the time the consent is signed and dated by the taxpayer, the written document must indicate: (1) the taxpayer's identity information; (2) the identity of the person to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer. Present law does not require that a recipient receiving returns or return information by consent maintain the confidentiality of the information received. Under present law, the recipient is also free to use the information for purposes other than for which the information was solicited from the taxpayer.

Criminal penalties

Under section 7206, it is a felony to willfully make and subscribe any document that contains or is verified by a written declaration that it is made under penalties of perjury and which the maker or subscriber does not believe to be true and correct as to every material matter.³⁵ Upon conviction, such person may be fined up to \$100,000 (\$500,000 in the case of a corporation) or imprisoned up to three years, or both, together with the costs of prosecution.

Under section 7213, criminal penalties apply to: (1) willful unauthorized disclosures of returns and return information by Federal and State employees and other persons; (2) the offering of any item of material value in exchange for a return or return information and the receipt of such information pursuant to such an offer; and (3) the unauthorized disclosure of return information received by certain shareholders under the material interest proposal of section 6103. Under section 7213, a court can impose a fine up to \$5,000, up to five years imprisonment, or both, together with the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

³³ Sec. 6103(a).

³⁴ Treas. Reg. sec. 301.6103(c)-1.

³⁵ Sec. 7206(1).

The willful and unauthorized inspection of returns and return information can subject Federal and State employees and others to a maximum fine of \$1,000, up to a year in prison, or both, in addition to the costs of prosecution. If the offense is committed by a Federal employee or officer, the employee or officer will be discharged from office upon conviction.

Civil damage remedies for unauthorized disclosure or inspection

If a Federal employee makes an unauthorized disclosure or inspection, a taxpayer can bring suit against the United States in Federal district court. If a person other than a Federal employee makes an unauthorized disclosure or inspection, suit may be brought directly against such person. No liability results from a disclosure based on a good faith, but erroneous, interpretation of section 6103. A disclosure or inspection made at the request of the taxpayer will also relieve liability.

Upon a finding of liability, a taxpayer can recover the greater of \$1,000 per act of unauthorized disclosure (or inspection), or the sum of actual damages plus, in the case of an inspection or disclosure that was willful or the result of gross negligence, punitive damages. The taxpayer may also recover the costs of the action and, if found to be a prevailing party, reasonable attorney fees.

The taxpayer has two years from the date of the discovery of the unauthorized inspection or disclosure to bring suit. The IRS is required to notify a taxpayer of an unauthorized inspection or disclosure as soon as practicable after any person is criminally charged by indictment or information for unlawful inspection or disclosure.

Description of Proposal

The proposal provides that persons designated by the taxpayer to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted, and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.

Effective Date

The proposal is effective for disclosures made after the date of enactment.

TITLE IV - EXPANDED USE OF ELECTRONIC SYSTEMS

1. Electronic filing of returns

Present Law

In general

The RRA98 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA98 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.³⁶ Section 2001(b) of RRA98 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.³⁷ The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,³⁸ and that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at a reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns (U.S. Corporation Income Tax Return/U.S. Income Tax Return for an S Corporation) and Form 990 information returns (Return of Organization Exempt from Income Tax) for tax years ending on or after December 31, 2006. In determining whether the 250 returns threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

Description of Proposal

The proposal relaxes the current restrictions on the authority of the Secretary to mandate electronic filing based on the number of returns required to be filed by a taxpayer in a given taxable period. First, it phases in a reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to

³⁶ The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal projected an overall e-filing rate of 80.1 percent in the 2017 filing season based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2017, IRS Pub. 3415, page 5.

³⁷ Sec. 6011(e).

³⁸ Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

be subject to a regulatory mandate. That threshold is reduced from 250 to 100 for calendar year 2020, from 100 to 10 for calendar year 2021 and for calendar years thereafter.

Second, the proposal authorizes the Secretary to waive the requirement that a Federal income tax return prepared by a specified tax return preparer be filed electronically if a tax return preparer applies for a waiver and demonstrates that the inability to file electronically is due to lack of internet availability (other than dial-up or satellite service) in the geographic location in which the return preparation business is operated.

Effective Date

The proposal is effective on the date of enactment.

2. Uniform standards for the use of electronic signatures for disclosure authorizations to, and other authorizations of, practitioners

Present Law

Disclosure of return information by consent of the taxpayer

As a general rule, returns and return information are confidential and cannot be disclosed unless authorized by the Code.³⁹ Under section 6103(c), the IRS may disclose the return or return information of a taxpayer to a third party designated by the taxpayer in a request for or consent to such disclosure. Treasury regulations set forth the requirements for such consent.⁴⁰ A request for consent to disclosure in written form must be a separate written document pertaining solely to the authorized disclosure. At the time the consent is signed and dated by the taxpayer, the written document must indicate (1) the taxpayer's taxpayer identity information; (2) the identity of the person(s) to whom disclosure is to be made; (3) the type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and (4) the taxable year(s) covered by the return or return information. The regulations also require that the consent be submitted within 120 days of the date signed and dated by the taxpayer.

Electronic signatures

The Secretary is required to develop procedures for the acceptance of signatures in digital and other electronic form.⁴¹ Until such time as such procedures are in place, the Secretary may waive the requirement of a signature for, or provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement or other document required or permitted to be made or written under the internal revenue laws and regulations. The Secretary is required to publish guidance as appropriate to define and implement any waiver of the signature requirements or alternative method of signing or subscribing.

³⁹ Sec. 6103(a).

⁴⁰ Treas. Reg. sec. 301.6103(c)-1.

⁴¹ Sec. 6061.

IRS Forms

Form 2848 (Power of Attorney and Declaration of Representative) is used to authorize an individual to represent the taxpayer before the IRS. The individual must be eligible to practice before the IRS.

Form 8821 (Tax Information Authorization) authorizes an individual or organization to request and inspect a taxpayer's confidential tax return information. Form 4506-T (Request for Transcript of Tax Return) authorizes an individual or organization to request and inspect transcripts of a taxpayer's confidential return information. These forms do not authorize an individual to represent the taxpayer before the IRS.

Description of Proposal

For a request for disclosure to a practitioner with consent of the taxpayer, or for any power of attorney granted by a taxpayer to a practitioner, the proposal requires the Secretary to publish guidance to establish uniform standards and procedures for the acceptance of taxpayers' signatures appearing in electronic form with respect to such requests or power of attorney. Such guidance must be published within six months of the date of enactment. For purposes of the proposal, a "practitioner" means an individual in good standing who is regulated under 31 USC sec. 330 (relating to practice before the Department of the Treasury).

Effective Date

The proposal is effective on the date of enactment.

3. Payment of taxes by debit and credit cards

Present Law

The Code generally permits the payment of taxes by commercially acceptable means such as credit cards.⁴² The Secretary may not pay any fee or provide any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes.⁴³

Description of Proposal

The proposal removes the prohibition on paying any fees or providing any other consideration in connection with the use of credit, debit, or charge cards for the payment of income taxes to the extent taxpayers paying in this manner are fully responsible for any fees or consideration incurred. The proposal requires the Secretary to seek to minimize the amount of any fee or other consideration that the Secretary pays under any contract.

⁴² Sec. 6311.

⁴³ Sec. 6311(d)(2).

Effective Date

The proposal is effective on the date of enactment.