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TaxNewsFlash

United States

No. 2025-059
January 30, 2025

Legislative update: Senate Finance leaders release discussion draft of bipartisan legislation to improve IRS services

U.S. Senate Finance Committee Chairman Mike Crapo (R-ID) and Ranking Member Ron Wyden (D-OR) today released a discussion draft of bipartisan legislation aimed at improving services provided to taxpayers by the IRS.

Read a section-by-section summary of the legislation

As described in the release from the Finance Committee, the legislation would make "an array of common-sense fixes" to IRS procedure and administration, including measures that would:

- Require the IRS to improve "math error" notices so that taxpayers are better positioned to timely respond to them
- Streamline review of offers-in-compromise to facilitate the taxpayers' resolution of tax debts
- Simplify foreign bank account report (FBAR) compliance so that fewer taxpayers will fail to file key forms
- Clarify and expand Tax Court jurisdiction so that more taxpayers can pursue their claims in an appropriate venue
- Expand the independence of the National Taxpayer Advocate (NTA) from the IRS
- Increase civil and criminal penalties on tax professionals that deliberately take actions to harm their clients
- Expand taxpayer access to the IRS Independent Office of Appeals
- Extend the so-called "mailbox rule" to electronic submissions so that taxpayers have certainty their materials are submitted on time
- Protect taxpayers by adopting reasonable standards and due process for issuing and revoking return preparer identification numbers (PTINs)
- Strengthen the IRS whistleblower program while protecting the confidentiality of taxpayer information
- Protect hostages from unfair tax processes and penalties

The proposed measures largely reflect nonpartisan legislative proposals recommended by the NTA, as well as standalone tax administrative bills introduced by congressional members.

KPMG observation

One particularly noteworthy provision not specifically mentioned in the Senate Finance Committee release is section 311 of the bill relating to the IRS' authority to assess certain penalties using deficiency procedures.

As explained in the section-by-section summary of the bill, the IRS is authorized to assess some penalties, such as the penalty for substantial understatement of income tax under section 6662, only after issuing to the taxpayer a notice of deficiency under section 6212. These "deficiency procedures" give the taxpayer an opportunity to petition the Tax Court to review the penalty before it is assessed and collected.

In contrast, the IRS is authorized to assess and begin collecting "assessable penalties" under section 6201 before the taxpayer has had an opportunity to appeal or dispute them in court. The Tax Court held in *Farhy* and *Mukhi* that the IRS is not authorized to assess or collect penalties under section 6038(b) for failure to file certain information returns because they are not "assessable penalties."

Section 311 of the bill would grant the IRS the authority to assess a civil penalty using deficiency procedures if it has identified the penalty in guidance as one that is not otherwise assessable under Title 26. While the IRS is normally prohibited from sending another notice of deficiency for the same tax year after a timely Tax Court petition is filed, in the case of a notice of deficiency for such penalties, the provision would only prohibit the IRS from sending an additional deficiency notice for the same act (or failure to act) to which the petition relates. The IRS would still be authorized to send a notice of deficiency for matters not covered by the penalty deficiency notice.

The provision would be effective on the date of enactment.

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