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TAXPAYER BILL OF RIGHTS 3 (PART B) AUDIT PROVISIONS (PART B) OF THE IRS RESTRUCTURING & REFORM ACT

By Victor Sy, CPA, MBA

We, the taxpayers, begin to see daylight from the days of dealing with a bureaucratic, abusive Internal Revenue Service. Be aware of your rights. Use them, for if the pendulum swings back for the need of a stronger, meaner IRS, you would look back at all missed opportunities when taxpayers had their day in Tax Courts. Read on and enjoy your newfound rights as a taxpayer.

1. **Civil damages for unauthorized collection actions:** Under prior law, a taxpayer could not recover damages because of the negligent disregard of the Internal Revenue Code in connection with a collection matter. Second, a taxpayer could not recover civil damages because of an IRS personnel's willful violation of the US Bankruptcy Code. Third, parties made subject to IRS collection actions could also not recover damages for unauthorized collection actions that affect such third parties.

New Act: There are three new provisions that extend the rights of taxpayers to sue the Federal government. First, any taxpayer may recover civil damages for an IRS employee's negligent disregard of the Code. Second, a third party can likewise sue the government for unauthorized IRS collection actions. Third, any taxpayer can sue for willful violations of certain Bankruptcy Codes with respect to the collection of Federal taxes. In effect, Congress caused a lower standard of liability for an aggrieved taxpayer to prevail in a negligence action against the IRS.

2. **Audit threats to report tips:** Employees who work in the entertainment, restaurant, and casino industries are required to report tips. A restaurant may enter into a Tip Reporting Alternative Commitment (TRAC) to help employees comply with reporting requirements. In return, the restaurant can receive an IRS promise that the IRS will agree to base the restaurant's liability for employment taxes solely on reported tips in the event of an IRS audit. There have been reports on those restaurants that failed to cooperate subsequently received threats of audit as an inducement to participate in this program.

New Act: The new law expressly prohibits IRS employees from using this audit threat to coerce establishments into joining TRAC. Agents can no longer twist arms of employers to force their employees to begin paying taxes at an agreed percentage of tips.

3. **Audit influence by the executive branch:** There have been allegations that high-level executive officers have caused their opponents to be audited by the IRS. While it is ethically wrong, the Internal Revenue Code did not explicitly prohibit such politically motivated practice. Even conservative tax-exempt organizations that, in the first place, are prohibited from intervening for political candidates, were subject to politically motivated audits.

New Act: The new law expressly prohibits "applicable persons" from requesting an IRS employee to conduct or terminate an audit.

4. **Request to give up right to sue:** Prior to the new Act, any officer or employee of the Federal government could use a position of authority to persuade, or even coerce an unknowing, unwitting,

unrepresented taxpayer to waive rights to bring a civil action against the Federal government, its officers, or employees.

New Act: The new law has codified a prohibition on requests that taxpayers waive their rights to sue the IRS or any agency of the Federal government.

5. **Confidentiality privilege extended to non-attorneys:** As you know, certain communications and discussions between you and your attorney with respect to legal advice are privileged information and cannot be disclosed to third parties or hearings in a court of law. This privilege information was not enjoyed by Certified Public Accountants (CPAs) or enrolled agents (EAs).

New Act: The new law extends the confidentiality privilege to any federally authorized tax practitioner, meaning CPAs, enrolled agents, and enrolled actuaries. (This confidentiality privilege, however, does not apply to criminal tax proceedings in Federal court).

Caveat: To circumvent this new provision, the IRS may then increase its criminal investigation since the confidentiality rules only apply to non-criminal proceedings. Note that this statute does not apply to State tax advice.

6. **Service to record keepers:** Under prior law, summons must be served by delivering an attested copy by hand to the taxpayer or by leaving a copy at the last place of abode.

New Act: The IRS now has the option of serving summons to third party record keepers either in person or by Certified or Registered Mail to the last known address. This is actually beneficial to both taxpayer and the Service. You really do not want an IRS officer visiting your residence or place of business. Just imagine an IRS agent coming through your door and serving you with a summons in front of your employees and customers. As for the IRS, they do no longer have to spend time and effort in driving to your residence or place of business.

7. **Taxpayer Pre-notification:** Under prior law, the IRS may issue summons to any person who has information of records and then notify you of such summons within three days of the date of service. This notice of a summons is done after the fact. It can have a chilling effect on your reputation, as you were not given the opportunity to resolve such issues in place of the summons.

New Act: The IRS is now prohibited from third-party contacts without prior notification to taxpayers. The Service needs to provide reasonable notice in advance to you before contacting third persons. This gives you an opportunity to provide the information in some other way to prevent summons to third parties. The IRS is also required to periodically provide you with a record of persons contacted during certain periods.