U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
Chairman Kevin Brady

**December 17, 2018**

# Retirement, Savings, and Other Tax Relief Act of 2018
# Taxpayer First Act of 2018

## Section-by-Section Summary

### DIVISION A – RETIREMENT, SAVINGS, AND OTHER TAX RELIEF ACT OF 2018

### TITLE I – DISASTER TAX RELIEF

- The bill provides disaster tax relief benefits with respect to individuals and businesses affected by Hurricanes Florence and Michael, Typhoons Mangkhut and Yutu, Tropical Storm Gita, California wildfires, Kilauea volcanic eruptions and earthquakes, and severe storms, tornadoes, winds, flooding, landslides, and mudslides in Alabama, Hawaii, Indiana, North Carolina, Wisconsin, and Texas. These benefits are special rules allowing access to retirement funds, a special credit for employee retention during business interruption, suspension of limits on deductions for charitable contributions, special rules for deductions for personal casualty disaster losses, and special rules for measurement of earned income for purposes of qualification for tax credits.

- The bill also provides an automatic 60-day extension to file specified tax returns and make specified tax payments for individuals whose principal places of abode, and taxpayers whose principal places of business, are in federally declared disaster areas.

### TITLE II – RETIREMENT AND SAVINGS

### SUBTITLE A – EXPANDING AND PRESERVING RETIREMENT SAVINGS

- **Sec. 201. Multiple employer plans; pooled employer plans.**

  **Current law:** In general, unrelated employers may join together to offer a defined contribution plan, known as a multiple employer plan. (These plans are generally a subcategory of single-employer plans and are distinct from multiemployer plans, which

are offered jointly by employers and unions.) However, there are several obstacles that limit the participation of employers in multiple employer plans. Defined contribution plans that do not meet any one of a host of tax-law requirements are subject to a variety of penalties, including disqualification of the plan. Under current Treasury guidance, if one employer in a multiple employer plan runs afoul of the tax rules, the entire plan may be subject to penalty, including disqualification, even if that one employer is only one of hundreds of employers in the plan. This guidance is known as the "one bad apple" rule. In addition, ERISA contains requirements that have been interpreted by the Department of Labor as significantly limiting the circumstances under which unrelated employers may join together in a multiple employer plan.

**Provision:** Under the provision, multiple employer plans that meet specified requirements, including a requirement that the plan have a pooled plan provider, are considered to be "pooled employer plans." A pooled plan provider is required to agree to be a fiduciary of the plan and to serve as the plan administrator, responsible for ensuring that the plan meets all applicable tax-law and ERISA requirements. In the event that one employer in a pooled provider plan violates one of the tax-law requirements, the other employers are not affected by that failure. In addition, the ERISA requirements regarding the types of employers that may participate together in a multiple employer plan are expanded for pooled provider plans to eliminate any requirement that the employers in the plan be related to each other in some fashion. The provision is effective for plan years beginning after December 31, 2019.

- **Sec. 202. Rules relating to election of safe harbor 401(k) status.**

**Current law:** Under current law, qualified retirement plans are subject to non-discrimination rules that impose requirements with respect to the balance between contributions to the plan made by highly compensated employees (and employer contributions for such employees) and contributions made by and for non-highly compensated employees. There are several different safe harbors that may be used by plans to avoid being subject to the non-discrimination rules. One of those safe harbors is based on the employer making a contribution to the plan on behalf of each employee that equals or exceeds three percent of the employee's compensation and that is not dependent on whether the employee contributes to the plan. These employer contributions are referred to as "non-elective." In order to use this safe harbor, the employer is required to inform employees before the plan year during which the employer will make these non-elective contributions.

**Provision:** Under the provision, employers have until the 30th day before the close of the plan year to choose to use the non-elective contribution safe harbor for the year. In addition, employers have until the end of the following plan year to choose this safe harbor if the employer provides an enhanced non-elective contribution of at least four percent of the employee's compensation (instead of three percent as generally required under the safe harbor). The provision is effective for plan years beginning after December 31, 2018.

- **Sec. 203. Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes.**

  **Current law:** Under current law, the annual limit on the contributions that an individual may make to one or more individual retirement accounts (IRAs) is the lesser of: (1) a dollar amount (which is $5,500 for 2018); and (2) the amount of the individual's compensation includible in gross income for the year. Additional limits on allowable contributions apply to individuals who participate in employer-sponsored retirement plans or whose spouse so participates.

  **Provision:** Under the provision, any fellowship grants, scholarships, or other amounts that are paid to an individual to help in the pursuit of graduate or postdoctoral study or research and that are includable in his or her taxable income are treated as compensation for IRA-contribution purposes. The provision is effective for tax years beginning after December 31, 2018.

- **Sec. 204. Repeal of maximum age for traditional IRA contributions.**

  **Current law:** Under current law, individuals who are age 70½ or older are not permitted to make contributions to a traditional IRA.

  **Provision:** The provision eliminates the age limit for contributing to a traditional IRA. The provision is effective for tax years beginning after December 31, 2018.

- **Sec. 205. Qualified employer plans prohibited from making loans through credit cards and other similar arrangements.**

  **Current law:** Employer-sponsored defined-contribution plans may offer employees who participate in the plan the option of taking loans from the plan with respect to their accounts. In some cases, these plans have arrangements that allow a participating employee to take a line of credit against his or her retirement account and then access those funds through a credit card.

  **Provision:** Under the provision, employer-sponsored retirement plans are prohibited from offering account loans that can be accessed through credit cards. The provision is effective for loans taken after the date of enactment of this Act.

- **Sec. 206. Portability of lifetime income investments.**

  **Current law:** Employers that sponsor defined contribution plans generally offer employees a menu of investment options that can be changed periodically, including the elimination of particular options. If an employee has chosen an investment option that the employer subsequently eliminates from the plan's menu of options, the employee generally must shift from that investment into another option that is available under the plan. Employers generally may not allow current employees to take retirement plan

distributions, known as "in-service" distributions, before they reach age 59½ or age 62 depending on the type of plan.

**Provision:** Under the provision, employers are permitted to allow current employees who have their defined-contribution accounts invested in annuities to choose to keep that investment by rolling the annuity into an IRA if the employer discontinues the annuity as an investment option under the retirement plan. The provision is effective for plan years beginning after December 31, 2018.

- **Sec. 207. Treatment of custodial accounts on termination of section 403(b) plans.**

  **Current law:** Section 403(b) plans are employer-sponsored retirement plans offered by (1) charitable tax-exempt organizations and (2) educational institutions of State or local governments, including public schools and public colleges and universities. Many of the rules that apply to section 403(b) plans are similar to the rules applicable to other qualified retirement plans, including section 401(k) plans.

  **Provision:** The provision requires Treasury to issue guidance to ensure that there is no disruption when an employer terminates a section 403(b) plan so that its assets are contributed to a custodial account with an IRS-approved nonbank trustee. The guidance is to provide that such an account is treated as directly owned by participants without any change in the tax treatment.

- **Sec. 208. Clarification of retirement income account rules relating to church-controlled organizations.**

  **Current law:** Under current law, retirement plans sponsored by churches generally are subject to different requirements than other retirement plans. The IRS has issued guidance that narrowly prescribes the circumstances in which the employees of a church-affiliated organization may participate in such a church plan.

  **Provision:** The provision clarifies that certain employees of church-affiliated organizations would be allowed to participate in a church's retirement plan. Such employees include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation. Employees of a tax-exempt organization that is controlled by or associated with a church or a convention or association of churches, and certain employees after separation from service with a church or a convention or association of churches, also are allowed to participate. The provision is effective for years beginning before, on, or after the date of enactment of this Act.

- **Sec. 209. Increase in 10 percent cap for automatic enrollment safe harbor after 1st plan year.**

  **Current law:** Under current law, safe harbor provisions apply with respect to compliance with nondiscrimination rule requirements applicable to defined contribution

deferral plans. One such safe-harbor provision provides rules for employers to automatically enroll employees in defined contribution deferral plans up to a specified percentage of the employees' compensation, starting at three percent in an employee's first year of employment, increasing by one percent every year during the subsequent three years of employment, and capped at 10 percent.

**Provision:** For automatic enrollment safe harbor plans, the provision increases the 10-percent cap on the allowable automatic escalation of employee deferrals after an employee's first plan year to a 15-percent cap of employee pay. The provision is effective for plan years beginning after December 31, 2018.

- **Sec. 210. Increase in credit limitation for small employer pension plan startup costs.**

  **Current law:** Under current law, small employers are eligible for a credit of up to $500 per year, for up to three years, to help cover the costs associated with starting a retirement plan for employees.

  **Provision:** The provision increases the credit by providing an annual limit on the credit of the greater of (1) $500 or (2) the lesser of (a) $250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $1,500. The credit applies for up to three years. The provision is effective for tax years beginning after December 31, 2018.

- **Sec. 211. Small employer automatic enrollment credit.**

  **Current law:** Under current law, the small employer retirement plan start-up tax credit does not include any special rules for plans with automatic enrollment features.

  **Provision:** The provision increases the small employer retirement plan start-up tax credit by $500 per year for employers that create new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment features. The credit also is available to employers that add automatic enrollment features to an existing plan. The provision is effective for tax years beginning after December 31, 2018.

- **Sec. 212. Exemption from required minimum distribution rules for individuals with certain account balances.**

  **Current law:** Under current law, individuals who have employer-sponsored plans, whether defined contribution or defined benefit plans, as well as individuals who own IRAs, are required to start taking annual distributions beginning at age 70½. The required minimum distribution is based on actuarial tables released by the Department of the Treasury.

  **Provision:** Under the provision, individuals with total defined contribution or IRA account balances of $50,000 or less are exempt from these required minimum distribution

rules. The provision is effective for distributions required to be made in calendar years beginning more than 120 days after the date of the enactment of this Act.

- **Sec. 213. Elective deferrals by members of the Ready Reserve of a reserve component of the Armed Forces.**

  **Current law**: Under current law, the annual limit for an employee's contributions to defined contribution plans (for 2018, $18,500, plus an additional catch-up contribution of $6,000 for those age 50 or older) applies to all plans in which the employee participates. Thus, if an employee participates in more than one such plan, the employee's combined maximum contribution to both plans for 2018 is $18,500 (and an additional $6,000 if age 50 or older).

  **Provision:** Under the provision, the contribution limit applies separately to contributions to the Thrift Savings Plan accounts of members of the Ready Reserve of a reserve component of the Armed Forces and to contributions to all other plans in which the reservist may participate. The provision is effective for plan years beginning after December 31, 2018.

## SUBTITLE B – ADMINISTRATIVE IMPROVEMENTS

- **Sec. 221. Plan adopted by filing due date for year may be treated as in effect as of close of year.**

  **Current law:** Under current law, an employer that wants to establish a qualified retirement plan for its employees must do so by the last day of the taxable year in order for the plan to apply for such year.

  **Provision:** Under the provision, an employer has until the due date (including with extensions) for its tax return for a taxable year to establish a qualified retirement plan that applies to such year. The provision is effective for plan years beginning after December 31, 2018.

- **Sec. 222. Modification of nondiscrimination rules to protect older, longer service participants.**

  **Current law:** Under current law, employer-sponsored retirement plans must meet a variety of requirements in order to be tax-qualified, including non-discrimination rules designed to ensure that the plan coverage of employees and the contributions or benefits provided to employees must not discriminate in favor of highly compensated employees. In general, employers may choose to stop allowing employees to accrue new benefits in a historical plan or to only allow existing employees to accrue new benefits while closing the plan to new employees, while providing a new plan for new benefits or new employees. For employers that sponsor both a defined contribution plan and a defined benefit plan, the non-discrimination rules allow limited cross-testing between the two

plans. However, over time non-discrimination violations can arise in situations where an employer allows current workers to continue to accrue benefits in a defined benefit plan that has been closed to new employees.

**Provision:** Under the provision, expanded cross-testing between an employer's defined-benefit plans and defined-contribution plans is allowed for purposes of the non-discrimination rules. The provision generally is effective on the date of enactment of the Act.

- **Sec. 223. Fiduciary safe harbor for selection of lifetime income provider.**

  **Current law:** Under current law, plan trustees are fiduciaries with regard to selecting service providers. If plan trustees select an insurance company to provide annuities to plan participants and that insurance company later goes insolvent and is unable to provide those annuities, participants would potentially have a cause of action against the plan and the plan trustees in order to recoup the annuities.

  **Provision:** Under the provision, fiduciaries are provided a safe harbor for satisfying the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract, provided that the fiduciary obtains certain written representations from the insurer, including that the insurer is licensed to offer such contracts and that the insurer, at the time of selection and in the previous seven years, operates under a certificate of authority from the insurance commissioner of its domiciliary State, has filed audited financial statements, satisfies reserve requirements, and is not operating under an order of supervision, rehabilitation, or liquidation.

- **Sec. 224. Disclosure regarding lifetime income.**

  **Current law:** Employers sponsoring defined contribution plans may provide financial education to plan participants. Such education may include information regarding the importance of saving for retirement and information regarding different strategies for calculating appropriate amounts of savings or drawing down one's account in retirement.

  **Provision:** The provision requires employers sponsoring defined contribution plans to provide a lifetime income disclosure to each plan participant in a manner to be specified by the Department of Labor, with information about the lifetime income stream equivalent of the participant's total account balance if the participant were to purchase an annuity. The provision generally is effective 12 months after the issuance of guidance by the Department of Labor.

- **Sec. 225. Modification of PBGC premiums for CSEC plans.**

  **Current law:** The Pension Benefit Guaranty Corporation (PBGC) is a governmental entity that has separate insurance programs for single-employer and multiemployer

defined-benefit pension plans. Participation in the program is a prerequisite for such plans to be tax-qualified. The single-employer program includes both single-employer plans and multiple employer plans, which are plans containing more than one employer that are generally subject to the single-employer funding rules. Cooperative- and small-employer charity (CSEC) plans are a subset of these multiple employer plans. For 2019, single-employer plans, including CSEC plans, are subject to a PBGC fixed of $80 per participant and a variable rate premium of $43 per $1000 of unfunded liabilities up to a cap of $541 per participant.

**Provision:** The provision reduces the fixed per participant PBGC premiums for CSEC plans to $19. The provision also provides that CSEC plans use the discount rate used for measuring plan liabilities to measure unfunded liabilities for purposes of the PBGC variable rate premium. The provision is effective for plan years beginning after December 31, 2018.

## SUBTITLE C – OTHER SAVINGS PROVISIONS

- **Sec. 231. Expansion of section 529 plans.**

**Current law:** Under current law, a 529 plan is, among other types of programs, a program maintained by a State under which an individual makes contributions to an account to help save and pay for qualified education expenses of a designated beneficiary. Contributions to a 529 plan are not deductible at the federal level, but 529 account distributions for qualified education expenses are not subject to tax. Qualified higher education expenses include tuition, fees, books, supplies, and equipment required for attendance at a higher educational institution as well as expenses for certain special-needs services. Beginning in 2018, tax-exempt distributions of up to $10,000 a year may be made for a designated beneficiary to help pay for tuition at an elementary or secondary public, private, or religious school.

**Provision:** Under the provision, for 529 plan purposes, qualified higher education expenses include specified expenses for the participation of a designated beneficiary in an apprenticeship program registered and certified with the Secretary of Labor. Qualified expenses also include specified expenses associated with homeschooling. In addition, qualified expenses include specified expenses that are incurred in connection with attendance at an elementary or secondary public, private, or religious school. Also, qualified expenses include payment of principal and interest with respect to student loans of a designated beneficiary or his or her siblings, with the aggregate amount of payments that may be made out of 529 funds with respect to an individual's student loans limited to a lifetime total of $10,000. Finally, the provision makes clear that an unborn child may qualify as a designated beneficiary with respect to a 529 account. The provision generally is effective for distributions after December 31, 2018.

- **Sec. 232. Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption.**

  **Current law:** Under current law, employees who have not reached retirement age generally may not make withdrawals from their employer-sponsored retirement plan except in the case of hardship withdrawals. Hardship withdrawals are includible in taxable income and also are subject to an additional tax of ten percent. Withdrawals from an IRA before the account owner turns 59½ also are generally includible in taxable income and subject to an additional tax of 10 percent.

  **Provision:** Under the provision, a parent is permitted to make a withdrawal from his or her IRA of up to $7,500 within one year of the birth of a child or the adoption of a child (or an individual who cannot care for him or herself). Such a withdrawal is not subject to the additional tax of 10 percent. In addition, any amount that is withdrawn from an IRA under this provision may be recontributed to an IRA in the future. Employer-sponsored defined-contribution plans also may allow for such withdrawals and recontributions. The provision is effective for distributions made after December 31, 2018.

## TITLE III – REPEAL OR DELAY OF CERTAIN HEALTH-RELATED TAXES

- **Sec. 301. Extension of moratorium on medical device excise tax.** The provision extends the moratorium on the Affordable Care Act's (ACA) 2.3 percent excise tax on manufacturers, producers, or importers of any taxable medical device for an additional five years (2020-2024).
  - **Background:** The ACA's medical device tax became effective in 2013. Congress suspended the tax for 2016 and 2017 and then extended the suspension for 2018 and 2019.

- **Sec. 302. Delay in implementation of excise tax on high cost employer-sponsored health coverage.** The provision delays the implementation of the ACA's tax on high-cost health plans, known as the "Cadillac tax," until 2023, granting employers one additional year of relief from the tax compared to current law.
  - **Background:** The tax was originally supposed to go into effect in 2018, but Congress has delayed its effective date twice.

- **Sec. 303. Extension of suspension of annual fee on health insurance providers.** The provision extends the suspension of the ACA's annual fee on health insurers for calendar years 2020 and 2021.
  - **Background:** The HIT tax was first effective in 2014. It was suspended for 2017, reinstated in 2018, and is suspended again in 2019.

- **Sec. 304. Repeal of excise tax on indoor tanning services.** The provision repeals the 10 percent excise tax levied by the ACA on indoor tanning services.

## TITLE IV – CERTAIN EXPIRING PROVISIONS

- **Sec. 401. Railroad track maintenance credit made permanent.** The provision makes permanent the railroad track maintenance tax credit. The provision includes a modification so that it provides a 30-percent credit to medium- and short-line railroads for amounts spent on track maintenance.

- **Sec. 402. Biodiesel and renewable diesel provisions extended and phased out.** The provision extends the $1.00 per gallon credit for biodiesel sold or used by the taxpayer or blended with diesel to produce a biodiesel mixture sold or used by the taxpayer through 2021. The provision then phases down the credit to $0.75, $0.50, and $0.33 per gallon for biodiesel used or sold in 2022, 2023, and 2024, respectively. Under the provision, no credit is available for biodiesel sold or used after 2024.

## TITLE V – OTHER PROVISIONS

- **Sec. 501. Technical amendments relating to Public Law 115-97 (Tax Cuts and Jobs Act)**

  - **Sec. 501(a). Amendment relating to section 11011.** The technical correction clarifies that in the case of an individual shareholder of a regulated investment company (RIC or mutual fund) that owns stock in a real estate investment trust (REIT) or interests in a publicly traded partnership, the individual is treated as receiving qualified REIT dividends or qualified publicly traded partnership income to the extent any dividends received by the individual from the RIC are attributable to qualified REIT dividends or qualified publicly traded partnership income.

  - **Sec. 501(b). Amendments relating to section 13204.** The technical correction clarifies that the cost recovery period for qualified improvement property (QIP) is 15 years under the modified accelerated cost recovery system and 20 years under the alternative depreciation system.

  - **Sec. 501(c). Amendment relating to section 13302.** The technical correction clarifies that the modification to carryovers and carrybacks of net operating losses (NOLs) applies to NOLs arising in taxable years beginning after December 31, 2017.

  - **Sec. 501(d). Amendment relating to section 13307.** The technical correction clarifies that the non-deductibility of attorneys' fees involved in nondisclosure agreements relating to a claim of sexual harassment or sexual abuse applies to defendants' costs and not to plaintiffs' costs.

  - **Sec. 501(e). Amendment relating to section 14103.** The technical correction clarifies that, for purposes of determining whether an overpayment of tax exists, installments of section 965 net tax liability are not taken into account as a liability until such installment is due.

  - **Sec. 501(f). Amendments relating to section 14213.** The technical correction clarifies the application of attribution rules under the Subpart F controlled foreign corporation provisions.

- **Sec. 502. Clarification of treatment of veterans as specified group for purposes of the low-income housing tax credit.** The provision clarifies that veterans' housing is considered to comply with the general public use requirements of the low-income housing tax credit.

- **Sec. 503. Clarification of general public use requirement for qualified residential rental projects.** The provision clarifies that veterans' housing is considered to comply with the general public use requirements for exempt facility bonds in the same manner that veterans' housing is considered to comply with the general public use requirements of the low-income housing tax credit.

- **Sec. 504. Floor plan financing applicable to certain trailers and campers.**

  **Current law:** Under current law, the deductibility of business interest expense is generally limited to the sum of (1) business interest income of the taxpayer for the taxable year, (2) 30 percent of the adjusted taxable income of the taxpayer for the taxable year, and (3) floor plan financing interest of the taxpayer for the taxable year. The amount of any interest disallowed may be carried forward indefinitely. Floor plan financing interest generally means interest paid or accrued on floor plan financing indebtedness. Floor plan financing indebtedness is indebtedness used to finance the acquisition of motor vehicles held for sale or lease to retail customers and secured by the inventory so acquired. A motor vehicle means a motor vehicle that is: (1) any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road; (2) a boat; or (3) farm machinery or equipment.

  **Provision:** Under the provision, for purposes of the treatment of floor plan financing indebtedness, the definition of a "motor vehicle" includes any trailer or camper that is designed to provide temporary living quarters for recreational, camping, travel, or seasonal use and is designed to be towed by, or affixed to, a motor vehicle. The provision is effective for taxable years beginning after December 31, 2017.

- **Sec. 505. Repeal of increase in unrelated business taxable income by disallowed fringe.**

  **Current law:** Under current law, unrelated business taxable income includes the amount of any expenses that are paid or incurred by a tax-exempt organization for qualified transportation fringe benefits and that are non-deductible under section 274.

  **Provision:** The provision repeals this section, effective as if included in the Tax Cuts and Jobs Act.

- **Sec. 506. Certain purchases of employee-owned stock disregarded for purposes of the foundation tax on excess business holdings.**

  **Current law:** Under current law, a private foundation that owns more than 20 percent of the voting stock of a business enterprise is subject to a 10 percent excise tax with respect to the excess business holdings. Special grandfather rules, such as higher ownership limits, apply to private foundations that had business holdings when the provisions related to excess business holdings were enacted in 1969.

  **Provision:** The provision increases the amount of voting stock a private foundation may own in a business enterprise without triggering the excise tax on excess business holdings under specified conditions. Under the provision, certain non-tradeable stock that is purchased by the business enterprise after January 1, 2005 from a stock bonus or profit-sharing plan that has been in place for at least ten years is treated as outstanding stock. However, such treatment does not apply to allow ownership of more than 49 percent. The provision generally is applicable to tax years ending after the date of enactment of this Act.

- **Sec. 507. Allowing 501(c)(3) organization to make statements relating to political campaign in ordinary course of carrying out its tax-exempt purpose.**

  **Current law:** Under current law, an entity that is exempt from tax under Code section 501(c)(3) is prohibited from "participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

  **Provision:** Under the provision, an organization will not fail to be treated as organized and operated exclusively for a purpose described in section 501(c)(3) solely because of the content of any statement that is made in the ordinary course of the organization's regular and customary activities in carrying out such purpose and that does not involve more than de minimis incremental expenditures by the organization. The provision applies to tax years ending after the date of enactment of the Act.

- **Sec. 508. Charitable organizations permitted to make collegiate housing and infrastructure grants.**

  **Current law:** Under current law, charities are generally tax-exempt organizations that have religious, charitable, scientific, literary, educational, or other similar purposes. Within specified limitations, taxpayers may deduct the value of their contributions to charities.

  **Provision:** Under the provision, tax-exempt charitable and educational organizations are permitted to make collegiate housing and infrastructure grants to specified tax-exempt social clubs, such as college fraternities and sororities, in order to fund their collegiate housing property. A "collegiate housing and infrastructure grant" is a grant to provide, improve, operate, or maintain collegiate housing property that may involve more than

incidental social, recreational, or private purposes. The grant must be for purposes that would be permissible for a dormitory or other residential facility of the college or university with which the collegiate housing property is associated. Such a grant may not be used to provide physical fitness facilities. The provision is applicable to grants made in tax years ending after the date of enactment of the Act.

- **Sec. 509. Restriction on regulation of contingency fees with respect to tax returns, etc.**

  **Current Law**: Under current law, taxpayers have the ability to contract with a professional services firm for the purposes of reviewing the taxpayer's federal tax return to determine if there were any overpayments for certain taxes. The professional services firm receives a percentage of the refund as payment for the work. Although current law permits this, the IRS has previously attempted to restrict this type of tax assistance to taxpayers.

  **Provision**: The provision prohibits the Secretary of the Treasury from regulating, restricting, or prohibiting the use of contingency fees in connection with tax returns or refund claims prepared on behalf of a taxpayer.

## DIVISION B – TAXPAYER FIRST ACT OF 2018

## TITLE I—PUTTING TAXPAYERS FIRST

### SUBTITLE A—INDEPENDENT APPEALS PROCESS

- **Sec. 1001. Establishment of Internal Revenue Service Independent Office of Appeals.** The provision codifies the requirement of an independent administrative appeals function at the Internal Revenue Service (IRS). The provision seeks to ensure that generally all taxpayers are able to access the administrative review process, allowing for their cases to be heard by an independent decision maker. The provision also provides for notice and protest procedures as well as additional Congressional oversight for taxpayers withheld from the administrative review process. The provision codifies the official responsible for overseeing the Independent Office of Appeals as the Chief of Appeals. The appointed official is required to have experience in a broad range of Federal tax law controversies and management of large service organizations. The provision also ensures that staff working in the Independent Office of Appeals do not receive advice from the Office of Chief Counsel from IRS employees working on the case prior to its referral for administrative review. Further, the provision provides taxpayers access to "the case against them." This provision would require the IRS to provide certain individual and business taxpayers with their case files, if requested, prior to the start of any dispute resolution process.

## SUBTITLE B—IMPROVED SERVICE

- **Sec. 1101. Comprehensive customer service strategy.** Under this provision, within one year of enactment, the IRS is required to develop and submit to Congress a comprehensive customer service strategy. The strategy must address how the IRS intends to provide assistance to taxpayers, in part by ensuring adequate customer service training for its own employees and taking into account best practices from the private sector. The strategy must also establish metrics and benchmarks for measuring the IRS's success in implementing this strategy.

- **Sec. 1102. IRS Free File Program.** The IRS currently works with electronic tax preparation services to provide free tax preparation software and electronically fillable forms. This program is known as the IRS Free File program. Generally, there is no fee for taxpayers using the Free File program provided they meet certain income thresholds. This provision codifies the existing Free File program and requires the IRS to continue to work with private stakeholders to maintain, improve, and expand the program. The provision also requires Free File program members to continue to provide basic fillable forms to all taxpayers.

- **Sec. 1103. Low-income exception for payments otherwise required in connection with a submission of an offer-in-compromise.** The IRS is authorized to enter into an offer-in-compromise (OIC) agreement with a taxpayer to settle a tax debt at a lower amount than what the taxpayer generally owes. Generally, when proposing an OIC to the IRS, the taxpayer must pay an application fee and provide an initial non-refundable lump sum payment. The IRS has the authority to waive these payments. Generally, the IRS does not require taxpayers certified as low-income, defined as those with incomes below 250 percent of the Federal poverty level, to include the application fee and initial payment. This provision codifies the existing low-income exception with respect to any user fee or upfront partial payment imposed with respect to any OIC.

## SUBTITLE C—SENSIBLE ENFORCEMENT

- **Sec. 1201. Internal Revenue Service seizure requirements with respect to structuring transactions.** The Bank Secrecy Act (BSA) mandates reporting and recordkeeping requirements, including the reporting of currency transactions exceeding $10,000, to assist Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. To circumvent these reporting requirements, individuals may structure cash transactions to fall below the $10,000 reporting threshold (also known as "structuring"). Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, or income earned legally in order to evade the payment of taxes. Structuring (or attempts to structure) for the purpose of evading the reporting and record-keeping requirements is subject to both civil and criminal penalties. Under this provision, the IRS must now show probable cause that funds believed to have been structured to avoid BSA reporting requirements are derived from an illegal source or are connected to another criminal activity. This

provision also provides important procedural protections for individuals, including a post-seizure hearing within 30 days of the seizure.

- **Sec. 1202. Exclusion of interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.** Related to Section 1201, under this provision, if a court determines the government should return funds and interest to an individual whose funds were seized by the IRS based on allegations of structuring, the interest will be exempt from income tax.

- **Sec. 1203. Clarification of equitable relief from joint liability.** In general, married couples who file tax returns jointly are both responsible for the entire tax liability that should be reported on the return. However, under certain circumstances, the tax code provides for relief for certain innocent spouses from joint liability. This provision clarifies that the Tax Court has jurisdiction to redetermine equitable claims for relief from joint liability. It also clarifies that the standard of review for such relief by the Tax Court shall be conducted on a de novo basis, meaning that the Tax Court would take a fresh look at the case without taking previous decisions into account. The review would be based on the administrative record and any newly discovered or previously unavailable evidence. The provision also clarifies the time frame in which claims for equitable relief can be brought.

- **Sec. 1204. Modification of procedures for issuance of third-party summons.** A John Doe summons is one that does not identify the person with respect to whose liability the summons is issued. Under current law, the IRS is authorized to issue a John Doe summons as part of an investigation of a specific, unidentified person or ascertainable group or class of persons. This provision seeks to clarify the IRS's authority to issue John Doe summons by emphasizing that the IRS must narrowly tailor such a summons to seek only information that pertains to the failure (or potential failure) of the person or group of persons to comply with Federal tax law. This provision is consistent with the current IRS manual, which states that a John Doe summons may not be used for the purposes of a "fishing expedition."

- **Sec. 1205. Private debt collection and special compliance personnel program.** Congress directed the IRS to establish a program that refers certain inactive tax receivable accounts to private collection agencies. The statute also specifies certain types of cases that are not eligible for referral to private collection agencies; however, the IRS does not currently exclude low-income individuals from being referred for private collection. This provision creates two additional categories of cases not eligible for referral to private collection agencies: (1) taxpayers with an adjusted gross income under 200 percent of the applicable poverty level or (2) taxpayers whose income is substantially derived from supplemental security income benefits or disability insurance benefit payments. The provision also alters the definition of inactive tax receivables that can be assigned to private debt collection agencies to those in which more than two years has passed since assessment of the tax debt and limits installment agreements between the taxpayer and private debt collection agencies to seven years.

- **Sec. 1206. Reform of notice of contact of third parties.** During the course of an audit, the IRS is required to notify a taxpayer prior to initiating third-party contacts. Testimony before the Ways and Means Oversight Subcommittee revealed that this notice has become routine at the beginning of any given audit and no longer serves to provide actual notice of impending contact with third parties. This provision requires that the IRS provide notice to taxpayers before contacting third parties, including friends, neighbors, and clients, closer in time to such contacts being made. Specifically, the provision requires that the taxpayer be notified at least 45 days prior to the period of contact, which may not be greater than one year. Notice is required only if there is a present intent to contact third parties at the time such notice is given.

- **Sec. 1207. Modification of authority to issue designated summons.** The IRS may issue designated or related summonses to examine the tax liability of certain corporations. A designated summons is an administrative summons that is issued to a large corporation (or person to whom the corporation has transferred the requested books and records) with respect to one or more taxable periods currently under examination. This provision requires that prior to issuing a designated summons, the Commissioner of the relevant operating division of the IRS and the Chief Counsel must review and provide written approval of the summons. The written approval must state facts establishing that the IRS had previously made reasonable requests for the information and must be attached to the summons. The provision also requires that the IRS certify in any subsequent judicial proceedings reasonable request for the information were made.

- **Sec. 1208. Limitation on access of non-Internal Revenue Service employees to returns and return information.** Generally, returns and return information are confidential and cannot be disclosed unless authorized by the Internal Revenue Code. This provision prohibits a person, other than an officer or employee of the IRS, from examining books and records as part of an examination other than for the sole purpose of serving as an expert. This provision also ensures that only IRS employees or the Office of Chief Counsel are able to question a witness under oath.

## SUBTITLE D—ORGANIZATIONAL MODERNIZATION

- **Sec. 1301. Office of the National Taxpayer Advocate.** The Office of the Taxpayer Advocate is expected to represent taxpayer interests independently in disputes with the IRS. The National Taxpayer Advocate (NTA) reports directly to the IRS Commissioner. Taxpayer Advocate Directives (TADs) allows the NTA to identify systemic problems and issue directives mandating changes to IRS tax administration or other processes unless the IRS Commissioner or Deputy Commissioner modifies or rescinds the order. The NTA's authority to issue TADs is pursuant to a delegation of authority from the IRS Commissioner. The NTA is required to submit reports directly to the House Committee on Ways and Means and the Senate Committee on Finance. This provision strengthens TADs by requiring a response from the IRS Commissioner or Deputy Commissioner and clarifying the time period required for such a response. This provision also makes other changes to the NTA's responsibilities. It requires the NTA to report to Congress any

TADs not addressed by the IRS, reduces the number of "most serious problems" included in the NTA Annual Report to Congress from "more than 20" to ten, requires the IRS to provide statistical support to the NTA upon request, and requires the NTA to coordinate research efforts with the Treasury Inspector General for Tax Administration (TIGTA). The provision also clarifies the salary for the NTA.

- **Sec. 1302. Modernization of Internal Revenue Service organizational structure.** The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) directed the IRS Commissioner to restructure the IRS by eliminating or substantially modifying the three-tier geographic structure (national, regional, and district) and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs. This provision allows the IRS to thoughtfully consider what a modern structure for the agency might look like, to develop a plan for its implementation, and to submit such a plan to Congress prior to making any organizational changes. The plan must consider how the IRS will prioritize taxpayer services, streamline and simplify its structure, better position itself to combat ongoing cyber threats, and take into account the Congressional priorities laid out in this package. The timely submission of the proposal to Congress would then remove the requirement of an organizational structure that features operating units serving particular groups of taxpayers with similar needs one year after the submission.

**SUBTITLE E—OTHER PROVISIONS**

- **Sec. 1401. Return preparation programs for applicable taxpayers.** The IRS, through its Volunteer Income Tax Assistance (VITA) Program, currently partners with IRS-certified volunteer organizations to provide free tax return filing assistance to low-income populations, persons with disabilities, taxpayers with limited English proficiency, and other underserved communities. This provision provides certainty for VITA organizations and taxpayers by permanently authorizing the VITA matching grant program to support the maintenance and expansion of VITA programs. The Secretary of the Treasury, unless otherwise provided by specific appropriation, may allocate from otherwise appropriated funds up to $30 million per year in matching grants to qualified entities for the development, expansion, or continuation of qualified tax return preparation programs assisting low-income taxpayers and members of underserved populations. Additionally, the provision allows the IRS to use mass communications and other means to promote the benefits and encourage the use of the program.

- **Sec. 1402. Provision of information regarding low-income taxpayer clinics.** Low Income Taxpayer Clinics (LITC) assist low-income taxpayers with representation in controversies with the IRS. This provision clarifies that IRS employees are able to provide taxpayers in need of such assistance with information about the availability of and eligibility requirements for LITCs. IRS employees also may now provide LITC location and contact information to taxpayers.

- **Sec. 1403. Notice from IRS regarding closure of taxpayer assistance centers**. Some taxpayers may require or want in-person assistance, which is provided at IRS facilities known as Taxpayer Assistance Centers (TAC). This provision requires the IRS to provide public notice, including by non-electronic means, to affected taxpayers 90 days prior to the closure of a TAC. The notice must include information on alternative forms of assistance available for impacted taxpayers and the date of the proposed closure. The IRS also must notify Congress of the closure and provide the reasons for doing so.

- **Sec. 1404. Rules for seizure and sale of perishable goods restricted to only perishable goods.** Under current law, the IRS may seize and sell a taxpayer's property on the same day if the IRS deems it to be "perishable." Perishable goods are defined as those that (1) are liable to perish, (2) become greatly reduced in price or value by keeping, or (3) cannot be kept without great expense to the IRS. Deeming property as "perishable" also allows the IRS to forgo minimum bid requirements, which can lead to seized property being sold for significantly less than a normal auction would allow. This provision limits the IRS's ability to seize a taxpayer's property and hold a same-day auction to only property that is likely to perish. Property that is greatly reduced in price or value by being held or that cannot be held without great expense would no longer be eligible to be sold on the same day by deeming it "perishable."

- **Sec. 1405. Whistleblower reforms.** In order to improve IRS communications with whistleblowers, this provision allows the IRS to exchange information with whistleblowers where doing so would be helpful to an investigation and requires the IRS to notify whistleblowers of the status of their claims. In addition, the provision amends the tax code to extend anti-retaliation provisions to IRS whistleblowers similar to those that are provided to whistleblowers under the False Claims Act and the Sarbanes-Oxley Act.

- **Sec. 1406. Customer service information.** The provision instructs the IRS to provide the following information over the telephone, while taxpayers are on hold with an IRS call center: information about common tax scams, direction to the taxpayer on where and how to report such activity, and tips on how to protect against identity theft and tax scams.

- **Sec. 1407. Misdirected tax refund deposits.** This provision directs the IRS to establish procedures for taxpayers to report instances where electronic fund transfers or refunds were erroneously delivered to the wrong taxpayer, and also to ensure the IRS will recover the erroneous refunds and deliver them to the correct taxpayer.

## TITLE II – 21ST CENTURY IRS

### SUBTITLE A—CYBERSECURITY AND IDENTITY PROTECTION

- **Sec. 2001. Public-private partnership to address identity theft refund fraud.** This provision codifies recent efforts of the IRS, through the Security Summit, to foster a

partnership aimed at combatting identity theft tax refund fraud (IDTTRF) with public and private stakeholders. Congress would like to ensure that these proactive efforts to protect taxpayers and combat IDTTRF continue to be a priority of the IRS.

- **Sec. 2002. Recommendations of Electronic Tax Administration Advisory Committee regarding identity theft refund fraud.** RRA 98 established the Electronic Tax Administration Advisory Committee (ETAAC) to provide input to the IRS on improving electronic tax administration. The ETAAC charter has since been amended to address the growing threat of IDTTRF, allowing it to work more closely with the Security Summit to address this issue. ETAAC's more recent annual reports to Congress have also provided meaningful recommendations on how to combat IDTTRF. This provision seeks to codify the changes made to ETAAC's charter by requiring ETAAC to study and make recommendations to the Secretary of the Treasury regarding methods to prevent IDTTRF.

- **Sec. 2003. Information sharing and analysis center.** Under this provision, the IRS is encouraged to participate in an IDTTRF information sharing and analysis center (ISAC) with state and private sector partners. The IRS has participated in the IDTTRF ISAC pilot, which tested the idea of more proactively and efficiently sharing information between ISAC members to quickly identify and prevent IDTTRF schemes. However, there are current statutory requirements, which limit the IRS's ability to share tax return information with its partners that is critical to combating these threats. This provision provides for the limited sharing of specified return information, such as IP address and the speed at which the return was filed, with paid return preparers who are members of the ISAC. The proposal also requires the Secretary of the Treasury to develop metrics for measuring the success of the ISAC in detecting and preventing IDTTRF.

- **Sec. 2004. Compliance by contractors with confidentiality safeguards.** This provision puts in place additional confidentiality safeguards on return information provided to contractors. Under this provision, the IRS will not be able to provide taxpayer information to any contractors or other agents of a Federal, state, or local agency unless the contractor has safeguards in place to protect the confidentiality of return information and agrees to conduct on-site compliance reviews every three years. Under this proposal, the Federal, state, or local 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.

- **Sec. 2005. Report on electronic payments.** This provision requires the Secretary of the Treasury, in coordination with the Bureau of Fiscal Service and the IRS, to submit a report to Congress within two years of enactment, outlining how the government can utilize new payment platforms to increase the use of electronic funds transfers for tax refunds. The report should also consider the impact on taxpayers who do not have access to financial accounts or institutions.

- **Sec. 2006. Identity protection personal identification numbers.** The IRS issued approximately 1.2 million identity protection personal identification numbers (IP PINs) to identity theft victims for the 2014 filing season. Still, the IP PIN program fails to protect victims whose identities have been stolen but have not yet had their tax account compromised. This provision requires the IRS to set up a program where any concerned taxpayer—regardless of their state of residence—can request an IP PIN to use in filing his or her return. The bill expands voluntary access to IP PINs nationwide over five years.

- **Sec. 2007. Single point of contact for tax-related identity theft victims.** This provision establishes a single point of contact within the IRS for any taxpayer who is a victim of identity theft. The single point of contact will be responsible for tracking the taxpayer's case to completion and coordinating with other units to resolve the taxpayer's issues as quickly as possible. This provision is intended to address concerns over the lack of continuity of assistance when taxpayers are victims of tax related identity theft.

- **Sec. 2008. Notification of suspected identity theft.** Often identity theft and refund fraud victims may be unaware that their identity has be used fraudulently or when they are aware, may not be fully informed of the outcome of their case. This provision requires the IRS to notify a taxpayer if there has been any suspected unauthorized use of a taxpayer's identity or that of the taxpayer's dependents, if an investigation has been initiated and its status, whether the investigation substantiated any unauthorized use of the taxpayer's identity, and whether any action has been taken (such as a referral for prosecution). Furthermore, when an individual is charged with a crime, the IRS must notify the victim as soon as possible, giving such victims the ability to pursue civil action against the perpetrators.

- **Sec. 2009. Guidelines for stolen identity refund fraud cases.** This provision requires that the IRS, in consultation with the NTA, develop and implement publicly-available caseworker guidelines that reduce the burdens for IDTTRF victims as they work with the IRS to sort out their tax affairs. The guidelines may include procedures to reduce the amount of time victims would have to wait to receive their tax refunds, the number of IRS employees with whom victims would need to interact, and the timeframe within which the issues related to the IDTTRF should be resolved.

- **Sec. 2010. Increased penalty for improper disclosure or use of information by preparers of returns.** The provision would impose an increased monetary penalty for the disclosure of taxpayer identity information by a return preparer in cases where such information is used in an identity theft crime, whether or not related to the filing of a tax return. This provision is intended to provide a strong incentive for tax preparers to secure client records, thereby decreasing the likelihood of their being stolen by identity theft criminals.

## SUBTITLE B—DEVELOPMENT OF INFORMATION TECHNOLOGY

- **Sec. 2101. Management of Internal Revenue Service information technology.** This provision seeks to strengthen IRS accountability for the billions of taxpayer dollars annually spent on developing and maintaining IRS information technology (IT) systems. This provision codifies the position of the IRS's Chief Information Officer (CIO) and establishes clear roles and responsibilities for the CIO. The provision also mandates that the IRS develop and implement an IT strategic plan, in alignment with the overall goals of the IRS, to ensure adequate consideration and planning for the IRS's long-term IT needs. The IRS also must finish its plans for the completion of the Customer Account Data Engine (CADE 2) and have a third party independently verify and validate planning for CADE 2 and Enterprise Case Management system(s) within a year of enactment.

- **Sec. 2102. Development of online accounts and portals.** Similar to the goal of increasing electronic filing established in RRA 98, this provision establishes a new goal for the IRS to develop robust and secure online accounts for taxpayers and their preparers by the end of 2023. While the IRS currently provides limited online assistance through its web applications, it continues to lag behind in developing online options for those taxpayers who wish to use them. This provision is intended to supplement, not replace, other taxpayer services provided by phone or in person by the IRS. It also mandates that the IRS develop a process for the secure acceptance of tax forms and supporting documentation in an electronic format.

- **Sec. 2103. Internet platform for Form 1099 filings.** This provision requires the IRS to develop an internet portal that would facilitate taxpayers filing Forms 1099 with the IRS. The internet portal is to be modeled after a Social Security Administration (SSA) system that allows individuals to file Forms W-2 with SSA. The website will allow taxpayers, with access to resources and guidance provided by the IRS, to prepare, file, and distribute Forms 1099, and create and maintain taxpayer records.

- **Sec. 2104. Streamlined critical pay authority for information technology positions.** RRA 98 provided the IRS with certain personnel flexibilities, one of which was the streamlined critical pay (SCP) authority. The purpose of the SCP authority was to provide the IRS a management tool to quickly recruit and retain employees with high levels of expertise in technical or professional fields critical to the success of the IRS's restructuring efforts. The authority was originally authorized for ten years and extended two times. The provision reauthorizes SCP authority at the IRS for IT positions. Such authority is effective on the date of the enactment and ends on September 30, 2023.

## SUBTITLE C—MODERNIZATION OF CONSENT-BASED INCOME VERIFICATION SYSTEM

- **Sec. 2201. Disclosure of taxpayer information for third-party income verification.** The Income Verification Express Service (IVES) is a program run by the IRS, which is used to verify a taxpayer's income. The program is most often used when a taxpayer is

applying for a mortgage and the mortgage lender is seeking to verify the taxpayer's income. This provision authorizes the IRS to develop an automated system to receive these forms in lieu of the current system, which relies on the forms to be sent to the IRS via secure fax. Additionally, the provision authorizes the IRS to charge a separate user fee over a two-year period on all IVES requests to fund the development of the new system.

- **Sec. 2202. Limit redisclosures and uses of consent-based disclosures of tax return information.** This provision limits tax return information redisclosures by the taxpayer's designee to only those redisclosures to which the taxpayer has expressly consented.

## SUBTITLE D—EXPANDED USE OF ELECTRONIC SYSTEMS

- **Sec. 2301. Electronic filing of returns.** Currently, the IRS can only require individuals filing more than 250 returns to file them electronically. This provision eventually would lower that threshold to 10 or more returns. This requirement would be phased in between the years 2019 and 2021. In the case of a partnership, the applicable number is 200 in the case of calendar year 2018 and 150 in the case of calendar year 2019. The provision also provides an exception to this requirement for tax preparers located in geographic areas with limited or no internet access.

- **Sec. 2302. Uniform standards for the use of electronic signatures for disclosure authorizations to, and other authorizations of, practitioners.** This provision requires the IRS to publish regulations and other guidelines that would allow for electronic signatures to be used to request taxpayer return information for the purposes of disclosures to a practitioner or to execute a power of attorney.

- **Sec. 2303. Payment of taxes by debit and credit cards.** Under current law, the IRS cannot accept credit and debit card payments for taxes directly due to a restriction on the payment of fees charged by the card issuer. As a result, the IRS must use a third-party processor to accept credit and debit card payments. This provision allows the IRS to directly accept credit and debit card payments for taxes, provided that the fee is paid by the taxpayer. The IRS is directed to seek to minimize these fees when entering into contracts to process credit and debit cards.

- **Sec. 2304. Requirement that electronically prepared paper returns include scannable code.** Requiring electronically-prepared returns that are submitted on paper to have a scannable code would allow the IRS to access the tax return information more rapidly and at a lower cost. In addition, the information captured by the IRS through the scannable code would be of a higher quality than that obtained by mechanically transcribing the paper return into IRS systems. The information obtained by scanning also would allow for more thorough fraud screening by IRS fraud filters than is currently available for paper returns. The provision requires that taxpayers who prepare their returns electronically, but print and file the returns on paper to print their returns with a scannable code.

- **Sec. 2305. Authentication of users of electronic services accounts.** In the past, unscrupulous tax return preparers have used the IRS's suite of electronic services (e-Services) to perpetrate tax refund fraud. The provision requires the IRS to verify the identity of any individual opening an e-Services account before he or she is able to use such services.

## SUBTITLE E—OTHER PROVISIONS

- **Sec. 2401. Repeal of provision regarding certain tax compliance procedures and reports.** RRA 98 included a provision requiring the IRS to develop procedures and produce an annual report for streamlining compliance with the tax code. This provision strikes that provision from the 1998 law so that IRS resources instead can be directed to help prevent IDTTRF.

- **Sec. 2402. Comprehensive training strategy.** This provision directs the IRS to submit to Congress a comprehensive training strategy to streamline current training processes, develop annual training on taxpayer rights, improve technology-based training, and better focus on fair resolution of taxpayer disputes.

# TITLE III—MISCELLANEOUS PROVISIONS

## SUBTITLE A—REFORM OF LAWS GOVERNING INTERNAL REVENUE SERVICE EMPLOYEES

- **Sec. 3001. Electronic record retention.** In August 2012, the Office of Management and Budget and National Archives and Records Administration issued a joint directive to heads of executive departments and agencies to manage both permanent and temporary email records in an accessible electronic format by December 31, 2016. There are no tax code provisions governing IRS record retention, management, or transfer of paper or electronic records. The Internal Revenue Manual provides IRS employees processes, procedures, and guidelines regarding records and information management. The provision codifies the joint directive issued in August 2012. In addition, the provision requires that the IRS maintain email records of all principal officers and specified employees for no less than 15 years. At the end of the 15-year period, the IRS is required to transfer all the email records for principal officers and specified employees to the National Archives for storage. Until TIGTA certifies that the IRS is in compliance with the requirements to maintain and transfer email records, the IRS must maintain the email records of all personnel.

- **Sec. 3002. Prohibition on rehiring any employee of the Internal Revenue Service who was involuntarily separated from service for misconduct.** In 2014, TIGTA found that the IRS had rehired hundreds of employees who had been involuntarily separated for serious, severable offenses under Section 1203 of RRA 98, such as fraud, failure to file a

return, falsification of documents, and unauthorized access to taxpayer information. The provision prohibits the IRS Commissioner from rehiring any employee of the IRS who has been involuntarily separated for misconduct or poor performance.

- **Sec. 3003. Notification of unauthorized inspection or disclosure of returns and return information.** A taxpayer shall be notified and provided certain information if the Secretary of the Treasury determines that there may have been an unauthorized use of the taxpayer's identity or that of the taxpayer's dependents. The provision provides that the notification include instructions to the taxpayer about filing a police report and the forms the taxpayer must submit to allow investigating law enforcement officials to access the taxpayer's personal information.

## SUBTITLE B—PROVISIONS RELATING TO EXEMPT ORGANIZATIONS

- **Sec. 3101. Mandatory e-filing by exempt organizations.** In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. Tax-exempt organizations that have assets of $10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990-PF information returns. Organizations that file Form 990-N (i.e., the e-postcard) also must electronically file. Information returns filed electronically can be processed more rapidly and at much lower cost than paper return filings. The provision extends the requirement to file electronically to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872 ("Political Organization Report of Contributions and Expenditures"). The provision also requires that the IRS make the information provided on the forms available to the public as soon as practicable.

- **Sec. 3102. Notice required before revocation of tax-exempt status for failure to file return.** Charities and other nonprofits automatically lose their tax-exempt status if they do not file annual information returns for three consecutive years. Once revoked, the organization must refile for exempt status. This provision requires the IRS to notify an organization after the organization's second consecutive failure to file an information return in order to give the organization time to file an information return and prevent their tax-exempt status from being revoked.

## SUBTITLE C—TAX COURT

- **Sec. 3301. Disqualification of judge or magistrate judge of the Tax Court.** This provision makes Tax Court judges subject to the same grounds for disqualification as judges of other Federal courts in order to ensure public confidence in the independence and impartiality of Tax Court judges.

- **Sec. 3302. Opinions and judgments.** This provision applies the judicial terminology of "opinion" and "judgment" used by Federal courts to the Tax Court. The provision replaces the non-judicial terms of "report" and "decision" used in Tax Court with "opinion" and "judgment," respectively. This provision does so in order to provide consistent use of terms within the Code and clarity for taxpayers.

- **Sec. 3303. Title of special trial judge changed to magistrate judge of the Tax Court.** The chief judge of the Tax Court may appoint special trial judges to handle certain cases. Special trial judges serve for an indefinite term. Special trial judges receive a salary of 90 percent of the salary of a Tax Court judge. Special trial judges do not have authority to impose punishment in the case of contempt of the authority of the Tax Court. This provision renames "special trial judges" to "magistrate judges." The provision provides clarity for taxpayers and brings the Tax Court terminology in line with other Federal courts.

- **Sec. 3304. Repeal of deadwood related to Board of Tax Appeals.** Congress established the United States Tax Court under Article I of the Constitution. Therefore, references to the Tax Court's predecessor, the Board of Tax Appeals, are obsolete. This provision deletes the references to the Board of Tax Appeals.