TAXATION

Bipartisan bill would overhaul IRS for first time since 1998

By **CHRIS GAETANO**
Trusted Professional Staff

Federal legislators have proposed a major overhaul of the IRS, the first such reform since 1998, which is intended to modernize the agency and emphasize the service aspect of its mission. Backed by both Democratic and Republican members of the House Ways and Means Committee, the legislation is organized into nine divisions, covering a wide variety of topics ranging from information technology to taxpayer services to enforcement policies. The bill passed the House by an overwhelming majority in April, but it has yet to be introduced in the Senate.

One of the major provisions in the proposed overhaul is the creation of a new IRS Independent Office of Appeals. This office would be led by a chief of appeals, who would report directly to the IRS administrator. (The bill would change the title of the IRS's leader from "commissioner" to "administrator," as a way to emphasize that the primary responsibility of this person is to administer the tax code.)

While the IRS already has an independent appeals process, the bill aims to make it more widely accessible. If the IRS does not grant a referral to the Independent Office of Appeals, then the taxpayer must be provided with a precise and detailed reason why, and be given instructions as to how to protest the decision. Further, those taking part in the appeals process would be provided with access to nonprivileged portions of their case file relevant to the dispute within 10 days of a conference with the Independent Office of Appeals. In contrast, however, current law requires a Freedom of Information Act request in order for this information to be released.

As a way to save money, the IRS changed its appeals policy in 2016 so that an in-person appeals conference would be granted only if the appeals team manager deemed it appropriate. Prior policy required the appeals office to automatically transfer cases from the campus to the field whenever taxpayers requested meetings face to face. Campus cases—also known as correspondence cases—are generally smaller cases; they comprise 75 percent to 80 percent of individual taxpayer appeals. Last year, the IRS changed policy again, providing that taxpayers with field cases could once again request a face-to-face meeting, but not those with campus cases.

Yvonne R. Cort, a partner at Capell Barnett Matalon & Schoenfeld LLP and a member of the NYSSCPA's Relations with the Internal Revenue Service Committee, said that she appreciates the attention the bill pays to the appeals process.

"There was a time … [when] they were trying to stop or limit face-to-face appeals conferences, but they went back and reinstated them. So this gives that additional protection that I'm hoping, with this bill, [will prevent] that kind of thing from happening again," she said.

She said that she also likes how the bill makes explicit that this new appeals office is to be independent, noting that it's important to keep that separation so that the taxpayer has a fair and impartial review. She pointed out that many cases can be resolved at the Office of Appeals, which benefits the taxpayer and the government by saving resources and avoiding an expensive and lengthy trip to the U.S. Tax Court.

Data protection

Another major focus of the bill is identity theft and cybersecurity. It would formally codify the already-existing public-private partnership represented by the IRS Security Summit; allow for limited sharing of tax return information with state-level and private-sector partners as part of an information-sharing and analysis center; establish a single point of contact within the IRS for identity theft victims; allow anyone to get an identity protection personal identification number (IP PIN), which before was available only to at-risk taxpayers); and prohibit the IRS from providing taxpayer information to any outside contractor, unless the contractor has adequate privacy safeguards in place. In addition to safeguards described in existing law under 26 U.S.C. Section 6103(p)(4), the legislation would include the requirement of an on-site review of each contractor ever three years, submission of the review's findings to the secretary of the Treasury and an annual certification of compliance to the secretary.

The IRS will also be required to develop, by 2023, robust and secure online accounts for taxpayers and preparers. These services are intended to supplement, not replace, existing IRS taxpayer services.

Other proposed changes

Among other things, the proposal would require the IRS to develop a comprehensive customer service strategy within a year after enactment, addressing how it intends to provide taxpayer assistance and establish benchmarks and metrics to gauge its success.

David Sands, a partner at Buchbinder Tunick & Company, LLP, and another member of the Relations with the Internal Revenue Service Committee, noted that the proposed changes would make procedures a little easier for both the taxpayer and tax practitioner. He said he welcomed modernizing the IRS, especially in the context of new challenges such as rising identity theft. His impression was that this measure signals that the government views preparers as a partner in the fight to protect client information. He added that measures to fight identity theft should not put additional burdens on taxpayers or preparers, and that nothing he has seen in the proposal so far indicates that this will happen.

According to the proposal, the IRS would also be required to develop and implement an information technology (IT) strategic plan that accounts for the service's long-term IT needs. This strategic plan would be overseen by the IRS chief information officer, a position that this bill formally codifies as part of the service's structure.

The legislation also greatly expands the number of professional tax preparers and organizations that must file electronically: The threshold for when the mandate for tax preparers kicks in would be reduced from 250 returns to 10, and all tax-exempt organizations would be required to file online, whereas right now, the requirement applies only to those organizations with assets over $10 million.

In addition, the bill would curtail the IRS's ability to seize property, requiring that the agency show probable cause when seizing funds that appear to have been structured for money-laundering purposes.

Finally, the bill introduces what appear to be largely cosmetic changes. Along with changing commissioner to administrator, it would change the name of "special trial judges" to "magistrate judges," which brings the U.S. Tax Court in line with other federal courts.

James P. Bressingham, director of taxation at RBSM LLP and current chair of the Relations with the Internal Revenue Service Committee, said that while much of the bill itself seems reasonable, he was skeptical that Congress would be able to pass effective reform, given the current political environment.

"[The] U.S. government … is procrastinating when the people's work needs to get accomplished," he said.

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The NYSSCPA made its presence known at the **Cannabis World Congress and Business Exposition**, held May 30–June 2, at the Javits Center in Manhattan. The Society maintained a booth promoting the services of the State Society to the fast-growing cannabis industry, which boasted sales of nearly $10 billion in 2017. **Zachary Gordon** (right), chair of the newly formed Cannabis Industry Committee, attended, along with **Steven B. Shaiman** (left), a member of the committee. The Society will host a Cannabis Conference in December and will release further information on nysscpa.org shortly.

CPA ROUNDTABLE

How did preparing for the Tax Cuts and Jobs Act affect this year's tax season?

RONALD B. HEGT | Tax Partner | White Plains

I don't think the tax season was drastically worse than before. It presented me with the more fun part of the practice: the thinking and planning and working through new issues. We all make our living on compliance, but the planning is where the real fun comes in.

Everyone basically asked the same question: "How much, how badly, will this hurt me?" We began planning for these questions in December. We ran generic projections for different income levels and locations, and we knew what group of people this was going to hurt and which group it would help. So we had advance conversations with clients about what their picture was probably going to look like. Then, using software, we were able to project what their 2018 [taxes] might look like, too. ...This was good for clients, not just so they could get a handle on what was to come, but because it got them thinking about tax planning early.

Now, the thing that took a *lot* of time is the new pass-through entities deduction. The big challenge was figuring out who qualified [because of the exclusion for a "specified service trade or business"]. Certainly, at one end of the spectrum, you know the law firm or doctor's practice doesn't qualify, and at the other end, a manufacturer does. But we live in the 80 percent of the world between those two. "Can I spin off the nontechnical part of a professional practice into a separate entity and maybe turn that into an eligible business?" "Is an insurance broker eligible?" "Is a headhunter eligible?" We don't have answers to these questions. I can't tell clients to start the legal reorganization of their business if there's the possibility that I'll have to tell them later that we got the regulations and they wasted their time. Mostly, we've been telling clients to just hold off until we get more concrete information.

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ROBERT S. BARNETT | Partner | Jericho

With estate planning, our wealthier clients were more inclined to make gifts to utilize the doubling of the estate tax exemption before it could either sunset or reverse. So they were looking at gifts, with a renewed attention on the generation-skipping tax (GST) because the increased exception also applied to the GST, and they were very proactive in taking advantage of that to alleviate the next generation's estate problems.

Because in New York you lose the benefit for all deductions past a certain point, those close to that cliff were very focused on utilizing either direct kinds of shelter trust planning or disclaimer planning for qualified disclaimers—we found a tremendous interest in that. Clients also paid a tremendous amount of attention to the step-up in basis [changed value of an inherited asset], which was very interesting to see. Our elder care department has been seeing a lot of interest in developing the step-up features within an elder care or Medicaid trust.

The other thing that got a lot of attention—I think too much—was entity choice and 199-A [business deduction for pass-through entities].

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KATHRYN H. VUNIC | Sole Practitioner | Manhattan

I think, for the most part, practitioners found it difficult to accurately calculate estimates the way we've been able to do in the past because so many of the changes impact one another. For example, now we have the SALT [state and local tax] deduction limit of $10,000, but the changes to the alternative minimum tax (AMT) need to be considered to determine how exactly the SALT changes impact an individual taxpayer. When practitioners are calculating an individual's estimates, they really need to ensure that they are looking at each change in the law to see how the various changes play against each other. A lot of times, for example, clients who used to be in the AMT zone aren't as impacted by the adjustments to SALT deductions, but you may have other clients who now won't be impacted by the AMT at all, or who, for the first time, will be impacted by it, so the whole thing is more complex because of all the moving parts. Additionally, tax brackets have changed, so that is another piece of the calculation that needs to be addressed. And this is just what's actually in the law—there are also a lot of misconceptions you need to address, where even those who are very financially astute can sometimes have difficulty understanding how the new law would impact them.

Overall, what this has meant is that things took a little more time this year. All these changes mean that I had to spend a little more time than in other years reviewing information to make sure everything was accurate.

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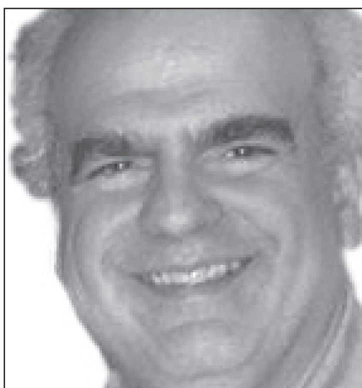

VINCENT J. COSENZA | Tax Manager | Manhattan

Our clients have been asking a lot of questions, especially about the 20 percent business deduction for pass-through entities. Determining whether they qualified was difficult because of all the different variables, like the W-2 wages of each entity, and all the different thresholds to deal with. I had to figure those numbers out and see how they stacked up against the limitations. At the end, a few clients were able to qualify. A lot of people were also affected by the changes to the state and local tax deductions. Most had to pay more in taxes due to the loss in benefits.

Overall, things were challenging because we basically had to do tax planning for two years—2017 and 2018—to see how the 2018 taxes would affect them, and give them a heads-up on what to expect. This meant we had to put in more time in what was already an intense busy season.

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