



August 21, 2018

**VIA EMAIL**

The Honorable Senator Rob Portman  
U.S. Senate  
448 Russell Senate Office Building  
Washington, DC 20510

The Honorable Senator Ben Cardin  
U.S. Senate  
509 Hart Senate Office Building  
Washington, DC 20510

**Re: USCIB Comment Letter on the Proposed “Protecting Taxpayers Act”**

Dear Senators Portman and Cardin,

USCIB strongly supports the provisions in S. 3278 to establish a statutory right to review by the Office of Appeals and to provide guardrails to protect the right of appeal. It is vital to perceptions of fairness that all taxpayers have prompt access to a full and impartial hearing with an independent Office of Appeals. As the American Bar Association Tax Section stated years ago, when efforts are made to “circumvent Appeals and to deny taxpayers an opportunity for review of their cases by Appeals, those steps undermine Appeals’ independence. This, in turn, undermines the success and credibility of the Service as a whole by adversely affecting taxpayers’ confidence and trust in the fairness of the tax system.”<sup>1</sup>

Specifically, the bill would make the following changes to help ensure taxpayers are fairly treated and are provided an opportunity for an IRS Appeals Office hearing:

- Require the IRS to send a proposed notice of deficiency detailing the taxpayers’ opportunity for administrative review with the Office of Appeals;
- Limit the ability of the IRS to deny access to the Office of Appeals to frivolous cases and cases designated for litigation. In the latter case, the bill would require the IRS to provide a detailed explanation of the reasons for denying access to appeals, and would provide a right for taxpayers to protest to the IRS Commissioner;
- Require the IRS to provide “specified taxpayers” access to all of their non-privileged case files prior to an appeals proceeding;
- Protect against undue influence and preserve the independence of the appeals process by preventing IRS compliance personnel from participating in appeals proceedings

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<sup>1</sup> American Bar Association Section of Taxation Comments on Summary of Staff Discussion Draft on Reforming Tax Administration (June 25, 2014).

without the direct consent of the taxpayer. (This appears currently to be limited to the right to an independent conference with the Office of Appeals under section 601 of the bill.) and;

- Impose stricter procedures for the IRS to designate cases for litigation, and provide notice requirements and procedures to allow taxpayers to protest such cases to the IRS Commissioner and IRS Chief Counsel.

USCIB believes the proposed changes in the bill as detailed above would strengthen the ability for taxpayers, consistent with the mission of the Office of Appeals, to “resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.”<sup>2</sup> USCIB, therefore, supports the bill. However, to ensure that the goals of the provisions are fully met, we respectfully suggest that the following modifications and clarifications be made:

1. To ensure independence of the appeals process and protect taxpayers from being unduly denied a right of independent review, taxpayers should be allowed to protest any designation of their cases for litigation to the IRS Commissioner and the Treasury General Counsel (rather than the Chief Counsel), both of whom have supervisory authority over the IRS Chief Counsel’s office.
  - a. Currently, there appears to be a conflict between bill section 604 and bill section 605. Bill section 604 appears to require such protests be made solely to the IRS Commissioner, while bill section 605 allows such protests to both the IRS Commissioner and the IRS Chief Counsel.
  - b. Our suggestion would ensure a de novo review by parties unlikely to be involved in the initial decision to designate the case for litigation.
2. Similar to the rule provided in section 601, the bill should prevent IRS compliance personnel and Chief Counsel personnel who participated in the decision to designate a case for litigation from participating in any protest proceeding under sec. 604(c) and sec. 605 without the explicit consent of the taxpayer. This will protect against undue influence and will help prevent circumvention of the independent appeals process.
3. The bill should specify a reasonable amount of time for taxpayers to contact the Office of Appeals to request review of their case in sec. 603(a)(3).
4. The statute of limitations provision in sec. 603(b) should be clarified to provide that a taxpayer will only be granted a right of appeal within 60 days of the statute of limitations period if he or she agrees to extend the statute of limitations period by twelve months. This is clearly the intent of the provision, but the wording does not appear to be working correctly.
5. Section 602(a) provides that only a “specified taxpayer” may obtain nonprivileged portions of the case file prior to an appeals conference. There is no obvious reason why access to this information should be limited to a “specified taxpayer”. The information

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<sup>2</sup> Internal Revenue Manual 8.1.1.1(1) (*Accomplishing the Appeals Mission*) (Oct. 23, 2007). See also Rev. Proc. 79-34, 1979-2 CB 498.

is nonprivileged and the IRS should therefore be willing to share such information with all taxpayers. We recommend removing Section 602(c)(1) entirely, while also removing references to “specified taxpayer” throughout section 602.

6. Section 602(a) provides that taxpayers shall be provided access to case files “not later than 10 days before the date of the conference.” This would not be an adequate amount of time to review a case file prior to the conference, especially for taxpayers with multiple disputed issues. A taxpayer should be provided access to the case file “not later than 30 days before the date of the conference.”

USCIB greatly appreciates the opportunity to submit comments on the bill and are grateful to you both and your staffs for your continued efforts to improve the administration of the tax laws and to enhance taxpayer rights. If you have any questions or would like to further discuss these issues with us, please contact Carol Doran Klein at (202) 682-7376 or [cdklein@uscib.org](mailto:cdklein@uscib.org).

Sincerely yours,



William J. Sample  
Chair, Taxation Committee  
United States Council for International Business (USCIB)

cc:

Robert Cusmano, Tax Counsel, Office of U.S. Senator Rob Portman  
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