

S 832 IS

109th CONGRESS

1st Session

S. 832

To amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 18, 2005

Mr. BINGAMAN (for himself, Mr. SMITH, Mr. BAUCUS, Mr. GRASSLEY, Mr. AKAKA, Mr. SCHUMER, and Mr. PRYOR) introduced the following bill, which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title- This Act may be cited as the 'Taxpayer Protection and Assistance Act of 2005'.

(b) Amendment of 1986 Code- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. LOW-INCOME TAXPAYER CLINICS.

(a) Grants for Return Preparation Clinics-

(1) IN GENERAL- Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

(a) In General- The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

(b) Definitions- For purposes of this section--

(1) QUALIFIED RETURN PREPARATION CLINIC-

`(A) IN GENERAL- The term `qualified return preparation clinic' means a clinic which--

`(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

`(ii) operates programs which assist low-income taxpayers, including individuals for whom English is a second language, in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

`(B) ASSISTANCE TO LOW-INCOME TAXPAYERS- A clinic is treated as assisting low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

`(2) CLINIC- The term `clinic' includes--

`(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

`(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

`(c) Special Rules and Limitations-

`(1) AGGREGATE LIMITATION- Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than \$10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

`(2) OTHER APPLICABLE RULES- Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.'

(2) CLERICAL AMENDMENT- The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

`Sec. 7526A. Return preparation clinics for low-income taxpayers.'

(b) Grants for Taxpayer Representation and Assistance Clinics-

(1) INCREASE IN AUTHORIZED GRANTS- Section 7526(c)(1) (relating to aggregate limitation) is amended by striking `\$6,000,000' and inserting `\$10,000,000'.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED-

(A) IN GENERAL- Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

`(6) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED- No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.'

(B) CONFORMING AMENDMENTS- Section 7526(c)(5) is amended--

- (i) by inserting 'qualified' before 'low-income', and
- (ii) by striking the last sentence.

(3) PROMOTION OF CLINICS- Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

'(7) PROMOTION OF CLINICS- The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.'

(c) Effective Date- The amendments made by this section shall apply to grants made after the date of the enactment of this Act.

SEC. 3. CLARIFICATION OF ENROLLED AGENT CREDENTIALS.

(a) In General- Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

'SEC. 7529. ENROLLED AGENTS.

'(a) In General- The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

'(b) Use of Credentials- Any enrolled agents properly licensed to practice as required under rules promulgated under subsection (a) shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.''

(b) Clerical Amendment- The table of sections for chapter 77 is amended by adding at the end the following new item:

'Sec. 7529. Enrolled agents.'

(c) Prior Regulations- The authorization to prescribe regulations under the amendments made by this section may not be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other related Federal rule or regulation issued before the date of the enactment of this Act.

(d) Effective Date- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4. REGULATION OF INCOME TAX RETURN PREPARERS.

(a) Authorization- Section 330(a)(1) of title 31, United States Code, is amended by inserting '(including compensated preparers of tax returns, documents, and other submissions)' after 'representatives'.

(b) Requirement-

(1) IN GENERAL- Not later than 1 year after the date of the enactment of this Act, the Secretary of the

Treasury shall prescribe regulations under section 330 of title 31, United States Code--

- (A) to regulate those compensated preparers not otherwise regulated under regulations promulgated under such section on the date of the enactment of this Act, and
- (B) to carry out the provisions of, and amendments made by, this section.

(2) EXAMINATION- In promulgating the regulations under paragraph (1), the Secretary shall develop (or approve) and administer an eligibility examination designed to test--

- (A) the technical knowledge and competency of each preparer described in paragraph (1)(A)--
 - (i) to prepare Federal tax returns, including individual and business income tax returns, and
 - (ii) to properly claim the earned income tax credit under section 32 of the Internal Revenue Code of 1986 with respect to such individual returns, and
- (B) the knowledge of each such preparer regarding such ethical standards for the preparation of such returns as determined appropriate by the Secretary.

(3) CONTINUING ELIGIBILITY-

- (A) IN GENERAL- The regulations under paragraph (1) shall require a renewal of eligibility every 3 years and shall set forth the manner in which a preparer described in paragraph (1)(A) must renew such eligibility.
- (B) CONTINUING EDUCATION REQUIREMENTS- As part of the renewal of eligibility, such regulations shall require that each such preparer show evidence of completion of such continuing education requirements as specified by the Secretary.
- (C) NONMONETARY SANCTIONS- The regulations under paragraph (1) shall provide for the suspension or termination of such eligibility in the event of any failure to comply with the requirements for such eligibility.

(c) Office of Professional Responsibility- Section 330 of title 31, United States Code, is amended by adding at the end the following new subsection:

 (e) Office of Professional Responsibility-

 (1) IN GENERAL- There shall be in the Internal Revenue Service an Office of Professional Responsibility the functions of which shall be as prescribed by the Secretary of the Treasury, including the carrying out of the purposes of this section.

 (2) DIRECTOR-

 (A) IN GENERAL- The Office of Professional Responsibility shall be under the supervision and direction of an official known as the 'Director, Office of Professional Responsibility'. The Director, Office of Professional Responsibility, shall report directly to the Commissioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, or, if the Secretary of the Treasury so

determines, at a rate fixed under section 9503 of such title.

`(B) APPOINTMENT- The Director, Office of Professional Responsibility, shall be appointed by the Secretary of the Treasury without regard to the provisions of title 5 relating to appointments in the competitive service or the Senior Executive Service.

`(3) HEARING- Any hearing on an action initiated by the Director, Office of Professional Responsibility to impose a sanction under regulations promulgated under this section shall be conducted in accordance with sections 556 and 557 of title 5 by 1 or more administrative law judges appointed by the Secretary of the Treasury under section 3105 of title 5.

`(4) INFORMATION ON SANCTIONS TO BE AVAILABLE TO THE PUBLIC-

`(A) SANCTIONS INITIATED BY ACTION- When an action is initiated by the Director, Office of Professional Responsibility, to impose a sanction under regulations promulgated under this section, the pleadings, and the record of the proceeding and hearing shall be open to the public (subject to restrictions imposed under subparagraph (C)).

`(B) SANCTION NOT INITIATED BY ACTION- When a sanction under regulations promulgated under this section (other than a private reprimand) is imposed without initiation of an action, the Director, Office of Professional Responsibility, shall make available to the public information identifying the representative, employer, firm or other entity sanctioned, as well as information about the conduct which gave rise to the sanction (subject to restrictions imposed under subparagraph (C)).

`(C) RESTRICTIONS ON RELEASE OF INFORMATION- Information about clients of the representative, employer, firm or other entity and medical information with respect to the representative shall not be released to the public or discussed in an open hearing, except to the extent necessary to understand the nature, scope, and impact of the conduct giving rise to the sanction or proposed sanction. Disagreements regarding the application of this subparagraph shall be resolved by the administrative law judge or, when a sanction is imposed without initiation of an action, by the Director, Office of Professional Responsibility.

`(5) FEES- Any fees imposed under regulations promulgated under this section shall be available without fiscal year limitation to the Office of Professional Responsibility for the purpose of reimbursement of the costs of administering and enforcing the requirements of such regulations.'

(d) Penalties-

(1) INCREASE IN CERTAIN PENALTIES- Subsections (b) and (c) of section 6695 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons) are each amended by striking '\$50' and inserting '\$500'.

(2) USE OF PENALTIES- Unless specifically appropriated otherwise, there is authorized to be appropriated and is appropriated to the Office of Professional Responsibility for each fiscal year for the administration of the public awareness campaign described in subsection (f) an amount equal to the penalties collected during the preceding fiscal year under sections 6694 and 6695 of the Internal Revenue Code of 1986 and under the regulations promulgated under section 330 of title 31, United States Code (by reason of subsection (b)(1)).

(e) Coordination With Section 6060(a)- The Secretary of the Treasury shall coordinate the requirements under

the regulations promulgated under section 330 of title 31, United States Code, with the return requirements of section 6060 of the Internal Revenue Code of 1986.

(f) Public Awareness Campaign- The Secretary of the Treasury shall conduct a public information and consumer education campaign, utilizing paid advertising--

(1) to encourage taxpayers to use for Federal tax matters only professionals who establish their competency under the regulations promulgated under section 330 of title 31, United States Code, and

(2) to inform the public of the requirements that any compensated preparer of tax returns, documents, and submissions subject to the requirements under the regulations promulgated under such section must sign the return, document, or submission prepared for a fee and display notice of such preparer's compliance under such regulations.

(g) Additional Funds Available for Compliance Activities- The Secretary of the Treasury may use any specifically appropriated funds for earned income tax credit compliance to improve and expand enforcement of the regulations promulgated under section 330 of title 31, United States Code.

(h) Effective Date- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5. CONTRACT AUTHORITY FOR EXAMINATIONS OF PREPARERS.

The Secretary of the Treasury is authorized to contract for the development or administration, or both, of any examinations under the regulations promulgated under section 330 of title 31, United States Code.

SEC. 6. REGULATION OF REFUND ANTICIPATION LOAN FACILITATORS.

(a) Regulation of Refund Anticipation Loan Facilitators-

(1) IN GENERAL- Chapter 77 (relating to miscellaneous provisions), as amended by this Act, is amended by inserting at the end the following new section:

SEC. 7530. REFUND ANTICIPATION LOAN FACILITATORS.

(a) Registration- Each refund loan facilitator shall register with the Secretary on an annual basis. As a part of such registration, each refund loan facilitator shall provide the Secretary with the taxpayer identification number of such facilitator.

(b) Disclosure- Each refund loan facilitator shall disclose to a taxpayer both orally and on a separate written form at the time such taxpayer applies for a refund anticipation loan the following information:

(1) NATURE OF THE TRANSACTION- The refund loan facilitator shall disclose--

(A) that the taxpayer is applying for a loan that is based upon the taxpayer's anticipated income tax refund,

(B) the expected time within which the loan will be paid to the taxpayer if such loan is approved,

`(C) the time frame in which tax refunds are typically paid based upon the different filing options available to the taxpayer,

`(D) that there is no guarantee that a refund will be paid in full or received within a specified time period and that the taxpayer is responsible for the repayment of the loan even if the refund is not paid in full or has been delayed,

`(E) if the refund loan facilitator has an agreement with another refund loan facilitator (or any lender working in conjunction with another refund loan facilitator) to offset outstanding liabilities for previous refund anticipation loans provided by such other refund loan facilitator, that any refund paid to the taxpayer may be so offset and the implication of any such offset,

`(F) that the taxpayer may file an electronic return without applying for a refund anticipation loan and the fee for filing such an electronic return, and

`(G) that the loan may have substantial fees and interest charges that may exceed those of other sources of credit and the taxpayer should carefully consider--

 `(i) whether such a loan is appropriate for the taxpayer, and

 `(ii) other sources of credit.

*(2) FEES AND INTEREST- The refund loan facilitator shall disclose all refund anticipation loan fees with respect to the refund anticipation loan. Such disclosure shall include--

 `(A) a copy of the fee schedule of the refund loan facilitator,

 `(B) the typical fees and interest rates (using annual percentage rates as defined by section 107 of the Truth in Lending Act (15 U.S.C. 1606)) for several typical amounts of such loans,

 `(C) typical fees and interest charges if a refund is not paid or delayed, and

 `(D) the amount of a fee (if any) that will be charged if the loan is not approved.

*(3) OTHER INFORMATION- The refund loan facilitator shall disclose any other information required to be disclosed by the Secretary.

*(c) Fines and Sanctions-

 `(1) IN GENERAL- The Secretary may impose a monetary penalty on any refund loan facilitator who--

 `(A) fails to register under subsection (a), or

 *(B) fails to disclose any information required under subsection (b).

 `(2) MAXIMUM MONETARY PENALTY- Any monetary penalty imposed under paragraph (1) shall not exceed--

 `(A) in the case of a failure to register, the gross income derived from all refund anticipation loans made during the period the refund loan facilitator was not registered, and

`(B) in the case of a failure to disclose information, the gross income derived from all refund anticipation loans with respect to which such failure applied.

`(3) REASONABLE CAUSE EXCEPTIONS- No penalty may be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

`(d) Definitions- For purposes of this section--

`(1) REFUND LOAN FACILITATOR-

`(A) IN GENERAL- The term `refund loan facilitator' means any electronic return originator who--

`(i) solicits for, processes, receives, or accepts delivery of an application for a refund anticipation loan, or

`(ii) facilitates the making of a refund anticipation loan in any other manner.

`(B) ELECTRONIC RETURN ORIGINATOR- For purposes of subparagraph (A), the term `electronic return originator' means a person who originates the electronic submission of income tax returns for another person.

`(2) REFUND ANTICIPATION LOAN- The term `refund anticipation loan' means any loan of money or any other thing of value to a taxpayer in connection with the taxpayer's anticipated receipt of a Federal tax refund. Such term includes a loan secured by the tax refund or an arrangement to repay a loan from the tax refund.

`(3) REFUND ANTICIPATION LOAN FEES- The term `refund anticipation loan fees' means the fees, charges, interest, and other consideration charged or imposed by the lender or facilitator for the making of a refund anticipation loan.

`(e) Regulations- The Secretary may prescribe such regulation as necessary to implement the requirements of this section.'

(2) CLERICAL AMENDMENT- The table of sections for chapter 77, as amended by this Act, is amended by adding at the end the following new item:

`Sec. 7530. Refund anticipation loan facilitators.'

(b) Disclosure of Penalty- Subsection (k) of section 6103 is amended by adding at the end the following new paragraph:

`(10) DISCLOSURE OF PENALTIES ON REFUND ANTICIPATION LOAN FACILITATORS- The Secretary may disclose the name of any person with respect to whom a penalty has been imposed under section 7530 and the amount of any such penalty.'

(c) Use of Penalties- Unless specifically appropriated otherwise, there is authorized to be appropriated and is appropriated to the Internal Revenue Service for each fiscal year for the administration of the public awareness campaign described in subsection (d) an amount equal to the penalties collected during the preceding fiscal year under section 7530 of the Internal Revenue Code of 1986.

(d) Public Awareness Campaign- The Secretary of the Treasury shall conduct a public information and consumer education campaign, utilizing paid advertising, to educate the public on making sound financial decisions with respect to refund anticipation loans (as defined under section 7530 of the Internal Revenue Code of 1986), including the need to compare--

(1) the rates and fees of such loans with the rates and fees of conventional loans; and

(2) the amount of money received under the loan after taking into consideration such costs and fees with the total amount of the refund.

(e) Effective Date- The amendments made by this section shall take effect on the date that is 1 year after the date of the enactment of this Act.

SEC. 7. TAXPAYER ACCESS TO FINANCIAL INSTITUTIONS.

(a) Establishment of Program- The Secretary is authorized to award demonstration project grants (including multi-year grants) to eligible entities which partner with volunteer and low-income preparation organizations to provide tax preparation services and assistance in connection with establishing an account in a federally insured depository institution for individuals that currently do not have such an account.

(b) Eligible Entities-

(1) IN GENERAL- An entity is eligible to receive a grant under this section if such an entity is--

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

(B) a federally insured depository institution,

(C) an agency of a State or local government,

(D) a community development financial institution,

(E) an Indian tribal organization,

(F) an Alaska Native Corporation,

(G) a Native Hawaiian organization,

(H) a labor organization, or

(I) a partnership comprised of 1 or more of the entities described in the preceding subparagraphs.

(2) DEFINITIONS- For purposes of this section--

(A) **FEDERALLY INSURED DEPOSITORY INSTITUTION-** The term 'federally insured depository institution' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(B) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION- The term 'community development financial institution' means any organization that has been certified as such pursuant to section 1805.201 of title 12, Code of Federal Regulations.

(C) ALASKA NATIVE CORPORATION- The term 'Alaska Native Corporation' has the same meaning as the term 'Native Corporation' under section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(D) NATIVE HAWAIIAN ORGANIZATION- The term 'Native Hawaiian organization' means any organization that--

(i) serves and represents the interests of Native Hawaiians, and

(ii) has as a primary and stated purpose the provision of services to Native Hawaiians.

(E) LABOR ORGANIZATION- The term 'labor organization' means an organization--

(i) in which employees participate,

(ii) which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and

(iii) which is described in section 501(c)(5).

(c) Application- An eligible entity desiring a grant under this section shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(d) Limitation on Administrative Costs- A recipient of a grant under this section may not use more than 6 percent of the total amount of such grant in any fiscal year for the administrative costs of carrying out the programs funded by such grant in such fiscal year.

(e) Evaluation and Report- For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

(f) Authorization of Appropriations- There is authorized to be appropriated to the Secretary, for the grant program described in this section, \$10,000,000, or such additional amounts as deemed necessary, to remain available until expended.

(g) Regulations- The Secretary is authorized to promulgate regulations to implement and administer the grant program under this section.

(h) Study on Delivery of Tax Refunds-

(1) IN GENERAL- The Secretary of the Treasury, in consultation with the National Taxpayer Advocate, shall conduct a study on the payment of tax refunds through debit cards or other electronic means to assist individuals that do not have access to financial accounts or institutions.

(2) REPORT- Not later than 1 year after the date of the enactment of this Act, the Secretary of the

Treasury shall submit a report to Congress containing the result of the study conducted under subsection (a).

SEC. 8. EXPANDED USE OF TAX COURT PRACTICE FEES FOR PRO SE TAXPAYERS.

(a) In General- Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end `and to provide services to pro se taxpayers'.

(b) Effective Date- The amendment made by this section shall take effect on the date of the enactment of this Act.

END