Report of the Individual Income Tax Reform Working Group

July 7, 2015

Table of Contents

I. FOREWORD

The Individual Income Tax Reform Working Group began its work of examining tax reform with the broad realization that comprehensive tax reform, including reform of the individual side of the tax code, is a major undertaking. Based on both ideological differences and individual priorities, there is considerable division among members of Congress about how individual tax reform should be approached. It is well-known that there are significant, longstanding rifts, and obstacles to individual tax reform that could arguably make it an even more difficult proposition than business tax reform, although a number of members believe that comprehensive reform of the entire tax code is the only viable option.

Also implicated in individual tax reform is the fact that pass-through entities pay taxes at the individual rates. There is no question that making sure that pass-through entities are treated fairly is an essential part of the tax reform process, especially as tax reform looks to eliminate tax benefits for businesses and lower corporate tax rates. Different options could be considered to ensure pass-through entities are treated equitably, including changes to the individual statutory rates, options to provide enhanced tax expenditures to certain businesses, and either a special rate or deduction applied to business income. However, the Individual Income Tax Reform Working Group did not have the opportunity to thoroughly and comprehensively examine this issue due primarily to its limited jurisdiction.[1] The members of the Working Group recognize the importance of pass-through entities – which make up more than 90 percent of all businesses nationally[2] – to our economy and agree that the tax treatment of pass-through businesses must be addressed, although there is disagreement among the Working Group members about whether changes can address just pass-throughs or must address the entire individual tax code.

At the same time that individual tax reform presents such difficult challenges, it is an especially important endeavor to individual taxpayers. For many taxpayers, filing their taxes is one of the primary direct interactions they have with the federal government. While much of the tax code may seem abstract to the vast majority of taxpayers, millions of taxpayers interact with the individual side of the tax code. The government has a duty to make complying with our tax laws as simple and understandable as possible so that taxpayers are able to make sense of their tax obligations while paying only the amount of tax that is owed.

In its current state, the individual tax code is frustratingly complex for the average taxpayer. Taxpayers face confusion in terms of which deductions or credits they might be able to take, uncertainty in terms of whether beneficial expiring provisions will be in effect, and a system of tax administration that creates unnecessary difficulties and risk of identity theft.

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[1] Jurisdiction over pass-through businesses primarily fell into the Business Income Tax Reform Working Group, while the Individual Income Tax Reform Working Group had jurisdiction over individual rates, which apply to pass-through entities.

[2] Joseph Rosenberg, Flow-Through Business Income As a Share of AGI, 2014 Tax Notes, Sept. 29, 2014 at 1613, 1613 (2014) available at http://taxpolicycenter.org/UploadedPDF/1001750-flow-through-business-income.pdf.

These outcomes directly undermine the policy objectives that our tax code seeks to promote. They may force taxpayers to defer decisions on making charitable gifts designed to benefit their local communities and their friends and neighbors in need. Taxpayers may leave credits and deductions on the table that could help make it easier for them to attend college or vocational school and secure the opportunity to better provide for themselves and their families. And taxpayers face too much confusion in the process of filing their taxes. Even worse, the federal government lacks the ability to ensure the integrity of filed tax returns, and taxpayers face the risk of becoming victims of crime by having their personal information compromised given that even a number of basic safeguards are not in place to protect them.

Whether taxpayers prepare their own return or rely on a hired preparer, and whether they file electronically or by mail, they should have confidence that the tax system protects their private information, allows reasonable access to the IRS for basic questions and ensures that those in the industry that has evolved around individual tax returns are competent and are not taking advantage of the taxpayer.

There is no question that there are many options for reforming the individual tax code. In general, members of the Working Group agree that tax reform to address the individual side of the tax code should seek to make the code fairer, and should aim to reduce complexity for individual taxpayers. It should also help ensure that our tax code provides an adequate source of revenue to fund national priorities but does not provide more revenue than is needed for federal responsibilities. At the same time, there are many differing views on what constitutes a "fair" tax system[3], what level of revenue our tax system should raise, how tax rates affect growth, the degree of progressivity tax reform should aim for, and many other broad structural changes that could be made to the code. This leads to a lack of agreement on many key issues in reforming the individual side of the tax code – including what changes to make, and whether and how to address revenue gained or lost through those changes.

To the extent that the goal of individual income tax reform would be a broader base, along with lower rates of tax, the base broadening measures could either substantially reduce, or eliminate, many popular and widely utilized deductions, credits, and exclusions from income. Alternatively, if tax reform resulted in an overall revenue reduction, some take the view that the cost could be mitigated by reducing federal spending. Indeed, the overall level of revenue needed to fund the government is a broad, over-arching question that needs to be answered. There are also important questions to be answered about how the benefits and burdens should be distributed under the tax code. Indeed, many – including some leaders of recent tax reform efforts – have agreed that reform of the individual side of the tax code should result in a tax system that is at least as progressive as the current system.[4] Others disagree.

To illustrate the magnitudes of difficulty associated with lowering tax rates, Table 1, below, shows the top individual income tax expenditures for 2014-2018. While these tax expenditure

[3] *See* Joint Committee on Taxation, *Fairness and Tax Policy*, JCX-48-15, February 27, 2015.

[4] Sen. Max Baucus & Rep. Dave Camp, Tax Reform Is Very Much Alive and Doable, 2013 Wall St. J., Apr. 7, 2013 at (2013), http://www.wsj.com/articles/SB10001424127887323611604578396790773598474.

estimates are not the same as the revenue that would be raised by eliminating them, they give a sense of the order of magnitude of the revenue loss stemming from the provisions.[5]

Table 1.–Top Individual Tax Expenditures 2014-2018

Individual Tax Expenditure	2014-2018 Projection ($Billions)
Exclusion of employer contributions for health care, health insurance premiums, and long-term care insurance premiums	785.1
Reduced rates of tax on dividends and long-term capital gains	632.8
Deduction for mortgage interest on owner-occupied residences	405.2
Net exclusion of pension contributions and earnings: Defined contribution plans	399.0
Earned income credit	352.8
Subsidies for insurance purchased through health benefit exchanges	318.1
Deduction of nonbusiness State and local government income taxes, sales taxes and personal property taxes	316.4
Credit for children under age 17	285.5
Net exclusion of pension contributions and earnings: Defined benefit plans	248.3
Exclusion of untaxed social security and railroad retirement benefits	209.1

[5] For a discussion of the distinction between a revenue estimate and a tax expenditure estimate, see Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2014-2018* (JCX-97-14), August 5, 2014, pp. 15-17.

The magnitude of the revenue at stake from altering the tax rate structure is seen in Table 2, below. This table shows the amount of revenue that would be raised over 10 years if all of the individual tax rates on ordinary income were increased by one percentage point. The amount of revenue that would be forgone if all of the individual tax rates on ordinary income were decreased by one percentage point would be similar.

Table 2.− Effect of Individual Tax Rate Changes

Option 46

Increase Individual Income Tax Rates

(Billions of dollars)	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2019	2015-2024
Change in Revenues												
Raise all tax rates on ordinary income by 1 percentage point	39	59	62	65	68	72	75	79	83	87	293	689

Thus, difficult choices would need to be made if even a modest reduction in rates were to be achieved while continuing to raise similar amounts of revenue.

The Co-Chairs and members of the Individual Income Tax Reform Working Group worked together in good faith with the goal of finding bipartisan areas of agreement to permit meaningful reform of the federal individual income tax system. Toward that goal, members of the Working Group requested an educational briefing from the Joint Committee on Taxation to provide an overview of the individual tax system, including issues ranging from the largest individual tax expenditures to the standard deduction to tax rates.

Based on this educational briefing, the Co-Chairs sought input from members of the Working Group on areas each believed would be prime candidates for reform and potential bipartisan consensus. Given the short time allowed for the Working Group process and the complexity associated with individual tax reform, the Working Group chose to focus on the areas that appeared most ripe for possible bipartisan consensus: Homeownership, Charitable Giving, Higher Education, and Tax Administration. For each of these areas, the Working Group requested a staff-level educational briefing from the Joint Committee on Taxation and invited industry stakeholders and policy experts to take part in an open discussion of tax provisions in that subject area, including whether they were achieving the desired policy objectives, and ways that the tax code could be improved.

Once these roundtables were completed, the Working Group looked at options in each area for potential bipartisan agreement. While options were considered in each of the four areas, staff for the group felt only three provided room for potential bipartisan agreement as part of this process – Charitable Giving, Higher Education, and Tax Administration. The Working Group does not make specific recommendations in these areas, but instead suggests that the Committee explore options for reforming the identified areas. This report does not indicate that all members of the

Working Group agree with any or all of the specific proposals identified, but does demonstrate that room for bipartisan agreement may exist for some individual issues.

Acknowledgments

The Co-Chairs of the Individual Income Tax Reform Working Group would like to thank the members of the working group: Sen. Charles Schumer (D-N.Y.), Sen. Mike Crapo (R-Idaho), Sen. Bill Nelson (D-Fla.), Sen. John Cornyn (R-Texas), Sen. Robert Menendez (D-N.J.), Sen. Pat Toomey (R-Pa.), and Sen. Michael Bennet (D-Colo). They would also like to thank the policy experts and stakeholders who took the time to present to the Working Group on the issues of Homeownership, Charitable Giving, Higher Education, and Tax Administration, as well as the stakeholders who took the time to contribute their written comments in this process. Finally, the Co-Chairs would like to offer their most sincere gratitude to Tom Barthold and the staff of the Joint Committee on Taxation, who worked tirelessly to advise and educate members and staff about options and policy considerations, and provided substantial assistance in the preparation of this report.

II. TAX INCENTIVES FOR CHARITABLE GIVING

A. Qualified Charitable Distributions from an IRA

Present Law

Individual retirement arrangements ("IRAs")

Within limits, individuals may make deductible and nondeductible contributions to a traditional IRA.[6] Amounts in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal represents a return of nondeductible contributions). Certain individuals also may make nondeductible contributions to a Roth IRA (deductible contributions cannot be made to Roth IRAs).[7] Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from a Roth IRA that are not qualified withdrawals are includible in gross income to the extent attributable to earnings. Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59-½ are subject to an additional 10-percent early withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from tax-favored retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA must generally begin by April 1 of the calendar year following the year in which the IRA owner attains age 70-½.[8]

If an individual has made nondeductible contributions to a traditional IRA, a portion of each distribution from an IRA is nontaxable until the total amount of nondeductible contributions has been received. In general, the amount of a distribution that is nontaxable is determined by multiplying the amount of the distribution by the ratio of the remaining nondeductible contributions to the account balance. In making the calculation, all traditional IRAs of an individual are treated as a single IRA, all distributions during any taxable year are treated as a single distribution, and the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year.

In the case of a distribution from a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings, contributions and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions;[9] (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution, all regular Roth IRA contributions for a year are treated as a single contribution, and all conversion contributions during the year are treated as a single contribution.

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[6] Secs. 219 and 408.

[7] Sec. 408A.

[8] Minimum distribution rules also apply in the case of distributions after the death of a traditional or Roth IRA owner.

[9] Conversion contributions refer to conversions of amounts in a traditional IRA or employer-sponsored retirement plan to a Roth IRA.

Distributions from an IRA (other than a Roth IRA) are generally subject to withholding unless the individual elects not to have withholding apply.[10] Elections not to have withholding apply are to be made in the time and manner prescribed by the Secretary.

<u>Exclusion from gross income for qualified charitable distributions</u>

Under a temporary provision that was effective for contributions made in taxable years beginning before January 1, 2015,[11] preferential percentage limits and carryforward rules apply for qualified charitable contributions. Specifically, otherwise taxable IRA distributions from a traditional or Roth IRA are excluded from gross income to the extent they are qualified charitable distributions.[12] The exclusion may not exceed $100,000 per taxpayer per taxable year. Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The otherwise applicable rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions. A qualified charitable distribution is taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under the qualified charitable distribution provision. An IRA does not fail to qualify as an IRA as a result of qualified charitable distributions being made from the IRA.

A qualified charitable distribution is any distribution from an IRA directly by the IRA trustee to an organization described in section 170(b)(1)(A) (generally, public charities) other than a supporting organization (as described in section 509(a)(3)) or a donor advised fund (as defined in section 4966(d)(2)). Distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70-½ and only to the extent the distribution would be includible in gross income (without regard to this provision).

The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.

If the IRA owner has any IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the qualified charitable distribution provision) and thus is eligible for qualified charitable distribution treatment. Under the special rule, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income (but for the qualified charitable distribution provision) if the aggregate balance of all IRAs having the same owner were distributed during the same year. In determining the amount of subsequent IRA

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[10] Sec. 3405.

[11] Sec. 170(b)(1)(E).

[12] Sec. 408(d)(8). The exclusion does not apply to distributions from employer-sponsored retirement plans, including SIMPLE IRAs and simplified employee pensions ("SEPs").

distributions includible in income, proper adjustments are to be made to reflect the amount treated as a qualified charitable distribution under the special rule.

Distributions that are excluded from gross income by reason of the qualified charitable distribution provision are not taken into account in determining the deduction for charitable contributions under section 170.

Under present law, the exclusion does not apply to distributions made in taxable years beginning after December 31, 2014.

B. Existing IRA Proposals

The Working Group considered the following options relating to the exclusion from gross income for qualified charitable distributions from an IRA.

Option 1: Permanent extension

The first option reinstates and makes permanent the exclusion from gross income for qualified charitable distributions from an IRA.[13]

Option 2: Permanent extension and expansion

In addition to reinstating and making permanent the exclusion from gross income for qualified charitable distributions, the second option expands the scope of excludable distributions. The Committee could consider a number of possible expansions that have been included in introduced bills.[14] For example, the Committee could expand the types of charities to which qualifying distributions may be made to include donor-advised funds ("DAFs"), either just for community foundations or all DAF providers; supporting organizations; and private foundations. In addition, the Committee could consider allowing qualifying distributions to charitable split-interest vehicles, such as charitable remainder trusts. Finally, the Committee could consider increasing or removing the annual dollar limit on excludable distributions (currently $100,000).

C. Discussion of IRA Options

Provide a permanent incentive for charitable giving

The now-expired rules allowing taxpayers to exclude qualified charitable distributions from gross income have the salutary effects of encouraging and facilitating charitable giving. The rules accomplish this by allowing an IRA owner to arrange for a distribution to be made directly from his or her IRA to a qualified charity and generally to exclude the amount of the distribution from the IRA owner's gross income. As a result, a taxpayer who has accumulated

[13] See, *e.g.*, section 3 of the America Gives More Act of 2015 (H.R. 644, 114th Cong.), as passed by the U.S. House of Representatives on February 12, 2015.

[14] See, *e.g.*, the Public Good IRA Rollover Act of 2015 (S. 1159, 114th Cong.), introduced by Senators Schumer, Collins, Gillibrand, and Cochran.

more assets in an IRA than she will need to fund her retirement expenses need not arrange both for a distribution from the IRA to the IRA owner and a subsequent donation to charity.

The intended benefits of the provision may be diminished by extending the provision only on a temporary basis, particularly where the provision is enacted late in the year to which it applies. When the provision was last extended in December 2014 for calendar year 2014, for example, many IRA owners who otherwise might have benefited from the provision were not able to use it. Some taxpayers were unable to arrange an IRA distribution, because their financial institutions' deadlines for requesting distributions for the 2014 calendar year already had passed. Others took required minimum distributions from their IRAs before the extension was enacted and were no longer in a position to arrange for further distributions. While the Working Group does not make specific recommendations, the Committee may wish to consider proposals for qualified charitable distribution rules that would increase certainty for taxpayers and increase the amount of funds that flow to charity.

While the exclusion for qualified charitable distributions provides a critical incentive for charitable giving, the Working Group is mindful of the importance of ensuring income security for retirees. Some might argue that the exclusion for qualified charitable distributions encourages IRA owners to redirect retirement savings to a non-retirement income security use (charitable giving) before they know the full extent of their income needs during retirement. Others, however, believe that the IRA owners most likely to take advantage of the income exclusion are well-advised taxpayers who have excess accumulations in an IRA or who would make many of the same charitable contributions even in the absence of the special exclusion.

<u>Reasons taxpayers make qualified charitable distributions</u>

The Working Group understands that a taxpayer might in some cases achieve ancillary tax or non-tax benefits by making a qualified charitable distribution, as outlined in the following paragraphs. In some cases, these ancillary benefits might be the primary reason a taxpayer arranges the qualified charitable distribution. In considering proposals in this area, the Committee will need to balance the benefits to charities and society provided by increased charitable giving with concerns about the resulting unintended tax or non-tax consequences.

<u>Proposed expansion</u>

The Committee may want to explore proposals that would expand the income exclusion for qualified charitable distributions. However, in conjunction with proposed expansions, the Committee may wish to explore whether additional reforms are necessary to address certain policy concerns.

Expanding the types of donee entities to, donor advised funds (DAFs), either just for community foundations, or for all providers of DAFs; supporting organizations; private foundations; and charitable split-interest entities, for example, may spur additional giving. It also raises policy considerations that should be weighed against the potential benefits. For example, unlike most operating public charities, private foundations, DAFs, and supporting organizations often do not operate direct charitable programs, but instead often primarily make grants to other charities. In other words, after receiving a deductible contribution from a donor, the private foundation, DAF, or supporting organization might at some future time make a grant of those funds to a public charity that runs direct charitable programs. As a result, there could be delay between the year in which the donor makes his or her initial contribution (and takes a charitable deduction) and the use of those donated funds to achieve a charitable end. Some might therefore question whether it is desirable to extend the qualified charitable distribution rules to these sorts of entities. Others might argue, however, that the law provides a tax deduction for charitable contributions to private foundations, DAFs, and supporting organizations, which are recognized as charitable organizations under section 501(c)(3), and that there is similarly no reason to treat these organizations differently for purposes of the income exclusion for qualified charitable distributions from an IRA.

D. Qualified Conservation and Other Charitable Property Contributions

Present Law

Deduction for charitable contributions

The Internal Revenue Code allows taxpayers to reduce their income tax liability by taking deductions for contributions to certain organizations, including charities, Federal, State, local and Indian tribal governments, and certain other organizations.

To be deductible, a charitable contribution generally must meet several threshold requirements. First, the recipient of the transfer must be eligible to receive charitable contributions (*i.e.*, an organization or entity described in section 170(c)). Second, the transfer must be made with gratuitous intent and without the expectation of a benefit of substantial economic value in return. Third, the transfer must be complete and generally must be a transfer of a donor's entire interest in the contributed property (*i.e.*, not a contingent or partial interest contribution). To qualify for a current year charitable deduction, payment of the contribution must be made within the taxable year.[15] Fourth, the transfer must be of money or property–contributions of services are not deductible.[16] Finally, the transfer must be substantiated and in the proper form.

Charitable contributions of cash are deductible in the amount contributed, subject to the percentage limits discussed below. In addition, a taxpayer generally may deduct the full fair market value of long-term capital gain property contributed to charity.[17] Contributions of tangible personal property also generally are deductible at fair market value if the use by the recipient charitable organization is related to its tax-exempt purpose.

In certain other cases, however, section 170(e) limits the deductible value of the contribution of appreciated property to the donor's tax basis in the property. This limitation of the property's deductible value to basis generally applies, for example, for: (1) contributions of inventory or other ordinary income or short-term capital gain property;[18] (2) contributions of tangible personal property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose;[19] and (3) contributions to or for the use of a private foundation (other than certain private operating foundations).[20]

[15] Sec. 170(a)(1).

[16] For example, the value of time spent volunteering for a charitable organization is not deductible. Incidental expenses such as mileage, supplies, or other expenses incurred while volunteering for a charitable organization, however, may be deductible.

[17] Capital gain property means any capital asset or property used in the taxpayer's trade or business, the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Sec. 170(e)(1)(A).

[18] Sec. 170(e)(3). Special rules apply for certain contributions of inventory and other property.

[19] Sec. 170(e)(1)(B)(i)(I).

[20] Sec. 170(e)(1)(B)(ii). For contributions of qualified appreciated stock, the above-described rule that limits the value of property contributed to or for the use of a private nonoperating foundation to the taxpayer's basis in the property does not apply; therefore, subject to certain limits, contributions of qualified appreciated stock to a

Contributions of property with a fair market value that is less than the donor's tax basis generally are deductible at the fair market value of the property.

Contributions of partial interests in property

In general

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity while retaining an interest in that property or transferring an interest in that property to a noncharity for less than full and adequate consideration.[21] This rule of nondeductibility, often referred to as the partial interest rule, generally prohibits a charitable deduction for contributions of income interests, remainder interests, or rights to use property.

A charitable contribution deduction generally is not allowable for a contribution of a future interest in tangible personal property.[22] For this purpose, a future interest is one "in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property."[23]

A gift of an undivided portion of a donor's entire interest in property generally is not treated as a nondeductible gift of a partial interest in property.[24] For this purpose, an undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property.[25] A gift generally is treated as a gift of an undivided portion of a donor's entire interest in property if the donee is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property.[26]

Exceptions to the partial interest rule are provided for, among other interests: (1) an undivided portion of a donor's entire interest in property; (1) remainder interests in charitable remainder annuity trusts, charitable remainder trusts, and pooled income funds; (2) present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the

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nonoperating private foundation may be deducted at fair market value. Sec. 170(e)(5). Qualified appreciated stock is stock that is capital gain property and for which (as of the date of the contribution) market quotations are readily available on an established securities market. Sec. 170(e)(5)(B).

[21] Secs. 170(f)(3)(A) (income tax), 2055(e)(2) (estate tax), and 2522(c)(2) (gift tax).

[22] Sec. 170(a)(3).

[23] Treas. Reg. sec. 1.170A-5(a)(4). Treasury regulations provide that section 170(a)(3), which generally denies a deduction for a contribution of a future interest in tangible personal property, has "no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during three months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than one year." Treas. Reg. sec. 1.170A-5(a)(2).

[24] Sec. 170(f)(3)(B)(ii).

[25] Treas. Reg. sec. 1.170A-7(b)(1).

[26] Treas. Reg. sec. 1.170A-7(b)(1).

property; (3) a remainder interest in a personal residence or farm; and (4) qualified conservation contributions.

Exception to the partial interest rule for qualified conservation contributions

As is discussed above, qualified conservation contributions are excepted from the "partial interest" rule, which generally bars deductions for charitable contributions of partial interests in property.[27] A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property. Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.

Percentage limits on charitable contributions and carryforwards of excess contributions

Percentage limits for individual taxpayers

Charitable contributions by individual taxpayers are limited to a specified percentage of the individual's contribution base. The contribution base is the taxpayer's adjusted gross income ("AGI") for a taxable year, disregarding any net operating loss carryback to the year under section 172.[28] In general, more favorable (higher) percentage limits apply to contributions of cash and ordinary income property than to contributions of capital gain property. More favorable limits also generally apply to contributions to public charities (and certain operating foundations) than to contributions to nonoperating private foundations.

More specifically, the deduction for charitable contributions by an individual taxpayer of cash and property that is not appreciated to a charitable organization described in section 170(b)(1)(A) (public charities, private foundations other than nonoperating private foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations generally may be deducted up to the lesser of 30 percent of the taxpayer's contribution base or the excess of (i) 50 percent of the contribution base over (ii) the amount of contributions subject to the 50 percent limitation.

Contributions of appreciated capital gain property to public charities and other organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base (after taking into account contributions other than contributions of

[27] Secs. 170(f)(3)(B)(iii) and 170(h).

[28] Sec. 170(b)(1)(G).

capital gain property). An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to nonoperating private foundations are deductible up to the lesser of 20 percent of the taxpayer's contribution base or the excess of (i) 30 percent of the contribution base over (ii) the amount of contributions subject to the 30 percent limitation.

Finally, more favorable percentage limits sometimes apply to contributions to the donee charity than to contributions that are for the use of the donee charity. Contributions of capital gain property for the use of public charities and other organizations described in section 170(b)(1)(A) also are limited to 20 percent of the taxpayer's contribution base.[29] In contrast to property contributed directly to a charitable organization, property contributed for the use of an organization generally has been interpreted to mean property contributed in trust for the organization.[30] Charitable contributions of income interests (where deductible) also generally are treated as contributions for the use of the donee organization.

Table 3. – Charitable Contribution Percentage Limits For Individual Taxpayers[1]

	Ordinary Income Property and Cash	Capital Gain Property to the Recipient[2]	Capital Gain Property for the Use of the Recipient
Public Charities, Private Operating Foundations, and Private Distributing Foundations	50%	30%	20%
Nonoperating Private Foundations	30%	20%	20%

[1] Percentages shown are the percentage of an individual's contribution base.

[2] Capital gain property contributed to public charities, private operating foundations, or private distributing foundations will be subject to the 50-percent limitation if the donor elects to reduce the fair market value of the property by the amount that would have been long-term capital gain if the property had been sold.

[29] Under a special, temporary provision that was effective for contributions made in taxable years beginning before January 1, 2015, described in greater detail below, certain qualified conservation contributions (generally, conservation easements), qualify for more generous contribution limits and carryforward periods.

[30] *Rockefeller v. Commissioner*, 676 F.2d 35, 39 (2d Cir. 1982).

Percentage limit for corporate taxpayers

A corporation generally may deduct charitable contributions up to 10 percent of the corporation's taxable income for the year.[31] For this purpose, taxable income is determined without regard to: (1) the charitable contributions deduction; (2) any net operating loss carryback to the taxable year; (3) deductions for dividends received; (4) deductions for dividends paid on certain preferred stock of public utilities; and (5) any capital loss carryback to the taxable year.[32]

Carryforwards of excess contributions

Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years.[33] In general, contributions carried over from a prior year are taken into account after contributions for the current year that are subject to the same percentage limit. Excess contributions made for the use of (rather than to) an organization generally may not be carried forward.

Qualified conservation contributions

Under a temporary provision that was effective for contributions made in taxable years beginning before January 1, 2015,[34] preferential percentage limits and carryforward rules apply for qualified conservation contributions. In general, under the temporary provision, the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, individuals may deduct the fair market value of any qualified conservation contribution to an organization described in section 170(b)(1)(A) (generally, public charities) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions. Individuals are allowed to carry forward any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years. In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.[35]

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[31] Sec. 170(b)(2)(A).
[32] Sec. 170(b)(2)(C).
[33] Sec. 170(d).
[34] Sec. 170(b)(1)(E).
[35] Sec. 170(b)(2)(B).

A qualified farmer or rancher means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

E. Existing Property Contribution Proposals

The Working Group considered the following options relating to the charitable deduction for qualified conservation contributions and for other contributions of appreciated property.

Option 1: Permanent extension of the enhanced deduction for qualified conservation contributions

This option reinstates and makes permanent the increased charitable percentage limits and extended carryforward period for qualified conservation contributions.[36]

Option 2: Rules to ensure integrity of qualified conservation contributions

In addition to making the incentive for qualified conservation contributions permanent, the Committee could consider enacting provisions designed to ensure that conservation easements are properly valued and serve a legitimate conservation purpose.

F. Discussion of Property Contribution Options

Provide a permanent incentive for conservation

The now-expired provision that allows for an enhanced charitable deduction and extended contribution carryforward period for qualified conservation contributions was originally enacted to encourage conservation. The provision gives private land owners an additional incentive to place restrictions on land that limit development and further important conservation purposes.

The temporary nature of past extensions may have undermined the policy objective of encouraging conservation. Conservation easement transactions are complex and take considerable time and resources to effect. Uncertainty about whether the incentive will be extended to any given year could discourage taxpayers from investing valuable time and resources in such transactions, thereby reducing the effectiveness of the provision.

In the interest of furthering conservation and eliminating uncertainty for taxpayers, the Committee may choose to examine proposals for the special incentives for qualified conservation contributions that would provide certainty to taxpayers.

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[36] See, *e.g.*, the Rural Heritage Conservation Act of 2013 (S. 526, 113th Cong.), introduced by Senators Baucus and Hatch (making the temporary rules for qualified conservation contributions permanent and eliminating the charitable deduction for conservation easements on golf course property). See also the Conservation Easement Incentive Act of 2015 (H.R. 641, 114th Cong.), introduced by Senators Heller and Stabenow, (making the temporary rules for qualified conservation contributions permanent and expanding the provision to include special rules for Alaska Native Corporations).

Tax compliance issues relating to conservation easement deductions

Charitable deductions of qualified conservation contributions present particular policy and compliance issues. Valuation can be problematic because the measure of the fair market value of the easement (generally, the difference in fair market value before and after placing the restriction on the property) can be highly speculative, considering that, in general, there is no market and thus no comparable sales data for such easements.

Tax compliance issues related to valuing contributions of non-cash property, in general

The valuation of contributions of property presents significant tax compliance challenges. The determination of fair market value creates a significant opportunity for error or abuse by taxpayers making charitable contributions of property.[37] To the extent that taxpayers claim inflated valuations that are not corrected by the IRS, the Treasury loses revenue that should be collected under present law because charitable contribution deductions are greater than are warranted. Whether due to mistake, incompetence, misunderstanding of the law or facts, or efforts to evade taxes, valuation misstatements are common.[38]

In addition, valuation is a difficult and resource intensive issue for the IRS to identify, audit, and litigate. The IRS must determine which values are suspect, prepare its own appraisal of the questioned property, and persuade a court that the IRS's value, and not the taxpayer's, is correct. Such hurdles often mean, as a practical matter, that attacking valuation misstatements in the charitable contribution context is not a high priority for the IRS because the probable revenue collected does not compare favorably with the resource cost (at least when compared to other tax compliance areas).

Unlike in an arm's length negotiation, in a charitable contribution situation, the interests of a donor and a donee organization are not adverse. A donee organization may have no knowledge of the amount a donor has claimed as the value of the easement and, even if known, has no incentive to question a donor's inflated value because there is no countervailing tax consequence to the donee if a donor inflates the value of contributed property, *i.e.*, the donee generally does not pay tax on the receipt of the contribution or a subsequent disposition of the contributed property. Some donees may even directly or indirectly support an inflated value in order to secure a desired gift. Such circumstances cause the valuation of property in the charitable contribution context to be a particularly difficult determination.

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[37] The Treasury Inspector General for Tax Administration estimates that more than 273,000 taxpayers claimed approximately $3.8 billion in potentially unsubstantiated non-cash contributions in tax year 2010, which resulted in an estimated $1.1 billion reduction in tax collected. Inspector General for Tax Administration, Department of the Treasury, *Many Taxpayers Are Still Not Complying With Noncash Charitable Contribution Reporting Requirements* (TIGTA 2013-40-009), December 20, 2012, p. 6.

[38] Some researchers have noted the spike in the number of taxpayers making donations of exactly $500, the threshold beyond which taxpayers are required to submit further reports of the donation, such as property type, name of the recipient, and other details. This spike at the $500 donation level may be indicative of valuation and compliance problems. However, without further information, this evidence is only suggestive. See Deena Ackerman and Gerald Auten, "Tax Expenditures for Noncash Charitable Contributions," *National Tax Journal*, vol. 64, June 2011, pp. 651-688.

In recent years, the Congress has responded to these concerns by enacting several targeted provisions designed to increase certainty and limit valuation abuse in connection with charitable contributions of difficult-to-value property. In 2004, for example, the Congress enacted provisions regarding the deductibility of charitable contributions of used motor vehicles and intellectual property.[39] In 2006, the Congress enacted additional provisions that addressed concerns about valuation of charitable contributions, including provisions: (1) imposing additional requirements for deducting contributions of clothing and household items; (2) restricting charitable deductions for contributions of taxidermy property; (3) limiting deductions for contributions of certain historic preservation easements; (4) imposing new standards for qualified appraisers and qualified appraisals; (5) lowering the thresholds for imposing accuracy related penalties in the case of gross valuation misstatements; and (6) imposing penalties on appraisers who participate in appraisals that result in a substantial or gross valuation misstatement.[40]

[39] American Jobs Creation Act of 2004, Pub. L. No. 108-357, secs. 882, 884. Under the vehicle provision, where a vehicle will not be used by the donee charity for its charitable purpose, the donor's deduction generally is limited to the gross proceeds from the sale of the vehicle. Sec. 170(f)(12). In the case of a contribution of intellectual property (such as a patent), the donor's initial deduction generally is the taxpayer's basis in the property (or, if less, the fair market value of the property). The donor may, however, take subsequent deductions as the donee charity receives income properly allocable to the intellectual property, if certain requirements are satisfied. Secs. 170(e)(1)(B)(iii) & 170(m).

[40] Pension Protection Act of 2006, Pub. L. No. 109-280, secs. 1213, 1214, 1216, 1219.

III. TAX INCENTIVES FOR HIGHER EDUCATION

A. Tax Incentives For Current Higher Education Expenses

Present Law

Hope credit and American opportunity tax credit

Hope credit

For taxable years beginning before 2009 and after 2017, individual taxpayers are allowed to claim a nonrefundable credit, the Hope credit, against Federal income taxes of up to $1,950 (estimated 2015 level) per eligible student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree or certificate program.[41] The Hope credit rate is 100 percent on the first $1,300 of qualified tuition and related expenses, and 50 percent on the next $1,300 of qualified tuition and related expenses (estimated for 2015). These dollar amounts are indexed for inflation, with the amount rounded down to the next lowest multiple of $100. Thus, for example, a taxpayer who incurs $1,300 of qualified tuition and related expenses for an eligible student is eligible (subject to the AGI phaseout described below) for a $1,300 Hope credit. If a taxpayer incurs $2,600 of qualified tuition and related expenses for an eligible student, then he or she is eligible for a $1,950 Hope credit.

The Hope credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $55,000 and $65,000 ($110,000 and $130,000 for married taxpayers filing a joint return), as estimated by the JCT staff for 2015. The beginning points of the AGI phaseout ranges are indexed for inflation, with the amount rounded down to the next lowest multiple of $1,000. The size of the phaseout ranges for single and married taxpayers are always $10,000 and $20,000 respectively.

The qualified tuition and related expenses must be incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer. The Hope credit is available with respect to an individual student for two taxable years, provided that the student has not completed the first two years of post-secondary education before the beginning of the second taxable year.

The Hope credit is available in the taxable year the expenses are paid, subject to the requirement that the education is furnished to the student during that year or during an academic period beginning during the first three months of the next taxable year. Qualified tuition and related expenses paid with the proceeds of a loan generally are eligible for the Hope credit. The repayment of a loan itself is not a qualified tuition or related expense.

A taxpayer may claim the Hope credit with respect to an eligible student who is not the taxpayer or the taxpayer's spouse (e.g., in cases in which the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent, the student is not entitled to claim a Hope credit

[41] Sec. 25A. For taxable years 2009-2017, the American Opportunity tax credit applies (discussed *infra*). Both the Hope credit and the American Opportunity tax credit (in the case of taxable years from 2009-2017) may be claimed against a taxpayer's alternative minimum tax liability.

for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of determining the amount of qualified tuition and related expenses paid by such parent (or other taxpayer) under the provision. In addition, for each taxable year, a taxpayer may claim only one of the Hope credit, the Lifetime Learning credit, or an above-the-line deduction for qualified tuition and related expenses with respect to an eligible student.

The Hope credit is available for qualified tuition and related expenses, which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of an eligible student at the institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of the student's degree program.

Qualified tuition and related expenses generally include only out-of-pocket expenses. Qualified tuition and related expenses do not include expenses covered by employer-provided educational assistance and scholarships that are not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and related expenses are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student (or the taxpayer claiming the credit) during the taxable year. The Hope credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

An eligible student for purposes of the Hope credit is an individual who is enrolled in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution. The student must pursue a course of study on at least a half-time basis. A student is considered to pursue a course of study on at least a half-time basis if the student carries at least one-half the normal full-time work load for the course of study the student is pursuing for at least one academic period that begins during the taxable year. To be eligible for the Hope credit, a student must not have been convicted of a Federal or State felony for the possession or distribution of a controlled substance.

Eligible educational institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. To qualify as an eligible educational institution, an institution must be eligible to participate in Department of Education student aid programs.

American opportunity tax credit ("AOTC")

The AOTC refers to modifications to the Hope credit that apply for taxable years beginning in 2009 through 2017. The maximum allowable modified credit is $2,500 per eligible student per year for qualified tuition and related expenses paid for each of the first four years of the student's post-secondary education in a degree or certificate program. The modified credit rate is 100 percent on the first $2,000 of qualified tuition and related expenses, and 25 percent on the next $2,000 of qualified tuition and related expenses. For purposes of the modified credit, the definition of qualified tuition and related expenses is expanded to include course materials.

The modified credit is available with respect to an individual student for four years, provided that the student has not completed the first four years of post-secondary education before the beginning of the fourth taxable year. Thus, the modified credit, in addition to other modifications, extends the application of the Hope credit to two more years of post-secondary education.

The modified credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $80,000 and $90,000 ($160,000 and $180,000 for married taxpayers filing a joint return). The modified credit may be claimed against a taxpayer's AMT liability.

Forty percent of a taxpayer's otherwise allowable modified credit is refundable. However, no portion of the modified credit is refundable if the taxpayer claiming the credit is a child to whom section 1(g) applies for such taxable year (generally, any child who has at least one living parent, does not file a joint return, and is either under age 18 or under age 24 and a student providing less than one-half of his or her own support).

Lifetime Learning credit

Individual taxpayers may be eligible to claim a nonrefundable credit, the Lifetime Learning credit, against Federal income taxes equal to 20 percent of qualified tuition and related expenses incurred during the taxable year on behalf of the taxpayer, the taxpayer's spouse, or any dependents.[42] Up to $10,000 of qualified tuition and related expenses per taxpayer return are eligible for the Lifetime Learning credit (i.e., the maximum credit per taxpayer return is $2,000). In contrast with the Hope credit, the maximum credit amount is not indexed for inflation.

In contrast to the Hope and AOTC, a taxpayer may claim the Lifetime Learning credit for an unlimited number of taxable years. Also in contrast to the Hope and AOTC, the maximum amount of the Lifetime Learning credit that may be claimed on a taxpayer's return does not vary based on the number of students in the taxpayer's family—that is, the Hope credit is computed on a per student basis while the Lifetime Learning credit is computed on a family-wide basis. The Lifetime Learning credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $55,000 and $65,000 ($110,000 and $130,000 for married taxpayers filing a joint return) in 2015. These phaseout ranges are the same as those for the Hope credit as it applies for tax years beginning before 2009 and after 2017, and are similarly indexed for inflation.

[42] Sec. 25A. The Lifetime Learning credit may be claimed against a taxpayer's AMT liability.

The Lifetime Learning credit is available in the taxable year the expenses are paid, subject to the requirement that the education is furnished to the student during that year or during an academic period beginning during the first three months of the next taxable year. As with the Hope credit and AOTC, qualified tuition and related expenses paid with the proceeds of a loan generally are eligible for the Lifetime Learning credit. Repayment of a loan is not a qualified tuition expense.

As with the Hope credit and AOTC, a taxpayer may claim the Lifetime Learning credit with respect to a student who is not the taxpayer or the taxpayer's spouse (e.g., in cases in which the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent by a parent or other taxpayer, the student may not claim the Lifetime Learning credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of the provision.

A taxpayer may claim the Lifetime Learning credit for a taxable year with respect to one or more students, even though the taxpayer also claims a Hope or AOTC for that same taxable year with respect to other students. If, for a taxable year, a taxpayer claims a Hope credit or AOTC with respect to a student, then the Lifetime Learning credit is not available with respect to that same student for that year (although the Lifetime Learning credit may be available with respect to that same student for other taxable years). As with the Hope credit and AOTC, a taxpayer may not claim the Lifetime Learning credit and also claim the section 222 deduction for qualified tuition and related expenses.

As with the Hope credit, the Lifetime Learning credit is available for qualified tuition and related expenses, which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of a student at the institution. However, unlike the AOTC, the Lifetime Learning credit is not available for the expenses of course materials. Eligible higher education institutions are defined in the same manner for purposes of both the Hope and Lifetime Learning credits. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the Lifetime Learning credit. Expenses involving sports, games, or hobbies are not qualified tuition expenses unless this education is part of the student's degree program, or the education is undertaken to acquire or improve the job skills of the student.

Qualified tuition and related expenses for purposes of the Lifetime Learning credit include tuition and fees incurred with respect to undergraduate or graduate-level courses.[43] Additionally, in contrast to the Hope credit and AOTC, the eligibility of a student for the Lifetime Learning credit does not depend on whether the student has been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

As with the Hope credit and AOTC, qualified tuition and fees generally include only out-of-pocket expenses. Qualified tuition and fees do not include expenses covered by employer-

[43] As explained above, the Hope credit is available only with respect to the first two years of a student's undergraduate education. The AOTC is available only with respect to the first four years of a student's post-secondary education.

provided educational assistance and scholarships that are not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and fees are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student during the taxable year (such as employer-provided educational assistance excludable under section 127). The Lifetime Learning credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

Deduction for Tuition and Fees

An individual is allowed a deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The deduction is allowed in computing adjusted gross income. The term qualified tuition and related expenses is defined in the same manner as for the Hope and Lifetime Learning credits, and includes tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer may claim a personal exemption, at an eligible institution of higher education for courses of instruction of such individual at such institution.[44] The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic period beginning during the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

The maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for other individuals whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption deduction may be claimed by another taxpayer for the taxable year. The deduction is not available for taxable years beginning after December 31, 2014.

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual, and by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of: (1) income from certain U.S. savings bonds used to pay higher education tuition and fees; and (2) income from a Coverdell education savings account.[45] Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for the qualified tuition deduction. No deduction is allowed for any expense for which a deduction is otherwise allowed or with respect to an individual for whom a Hope or Lifetime Learning credit is elected for such taxable year.

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[44] The deduction generally is not available for expenses with respect to a course or education involving sports, games, or hobbies, and is not available for student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

[45] Sec. 222(c). These reductions are the same as those that apply to the Hope and Lifetime Learning credits.

Pell Grants

The Federal Pell Grant Program provides need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access to postsecondary education. The maximum Pell Grant for the 2014-2015 award year is $5,730. Federal student aid, including Pell Grants, can be used to cover a variety of costs, including tuition and fees, books, supplies, transportation, living expenses such as room and board; and an allowance for costs expected to be incurred for dependent care for a student with dependents.

Treatment of scholarships and fellowship grants

Present law provides an exclusion from gross income and wages for amounts received as a qualified scholarship by an individual who is a candidate for a degree at a qualifying educational organization.[46] Generally, the exclusion does not apply to amounts received by a student that represent payment for teaching, research, or other services by the student as a condition for receiving the scholarship.

In general, a qualified scholarship is any amount received by such an individual as a scholarship (including a Pell Grant) or fellowship grant if the amount is used for qualified tuition and related expenses. Qualified tuition and related expenses include tuition and fees required for enrollment or attendance, or for fees, books, supplies, and equipment required for courses of instruction, at the qualifying educational organization. This definition does not include regular living expenses, such as room and board. A qualifying educational organization is an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

B. Existing Proposals

The Working Group considered three options, each of which is intended to consolidate and simplify the tax benefits for taxpayers who incur expenses for higher education. While each of these options include refundability, other consolidation and simplification proposals could be designed without this feature.

Option 1: The American Opportunity Tax Credit Permanence and Consolidation Act of 2013 (S. 835, 113th Cong.)

The American Opportunity Tax Credit Permanence and Consolidation Act of 2013 (S. 835, 113th Cong.), introduced by Senator Schumer, would repeal the Lifetime Learning credit and modify the AOTC, such that the credit value is increased and the credit is made permanent. Under the proposal, for tuition paid with respect to a student who attends school on a half-time or greater basis, a taxpayer is eligible for a 100-percent credit on the first $2,000 of tuition expenses and a 25-percent credit on the next $4,000 of tuition expenses, thus increasing the maximum credit value to $3,000. For a taxpayer who attends school on a less-than-half-time basis, the

[46] Secs. 117(a), 3121(a)(20).

credit is equal to 30-percent of tuition paid, up to $10,000. Under the proposal, 40-percent of the credit amount is refundable.

The proposal expands the phaseout range of the credit, such that the credit begins phasing out at modified AGI of $80,000 and is fully phased out at $100,000 for non-joint filers, and begins phasing out at modified AGI of $160,000, and is fully phased out at $200,000 for joint-filers. The proposal creates a lifetime maximum benefit of $15,000 in tax credits. Thus, it eliminates the requirement that a taxpayer must be attending the first two years (in the case of the Hope credit) or the first four years (in the case of the AOTC) of post-secondary education.

The proposal modifies the tax treatment of Pell Grants. Under the proposal, Pell Grants would be excludable from a taxpayer's gross income without regard to which expenses the Pell Grant funds were applied, so long as the proceeds are spent in accordance with the Pell Grant program. Additionally, the proposal modifies the rule in the present-law AOTC such that taxpayers would be able to treat the entire amount of the Pell Grant as used to pay expenses other than qualified tuition and related expenses. The effect of this provision is to reduce the amount by which a taxpayer would otherwise be required to reduce his or her qualified tuition amount (because the entirety of the Pell Grant, under the proposal described above, would now be excluded from income). This in effect provides for a "stacking" rule, ensuring that Pell Grants are deemed first to cover non-tuition expenses.

Option 2: The President's Fiscal Year 2016 Budget Proposal

With respect to tax benefits for current educational expenses, the President's fiscal year 2016 budget proposal modifies the AOTC, in addition to making it permanent. The proposal expands the AOTC to cover the first five years of post-secondary education, rather than the first four years under present law. The proposal also allows students who are enrolled on a less than half-time basis to claim 50-percent of the AOTC. In addition, the proposal would increase the portion of the AOTC that is refundable, providing that the first $1,500 of the allowable credit is refundable. This is a departure from present law in two ways: 1) it increases the maximum refundability of the credit from $1,000 to $1,500; and 2) it stacks the refundable portion of the credit first, rather than allocating it pro rata, as under present law. Finally, the proposal provides that, in the case of certain students who do not provide more than one-half of their own support, such students would no longer be able to claim the AOTC on their own return (whereas under present law they are currently able to claim the non-refundable portion of the credit).

The proposal fiscal year 2016 budget proposal repeals the Lifetime Learning Credit. Thus, under the proposal, taxpayers may only receive tax credits for tuition paid for the first five years of post-secondary education.

Finally, the proposal contains similar provisions with respect to Pell Grants that are contained in S. 835, described above.

Option 3: American Institute of Certified Public Accountants (AICPA) Proposal

The AICPA proposal combines the AOTC, Hope, and Lifetime Learning credits, and the tuition deduction, into one credit for all post-secondary education. The credit is fully refundable and, like S. 835 (described above), would have a lifetime cap. The credit rate, phaseout range of the credit, and the level at which the lifetime cap are set, is not specified.

Additionally, the AICPA proposal would create a uniform definition of higher education expenses, and would coordinate the phaseout ranges of all of those benefits so as to provide uniformity across all of the benefits.

C. Discussion of Options

As described in the present-law section above, a variety of tax code provisions allow taxpayers to reduce the cost of post-secondary education. The existence of these numerous tax incentives for education may mean that more taxpayers are able to take advantage of one or more education incentives. However, understanding the tax benefits provided by the different provisions, the various eligibility requirements, the interactions between different incentives and provisions within each incentive, and the recordkeeping and reporting requirements may be time consuming and confusing for taxpayers who are interested in reducing their current after-tax education expenses or saving for future expenses. Specific sources of complexity include the difficulty of comparing the benefit offered by the competing incentives, the absence of a uniform definition of qualifying education expenses, different income limitations for the different incentives, and provisions designed to prevent duplicative tax benefits with respect to the same expenses. While the Working Group makes no specific recommendations, the Committee may want to explore proposals to consolidate existing credits to reduce complexity and improve compliance.

Consolidation of benefits

Because the AOTC, Hope and Lifetime Learning credits have differing credit percentages applied to different base amounts of qualifying expenses, families eligible for all credits must complete separate calculations to calculate their total education credits. Additionally, beginning in 2018, when the AOTC is scheduled to expire, certain families with a child eligible for the Hope credit will need to calculate separately both the value of the Lifetime Learning credit (and the tuition deduction, if that deduction is subsequently extended through 2018) and the value of the Hope credit to see which provides the greater benefit. The complexity involved in maximizing available credits is compounded for families with more than one student in college at the same time. Such complexities associated with multiple credits make it difficult for taxpayers to take into account the value of the credits in budgeting for college expenses, while the income-related phaseouts of the credits create both computational and transactional complexity for taxpayers.

All three proposals reviewed by the Working Group attempt to simplify the landscape of tax benefits for higher education by combining the credits (and the currently-expired deduction) for tuition expenses into one credit. By providing a fixed credit base and percentage (in the case of the President’s budget proposal), taxpayers may find it easier to compute the value of the credit. By providing for a uniform phaseout range (in the case of all three proposals), taxpayers may encounter less difficulty in understanding which, if any, benefits they qualify for.

However, certain aspects of these proposals may create new complexities for taxpayers and the IRS in its administration of the credits. For instance, both S. 835 and the AICPA proposal institute a lifetime cap on the value of the credit. Such a cap would require taxpayers to track the value of the credits claimed from year to year. Such recordkeeping could be difficult for some taxpayers, especially if in prior years the credit was claimed by a parent for expenses incurred on the individual's behalf, which may require the individual to know what was claimed on his or her parents' prior tax returns. Additional rules would need to be established so as to allocate the credits in the case of joint filers who subsequently filed separately. Furthermore, in order to enforce the limit, the IRS would need to establish systems so as to track the credits taken by each taxpayer over many years.

Additionally, in consolidating tax benefits for higher education, there may be opportunities to reduce overpayments that result from innocent human error, administrative mistake, or fraud. A recent Inspector General report highlighted the potential magnitude of these problems. The Committee may also want to explore how to reduce the incidences of underpayments, including how to make it easier for taxpayers to accurately determine and claim the full amount of the incentives available to them under the tax code. A 2012 GAO report found that a significant number of taxpayers failed to claim a tax benefit for higher education that they were eligible for.[47]

Pell Grant simplification

Both S. 835 and the President's proposal contain a proposal to simplify the tax treatment of Pell Grants. Under present law, Pell Grants are generally treated as a scholarship, and thus excluded from taxable income, if the proceeds are allocated towards tuition and fees, but included in taxable income if deemed used for other purposes, such as room and board. Conversely, any Pell Grant amount that is deemed to be treated as a scholarship will reduce the amount of tuition paid, for purposes of computing a taxpayer's Hope, AOTC, or Lifetime Learning credit. Taxpayers may find the calculations necessary to compute the maximum economic benefit from both Pell Grants and the tax credits to be difficult and confusing, and as a result may not receive the maximum Federal benefits available to them.

Both S. 835 and the President's proposal contain provisions that 1) exclude the entirety of Pell Grant amounts from a taxpayer's income, without regard to the use of those proceeds; and 2) for purposes of reducing the amount of tuition paid for purposes of computing the education tax credits, would deem that Pell Grant amounts were first attributable to non-tuition and fee expenses.[48]

[47] U.S. Government Accountability Office, Higher Education: Improved Tax Information Could Help Families Pay for College (2012), http://www.gao.gov/assets/600/590970.pdf.

[48] S. 835 and the President's proposal differ slightly on this point. S. 835 would deem a Pell Grant to be allocable to non-tuition expenses to the extent the taxpayer has paid such expenses, and expenses in excess of that amount are allocable to tuition and fees, and reduce the tuition paid. The President's proposal deems all Pell Grant funds to be considered used for non-tuition expenses, even if those funds exceeded such expenses. However, at current Pell Grant levels, this may be a difference without consequence, as generally an individual's living expenses in any given year are estimated to exceed the maximum Pell Grant amount.

The Working Group notes that these proposals may provide simplification for taxpayers who currently need to determine the most tax-efficient way to allocate these funds.

IV. TAX ADMINISTRATION AND SIMPLIFICATION PROPOSALS

A. Identity Theft Protections

Present Law and Background

In general

Disparate elements in the tax laws and administration are implicated in identity theft. The aspects of tax law and practice exploited by identity thieves can be grouped generally into two groups: those factors that are relevant to prevention of the fraudulent claims and those that are relevant to investigation and prosecution of identity thieves. In the former category are the information return filing schedule that precludes real-time document matching by the IRS during filing season. . In the latter category are the provisions protecting confidentiality of tax information and the extent to which such information may be used for non-tax criminal matters.[49]

Tax provisions and practices relevant to identification and prevention of fraudulent refund claims

Despite extensive information reporting requirements, third-party reporting is limited in its ability to aid early detection and prevention of fraud during the filing season. Through the filing of tax returns, information received from third parties, and its own audits and investigations, the IRS has a significant amount of information about U.S. taxpayers. That information enables the IRS to select and examine the accuracy of income tax returns, but may be unavailable during the filing season to verify accuracy of refund claims as they are received.

The individual income tax filing season is the period beginning in January when the IRS first accepts for filing income tax returns for the preceding calendar year and ending April 15, the due date (absent an extension) for individual income tax returns. Although copies of information reports that payors must provide to individuals are generally due to the individuals no later than January 31 following the close of the calendar year,[50] the person preparing such reports may not be not required to submit the related information return to the IRS until a later date. The due date for information returns that are filed electronically is March 31,[51] but information returns of various types that are filed on paper are due earlier, on the last business day of February in the year after the taxable year in question.[52] There is not a similar disparity in filing due dates for individual income tax returns dependent upon whether the returns are filed electronically or on paper.

[49] Section 6103.

[50] Section 6051.

[51] Sections 6011(e) and 6071(b); Treas. Reg. sec. 301.6011-2(b), mandates use of magnetic media by persons filing information returns identified in the regulation or subsequent or contemporaneous revenue procedures and permits use of magnetic media for all others.

[52] Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

The most significant information report with respect to identifying fraudulent refund claims may be the information reports on wages paid to, and taxes withheld from, employees. That information is compiled in Form W-3, with copies of all Form W-2s attached, and submitted directly to the Social Security Administration by the employer.[53] The information on the Form W-3 is not available to the IRS until it has been processed by Social Security Administration, which may not be completed during the filing season. As a result, third-party reporting is limited as a tool to identify and reject fraudulent claims. Delay in processing a refund beyond the filing season presents the possibility that the IRS must pay interest on the refund.[54]

Tax provisions and practices relevant to investigation and prosecution of fraudulent refund claims

Both Federal and State law enforcement agencies may have an interest in investigating and prosecuting persons who claim fraudulent identity theft refund claims. In prosecuting any offenses arising from the actions of the thief, questions arise about the extent of the ability of the IRS to cooperate with those law enforcement officials, due to the restrictions on disclosure of tax return information under Code section 6103. For example, if the stolen identity is used by an undocumented worker to obtain employment and file a return reporting his own wages and claiming a refund of taxes withheld from those wages, the IRS must determine whether the return filed should be considered to be that of the victim or of the thief. As a result, questions may arise as to whether the victim may consent to disclosure of information to law enforcement. Such cases require careful examination of the facts and the applicability of exceptions to the general rule against disclosure. A brief history of the nondisclosure rules and the development of the exceptions under which disclosure is permitted for purposes of non-tax criminal prosecution is provided below.

General rule of nondisclosure and historical background[55]

Prior to 1976, pursuant to Treasury regulation, a U.S. Attorney or an attorney of the Justice Department could obtain tax information in any case "where necessary in the performance of his official duties." Tax information obtained by the Justice Department could be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United States was a party. Tax information obtained by both the Justice Department and U.S. Attorneys was used in investigating and prosecuting criminal activities. In addition, in connection with the enforcement of non-tax criminal statutes, tax information was made available to each executive department and other establishments of the Federal government in connection with matters officially before them, on the written request of the head of the agency. Tax information so obtained could be used as evidence in proceedings before any "department or establishment" of the United States or any proceedings in which the United States was a party.

[53] Treas. Reg. sec. 31.6051-2; IRS, "Filing Information Returns Electronically," Pub. 3609 (Rev. 12-2011); Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

[54] Sec. 6611(e).

[55] This background generally is based on Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976 (JCS-33-76) December 29, 1976 at 322-323; 1976-3 C.B. 314 (Vol. 2), p. 326.

Congress enacted section 6103 in 1976 after a comprehensive review of the handling of tax return information. Section 6103 treats returns and return information as confidential. Returns and return information are not to be disclosed unless such disclosure is specifically authorized in section 6103 or other provision of the Code.[56] Criminal and civil sanctions apply to the unauthorized disclosure or inspection of returns and return information (secs. 7213, 7213A, and 7431). In its review of the areas in which returns and return information were subject to disclosure, Congress sought to balance a particular office or agency's need for the information with the citizen's right to privacy and the related impact of the disclosure upon the necessary continuation of voluntary compliance with the Federal tax assessment system.

Thus, present law provides that both returns and return information generally should be treated as confidential and neither may be disclosed except in those limited circumstances in which Congress determines that disclosure is warranted. "Return" means a tax or information return, declaration of estimated tax, or claim for refund which, under the Code, is required (or permitted) to be filed on behalf of, or with respect to, any person. It also includes any amendment, supplemental schedule or attachment filed with the tax return, information return, declaration of estimated tax or claim for refund. For example, Form W-2, Wage and Tax Statement, is an information return, and is the return of both the employer who filed it with the IRS and the employee with respect to whom it was filed. The Code defines "return information" broadly to include a taxpayer's identity.[57]

"Taxpayer return information" is another defined term for purposes of section 6103 and is a subset of return information. Taxpayer return information means return information that is filed with, or furnished to, the IRS by or on behalf of the taxpayer to whom such return information relates. For example, information filed with the IRS by a taxpayer's attorney or

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[56] See section 6103(c) (disclosure by taxpayer consent); 6103(d) (disclosure to State tax officials); 6103(e) (disclosure to persons having material interest); 6103(f) (disclosure to committees of Congress); 6103(g) (disclosure to the President and certain other persons); 6103(h) (disclosure to Federal officers and employees for tax administration purposes); 6103(i) disclosure to Federal officer and employees for administration of Federal laws not relating to tax administration); 6103(j) (statistical use); 6103(k) (disclosure of certain returns and return information for tax administration purposes); 6103(l) (disclosure for purposes other than tax administration); 6103(m) (disclosure of taxpayer identity information); 6103(n) (tax administration contractors); and 6103(o) (disclosure of return and return information with respect to certain taxes).

[57] Identity refers to the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (TIN or SSN or a combination thereof). In addition to taxpayer identity, return information includes any information gathered by the IRS with regard to taxpayer's liability under the Code, such as the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments; whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110; any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an inspection under section 6110; any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement; and any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)). It does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

accountant is taxpayer return information. Information transcribed directly from a taxpayer's return is taxpayer return information. The distinction between return information and taxpayer return information is significant for the disclosures non-tax criminal matters for which a court order generally is required to obtain taxpayer return information.

Exception for disclosure for non-tax criminal purposes

In making the access to tax information for non-tax criminal purposes more restrictive, Congress noted that in years before 1977, Federal agencies had almost unfettered access to tax information for non-tax criminal purposes and such non-tax access was inconsistent with the premise that the American citizen's tax information should be afforded a degree of privacy similar to that given to private papers in a private home. The information "that the American citizen is compelled by our tax laws to disclose to the Internal Revenue Service is entitled to essentially the same degree of privacy as those private papers maintained in his home. [Prior] law and practice [did] not afford him that protection -- the Justice Department and other Federal agencies, as a practical matter, being able to obtain that information for nontax purposes almost at their sole discretion."[58]

To afford the taxpayer the appropriate degree of privacy and balance the need for tax information in the investigation and prosecution of non-tax criminal matters, Congress decided that the Justice Department and any other Federal agency responsible for the enforcement of a non-tax criminal law should be required to obtain court approval for the inspection of a taxpayer's return or return information. Notably, however, Congress did not require the court approval procedure with respect to information which is derived from a source other than the taxpayer or filed on behalf of such taxpayer, such as the information developed by an examining agent from third-parties or public records. A court order by a Federal district court judge or magistrate is generally required to obtain returns and information submitted by the taxpayer or the taxpayer's representative to the IRS (taxpayer return information). The court order process is ex parte, meaning that there is no right of notification or participation of the defendant in the proceeding.

The order can be granted upon a determination where (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed, (2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and (3) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source. With respect to terrorist activities, since 2001, an order may be granted if there is (1) reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to a terrorist incident, threat or activity and (2) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat or activity. Pursuant to ex parte court order, returns and return information may be disclosed for purposes of locating a fugitive from justice.

[58] S. Rep. No. 94-938 (94th Cong. June 10, 1976), p. 328; 1976-3 C.B. (Vol. 3) 49, p. 366.

Because a court order is not required for the disclosure of tax information obtained from a source other than the taxpayer, this authority allows the IRS to disclose return information (other than taxpayer return information) to the appropriate Federal officials of possible violations of Federal criminal law, and to respond to requests from the head of any Federal agency and certain other Federal officials responsible for non-tax Federal criminal purposes. The IRS may also disclose return information to Federal and State law enforcement agencies in cases of imminent danger of death or physical injury.

IRS Pilot Program for cooperation with local authorities

On its website, the IRS describes the Identity Theft Victim Disclosure Waiver Process, a strategy developed by the IRS to permit greater cooperation with state and local law enforcement. Under this process, Federal tax returns and return information associated with the accounts of known and suspected victims of identity theft is made available to non-Federal law enforcement officers with the express written consent of those victims. Prior to disclosing any tax information, the IRS requires that victims sign a waiver authorizing the release of information to the designated State or local law enforcement official pursuing the investigation. First launched in Florida in April 2012, the process is now being implemented throughout the United States.[59]

Background regarding identity theft proposals

The options reviewed by the Working Group (described below) contained some or all the following five provisions dealing with combating identity theft: (i) extending IRS authority to require truncated social security numbers on Form W-2; (ii) adding civil and criminal penalties specifically targeted at identity theft; (iii) providing notification to taxpayer of suspected identity theft; (iv) providing a single point of contact for identity theft victims; and (v) studying the expansion of IP PIN system for prevention of identity theft tax fraud. Below is a description of the present law underlying each of these proposals.

Truncated SSN

Section 6051(a) generally requires that an employer provide a written statement to each employee on or before January 31 of the succeeding year showing the remuneration paid to that employee during the calendar year and other information including the employee's Social Security number ("SSN"). The Form W-2, Wage and Tax Statement, is used to provide this information to employees and contains the taxpayer's SSN, wages paid, taxes withheld, and other information.

Other statements provided to taxpayers, such as Forms 1099, generally issued to any individual or unincorporated business paid in excess of $600 per calendar year for services rendered, are subject to rules under section 6109 dealing with identifying numbers. Section 6109 requires that the filer provide the taxpayer's "identifying number" which is an individual's SSN

[59] See, http://www.irs.gov/Individuals/Law-Enforcement-Assistance-Pilot-Program-on-Identity-Theft-Activity-Involving-the-IRS. See also, IRS, "Disclosure Issues Related to Identity Theft," PMTA 2012-5, available at http://www.irs.gov/uac/Legal-Advice-Issued-to-Program-Managers.

except as otherwise specified in regulations.[60] Accordingly, for Forms 1099, the Treasury Department has the authority to require or permit filers to use a number other than a taxpayer's SSN.

Penalties for Tax Identity Theft

The Code does not contain civil or criminal penalties specifically targeted at identity theft. Instead, most claims for tax refund-related identity theft are prosecuted as false claims under section 287 of title 18 and are classified as felonies, generally punishable by a penalty of up to $250,000 and imprisonment for up to five years. In addition, section 1028A of title 18 provides for the statutory crime of "aggravated identity theft" in cases where the identity of another individual is used to commit enumerated crimes and generally adds an additional two year prison term (herein the "Aggravated Identity Theft Statute"). However, that section does not cover and specifically carves out any tax offenses under the Code or tax-related offenses under Title 18, including conspiracy to defraud the government with respect to claims, false, fictitious or fraudulent claims, or conspiracy.

The Code includes two provisions, sections 7206 and 7207, that cover fraud and false statements and fraudulent returns. Sections 7206(1) and (2) cover situations that could potentially involve identity theft. Those provisions make it a felony, punishable by a penalty of up to $100,000 ($500,000 for a corporation), imprisonment for up to three years, or both, plus prosecution costs, for a person who: (i) makes a false declaration under penalties of perjury; and (ii) aids or assists in the preparation or presentation of any return or other document that is false as to a material matter. Section 7207 treats as a misdemeanor the willful delivery or disclosure to any officer or employee of the IRS of fraudulent or false lists, returns, accounts, statements, or other documents, punishable by a penalty of up to $10,000 ($50,000 for corporations), imprisonment for up to a year, or both. However, this penalty is generally applied to taxpayers who provide false documents to revenue agents during an audit.

Notification

The Code does not generally require that the Secretary inform a taxpayer if possible unauthorized use of the taxpayer identity is observed.

Single Point of Contact

There is currently no single IRS point of contact for identity theft victims.

In October 2008, the IRS established the Identity Protection Specialized Unit (IPSU), a unit dedicated to assisting victims of identity theft. The IPSU coordinates with various IRS functions to handle identity theft cases.[61] If a victim thinks he or she is not being properly served by the IRS or the IPSU, the taxpayer may be eligible for assistance from the Taxpayer

[60] Treas. Reg. sec. 301.6109-1.

[61] Inspector General for Tax Administration, Department of the Treasury, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (TIGTA 2012-40-050), May 2012, available at http://www.treasury.gov/tigta/auditreports/2012reports/201240050fr.pdf.

Advocate Service (TAS) as in the case of economic hardship caused by the theft. In such instances, the TAS will assign a case advocate to the taxpayer's account.

Study of Expansion of IP PIN system

In 2011, the IRS launched a pilot program to test the Identity Protection Personal Identification Number (IP PIN). The IP PIN is a unique identifier that authenticates a return filer as the legitimate taxpayer at the time the return is filed. For the 2014 filing season, the IRS issued IP PINs to more than 1.2 million taxpayers who had identity theft markers on their tax accounts.[62] The IRS verified the presence of the IP PIN at the time of filing, and rejected returns associated with a taxpayer's account where an IP PIN had been assigned but was missing.

B. Existing Identity Theft Proposals

The Working Group reviewed four proposals to combat identity theft: (i) the Chairman's (Baucus) Staff Discussion Draft ("Baucus proposal"); (ii) the Identity Theft and Tax Fraud Prevention Act of 2015, S. 676, introduced by Senator Nelson (March 2015) ("Nelson proposal"); (iii) the Tax Refund Theft Prevention Act of 2014, S. 2736, introduced by Senators Hatch and Wyden (July 2014) ("Hatch-Wyden proposal"); and (iv) the Administration's Fiscal Year 2016 Revenue Proposals ("Administration proposal"). A table comparing these proposals follows the discussion below.

The Baucus, Nelson, Hatch-Wyden, and Administration proposals revise section 6051 to require employers to include an "identifying number" for each employee, rather than an employee's SSN, on Form W-2. This change will permit the Department of the Treasury to promulgate regulations requiring or permitting a truncated SSN on Form W-2, under authority currently provided in section 6109(d).

The Baucus, Nelson, and Hatch-Wyden proposals make it a felony under the Code, punishable by a penalty of up to $250,000 ($500,000 for a corporation), imprisonment for up to five years, or both, plus prosecution costs, for a person to use a stolen identity to file any return or other document and add this crime to the list of predicate offenses contained in the Aggravated Identity Theft Statute. The Administration proposal adds the tax-related offenses in Title 18 and the criminal tax offenses in Title 26 to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

The Administration proposal adds a $5,000 civil penalty to the Code to be imposed in tax identity theft cases on the individual who filed the fraudulent return.

The Baucus and Nelson proposals require the Secretary to notify the taxpayer as soon as practicable if the Secretary determines that there was an unauthorized use of a taxpayer's identity and if any person is criminally charged with respect to such unauthorized use.

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[62] Inspector General for Tax Administration, Department of the Treasury, *Identity Protection Personal Identification Numbers Are Not Provided to All Eligible Taxpayers* (TIGTA 2014-40-086), September 24, 2014, available at http://www.treasury.gov/tigta/auditreports/2014reports/201440086fr.html.

The Baucus and Hatch-Wyden proposals require, within six months of enactment, the Secretary of the Treasury (or his or her delegate) to establish new procedures to implement a single point of contact for taxpayers adversely affected by identity theft. These procedures are to ensure that any taxpayer whose return has been delayed or otherwise adversely affected due to identity theft is assigned one IRS employee contact who is responsible for the case. This person may be changed upon request of the taxpayer or where the employee ceases employment or is otherwise unavailable, or a change is required to meet IRS needs and the taxpayer is notified within five business days.

The Baucus proposal requires the Secretary of the Treasury (or his or her delegate) to provide a report to the Senate Finance Committee and the House Ways and Means Committee on the IRS's current IP PIN program. The report is due within one year of the date of enactment and must provide information about (i) the efficacy of the program in reducing tax fraud, (ii) whether such program can be expanded to include all taxpayers, and (iii) whether such program can be converted into an Internet system to allow taxpayers to authenticate their identity when e-filing. The Nelson proposal requires the Secretary of the Treasury (or his or her delegate) to issue a personal identification number to any individual requesting protection from identity theft-related tax fraud after the individual's true identity has been established and verified. The Nelson proposal also requires the Secretary of the Treasury to provide a report to Congress within 360 days after enactment analyzing the effectiveness of the IP PIN program in reducing tax fraud. The Hatch-Wyden proposal requires the Secretary of the Treasury, within two years after the date of enactment, to implement a program whereby any individual taxpayer can elect to have a unique password which will be required to be included on any Federal tax return he or she files. The Hatch-Wyden proposal also requires the Secretary of Treasury to study and provide a report on the program within three years of implementation of the expanded program to the Senate Finance Committee and the House Ways and Means Committee on the efficacy of the program in reducing tax fraud and include a recommendation as to whether the program should be mandatory.

C. Discussion of Identity Theft Options

A comprehensive solution is needed to the growing problem of identity theft. The Working Group discussed the importance of detecting and preventing tax fraud and protecting the integrity of the tax system, providing enhanced protection for taxpayers against fraudulent tax refund claims that are made with the use of stolen taxpayer identities, providing assistance to those taxpayers who have been victimized, and protecting individuals' privacy. Given the seriousness of this issue, the Committee needs to take action in this area, including the consideration of proposals such as those discussed above.

However, the Working Group did discuss the competing policy concerns of a proposal to require notice to victims of identity theft. On the one hand the taxpayer whose SSN or name was used to file a fraudulent return has an interest in knowing the facts upon which the Secretary made the determination that there was an unauthorized use of the taxpayer's identity, the existence of an investigation, the status of such investigation as open or closed, if any person is criminally charged, and information on how to best protect his or her identity. On the other hand, a third-party has a right to privacy and a right not to be prematurely identified and associated with a criminal investigation. For example, in some cases the incorrect use of a SSN may be the result of transposed digits or the fault of the tax return preparer.

Table 4.− ID Theft Proposals Compared

	Baucus Discussion Draft	Nelson, S. 676 (114th)	Hatch-Wyden, S. 2736 (113th)	Administration FY16
Truncated SSN	Extend authority of IRS to use truncated SSN to Form W-2	Extend authority of IRS to use truncated SSN to Form W-2	Extend authority of IRS to use truncated SSN to Form W-2	Extend authority of IRS to use truncated SSN to Form W-2
Criminal penalty	Makes felony to steal identity for document submitted to IRS; adds crime as predicate offense for aggravated identity theft statute	Specifies criminal penalty up to 5 years in prison, and $250,000 fine if tax-related ID theft	Makes felony to steal identity for document submitted to IRS; adds crime as predicate offense for aggravated identity theft statute	Adds all tax crimes to predicate offenses list in aggravated identity theft statute
Civil penalty	No change specified	No change specified	No change specified	Add $5,000 civil penalty to the Code
Notification	Treasury to notify TP if unauthorized identity use and if criminal charge	Treasury to notify TP if unauthorized identity use and if criminal charge	No change specified	No change specified
Contact	Single point of contact with IRS for identity theft victims	Single point of contact with IRS for identity theft victims	Single point of contact with IRS for identity theft victims	No change specified
Prevention	Treasury to study and report on expansion of PIN program	Expand PIN program to any individual after identity verified; Treasury to report on effectiveness	Treasury to give TP password for return and study and report	No change specified, but calls for regulation of preparers

D. Tax Return Due Date Simplification

Present Law

Persons required to file income tax returns[63] must file such returns in the manner prescribed by the Secretary, in compliance with due dates established in the Code, if any, or by regulations. The Code includes a general rule that requires income tax returns to be filed on or before the 15th day of the fourth month following the end of the taxable year, but certain exceptions are provided both in the Code and in regulations.

A partnership generally is required to file a Federal income tax return on or before the 15th day of the fourth month after the end of the partnership taxable year.[64] For a partnership with a taxable year that is a calendar year, for example, the partnership return due date (and the date by which Schedules K-1 must be furnished to partners) is April 15. However, a partnership is allowed an automatic five-month extension of time to file the partnership return and the Schedule K-1s (to September 15 in the foregoing example) by submitting an application on Form 7004 in accordance with the rules prescribed by the Treasury regulations.[65]

A C corporation or an S corporation generally is required to file a Federal income tax return on or before the 15th day of the third month following the close of the corporation's taxable year. For a corporation with a taxable year that is a calendar year, for example, the corporate return due date is March 15.[66] However, a corporation is allowed an automatic six-month extension of time to file the corporate return (to September 15 in the foregoing example) by submitting an application on Form 7004 in accordance with the rules prescribed by the Treasury regulations.[67]

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[63] Section 6012 provides general rules identifying who must file an income tax return, while other Code provisions referenced herein specifically address filing requirements of partnerships, corporations, and other entities.

[64] Secs. 6031, 6072.

[65] Sec. 6081. Treas. Reg. sec. 1.6081-2. See Department of the Treasury, Internal Revenue Service, *2011 Instructions for Form 1065, U.S. Return of Partnership Income,* p. 3. Unlike other partnerships, an electing large partnership is required to furnish a Schedule K-1 to each partner by the first March 15 following the close of the partnership's taxable year (sec. 6031(b)). For calendar year 2012 partnerships, for example, the due date is March 15, 2013 even though the partnership return due date is April 15, 2013. However, an electing large partnership is allowed an automatic six-month extension of time to file the partnership return and the Schedule K-1s by submitting an application on form 7004 in accordance with the rules prescribed by the Treasury Regulations. Treas. Reg. sec. 1.6081-2(a)(2).

[66] Secs. 6012, 6037, 6072. Section 6012(a)(2) provides that every corporation subject to taxation under subtitle A shall be required to file an income tax return. Section 6037, which governs the returns of S corporations, provides that any return filed pursuant to section 6037 shall, for purposes of chapter 66 (relating to limitations) be treated as a return filed by the corporation under section 6012. Section 6072, which sets forth the due dates for filing various income tax returns, provides that returns of corporations with a taxable year that is a calendar year under section 6012 (and section 6037 based on the language in that section) are due March 15.

[67] Section 6081(b) provides that a corporation is allowed an automatic extension of three months to file its income tax return if the corporation files the form prescribed by the Secretary and pays on or before the due date prescribed for payment, the amount properly estimated as its tax. However, section 6081(a) provides that the Secretary may grant an automatic extension of up to six months to file and the Treasury regulations do so provide. Treas. Reg. sec. 1.6081-3.

To assist taxpayers in preparing their income tax returns and to help the Internal Revenue Service ("IRS") determine whether such income tax returns are correct and complete, present law imposes a variety of information reporting requirements on participants in certain transactions.[68] The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments aggregating $600 or more in any taxable year to a single payee in the course of the payor's trade or business.[69] Payments subject to reporting include fixed or determinable income or compensation, but do not include payments for goods or certain enumerated types of payments that are subject to other specific reporting requirements.[70] Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock) paid to U.S. persons.[71]

The payor of amounts described above is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.[72] The statement must be supplied to taxpayers by the payors by January 31 of the year following the calendar year for which the return must be filed. Payors generally must file the information return with the IRS on or before the last day of February of the year following the calendar year for which the return must be filed,[73] unless they file electronically, in which event the information returns are due March 31.[74]

Payors also must report wage amounts paid to employees on information returns. For wages paid to, and taxes withheld from, employees, the payors must file an information return with the Social Security Administration ("SSA") by February 28 of the year following the calendar year for which the return must be filed.[75] However, the due date for information returns that are filed electronically is March 31.

Under the combined annual wage reporting ("CAWR") system, the SSA and the IRS have an agreement, in the form of a Memorandum of Understanding, to share wage data and to resolve, or reconcile, the differences in the wages reported to them. Employers submit Forms W-2, Wage and Tax Statement (listing Social Security wages earned by individual employees), and W-3, Transmittal of Wage and Tax Statements (providing an aggregate summary of wages

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[68] Secs. 6031 through 6060.

[69] Sec. 6041(a). The information return generally is submitted electronically as a Form-1099 or Form-1096, although certain payments to beneficiaries or employees may require use of Forms W-3 or W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

[70] Sec. 6041(a) requires reporting as to fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a), or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045). These payments excepted from section 6041(a) include most interest, royalties, and dividends.

[71] Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest) and the Treasury regulations thereunder.

[72] Sec. 6041(d).

[73] Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

[74] Secs. 6011(e) and 6071(b) apply to "returns made under subparts B and C of part III of this subchapter"; Treas. Reg. sec. 301.6011-2(b), mandates use of magnetic media by persons filing information returns identified in the regulation or subsequent or contemporaneous revenue procedures and permits use of magnetic media for all others.

[75] Treas. Reg. sec. 31.6051-2; IRS, "Filing Information Returns Electronically," Pub. 3609 (Rev. 12-2011); Treas. Reg. sec. 31.6071(a)-1(a)(3)(i).

paid and taxes withheld) directly to SSA.[76] After it records the Forms W-2 and W-3 wage information in its individual Social Security wage account records, SSA forwards the Forms W-2 and W-3 information to IRS.[77]

U.S. persons who transfer assets to, and hold interests in, foreign bank accounts or foreign entities may be subject to self-reporting requirements under both Title 26 (the Internal Revenue Code) and Title 31 (the Bank Secrecy Act) of the United States Code. With respect to account holders, a U.S. citizen, resident, or person doing business in the United States is required to keep records and file reports, as specified by the Secretary, when that person enters into a transaction or maintains an account with a foreign financial agency.[78] Regulations promulgated pursuant to broad regulatory authority granted to the Secretary in the Bank Secrecy Act[79] provide additional guidance regarding the disclosure obligation with respect to foreign accounts. Treasury Department Form TD F 90-22.1, “Report of Foreign Bank and Financial Accounts,” (the “FBAR”) must be filed by June 30 of the year following the year in which the $10,000 filing threshold is met.[80]

E. Existing Proposals

The Working Group identified several proposals that would reorder filing due dates: Senator Enzi's “Tax Return Due Date Simplification and Modernization Act of 2013,” (S. 420, 113th Cong.) (“Enzi proposal”); Sections 6201through 6203 of The Tax Reform Act of 2014 (H.R. 1, 113th Cong.), as introduced by former Chairman of the House Committee on Ways and Means, Dave Camp (“Camp proposal”); former Chairman Baucus’s Staff Discussion Draft, sections _01 and 51; and the Administration Budget proposal first offered for the fiscal year 2015 budget, and included in the fiscal year 2016 budget.

All of the proposals identified above included the following features: (i) filing deadline for partnerships and S corporations precede the due dates of their individual and corporate investors and (ii) due date for filing returns by C corporations to be determined under general rule, with effect that it is a later return than under present law. The Camp and Enzi proposals also include statutory confirmation that six-month extension for time to file corporate income tax return is automatic, conform the FBAR filing due date with income tax filing dates, and provide certain exceptions to the new rules that were not considered by the Working Group. The Baucus

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[76] Pub. L. No. 94-202, sec. 232, 89 Stat. 1135 (1976) (effective with respect to statements reporting income received after 1977).

[77] Employers submit quarterly reports to IRS on Form 941 regarding aggregate quarterly totals of wages paid and taxes due. IRS then compares the W-3 wage totals to the Form 941 wage totals.

[78] 31 U.S.C. sec. 5314. The term “agency” in the Bank Secrecy Act includes financial institutions.

[79] 31 U.S.C. sec. 5314(a) provides: “Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.”

[80] 31 C.F.R. sec. 103.27(c). The $10,000 threshold is the aggregate value of all foreign financial accounts in which a U.S. person has a financial interest or over which the U.S. person has signature or other authority.

and Administration proposals address the filing dates of information returns as well as income tax returns.

Option 1: Sen. Enzi and Chairman Camp proposals

Both the Enzi and Camp proposals accelerate the due date for filing of Federal income tax returns of partnerships and remove C corporations from the scope of the exception to the general rule that requires income tax returns to be filed by the 15th day of the fourth month after the end of a taxable year.

The proposals differ with respect to the treatment of S corporations. The Enzi proposal moves the due date from the 15th to the 30th of the third month following the close of the year. The Camp proposal does not change the filing requirements for S corporations. Under the Camp proposal, both partnership and S corporation returns must be filed on or before the 15th day of the third month following the close of the taxpayer's taxable year, or March 15 in the case of a calendar year taxpayer.

Both proposals require that the C corporation return be filed on or before the 15th day of the fourth month after the close of a taxable year, or April 15 in the case of a calendar year taxpayer. Although Chairman Camp's proposal was to be effective for returns for taxable years beginning after December 31, 2014, it included an exception for returns with respect to taxable years beginning in 2022 for C corporations that adopt a taxable year ending June 30.

Both proposals requires that the Treasury Department modify its regulations that establish extensions of due dates by conforming the extension periods to the following terms. The maximum extension for the returns of partnerships using a calendar year is a six-month period ending on September 15. The maximum extension for the returns of trusts using a calendar year is a 5-1/2 month period ending on September 30. The maximum extension for the returns of employee benefit plans using a calendar year is an automatic 3-1/2 month period ending on November 15. The maximum extension for the returns of tax-exempt organizations using a calendar year is an automatic six-month period ending on November 15. The due date for forms relating to the Annual Information Return of Foreign Trust with a United States Owner for calendar year filers is April 15 with a maximum extension for a six-month period ending on October 15.

In addition to requiring modification of the regulatory deadlines established for extensions of time to file income tax returns, the proposal establishes a statutory due date for the form required under FBAR that generally conforms to income tax filing deadlines. Under the proposal, the FBAR due date is April 15 with regulatory authority to grant an extension of up to a six-month period ending on October 15. The proposal permits the Secretary to waive any penalties for failure to file a timely request for an extension if the reporting period to which the penalty relates is the first period for which the taxpayer was subject to the FBAR requirements.

The proposal modifies the statute to provide (consistent with current Treasury regulations) that a corporation is allowed an automatic six-month extension of time to file its Federal corporate income tax return (to October 15 for a calendar year taxpayer, assuming the new filing dates as described in section 6201 above) if the corporation files the form prescribed by the Secretary and pays on or before the due date prescribed for payment, the amount properly estimated as its tax.

Option 2: Baucus proposal

The Baucus proposal is similar to the Enzi proposal with respect to the income tax due dates. It accelerates the original filing date of Federal income tax returns of partnerships and delays the original filing dates of Federal income tax returns of both C corporations and S corporations as follows. Partnership returns are required to be filed on or before the 15th day of the third month following the close of the taxpayer's taxable year, or March 15 in the case of a calendar year taxpayer. Returns for S corporations are due on or before the 30th day of the third month following the close of the taxpayer's taxable year, or March 30 in the case of a calendar year taxpayer. Finally, C corporations are subject to the general due date for filing original returns, that is, the 15th day of the fourth month after the close of a taxable year, or April 15 in the case of a calendar year taxpayer.

The Baucus proposal accelerates the information return filing date to February 21 of the year following the calendar year for which the return must be filed (either on paper or electronically) for transactions covered under sections 6041 through 6050W, which includes payments made by a person engaged in a trade or business, payments of fixed or determinable income or compensation, and investment income, including interest, dividends, and gross proceeds from brokered transactions. The proposal also accelerates the information return filing date to February 21 of the year following the calendar year for which the return must be filed (either on paper or electronically) for wages paid to employees.

Option 3: The President's Fiscal Year 2016 Budget Proposal

The Administration's fiscal year 2016 budget proposal accelerates the due date for filing of Federal income tax returns of partnerships to conform to the due date for Federal income tax returns of S corporations, and removes C corporations from the scope of the exception to the general rule that requires income tax returns to be filed by the 15th day of the fourth month after the end of a taxable year.[81]

Under the proposal, both partnership and S corporation returns must be filed on or before the 15th day of the third month following the close of the taxpayer's taxable year, or March 15 in the case of a calendar year taxpayer. The proposal requires that C corporation returns be filed on or before the 15th day of the fourth month after the close of a taxable year, or April 15 in the case of a calendar year taxpayer.

The proposal also accelerates to January 31 the filing date for all information returns except forms 1099-B, and eliminates the extended due date for electronically filed returns. The due date for payee statements remains the same.

[81] The estimated budgetary effect of this proposal can be found at Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2015 Budget Proposal* (JCX-36-14), April 15, 2014, Item XVII.C.27, reprinted in the back of this volume.

F. Discussion of Options

The Working Group identified the order in which various income tax returns and information returns are due as a problem that complicates and, in some instances, undermines tax compliance. Two different problems are presented by the due dates: First, the sequence of information provided to taxpayers complicates return preparation. Second, the limitations on access to information returns by the IRS during the processing of income tax returns to which those information returns relate hampers the IRS ability to deter and detect fraudulent claims for refund.

Sequence of return filing dates

The sequence of return filing dates complicates a taxpayer's ability to prepare an accurate return, because the information that a taxpayer is required to assemble with respect to all income-generating investments or activities may not be available until shortly before, after or contemporaneous with one's filing date. The filing due date for flow-through entities such as S corporations and partnerships is April 15 for calendar year taxpayers, and thus falls after the filing due date for corporations owning an interest in such entities and before the due date for individual owners. The sequence of due dates thus necessitates reliance on extensions of due dates for filing. Receipt of information shortly before the income tax due date may contribute to errors on original returns that later require amendment. Reordering the due dates for filing income tax returns so that both partnerships and S corporations file before C corporations and individuals may reduce the need for routine use of extensions. The American Institute of Certified Public Accountants ("AICPA") has supported efforts to rationalize the flow of information to taxpayers and their preparers, pointing to improved efficiency in the preparation of returns, possible reduction in the number of amended returns to be filed, and avoidance of a compressed work schedule for CPAs working on end of year matters and return preparation.[82]

Critics of the proposal may note that the availability of extensions will remain attractive to persons with complex returns or those who are inclined to be dilatory. To the extent that the extensions continue to be widely used by partnerships, the investors in such partnerships will remain unable to complete return preparation and likely request extension of time to file. Therefore, changes in the sequencing of due dates should be accompanied by changes to the periods for which extensions are permitted as well, to assure that the desired rational sequence of information is achieved.

IRS access to information returns during filing season

The Administration and Baucus proposals also prescribed earlier due dates for information returns for wages and retirement payments. Unlike the simplification focus of the other filing date changes, this proposal is intended to assist the IRS in efficient processing of returns and detection of errors through verification by improving the likelihood that the IRS will

[82] See, "AICPA Recommends Change to Return Due Dates," available at http://www.aicpa.org/InterestAreas/Tax/Resources/TaxLegislationPolicy/Pages/duedatesproposal2010.aspx.

have access to the data contained in information returns received during the filing season,[83] even though the most significant information report with respect to identifying fraudulent refund claims may be the information reports on wages paid to, and taxes withheld from, employees. As explained above, present law requires that the information be compiled by each employer and submitted directly to the Social Security Administration, which processes the forms and forwards the information to the IRS. Because the electronically filed forms are not due until March 30, most of these returns are not available until late in the filing season. As a result, third-party reporting is limited as a tool to identify and reject fraudulent claims. Such access is critical in deterring fraudulent claims for refund, especially claims by identity thieves.

[83] The individual income tax filing season is the period beginning in January when the IRS first accepts for filing income tax returns for the preceding calendar year and ending April 15, the due date (absent an extension) for individual income tax returns. In 2014, the filing season opened January 31, 2014, according to a news release issued December 18, 2013. See, IR-2013-100, available at www.irs.gov/newsroom.