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SENATE

REPORT
113–272

AMENDING TITLE 5, UNITED STATES CODE, TO PROVIDE THAT PERSONS HAVING SERIOUSLY DELINQUENT TAX DEBTS SHALL BE INELIGIBLE FOR FEDERAL EMPLOYMENT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1045

AMENDING TITLE 5, UNITED STATES CODE, TO PROVIDE THAT PERSONS HAVING SERIOUSLY DELINQUENT TAX DEBTS SHALL BE INELIGIBLE FOR FEDERAL EMPLOYMENT



NOVEMBER 13, 2014.—Ordered to be printed

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NOVEMBER 13, 2014.—Ordered to be printed

Mr. CARPER, from the Committee on Homeland Security and Government Affairs, submitted the following

R E P O R T

[To accompany S. 1045]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1045), to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for Federal employment, having considered the same, reports favorably thereon with amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 1045 would make most individuals with seriously delinquent federal tax debt—generally defined as a tax debt for which the government has filed a public lien—ineligible to work for the federal government.

II. BACKGROUND AND NEED FOR THE LEGISLATION

With most federal salaries generally derived from taxes paid by the American people, federal workers have a special responsibility to meet their tax obligations. The vast majority of federal workers do just that. However, some do not. According to the Internal Revenue Service's (IRS's) annual Federal Employee/Retiree Delinquency Initiative (FERDI) report for 2013, 116,169 civilian federal employees owed $1,084,201,015 in federal back taxes in 2013.[1] This figure represents a delinquency rate of 4.07%.[2]

Currently, employees of the Internal Revenue Service can be terminated for having seriously delinquent tax debt.[3] S. 1045 requires all agencies to adopt this common-sense approach by requiring that they notify employees with seriously delinquent tax debt that they must immediately repay the debt or enter a repayment program. If within 150 days of receiving the notice, the employees have not repaid the debt, entered a repayment program, or otherwise offered evidence to the agency that their tax debt is not seriously delinquent, the agency will terminate their employment. In a case where employment is terminated under the legislation for these reasons, the employee may apply for review of the proposed termination under an applicable procedure, appeal, or grievance process to which the employee would be entitled generally in the case of a proposed termination of the individual's employment.

The bill also provides for an exemption, so that, if an individual's employment would otherwise need to be terminated, the head of the employing agency may determine, in his or her discretion that the individual's continued service is in the best interests of the United States. The making or not making of such a determination would not be subject to review.

S. 1045 also prohibits anyone with seriously delinquent tax debt from entering the federal workforce. The legislation requires agencies to ensure that job applicants certify, under penalty of perjury, that they do not owe seriously delinquent tax debt as of the date that the certification is made. S. 1045 prohibits the agency from hiring an applicant who does not make that certification.

Each agency will also offer a process under which a job applicant who is denied employment under the legislation may appeal to bring to the agency's attention any factual errors made in determining that the applicant did not make the required certification. S. 1045 allows each agency to decide what kind of review to make available for this purpose, and the Office of Personnel Management could, under its general authority, consider whether it would be desirable for the Director to establish any government-wide guidance or standards.

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[1] *See Internal Revenue Service, Federal Employee/Retiree Delinquency Initiative (FERDI) Report, 2013.*

[2] Ibid. Further, a July 2014 report by the Government Accountability Office (GAO)—"Tax Debts Owed by DoD Employees and Contractors"—revealed that about 83,000 Department of Defense (DOD) military and civilian employees and contractors who had been determined eligible for secret, top secret, or sensitive compartmented information clearances had unpaid federal tax debt totaling more than $730 million as of June 30, 2012. Of these, about 44,500 were DOD employees, though the report does not indicate how many of them were military (who would not be covered under this bill) and how many civilian (who could be covered under this bill, if they have seriously delinquent tax debt and meet other conditions). GAO, "Security Clearances: Tax Debts Owed by DOD Employees and Contractors," GAO–14–686R, July 28, 2014, at pages 10, 16 of the enclosure, *http://www.gao.gov/products/GAO–14–686R.*

[3] PL 105–206, section 1203.

While S. 1045 aims to bring about greater tax compliance among the federal workforce, it also recognizes unforeseen circumstances or financial hardship can happen to even the most law abiding citizens. S. 1045 defines "seriously delinquent" very specifically. An employee does not owe "seriously delinquent" tax debt if he or she is in the process of repaying the debt in a timely manner, or if a hearing or appeal is pending or ongoing. In addition, if a levy has been issued on the tax debt or if a financial hardship exemption has been granted, the tax debt is not "seriously delinquent".

The Committee notes that the House of Representatives considered similar legislation, H.R. 249, in April of 2013. Although a majority of members voted in favor of the legislation, the bill did not pass the House, because it was considered on the suspension calendar, where a two-thirds vote is required. The vote was 250 in favor and 159 against, which was 23 yea votes less than the necessary two-thirds.[4]

Opponents argued that the legislation was unwarranted, citing that the tax delinquency rate for federal employees is less than half that of the general public, mechanisms already exist to collect back taxes from federal employees and to discipline those who do not pay, and termination of individuals' employment may make it more difficult to collect unpaid taxes from them.[5]

This Committee, however, contends legislation to further push higher tax compliance rates for federal employees is needed. The over a billion dollars in tax debt owed by federal employees is not an insignificant sum and demands attention. The Committee wants to make clear that individuals who choose not to pay their federal tax debt, after being given numerous options to do so, should not be rewarded with federal employment. Federal salaries are derived from federal taxes, and it is incumbent on those in federal service to set an example.

Further, S. 1045 provides a number of due process provisions and exemptions for financial hardship, making sure to focus on the seriously tax delinquent federal employees who chronically refuse to pay what they owe.

III. Legislative History

On May 23, 2013, Senator Coburn introduced S. 1045, with Senator Pryor as a cosponsor. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1045 at a business meeting on May 21, 2014. Senators Coburn and Pryor offered a substitute amendment which differentiated processes for current and prospective federal employees, requiring prospective employees to certify they do not possess seriously delinquent tax debt. For current employees, the substitute amendment includes specific timelines for agencies and employees to act, and includes specific exemptions and due process provisions for employees or prospective employees against whom adverse action is taken. The Committee adopted the substitute and then ordered the bill, as amended, favorably reported, both by voice vote. Senators Carper, Pryor, Landrieu, McCaskill,

[4] *See* 159 Congressional Record H2012 (daily edition April 15, 2013).

[5] *See* 159 Congressional Record H2004–H2010 (daily edition April 15, 2013). See also, Kelley, Colleen, National Treasury Employees Union, Letter to Congressional Representatives, April 8, 2013, *http://www.secunion.org/files/LtrtoHouseonHR249492013.pdf.*

Tester, Begich, Coburn, Johnson, Portman, and Enzi were present for both votes.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1(a) adds a new Subchapter VIII to Chapter 73 of title 5 and defines the terms "agency", "Code", "Federal employee, and "seriously delinquent tax debt". "Seriously delinquent tax debt" is defined as any tax debt owed for which a public lien has been filed, with certain exceptions. Those exceptions include a debt that is being repaid through an arranged repayment agreement, a debt for which a hearing or appeal is pending or ongoing, a debt for which the IRS has already issued a levy for repayment, or a debt for which relief has been otherwise granted.

Section 1(b)(1) prohibits any applicant for federal employment with seriously delinquent tax debt from working for the federal government or being appointed to federal employment.

Section 1(b)(2)(A) requires an agency to provide written notice to a current federal employee if the employee has seriously delinquent tax debt. The employee has 150 days from the date of the notice to begin repaying the debt.

Section 1(b)(2)(B) requires the agency to notify an employee who has seriously delinquent tax debt and has not begun repaying the debt within the 150–day deadline that they must repay the total amount or enter a repayment program within 60 days from when the notice is received, or be terminated from employment.

Section 1(b)(2)(C) allows an exemption for federal employees who do not comply if the head of the employing agency determines that the employee's continued service is in the best interests of the United States.

Section 1(b)(2)(D) provides terminated employees with applicable appeal, review, and grievance procedures provided by current law, if they are terminated for failing to repay their seriously delinquent tax debt in full or for failing to enter a repayment program to begin paying back the seriously delinquent tax debt.

Section 1(c) requires the head of an employing agency to require applicants to certify, under penalty of perjury, that they do not possess a seriously delinquent tax debt. It prohibits the employing agency from hiring someone who does not make such a certification. It further requires the head of an employing agency to establish a fair and efficient appeals process for employees who are denied employment for not making the certification.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact that would be incurred in carrying out this legislation and determined that there is no regulatory impact within the meaning of the rule. The Committee further agrees with the Congressional Budget Office there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE ESTIMATE

JUNE 5, 2014.

Hon. TOM CARPER,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1045, a bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for federal employment.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1045—A bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for federal employment

Under S. 1045, individuals with federal tax debt that is seriously delinquent would be ineligible to be appointed or to continue serving as an employee of the federal government. The legislation defines tax debt to be seriously delinquent if a public lien has been filed. Tax debt that is being repaid in a timely manner, is part of a requested or pending collection-due-process hearing, or whose repayment the Department of Treasury determines would cause financial hardship, would not be considered seriously delinquent. Federal agencies would be required to have job applicants certify that they do not have such debt. Current federal employees would have 150 days after receiving their outstanding debt notice to enter into agreements to resolve their debt in order to remain eligible for continued employment.

Based on information from the Office of Management and Budget, the Internal Revenue Service, and staff of the Joint Committee on Taxation (JCT), CBO estimates that implementing S. 1045 would cost less than $500,000 annually, subject to the availability of appropriated funds, mostly to create and administer certification forms.

Pay-as-you-go procedures apply to the bill because it would affect direct spending and revenues. Agencies not funded through annual appropriations, such as the Tennessee Valley Authority and Bonneville Power Administration, would face some additional costs (as described above), but CBO estimates that any net increase in direct spending by such agencies would not be significant. JCT estimates that enacting the bill would have a negligible effect on revenues.

S. 1045 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on budgets of state, local, or tribal governments.

On April 11, 2013, CBO transmitted a cost estimate for H.R. 249, the Federal Employee Tax Accountability Act of 2013, as ordered reported by the House Committee on Oversight and Government Reform. Both bills address delinquent taxes of federal employees, however, the House bill would authorize agencies to review tax records. The estimated costs reflect the differences between the bills.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

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Subpart F—Labor-Management and Employee Relations

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.

7301. Presidential regulations.

* * * * * * *

SUBCHAPTER VIII—INELIGIBILITY OF PERSONS HAVING SERIOUSLY DELINQUENT TAX DEBTS FOR FEDERAL EMPLOYMENT

7381. Ineligibility of persons having seriously delinquent tax debts for Federal employment.

* * * * * * *

Subchapter VIII—Ineligibility of Persons Having Seriously Delinquent Tax Debts for Federal Employment

§ 7381. Ineligibility of persons having seriously delinquent tax debts for Federal employment.

(a) DEFINITIONS.—In this section—

(1) the term "agency" means—

(A) an Executive agency;

(B) the United States Postal Service;

(C) the Postal Regulatory Commission; and

(D) an employing authority in the legislative branch;

(2) the term "Code" means the Internal Revenue Code of 1986;

(3) the term "Federal employee" means an employee in or under an agency, including an individual described in section 2104(b) or 2105(e);

(4) the term "seriously delinquent tax debt" means an outstanding debt under the Code for which a notice of Federal tax lien has been filed in public records pursuant to section 6323 of the Code, except that such term does not include—

(A) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of the Code;

(B) a debt with respect to which a collection due process hearing under section 6330 of the Code, or relief under subsection (a), (b), or (f) of section 6015 of the Code, is requested or pending;

(C) a debt with respect to which a levy has been issued under section 6331 of the Code (or, in the case of an applicant for employment, a debt with respect to which the applicant agrees to be subject to a levy issued under that section if employed by an agency); and

(D) a debt with respect to which relief under section 6343(a)(1)(D) of the Code is granted.

(b) INELIGIBILITY FOR FEDERAL EMPLOYMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2)(C), an individual who has a seriously delinquent tax debt shall be ineligible to continue serving as a Federal employee or, subject to subsection (c), to be appointed as a Federal employee.

(2) FEDERAL EMPLOYEES.—

(A) IN GENERAL.—A Federal employee who has a seriously delinquent tax debt shall have 150 days after the date of written notice by the agency employing the Federal employee to begin repaying the debt in a timely manner pursuant to an agreement under section 6159 or 7122 of the Code.

(B) FAILURE TO BEGIN REPAYING SERIOUSLY DELINQUENT TAX DEBT IN A TIMELY MANNER.—If a Federal employee who has a seriously delinquent tax debt does not begin repaying the debt in a timely manner pursuant to an agreement under section 6159 or 7122 of the Code during the period specified in subparagraph (A), the head of the employing agency of the Federal employee shall—

(i) notify in writing the Federal employee that, not later than 60 days after the date on which the Federal employee receives the notification, the Federal employee shall—

(I) repay the total amount of the seriously delinquent tax debt of the Federal employee; or

(II) begin repaying the debt in a timely manner pursuant to an agreement under section 6159 or 7122 of the Code; and

(ii) except as provided in subparagraphs (C) and (D), terminate the Federal employee if the Federal employee does not comply with the requirements of a notice issued under clause (i).

(C) EXEMPTION.—A Federal employee who does not comply with the requirements of a notice issued under subpara-

graph (B)(i) may continue serving as a Federal employee if the head of the employing agency of the Federal employee determines that the continued service of the Federal employee is in the best interests of the United States.

(D) PROCEDURE.—Chapter 75, any other applicable provision of law, and appeal, review or grievance procedures to which the employee is entitled shall apply to a termination under subparagraph (B)(ii).

(c) APPLICANTS.—The head of an agency—

(1) shall take appropriate measures to ensure that each individual that submits an application for employment with the agency certify (as part of the application) under penalty of perjury as provided in section 1746 of title 28 that the individual does not have a seriously delinquent tax debt (as of the date on which the certification is made);

(2) may not employ any individual who does not make the certification described in paragraph (1)(C); and

(3) shall establish an appeal process for individuals denied employment under paragraph (2).

○