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Tax Regs in Plain English

# IRS Restructuring and Reform Act of 1998

## 1102 - Commissioner of Internal Revenue Service; Other Officials

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### Section 1102

**A. Provision covered:** Section 1102 (Commissioner of Internal Revenue; Other Officials) [amending IRC §§ 6212, 7803, 7811; see former IRC § 7802]

**B. Background:** Under prior law, statutory offices in the Service were established in former IRC § 7802. The Act creates the Internal Revenue Service Oversight Board at IRC § 7802 and provides for the continuation (with modifications) of certain officials and offices formerly established in section 7802 in a revised section 7803.

### Overview

In general, this section:

- reestablishes (with modifications) the statutory offices of --
  - Commissioner of Internal Revenue (IRC § 7803(a)(revised))
  - the Chief Counsel for the Internal Revenue Service (IRC § 7803(b)(revised)), and
  - the Office of the Taxpayer Advocate, consisting of a National Taxpayer Advocate and local taxpayer advocates (IRC § 7803(c)(revised)), and revises I.R.C. § 6212 to provide that deficiency notices contain notices of right to contact the local Taxpayer Advocate's office.

- expands the authority of the National Taxpayer Advocate under to I.R.C. § 7811 to issue taxpayer assistance orders;
- specifies additional duties for the new Treasury Inspector General for Tax Administration established in section 1103 of the Act (IRC § 7803(d)(revised)); and
- eliminates as statutory requirements the offices and functions of the Assistant Commissioner (Taxpayer Services) and Assistant Commissioner (Employee Plans and Exempt Organizations).

### ***Commissioner of the Internal Revenue (IRC § 7803(a)(revised))***

The Commissioner remains the Chief Executive Officer of the IRS. The Commissioner will continue to be appointed by the President, by and with the advice and consent of the Senate, and is removable at the will of the President. However, the Commissioner will now be appointed in renewable 5-year terms. Under the statute, Commissioner Rossotti's first 5-year term began as of the date of his appointment. The appointment must be made from individuals who, among other qualifications, have a demonstrated ability in management. The Internal Revenue Service Oversight Board established by section 1101 of the Act will recommend to the President candidates for appointment as Commissioner and the need for removal of a sitting Commissioner. As under prior law, subject to certain Congressional reporting obligations, the Commissioner shall have duties and powers as prescribed by the Secretary (e.g., the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party). However, the Commissioner must now consult with the Oversight Board, and the Board has review (and in some cases review and approval) authority over certain operational plans and management matters, including plans for modernization of the tax system; plans for outsourcing or managed competition; plans for training and education; the selection, evaluation, and compensation of Service senior executives who have program management responsibility over significant functions of the Service; and plans for any major reorganization of the Service. The Commissioner must submit budget requests to the oversight Board for review and approval.

### ***Chief Counsel for the Internal Revenue Service (IRC § 7803(b)(revised))***

The Chief Counsel remains the chief law officer of the IRS. The Chief Counsel will continue to be appointed by the President, by and with the advice and consent of the Senate, and is removable at the will of the President. The Commissioner may recommend to the President a candidate for appointment as Chief Counsel and recommend to the President the removal of the Chief Counsel. The Chief Counsel shall have duties and powers as prescribed by the Secretary of the Treasury, including the duty to:

1. be legal advisor to the Commissioner and the Commissioner's officers and employees,
2. furnish legal opinions for the preparation and review of rulings and memoranda of technical advice,

3. prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Service,
4. represent the Commissioner in cases before the Tax Court, and
5. determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

This subsection revised the reporting obligations of the Chief Counsel, but the revisions will not take effect until 90 days after enactment. Under this subsection, the Chief Counsel will report directly to the Commissioner, with certain exceptions. The Chief Counsel will report exclusively to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy (e.g., proposed legislation and international tax treaties). The Chief Counsel will have dual reporting responsibilities to *the Commissioner and the General Counsel* with respect to (1) legal advice or interpretation of the tax law not relating solely to tax policy and (2) tax litigation. The House Conference Report provides as examples of reporting with respect to "legal advice or interpretation of the tax law" as reporting with respect to regulations, revenue, rulings and revenue procedures, technical advice and other similar memoranda, private letter rulings, and other published guidance. Chief Counsel personnel will continue to report to the Chief Counsel (and not to any person at the IRS or elsewhere within the Treasury Department).

### ***Office of the Taxpayer Advocate (IRC § 7803(c)(revised))***

The Office of the Taxpayer Advocate shall be under the supervision and direction of a "National Taxpayer Advocate" (NTA). The NTA will report directly to the Commissioner. The NTA will be appointed by the Secretary, after consultation with the Commissioner and the Oversight Board. No person who has been employed by the IRS within two years of the date of appointment, except for those employees of the Office of the Taxpayer Advocate, may serve as NTA. The NTA must commit not to accept any employment with the Service for at least five years after termination of employment as the NTA.

Section 1102 provides for a system of local taxpayer advocates (LTAs), whom the NTA must appoint and evaluate, and respecting whom the NTA may take personnel actions (including dismissal). The section provides that the NTA make available at least one LTA for each State so that a local taxpayer advocate will be available to taxpayers in each State. The NTA may consult with appropriate supervisory personnel of the Service regarding these personnel responsibilities. Each LTA reports to the NTA (or the NTA's delegate). Each LTA may consult with the appropriate supervisory personnel of the Service regarding daily operation of the LTA's office. The LTA, at the initial meeting with any taxpayer seeking the assistance of LTA's office, must notify the taxpayer that the taxpayer advocate offices operate independently of any other Service office and report directly to Congress through the National Taxpayer Advocate. An LTA may, in the LTA's discretion, not disclose to the Service contact with, or information provided by, a taxpayer. LTAs' offices must maintain a separate phone, facsimile, and other

electronic communication access, and a separate post office address.

The functions of the Office remain to:

1. assist taxpayers in resolving problems with the Service,
2. identify areas in which taxpayers have problems in dealings with the Service,
3. propose, to the extent possible, changes in the administrative practices of the Internal Revenue Service to mitigate those problems and
4. identify potential legislative changes. However, section 1102 provides that it is the additional responsibility of the NTA to:
  - monitor the coverage and geographic allocation of LTA offices,
  - develop guidance to be distributed to all Service officers and employees outlining the criteria for referral of taxpayer inquiries to LTA offices,
  - ensure that the local telephone number for each LTA office is published and available to taxpayers served by the office, and
  - in conjunction with the Commissioner, develop career paths for LTAs choosing to make a career in the Office of the Taxpayer Advocate.

IRC § 6212(a) (relating to notice of deficiency) is amended to provide that deficiency notices "include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office."

Congressional reporting obligations of the Office also have been broadened.

Expanded Authority of the National Taxpayer Advocate under to I.R.C. § 7811 to Issue Taxpayer Assistance Orders

See separate template on IRC §7811(c)(revised) concerning Taxpayer assistance Orders.

### **Additional Duties for the New Treasury Inspector General for Tax Administration (IRC § 7803(d)(revised))**

See template for RRA § 1103 (Treasury Inspector General for Tax Administration) for an explanation of IRC § 7803(d) (revised).

### **Elimination of the Assistant Commissioner (Taxpayer Services) and Assistant Commissioner (Employee Plans and Exempt Organizations) as Statutory Offices**

In concert with section 1101 of the Act, this section eliminates as statutory requirements the offices and functions of the Assistant Commissioner (Taxpayer Services) and Assistant Commissioner (Employee Plans and Exempt Organizations), including the funding mechanism for EP/EO set forth in former I.R.C. § 7802(b). The elimination of the statutory provisions establishing these offices and officials does not preclude the Service from preserving them administratively.

**C. Changes:** The changes to existing law are described in section B.

**D. Impact:** Numerous, but among the most important are:

- Commissioner to be appointed in five year terms;
- Chief Counsel given revised reporting obligations;
- Office of the Taxpayer Advocate revised, with National and State structures specified and expanded authority to issue taxpayer assistance orders; and Assistant Commissioner (Taxpayer Services) and Assistant Commissioner (Employee Plans and Exempt Organizations), together with their offices, eliminated as officers and functions required by statute.

**E. Necessary Actions:**

**Actions/Procedures:** Employees with job applicant screening responsibilities should revise their procedures to reflect limitations on hiring former employees as the National Taxpayer Advocate and limitations on hiring a former National Taxpayer Advocate for another position within the Service. Employees with personnel records responsibilities should revise the Commissioner's records to reflect date for an expiring term and provide a tickler system where necessary. Position descriptions should be amended to reflect minimum statutory qualifications for the Commissioner and National Taxpayer Advocate.

**Actions Permitted:** N/A

**Actions Forbidden:** N/A

**F. Comments:** None.

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