

THE U.S. TAXPAYER BILL OF RIGHTS: WINDOW DRESSING OR EXPRESSION OF JUSTICE?

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Abstract

The subject of taxpayer rights is receiving increasing attention worldwide. Tax scholars, practitioners, and administrators are grappling with the challenges of delivering on the promise of taxpayer rights, the benefits of success, and the price of failure. Nevertheless, a fundamental question has escaped pointed examination: What does the concept of taxpayer rights offer?

In this paper we suggest an answer to that question. Our focus is the U. S. Taxpayer Bill of Rights (TBOR). At first blush, the TBOR may seem to be no more than window dressing because it does not codify legal remedies for violations of the enumerated taxpayer rights. Nevertheless, we argue that by its explicit use of the language of rights and by its adoption by the IRS and enactment by Congress, the TBOR generates a powerful normative force that supports enforcement. That force, in turn, can change the behavior of the IRS toward taxpayers and support calls for Congress, Treasury, or the courts to fashion legal remedies. Put differently, there is strong reason to predict that the adoption and enactment of the TBOR will make the administration of the tax law more just.

Our format is a bit unconventional. What follows is a dialogue in which we ask and answer challenging questions. We believe this format clarifies the fundamental issues raised by the concept of taxpayer rights and best illuminates some of the tensions generated.

Alice Abreu: The concept of taxpayer rights invites scrutiny from at least two perspectives. I've been a tax lawyer for the entirety of my professional life, whereas Rick writes in jurisprudence and regularly teaches criminal law and jurisprudence. Tax and philosophy might seem like disparate fields—one intensely practical, with blunt effects on everyday life and business, and the other abstract. But in our thinking about taxpayer rights the two fields come together quite nicely. We reveal how through a dialogue about taxpayer rights from those two points of view.

We start with the observation that in the United States taxpayer rights have been a specific topic of concern for nearly three decades, and no one has promoted them like Nina Olson, who has been the National Taxpayer Advocate since 2001. Her Annual Reports to Congress have long

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championed taxpayer rights,² and she was instrumental in the IRS's adoption of a Taxpayer Bill of Rights (TBOR) in June, 2014 (Internal Revenue Service [IRS], 2014).³ Later, during the 1st International Conference on Taxpayer Rights in Washington DC in November, 2015, she took understandable pride and delight in announcing the introduction of legislation codifying a TBOR.⁴ That legislation is now 26 USC 7803(a)(3) of the Internal Revenue Code (the "Code") (26 USC 7803(a)(3)).⁵ Such a development should have attracted substantial commentary from scholars and practitioners. Yet, the tax bar shrugged.

There was barely a mention of the TBOR in Tax Notes, a publication which has a large daily and weekly readership, and no profusion of either scholarly or celebratory articles has appeared.⁶ Indeed, the one item of reader reaction that appeared in Tax Notes after the IRS announced the adoption of its TBOR on June 10, 2014, was an anonymous letter released the following day (Anonymous, 2014). That letter was highly critical and pointed to the existence of an elephant in the room. We think it is time to identify and challenge that elephant.

The author of the anonymous letter charged that:

² See Olson (2013, p. 5) (stating: "Since 2007, the National Taxpayer Advocate has repeatedly recommended adoption of a Taxpayer Bill of Rights (TBOR) that takes the multiple existing rights embedded in the code and groups them into ten broad categories, modeled on the U.S. Constitution's Bill of Rights.") As she explained:

Taxpayer rights are central to voluntary compliance. If taxpayers believe they are treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the tax system and be less likely to comply with the laws voluntarily. If taxpayers have confidence in the fairness and integrity of the system, they will be more likely to comply.

The Internal Revenue Code (IRC) provides dozens of real, substantive taxpayer rights. However, these rights are scattered throughout the Code and are not presented in a coherent way. Consequently, most taxpayers have no idea what their rights are and therefore often cannot take advantage of them. . . . A thematic, principle-based list of core taxpayer rights would provide a foundational framework for taxpayers and IRS employees alike that would promote effective tax administration.

Simply put, labels and presentation matter. (Olson, 2013, pp. 5-6).

³ IR-2014-72, 2014 TNT 112-113 (June 10, 2014). See Appendix A hereto for the text of the IRS's TBOR. In her 2013 Annual Report the National Taxpayer Advocate recommended that the IRS adopt a TBOR "and actively apply its principles to all IRS strategic planning, compliance and taxpayer service activities, and to outreach and education. Doing so will ensure taxpayers know their rights, enable them to avail themselves of those rights, and restore trust in the tax system. A TBOR provides organizing principles — a framework — for effective tax administration." (Olson, 2013, p. 6). As she explained: "While codifying a TBOR would require Congressional action, the IRS can articulate these rights by adopting a TBOR on its own. Internally, the National Taxpayer Advocate has had several discussions with senior IRS officials over the last few months about publishing a Taxpayer Bill of Rights, and she is hopeful the IRS will decide to do so in the near future if Congress does not act first." [Footnote omitted]. Olson, 2013, pp. 7-8.

⁴ The National Taxpayer Advocate had "recommended numerous times that a statement of taxpayer rights, a Taxpayer Bill of Rights, be formally codified." [Footnote omitted]. Olson (2013, p. 7).

⁵ The provision (26 USC 7803(a)(3)) is reproduced in Appendix B hereto.

⁶ We do not mean to imply that there was no reaction at all to the announcement of the IRS's TBOR. The one news item in Tax Notes that described the announcement included a number of positive reactions from directors of Low Income Taxpayer Clinics (LITCs). (LITCs are not-for-profit entities operated either as stand-alone organizations providing free or low-cost legal representation in tax matters to qualifying low income individuals, or as part of law schools or legal services organizations. They can apply for and receive up to \$100,000 per year in matching funds from the IRS, as provided by 26 USC 7526. Olson (2015). Fogg (2013) provides an excellent description of the history and function of LITCs.) But our point is that neither Tax Notes nor Bloomberg's Daily Tax Report contained explanatory reports or reader commentary regarding either the IRS's adoption of the TBOR or its codification in 26 USC 7803(a)(3), with the exception described later in text.

The recently announced so-called Taxpayer Bill of "Rights" is no more than a cynical move by the IRS to stave off further regulation by Congress. I put the word "rights" in quotes because the fact of the matter is many of the enumerated items are not actually rights—the IRS is not compelled to respect them and the taxpayer has no legal remedy when they are violated (and the ones that are in fact legal rights were already enacted by Congress, not the IRS).

And the letter did not stop there. It went on to quote from the foundational U.S. constitutional law case, *Marbury v. Madison*, in which the U.S. Supreme Court observed that:

The Government of the United States has been emphatically termed a government of law, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right (*Marbury v. Madison*, p. 163).

The letter then concluded by asserting that "in light of this proud history, I am offended that the IRS spin doctors' self-congratulatory release claims that the IRS pronouncement is 'similar to the U.S. Constitution's Bill of Rights.'"

Although it is tempting to dismiss these charges as yet another example of the IRS-bashing that has become all too common in the U.S. (and the letter does overstate the IRS's allusion to the Constitution's Bill of Rights),⁷ we believe that the core charge deserves serious consideration. It also likely explains the lack of general interest that the TBOR, either as adopted by the IRS or as codified, has drawn from the tax practitioner and scholarly communities. That core is that the rights (or more accurately, most of the rights) provided by the TBOR are not enforceable;⁸ that taxpayers in the U.S. who believe the IRS has violated their taxpayer rights cannot seek redress in court; and therefore, that the rights the TBOR provides are not rights at all. It is not surprising that practitioners, or taxpayers themselves, would reason that if all a TBOR does is collect and restate rights that the statute already provides, without providing any additional right to enforcement or compensation for a violation, then the TBOR provides nothing. It is window-dressing, at best.

It is correct to observe that the TBOR the IRS adopted does nothing more than collect and restate existing rights. As the IRS noted in its announcement of the adoption of the TBOR,

⁷ The IRS announcement invoked only the similarity in the number of provisions (ten). It did not purport to compare the TBOR to the Constitutional Bill of Rights categorically. IRS (2014).

⁸ Some of the statutory provisions implicated in the TBOR do contain enforcement mechanisms either by providing for civil actions or sanctioning violations through the criminal justice system. For example, 26 USC 6304(a) prohibits certain contacts with taxpayers and 26 USC 6304(b) prohibits taxpayer harassment (such as contact at unreasonable times or at the taxpayer's workplace), implicating taxpayer right #7, the Right to Privacy), and 26 USC 6304(c) allows civil actions for violations of 26 USC 6304. Similarly, 26 USC 6103 prohibits the disclosure of return information and 26 USC 7213 makes unauthorized disclosure of such information a felony; 26 USC 7216 makes knowing or reckless disclosure of return information by paid preparers a misdemeanor, and 26 USC 6713 provides a penalty for disclosure or unauthorized use of return information by paid preparers. But most of the enumerated rights don't map onto a statutory provision that provides a mechanism for enforcement or sanction. For example, how would a taxpayer enforce right #10, the Right to a Fair and Just Tax System?

The Taxpayer Bill of Rights takes the multiple existing rights embedded in the tax code and groups them into 10 broad categories, making them more visible and easier for taxpayers to find on IRS.gov. . . . The tax code includes numerous taxpayer rights, but they are scattered throughout the code, making it difficult for people to track and understand (IRS, 2014).

Moreover, the legislative action that codified the TBOR was to the same effect. It neither provided additional rights nor offered any remedies for violation of the rights it states. Rather, it simply provided,

In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including [the list of the ten rights provided in the IRS's TBOR then follows]. (26 USC 7803(a)(3)).

Hence, the charge that neither version of the TBOR gives taxpayers any additional, actionable, rights is not spurious.

Rick Greenstein: I just want to note at the outset that the enforceability of most of the rights provided by the TBOR has not been tested; so, we don't know with certainty that anything beyond its adoption by the IRS and its legislative enactment as part of the Code is needed to effect compliance or compensation. That notwithstanding, you raise vitally important questions. Let's assume that most of the TBOR provisions adopted by the IRS and codified in 26 USC 7803(a)(3) are not directly enforceable. What, then, is the value of the TBOR? Indeed, can the ten items that make up the TBOR be meaningfully characterized as rights at all? Or are they, at worst, a ruse or a deception, and at best, an illusion or, as you put it, "window-dressing"?

Taxation in the United States, never the most popular of government activities, is facing a crisis of legitimacy. Legitimacy is necessary for a robust tax system because the level of voluntary compliance required for a functional tax regime depends on public acceptance that paying one's taxes is a legitimate demand of the government.⁹ Some of the crisis of legitimacy stems from ideological skepticism about taxation; some from the effects of eight years of Republican opposition to all activities of the Obama Administration; and some from missteps by the IRS itself, which have enmeshed the agency in a distracting and damaging scandal.¹⁰ But the fragility of the tax system's legitimacy also derives, I believe, from two deeper sources. I'm going to address one of those sources now and return to the other—tax exceptionalism—later.

⁹ Professor Tom R. Tyler has argued that compliance is bolstered by a normative commitment to obedience based on legitimacy, "obeying the law because one feels that the authority enforcing the law has the right to dictate behavior." Tyler (2006, pp. 3-4). That normative perspective, in turn, is closely tied to perceptions of "procedural justice": perceptions that the outcomes we receive in our social experiences are produced by fair procedures. Tyler (2006, pp. 161-178).

¹⁰ See Confessore & Luo (2013). The scandal led to investigations by the FBI, the Department of Justice, and Congress. In the wake of the controversy the Acting Commissioner of Internal Revenue, the Commissioner of the Tax Exempt and Governmental Entities Division, and the Director of the Exempt Organizations Division resigned. In addition, Congress attempted to impeach John Koskinen, then IRS Commissioner. Gattoni-Celli & van den Berg (2017); Hoffman (2016). See generally Wikipedia (2017).

The first is that the tax system is not, in the public's mind, readily associated with principles of justice. Significant burdens imposed by the government must be perceived as just in order to be perceived as legitimate. One way that the tax system would be perceived as just is if it gave good value in return for what is taken from the taxpaying public. But the relationship between what the government takes through taxation (palpable and arduous) and what it gives in terms of valuable and desired services is often obscure. For many taxpayers the tax system feels remote, arcane, opaque, oppressive, and uncaring.

Another way that the tax system would be perceived as just is if it treated taxpayers with procedural fairness (see Tyler, 2006, pp. 161-178). The TBOR responds specifically to the issue of procedural fairness, thereby bolstering the tax system's legitimacy. It does this by utilizing the language of rights. Specifically, 26 USC 7803(a)(3) refers to "taxpayer rights as afforded by other provisions of this title." As you remarked, that reference to other provisions of the Code suggests that the TBOR gives the taxpayer nothing new. But, in fact, the TBOR gives taxpayers something very new: the language of rights.

Prior to the enactment of the TBOR, the provisions that 26 USC 7803(a)(3) refers to were couched in terms of legal obligations the Code imposed on the Treasury Secretary and other tax officials. For example, 26 USC 6751(a), provides that "[t]he Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty." (26 USC 6751(a). Similarly, 26 USC 7524 provides: "Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice." (26 USC 7524). Although taxpayers clearly benefit from the duties these provisions impose on the Secretary, the benefit is incidental to the duty imposed, which gives it the character of legislative grace. Hence, in fulfilling those statutory obligations the IRS can proceed mechanically, doing what is required just because it is required, rather than because it has independent value.

But the TBOR translates these obligations into a different language—the language of rights. By using the language of rights, the TBOR transforms those already-existing duties into taxpayer rights, that is, it transforms the *obligations* of IRS officials into *entitlements* possessed by taxpayers. In this way the language of rights shows a new level of respect toward taxpayers. This transformation is important because the language of rights has a particular significance in American legal and political theory.

Moreover, the language of rights signals entitlements that reflect the demands of justice. The rights enumerated in the TBOR are immediately recognizable as demands of procedural justice—demands of justice having to do with how members of the polity, now explicitly including taxpayers, should be treated by the government.¹¹ The language of taxpayers' rights signifies that these entitlements have their source outside of positive law; their source is justice itself.

¹¹ For example, "The Right to Challenge the IRS's Position and be Heard" (TBOR #4) corresponds to a widely shared understanding that procedural justice requires that people have "an opportunity to present their arguments, [be] listened to, and [have] their views considered by the authorities." Tyler (2006, p. 163).

AA: You emphasize the incorporation of the TBOR into the Code (26 USC 7803(a)(3)) and suggest that the use of the language of rights is significant because it characterizes the duties already imposed on the government by legislation as proceeding not merely from legislative grace but rather from the demands of justice. Are you suggesting that by invoking the language of rights in 26 USC 7803(a)(3), Congress is providing normative support for enforcement of the TBOR and for compensating violations? And if you are, didn't the adoption of the TBOR by the IRS a year and a half earlier provide the same normative support for enforcement and compensation?

RG: I think that although the language of the IRS's version of the TBOR is identical to that of the legislative version, their expressive meanings are importantly different.

AA: What does it mean to say that the expressive meanings are different? Isn't all language expressive?

RG: The expressive meaning of a statement comes from the *form* in which statement is made (see generally Hayner, 1956, pp. 149-157). It's distinct from what I'll call the statement's linguistic meaning: the meaning derived from the particular words used. Linguistic meaning refers to the *content* of the statement; the linguistic meaning of the TBOR is that the listed items are things taxpayers are entitled to, reflecting the demands of justice. The TBOR has the same linguistic meaning—the same content—whether it is stated in the IRS's Publication 1 or in 26 USC 7803(a)(3) of the Code because the same words are used in both of those documents. But the TBOR's expressive meaning, which derives from the form in which it is presented, varies considerably depending on which document we are talking about.

The expressive meaning of the TBOR's adoption by the IRS is a commitment by that agency to recognize and respect those rights, but the expressive meaning of the TBOR's codification is that it confers on the TBOR the force of law. The act of codification provides the force of law because that is what legislation does: it creates law. Adoption by the IRS, though significant, did not make the TBOR law. But adoption by the legislature did, and that difference—making the TBOR part of law—is what gives the codified TBOR a different expressive meaning than the IRS's TBOR. What is important about these different expressive meanings is that they have different normative significance. The commitment by the IRS to respect taxpayer rights (made by the IRS's TBOR), is subject to evaluation against a standard of sincerity, but the codification of taxpayer rights in 26 USC 7803(a)(3) is subject to evaluation against a standard of the availability of legal remedies. If legal remedies are available, the coercive power of government can be invoked to protect and enforce those rights. Therefore, by incorporating taxpayer rights into the Code, Congress has made patent that the rights enumerated are *legal* rights—that the *tax law* recognizes and stands for procedural justice.

The idea that the form in which the TBOR is presented determines its expressive meaning and therefore its normative significance, is reinforced by the scholarship on the “expressive function of law.” For example, Professor Cass Sunstein has argued that in addition to “controlling behavior directly,” law also “make[s] statements.” (Sunstein, 1996, p. 2024). In particular, he notes how “legal ‘statements’ might be designed to change social norms.” (Sunstein, 1996, pp. 2024-2025). That is precisely my point. The adoption of the TBOR by the IRS changed the normative

environment for taxpayer rights. It expressed what those rights are and committed the IRS to respecting them.

And enactment by Congress further changed the normative environment: It gave the TBOR the force of law. The change in the normative environment brought about by the codification of the TBOR is significant in two different ways. It expresses, first, that taxpayer rights are legal rights and, second, that the tax law stands for procedural justice. The normative environment structures our thinking about taxpayer rights.

The successive changes in the normative environment, in turn, lay the foundation for moving Congress, Treasury, or the courts toward the recognition of legal remedies for violations of those rights. In effect they create a powerful normative basis for enforcement.

AA: You seem to suggest an equation in which the language of rights, plus codification, produces a powerful normative basis for enforcement. Put another way, $LR + C = NBE$, where LR is the Language of Rights, C is Codification and NBE is the Normative Basis for Enforcement. That is persuasive, but it doesn't really solve the problem. The reason is that the equation brings us back to a reliance on the importance of language, and the problem with that is that it resurrects the argument with which this dialogue began: that words are meaningless if they are not backed by the ability to impose sanctions.

That is the *Marbury v. Madison* problem: the idea that rule of law requires a "remedy for the violation of a vested legal right." (*Marbury v. Madison*, 1803, p. 163). This formulation, which makes the existence of a remedy definitive of the existence of a right, is a problem. If it is true, then the codification of the TBOR is either meaningless because there is no remedy, or it requires the provision of legal remedies if it is to be anything more than window dressing. And the problem with that is that it leaves no room for nuanced analysis.

Your invocation of the expressive function of law and its power to provide a normative basis for enforcement, when combined with the *Marbury v. Madison* problem, therefore raises for me an issue that goes to the heart of the concept of taxpayer rights. That issue is this: Assume that I'm convinced that the expressive meaning of words changes depending on the form in which they are uttered, making the expressive meaning of the codified TBOR different from that of the TBOR adopted by IRS. Further assume that I agree that the expressive meaning of the codified TBOR is to change the normative environment by imbuing the TBOR with the force of law, and the tax law with the force of justice. Does that inexorably lead to the conclusion that the uttering of the words by Congress leads to making the rights enumerated in 26 USC 7803(a)(3) enforceable? In other words, does Congress' use of the language of rights require that the rights be enforced?

RG: No. If legal challenges are brought against the IRS for alleged violations of taxpayer rights, the courts will still have to decide whether and how to remedy those alleged violations. The enactment of the TBOR doesn't create those remedies directly, but incorporating the language of rights into the Code does generate a powerful normative basis for enforcement. Whether the courts are ultimately moved by the words of the TBOR is not a foregone conclusion, but the incorporation of those words into the Code does make it more likely that legal remedies will be fashioned.

Words matter. They can have enormous practical effect. We know that from so-called “performative” utterances—statements that are understood to bring about changes in the world by virtue of their mere utterance (e.g., when two individuals exchange promises, thereby creating an enforceable contract) (see Austin, 1962, pp. 4-7). More generally, to give something a verbal label can change what it is. For example, when a particular constellation of behaviors was first labeled sexual harassment, four things happened. First, the disparate behaviors were transformed into a unified concept. Second, this now-unified concept was imbued with value particular judgments. Third, the constellation of behaviors could be experienced in a different way. Fourth, the new label changed the normative environment, which in turn paved the way for the creation of legal remedies.

The same seems true for the codification of taxpayer rights. I think your equation gets it right. The Code’s transformation of the obligations of IRS officials into the language of a TBOR, has important effects. First, the language of rights, transforms these obligations into entitlements that have their source in the demands of justice. Second, the statutory form—*codification* of these rights—expresses a legal recognition of the demands of justice. Together, those two effects provide a powerful normative basis for *demanding* enforcement. After all, as the quotation from *Marbury v. Madison* suggests, it would be an embarrassment to the law were it to legally recognize a right—especially one anchored in justice—but “furnish no remedy for the violation” of that right. Consequently, the incorporation of the TBOR into the Code has a very real, practical effect: it strengthens the position of taxpayers to insist that these demands of justice actually be satisfied by the actions of government officials, and that the law provide remedies for noncompliance. This strengthening of the normative position of taxpayers is not the same as concluding that taxpayers are necessarily entitled to a legal remedy; that determination will have to be made Congress, Treasury, or the courts with respect to each right, after weighing all of the relevant factors.¹²

This analysis is not unique to the tax law. A recent decision of the European Court of Human Rights provides an illuminating example. The Court ruled that laws requiring transgender persons to be sterilized as a condition for changing their names on official government documents violate Article Eight of the European Convention on Human Rights (ECHR) (*Affaire A.P., Garçon et Nicot c. France*, 2017). Regarding the effect of this ruling, the *New York Times* reported the following:

The ruling does not mean immediate legal change in any of the countries, and none of them have so far changed their laws. The court does not possess a strong enforcement mechanism that can make lawmakers pass new legislation, and activists cautioned that it may take several more court cases before legal change comes to individual countries.

But nevertheless, many greeted the ruling as an important milestone.

¹² In the case of the judicial remedies the considerations would be even more granular. Whether any particular TBOR right is enforceable by the courts might vary case by case.

“The European Court of Human Rights is very much respected in Europe and we can expect that in the majority of countries where this issue comes up, this ruling will be respected as the new precedent,” said Richard Köhler, the senior policy officer at Transgender Europe. He said the first impacts of the decision may be seen in upcoming court cases in Bulgaria and Macedonia. (Stack, 2017).

The decision of the ECHR did not itself require member states to permit transgendered persons to change their names on official documents without first undergoing sterilization. But the decision did change the normative environment for demanding enforcement of the Court’s ruling. The codification of the TBOR has a similar effect. Codification imbues the TBOR with the force of law. That does not automatically make makes the enumerated rights enforceable, but it changes the normative environment for enforcement, which may then result in enforcement.

AA: You’ve persuaded me that the creation of a normative basis for enforcement does not require that enforcement follow, but rather invites a deeper analysis of the costs and benefits of enforcement. That is a useful explanation; it shows that the concept of taxpayer rights has substantive effect while not precluding analysis of the difficult issues raised by enforcement or by the provision of remedies.

Nuanced analysis is necessary because the possibility of enforcement of the rights contained in the TBOR, not to mention the allowance of pecuniary damages, is not an unqualified good. Nor is it a subject that has been widely studied. Although the threat of enforcement of taxpayer rights might give the IRS a strong incentive to act to respect those rights, an avalanche of lawsuits propelled by the prospect of pecuniary reward might well cripple an already beleaguered agency. That prospect could also create or exacerbate a defensive mentality that will only intensify the legitimacy issues the agency is currently facing, thereby further eroding taxpayer rights. Although the competing values raised by the possibility of enforcement of taxpayer rights are difficult to reconcile, interpreting the enactment of the TBOR in 26 USC 7803(a)(3) as providing a normative basis for enforcement allows an examination, on a right-by-right or even a case-by-case basis, of the desirability of enforcement. Although the examination does not determine the outcome of the analysis, it does mean that taxpayer rights as currently constituted are not mere window dressing.

But all that raises another question: Given the emphasis that your analysis places on the use of the language of rights because of its expressive meaning (which creates the normative basis for enforcement), does that analysis suggest that there is a meaningful distinction between rights and charters? That question arises for me largely as a result of the discussion in the National Taxpayer Advocate’s 2016 Annual Report, which contains a literature review of a number of subjects, including *Taxpayer Service in Other Countries* (NTA, 2016c, pp.3-15), and, most importantly for our purpose here, *Incorporating Taxpayer Rights in Tax Administration*. (NTA, 2016d, pp. 26-43).

The discussion of that last topic notes that many countries

have statements of principles that use the title ‘charter’ as opposed to ‘bill of rights,’ [but] citizen charters are often akin to a bill of rights because they provide a list of fundamental rights, values, or standards to which a government either aspires or promises to uphold. (NTA, 2016d, p. 27).

A footnote cites Q.C. Philip Baker for an explanation of the distinction between a charter of rights and a bill of rights, namely that “a bill of rights enacts the provisions included in the statement of rights in legislation,” while

[a] charter is a declaration of taxpayers’ rights (which can also include obligations) that is not included in legislation and has no specific force of law. However, a charter could be given the force of law through a legislative provision that directs a governmental agency to issue a charter.” (NTA, 2016d, n. 5).

How does the bill of rights/charter of rights distinction connect to your analysis of expressive meaning?

RG: I think the bill/charter distinction is very helpful in that it gives us labels for distinguishing between statements of rights that do not have the force of law (charters of rights) and statements of rights that are incorporated into legislation and thus do have the force of law (bills of rights). By this account, what the IRS adopted in 2014 was a charter of rights since it didn’t have the force of law. By contrast, the incorporation of those rights into the Code in 2015 was a true bill of rights. My argument has been that those two statements of rights have the same linguistic meaning, but very different expressive meanings. And that difference in expressive meaning has an importantly different normative significance. In short, enactment of the TBOR by Congress made the tax law more just. That, in turn, should increase its legitimacy and, as I suggested, provide a powerful basis for demanding remedies for violations.

AA: Your reference to the issue of legitimacy reminds me that although our discussion thus far has addressed the TBOR’s role in highlighting the justice values embraced by the tax system and therefore addresses one of two sources of the tax system’s legitimacy crisis, we still need to discuss the second source—tax exceptionalism.

RG: As we have argued in our previous scholarship, the repeated claim that tax is exceptional has not only separated tax from the legitimacy shared by law generally, but has rendered obscure, mysterious, and potentially illegitimate, decisions by tax administrators that would be readily explainable and justifiable if seen through the lens of ordinary principles of administrative law (Abreu & Greenstein, 2016, pp. 501-512). The TBOR undermines the claim of exceptionalism by making explicit that principles of justice are intrinsic to the tax system, as they are to multiple other fields of law, and that tax is like those other fields in that sense.

AA: But doesn’t the existence of a TBOR itself mark the tax law’s exceptionalism? That is, if tax were just another type of law, wouldn’t it suffice for taxpayers to be covered by the Constitution’s Bill or Rights?

RG: There’s an important difference between noting that taxpayers are covered by the Constitution’s Bill or Rights (which, of course, is true) and noting that procedural justice is an important dimension of tax in its own right. The problem is that the relationship between the law and justice, which is assumed for other fields of law, is not assumed for tax. On the contrary, the public expects tax to be unfair and oppressive—that is, to be unjust. This disconnect between public expectations and the reality that tax, like all fields of law, should be just is facilitated by tax

exceptionalism. Although law is normally thought to be subject to the demands of justice, the core claim of tax exceptionalism is that tax is different in kind from other fields of law (see, e.g., Puckett, 2015; Zelenak, 2014, pp. 1901; Hoffer & Walker, 2014; Hickman, 2013; Caron, 1994; Ferguson, Hickman, & Lubick, 1989, p. 806. See also Prebble, 2002), or perhaps not really law at all.¹³ That is what makes tax exceptionalism such a dangerous challenge to the legitimacy of taxation. (For a discussion of both tax exceptionalism and the way in which it threatens the legitimacy of the IRS, see Abreu & Greenstein, 2016, pp. 497-501.)

The TBOR points in the opposite direction. It insists that tax is like other fields of law in that like other fields of law it must be applied using procedures that are consistent with principles of justice. The TBOR is an official acknowledgment by both the executive and legislative branches of government that the tax system recognizes and holds itself subject to principles of procedural justice—thereby aligning it with other fields of law and undermining the idea of tax exceptionalism. All of this is elegantly captured by the tenth taxpayer right—“The Right to a Fair and Just Tax System”—a concise statement that the administration of the tax law must be just.

AA: Your invocation of the tenth TBOR right just revived all of my concerns about enforcement. How can a “right to a fair and just tax system” ever be enforced? Could I sue the IRS because I think the tax system is unfair?

RG: I don’t think of the tenth TBOR right as an independently enforceable right. Rather, its function is to sum up the TBOR by making clear that all of the specific TBOR rights that precede the tenth reflect principles of procedural fairness and justice, even though those words haven’t been explicitly used. In this way, its function is analogous to the Ninth Amendment to the U.S. Constitution: “The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others reserved by the people (U.S. Const., amend. IX). The Ninth Amendment characterizes the first eight amendments as expressing rights, thereby imbuing them all with the linguistic meaning that comes with the language of rights. It does this even though the language of rights isn’t explicitly used in those preceding amendments.¹⁴

AA: That’s persuasive. Even if I agree that the TBOR does not make tax exceptional, but on the contrary, shows that tax is subject to the same demands of justice as other fields of law, the TBOR may make tax exceptional for another reason. Although there are BORs in other fields of law, as the National Taxpayer Advocate points out in her 2016 Annual Report (NTA, 2016d, pp. 27-36), I think that those BORs are fundamentally different from the TBOR. The Patient’s Bill of Rights, for example, gives individuals the right to health insurance coverage by specifically prohibiting insurance companies from denying coverage for reasons such as the existence of a pre-existing condition (Patient Protection and Affordable Care Act, 2010). The Constitution’s Bill of Rights also contains numerous prohibitions, such as those in the first, fourth, fifth, and eighth amendments. In other words, it provides rights by specifying a number of prohibitions—“thou shalt not.” I could only identify six “thou shalt not” provisions that I can see implicated in the

¹³ For example, Louis Kaplow and Steven Shavell’s important article, *Why the Legal System is Less Efficient than the Income Tax in Redistributing Income*, reflects in its very title this distinction between the “legal system,” on the one hand, and “the income tax,” on the other. Kaplow & Shavell (1994).

¹⁴ This reading of the Ninth Amendment seems supported by its plain meaning. See also *Griswold v. Connecticut*, (1965, pp. 486-499) (Goldberg, J., concurring).

TBOR,¹⁵ the most well-known of which is probably 26 USC 6103, which prohibits the disclosure of tax returns and return information (26 USC 6103(a)). So, in the absence of many “thou shalt nots,” isn’t the TBOR exceptional?

RG: I don’t think that the language of prohibition—“thou shalt not”—is a necessary feature of rights. Here, the Bill of Rights in the U.S. Constitution is instructive. Some rights are couched in terms of prohibitions, for example, “the right of the people to keep and bear arms, shall not be infringed.” (U.S. Const., amend II). Others, however, are formulated in terms of affirmative rights. Consider the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (U.S. Const., amend. VI).

It is easy enough to translate the language of prohibition into the language of entitlement. For example, “the right of the people to keep and bear arms, shall not be infringed” could just as clearly have been written, “the people shall enjoy the right to keep and bear arms” or “the right of the people to keep and bear arms, shall be preserved.” If the language of rights signals entitlements that reflect the demands of justice, then there is no logical reason why those demands should be limited to either affirmative or negative language.

AA: Perhaps there is no logical reason, but might there be a psychological reason, which would be relevant to the expressive function? That is, “thou shalt not” is more emphatic because it places the government, and the constraints on government actions, in the center. The affirmative formulation places the taxpayers and their right in the center. Can that have an expressive implication?

RG: It might, but the difference in emphasis doesn’t have such profound significance as to make tax “exceptional” in the sense of a being fundamentally different from other fields of law. For example, many of the “thou shalt nots” in the Constitution’s Bill of Rights do not even explicitly use the language of rights. The famous First Amendment reads in part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” (U.S. Const., amend. I). But as I suggested earlier, the Ninth Amendment corrects for that omission by characterizing the first eight amendments as *rights*, imbuing them all with the linguistic meaning that comes with the language of rights.

¹⁵ These are 26 USC 6103, prohibiting disclosure of tax returns and return information; 26 USC 6212, prohibiting the issuance of additional deficiencies after a Tax Court petition has been filed; IRC § 6304, prohibiting direct communication with a taxpayer regarding the collection of an unpaid tax except under specific conditions; 26 USC 6330, restricting the conditions under which levies may be made; and sections 7521 and 7602, imposing various restrictions on the IRS’s conduct during an investigation.

AA: But the differences between the TBOR and the Constitution’s Bill of Rights are not differences in linguistic formulation only. They are differences in level of protection. The TBOR by its terms constrains the actions of the IRS—an administrative agency. But the Constitution’s Bill of Rights is much more pervasive—it constrains not only the actions of administrative agencies but also of Congress itself. It provides rights which Congress cannot infringe by legislation, but nothing in the TBOR constrains Congress. By comparison, then, the TBOR is a paper tiger. The very comparison makes that difference patent and hence de-legitimizes the TBOR.

RG: The differences between from the Constitution’s Bill of Rights and the TBOR reflect the differences between a Constitution and a specific field of administrative law. The Constitution’s Bill of Rights applies to all branches of the government because the Constitution regulates all branches. The more limited scope of the TBOR reflects the more limited functions of an administrative agency. Congress has the power to eliminate the TBOR, whereas it cannot eliminate the Constitution’s Bill of Rights, but that is exactly why the expressive quality of the TBOR is so significant as a practical matter. By recognizing through legislation the demands of justice reflected in the TBOR, Congress changed the normative environment and made it that much more difficult to eliminate those rights in the future.

AA: There is another potential set of concerns that come from a different direction. That is, we might be concerned that whatever its salutary effects, the TBOR goes too far in at least two ways. First, the TBOR may go too far because its reach extends to all taxpayers, which means that it sweeps in entities, such as corporations and partnerships, that are big and powerful and don’t really need protection. Indeed, as the corporate tax shelters of the last two decades showed, and the current issues of inversions and carried interests persistently remind us, it might be the government and the tax system that need to be protected from the predations of some taxpayers. Isn’t it a waste of resources to extend the protections of the TBOR to entities like Apple, Microsoft, and Google?

RG: *Every* taxpayer is entitled to the rights enumerated in the TBOR. And that includes Apple, Microsoft, and Google. Rights reflect the demands of justice, and justice demands equality of treatment. The question, then, is whether wealth and power make those taxpayers unequal, so that affording them less protection in terms of rights is just.

Wealthy and powerful taxpayers certainly aren’t unequal in principle. They can be treated unjustly. Just as wealthy and powerful individuals can be subjected to cruel and unusual punishment, so can wealthy and powerful corporations be forced to pay “more than the correct amount of tax.” It is true that wealthy and powerful taxpayers have, as a practical matter, greater resources available to protect their interests. Still, they are susceptible to changes in fortune that can deprive them of those resources, and in some contexts, even wealthy and powerful taxpayers can be subject to potentially unjust treatment by taxing authorities.¹⁶

¹⁶ For example, the Mutual Agreement Procedures (MAP) provided by many bilateral tax treaties to resolve double-taxation disputes can subject even powerful and wealthy taxpayers to unfair treatment. For an overview of MAP and explanation of the rights it provides taxpayers see Ault, 2013. For a succinct explanation of the conditions that could result in unfairness to taxpayers, (even if those taxpayers are large and powerful), which MAP was designed to resolve or ameliorate, see Bodner (1986); for an illustration of what can happen if MAP is not available, see FSA 1998-215 (1998).

AA: That suggests that what I classified as over-breadth might actually contribute to the TBOR's legitimizing function; the TBOR's extension of rights to all taxpayers based on their status as taxpayers underscores that the TBOR is carrying out the demands of justice. But even if that resolves my first over-breadth concern, it does not resolve the second. That is the concern that if the TBOR really applies to any person or entity who attains the status of taxpayer (defined as anyone who has a duty to pay taxes to the U.S. government, which is the definition implicit in the list of rights), then it necessarily applies extraterritorially, to individuals or entities who may have no contact with the U.S. other than through a financial investment. Although the United States Supreme Court held a long time ago that the U.S. tax law has extraterritorial reach (*Cook v. Tait*, 1924), extraterritorial application of U.S. law is the exception, not the rule.¹⁷ Why have extraterritorial application of taxpayer rights, particularly when the likely beneficiaries of those rights are individuals or entities who are having contact with the U.S. for what is often almost certainly only pecuniary gain?

RG: Again, the government should treat *everyone* who comes into contact with it in a just manner. While it may be that laws generally should not have effects beyond the nation's borders, that should not apply to laws that are designed to effect justice. Put another way: Territorial limitations protect the sovereignty of nations, but the U.S. doesn't interfere with the sovereignty of other nations when it extends procedural justice to the citizens and residents of those nations so including non-U.S. persons within the protection of the TBOR would not violate the sovereignty of other nations.¹⁸ In short, non-U.S. persons who are U.S. taxpayers should be covered by the TBOR.

AA: We've now established the value of the TBOR despite its failure to offer additional, enforceable and compensable, rights, and addressed concerns regarding exceptionalism and overbreadth. Nevertheless, does the value of the TBOR disappear if taxpayers don't know about it because it exists in a statute and in a government document (the IRS's Publication 1), which taxpayers may not bother to read?¹⁹ Moreover, even if the TBOR were included in every piece of correspondence sent by the IRS, we know that many taxpayers will not read it, and even if they do, will not understand what it means. Bluntly put, can the TBOR have a legitimizing effect if taxpayers don't know about it?

RG: The TBOR can have an effect even if taxpayers don't know about it (see Olson, 2013, pp. 13-17). As we noted earlier, the Code imposed obligations on tax officials prior to the codification of the TBOR, which transformed those obligations into rights. And those obligations have not

¹⁷ See *EEOC v. Arabian Am. Oil Co.* (1991, p. 248):

It is a longstanding principle of American law "that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *Foley Bros.*, 336 U.S., at 285. This "canon of construction . . . is a valid approach whereby unexpressed congressional intent may be ascertained." *Ibid.* It serves to protect against unintended clashes between our laws and those of other nations which could result in international discord. See *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 20-22 (1963)."

¹⁸ Arguably, implementation of a MAP intrudes on sovereignty by forcing Contracting Parties to negotiate disputes arising out of Double Taxation Agreements. But the MAP respects sovereignty in that its provisions are contracted for by governments.

¹⁹ A study commissioned by the National Taxpayer Advocate revealed that "in 2012, less than half [of taxpayers surveyed] said they believed they have rights before the IRS, and only 11 percent said they knew what those rights are." Olson (2013, p. 5). Focus groups conducted by a contractor for the Taxpayer Advocate Service showed "that taxpayers had little knowledge of, but high interest in, the list of taxpayer rights in our proposed TBOR, and they reacted very positively to it overall." Olson (2013, p. 16).

disappeared. Both through the original obligations and through their more recent transformation into rights, the Code generates normative pressure on the IRS, to treat taxpayers justly even if taxpayers don't know about their rights.

Moreover, by its own adoption of the TBOR in 2014, prior to codification, the IRS expressed its recognition of taxpayer rights, its commitment to respecting those rights, and to acting in a manner consistent with those rights. Because those rights are grounded in justice, the expressive meaning of their adoption by the IRS and codification by Congress imposes normative pressure on the IRS to act accordingly. That normative pressure is real even in the absence of a legal remedy to enforce the rights, so we can expect it to have an impact on agency behavior. In short, even in the worst-case scenario, in which taxpayers know nothing about their rights, IRS officials do, and the normative pressure on them should increase the likelihood that they will act in accordance with the TBOR. Once again, we see the practical effect of words—both through their content and the form in which they're expressed.

AA: That observation gives me a different perspective on the Commissioner's statement at the time he and National Taxpayer Advocate Nina Olson announced the IRS's adoption of the TBOR (see IRS, 2014). According to a Tax Notes report, the Commissioner said that some of the rights would be difficult to enforce without additional resources:

If we do not have adequate funding, that means we don't have enough people answering phones, taking care of correspondence, or staffing our walk-in taxpayer assistance sites, . . . So I will continue making the case to Congress that the IRS needs adequate resources in order to properly serve taxpayers (Hoffman, 2014).

At the time, I saw the Commissioner's statement simply as part of his persistent plea for additional resources in the face of repeated Congressional budget cuts to the IRS. Now, I see it differently. I see it as a public acknowledgement that respecting taxpayer rights is not just something that imposed on the IRS from the outside, but rather is something that the IRS actually sees as *its* job. In other words, the IRS is undertaking to respect taxpayer rights.

That, in turn, has led me to reflect on another important aspect of taxpayer rights that we haven't touched on yet: the function of the Office of the Taxpayer Advocate, established by the Code (26 USC 7803(c)(1)(A)). The establishment of that Office in the U.S., and the provision of ombuds in other tax systems, is an integral part of taxpayer rights and of the IRS's duty to respect them. It ensures that IRS employees will not only know about taxpayer rights but have the legislatively sanctioned duty to ensure that they are respected. In the U.S., the Office of the Taxpayer Advocate, is "under the supervision and direction of an official to be known as the 'National Taxpayer Advocate'" (26 USC 7803(c)(1)(B)(i), who reports "directly to the Commissioner" (26 USC 7803(c)(1)(B)(i)). Its establishment ensures that there is someone who is not only aware of taxpayer rights but who has the legislatively sanctioned duty to "assist taxpayers in resolving problems with the Internal Revenue Service . . ." (26 USC 7803(c)(2)(A)(i)).

Indeed, the implementation of the legislative mandate may be the most concrete expression of taxpayer rights in the Internal Revenue Code. In the Taxpayer Advocate Service ("TAS"), taxpayers have what amounts to a form of a right to counsel (IRS, 2017). TAS employees serve

as the advocates for taxpayers in resolving problems, and although they need not be lawyers and do not serve the same function as lawyers representing clients, their advocacy allows the taxpayer's viewpoint to be heard. TAS is the concrete expression of taxpayer rights. It gives taxpayer rights teeth.

The other functions of the Office of the Taxpayer Advocate sharpen those teeth. They require the Office to

- (i) assist taxpayers in resolving problems with the Internal Revenue Service;
- (ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- (iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and
- (iv) identify potential legislative changes which may be appropriate to mitigate such problems. (26 USC 7803(c)(2)(A)).

One need look no further than the adoption of the TBOR by the IRS in 2014 and its codification in 26 USC 7803, the same section that established the Office of the Taxpayer advocate, to see that a TBOR backed by the force of the Office of the Taxpayer Advocate is not mere window dressing. The National Taxpayer was instrumental to both of those events (see Olson, 2013, pp. 5, 8). She was also the moving force behind the establishment of a series of international conferences on taxpayer rights (see TAS, 2017b).²⁰

Moreover, the National Taxpayer Advocate has effectively used the Annual Reports that the Code requires her to produce to promote the principle of taxpayer rights (26 USC 7803(c)(2)(B)(i),(ii)). For example, her 2016 Annual Report meticulously lists every taxpayer right affected by each of the 20 "Most Serious Problems" identified in the Report (NTA, 2016a). It identifies the IRS's need to "Do More to Incorporate the Taxpayer Bill of Rights into its Operations" as Most Serious Problem #5 (NTA, 2016a, p. 98), and even includes a Taxpayer Rights Assessment (NTA, 2016b)—a report card on the IRS's performance in complying with the TBOR.²¹ By publicly advocating for taxpayer rights and making them central to her evaluation of the way in which the IRS interacts with taxpayers, the National Taxpayer Advocate contributes to the salience of taxpayer rights and thereby enhances the tax system's legitimacy. That her Reports are delivered to directly Congress twice a year puts taxpayer rights before the legislature on a regular basis, potentially adding to the normative pressure for enforcement (26 USC 7803(c)(2)(B)(iii)).

That, in turn, suggests another reason the TBOR is not just window dressing: it makes patent that tax administration is important. Indeed, it shows that the way the tax system is administered is as important to its legitimacy as the substantive provisions that impose the tax. In other words, the TBOR is a reminder that "procedure is substance." Although the role of tax administration in contributing to the legitimacy of the tax system is often overlooked, the TBOR reminds us that without effective administration, the wonderful technical intricacy that many practitioners and academics love about the tax law would come to naught.

²⁰ The 3rd International Conference on Taxpayer Rights will be held in The Netherlands on May 3-4, 2018.

²¹ She first proposed this in Olson (2013, pp. xiv-xvii).

RG: There's one last concern, prompted by current political developments in the United States, Europe, and elsewhere in the world. I worry that rule-of-law norms are fraying and perhaps even breaking down. I see governments acting, or threatening to act, in ways that compromise or even ignore legal constraints, often enjoying significant popular support. And if that continues, then the power of taxpayer rights to shore up tax's legitimacy will evaporate. In other words, worrying about the legitimacy of the tax system seems beside the point if the legitimacy of law generally is in question.

Moreover, we may be witnessing a weakening of the idea that law is intimately connected to justice. We see large segments of civil society making demands on government that are motivated by fear for their well-being, resentment of the gains made by others, and a general distrust of those who are members of different racial, ethnic, and religious groups. Populism, nationalism, and tribalism are recipes for the dissolution of the very commitment to justice that the TBOR expresses. If as a society we are no longer committed to justice, then the concern that the TBOR might not be enforceable won't matter much at all. Without a shared commitment to justice, what significance could a TBOR (or, for that matter, a Constitutional Bill of Rights) possibly have?

AA: Nevertheless, at the moment the concept of taxpayer rights is enjoying significant attention from tax administrators worldwide. We have tried to show that the TBOR is important in enhancing the legitimacy of the tax system even if it does not provide specific mechanisms for enforcement, because it changes the normative environment for such enforcement. In that changed normative environment taxpayer desire for enforcement may receive serious consideration from Congress, Treasury or the courts, weighing various factors in the process. And that makes the enactment of the TBOR significant. You're correct that such significance rests on our continued commitment to justice and the rule of law, but for now, I'm going to proceed on the assumption that the commitment will endure.

APPENDIX A



Your Rights as a Taxpayer

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

APPENDIX B

IRC § 7803(a)(3)

(3) Execution of duties in accord with taxpayer rights-

In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including--

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,
- (D) the right to challenge the position of the Internal Revenue Service and be heard,
- (E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
- (F) the right to finality,
- (G) the right to privacy,
- (H) the right to confidentiality,
- (I) the right to retain representation, and
- (J) the right to a fair and just tax system.

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