

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 641 Internal Revenue Service Reporting Requirements

SPONSOR(S): Rommel

TIED BILLS: **IDEN./SIM. BILLS:** SM 982

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	14 Y, 3 N	LaTorre	Aldridge
2) Commerce Committee	16 Y, 5 N	Hinshelwood	Hamon

SUMMARY ANALYSIS

HM 641 urges the Congress of the United States to oppose the Internal Revenue Service (IRS) reporting requirements placed on financial institutions, small businesses, and law abiding citizens, which are included in the Biden administration's tax increase proposal.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The memorial does not have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Biden Administration Revenue Proposals

In the Biden Administration's proposal released in May 2021, a provision provided the IRS increased scrutiny over bank accounts.¹ The proposal would require banks, credit unions, and other financial companies to report to the IRS gross deposits and withdrawals for accounts that have gross deposits or withdrawals of more than \$600.² Under a revised proposal, the threshold was raised to \$10,000.³ The financial institution's report to the IRS would include a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner.⁴

In the current version of the Build Back Better Act passed by the United States House of Representatives on November 19, 2021, the provision requiring additional reporting by banks, credit unions, and other financial companies was omitted.⁵

Current Law on Reporting of Cash Transactions and Suspicious Activity

Current federal law requires a person to report to the IRS cash transactions of more than \$10,000 received in a trade or business.⁶ "Person" means an individual, company, corporation, partnership, association, trust, or estate.⁷ "Cash" includes coins and currency of the United States or any foreign country.⁸ Cash also includes a cashier's check, bank draft, traveler's check, or money order with a face amount of \$10,000 or less that a person receives for either a designated reporting transaction or any transaction in which the person knows the payer is trying to avoid a report.⁹

Banks and other financial institutions are required to report each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to the bank or financial institution which involves a transaction in currency of more than \$10,000, including cash purchases of cashier's checks, treasurer's checks, bank checks, bank drafts, traveler's checks, and money orders with a face value of more than \$10,000, to the Financial Crimes Enforcement Network (FinCEN), which is a bureau of the United States Department of the Treasury.¹⁰

¹ General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals, United States Department of the Treasury, May 2021, <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> (Last visited Jan. 27, 2022).

² *Id.*

³ FACT SHEET: Tax Compliance Proposals Will Improve Tax Fairness While Protecting Taxpayer Privacy, United States Department of Treasury, Oct. 19, 2021, <https://home.treasury.gov/news/press-releases/jy0415> (Last visited Jan. 27, 2022).

⁴ General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals, *supra* note 1.

⁵ Build Back Better Act, H.R. 5376, 117th Cong. (2021) <https://www.congress.gov/bill/117th-congress/house-bill/5376> (Last visited Jan. 27, 2022).

⁶ Internal Revenue Code (IRC), s. 6050I. Cash payment report helps government combat money laundering, IRS, <https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-money-laundering> (Last visited Jan. 27, 2022).

⁷ IRC, s. 7701(a)(1).

⁸ IRC, s. 6050I(d)

⁹ See IRC, s. 6050I(d) and (f). A "designated reporting transaction" is the retail sale of tangible personal property that's generally suited for personal use, expected to last at least one year and has a sales price of more than \$10,000, such as sales of automobiles, jewelry, mobile homes, and furniture, the sale of a collectible, or the sale of travel and entertainment if the total price of the items for the same trip or entertainment event is more than \$10,000. Cash payment report helps government combat money laundering, IRS, <https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-moneylaundering>, (Last visited Jan. 13, 2022).

¹⁰ *Id.* 31 C.F.R. ss. 1010.306, 1010.311, and 1010.313; and 31 U.S.C. ss. 5312 and 5313

Banks and other financial institutions are also required to file suspicious activity reports (SARs) with FinCEN.¹¹ A SAR is required following the discovery of: insider abuse involving any amount, violations aggregating \$5,000 or more where a suspect can be identified, violations aggregating \$25,000 or more regardless of a potential suspect, or transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.¹²

Leak of Tax Return Data

On June 8th, 2021, ProPublica published an article which revealed a massive leak of tax return data from the IRS and brought into question IRS's ability to protect taxpayer information.¹³

The Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act (Act) was signed into law on November 15, 2021.¹⁴ The Act adds additional reporting requirements for a broker that facilitates the movement of "digital assets," or cryptocurrency.¹⁵ Applicable to returns required to be filed and statements required to be furnished after December 31, 2023, the Act:

- Expands the definition of broker to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."¹⁶ A broker is required to file a return with the IRS showing the name and address of each customer with details regarding gross proceeds and other information.¹⁷
- Modifies the definition of "specified security" to include digital assets.
- Requires brokers to report transfers of digital assets that are not otherwise subject to reporting to the IRS.¹⁸

The act also expands the definition of cash for purposes of cash reporting to include digital assets. By including digital assets in the definition of cash, the Act extends the reporting requirements for transactions of more than \$10,000 in cash to transactions involving digital assets of more than \$10,000. The new reporting requirement requires a person that is currently required to comply with cash reporting requirements to collect information and report to the IRS details of transactions involving digital assets, or cryptocurrency transactions, of more than \$10,000.¹⁹

Legislative Memorials

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

¹¹ 12 C.F.R. 21.11; 31 C.F.R. ss. 1010.320 and 1020.320; s. 655.50, F.S.

¹² National Credit Union Administration, *Suspicious Activity Reports*, <https://www.ncua.gov/regulation-supervision/manuals-guides/suspicious-activity-report> (last visited Jan. 27, 2022).

¹³ The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax> (last visited Jan. 27, 2022)

¹⁴ Infrastructure and Jobs Act, Pub. L. No. 117-58 (2021), § 80603, <https://www.congress.gov/bill/117th-congress/house-bill/3684/text> (Last visited Jan. 27, 2022).

¹⁵ *Id.* IRC, s. 6045(g)(3)(D) defines "digital asset" to mean, except as otherwise provided by the [United States] Secretary [of the Treasury], any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

¹⁶ *Id.* IRC, s. 6045(c)(1)(D).

¹⁷ *Id.* IRC, s. 6045(a).

¹⁸ *Id.* IRC, s. 6045A(d).

¹⁹ *Id.* IRC, s. 6050I(d).

Proposed Changes

The House memorial would urge the United States Congress to oppose the reporting requirements placed on financial institutions, small businesses, and law abiding citizens, which are included in the Biden administration's tax increase proposal, and would dispatch a message to that effect.

Copies of the memorial will be sent by Florida's Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

The memorial contains seven whereas clauses. The clauses outline concerns regarding data privacy and security relating to a proposed expansion of reporting requirements as well as concerns regarding additional regulations imposed on financial institutions.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES