

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 507 Federal Taxation
SPONSOR(S): Ways & Means Committee, Overdorf and others
TIED BILLS: HB 509 **IDEN./SIM. BILLS:** SB 372

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|-----------------------------|------------------|----------------|--|
| 1) Ways & Means Committee | 19 Y, 3 N, As CS | Berg | Aldridge |
| 2) Judiciary Committee | | | |
| 3) Appropriations Committee | | | |

SUMMARY ANALYSIS

The Internal Revenue Service (IRS) is tasked with enforcing the federal tax code, including auditing, and in some cases, bringing suit against taxpayers it believes are not in compliance with federal tax laws. Recent federal legislation provided additional funding for the IRS, and is expected to increase enforcement actions.

The bill allows the Chief Financial Officer to reimburse owners of small businesses for their attorney fees and costs in actions in the United States Tax Court if the IRS brings suit, the small business owner prevails in court, and the court finds that the proceedings were brought by the IRS for retaliatory purposes.

The bill also creates a new cause of action in circuit court against an officer or employee of the IRS, or any contractor employed by the IRS, if in federal district court the employee, officer, or contractor is found to have violated one or more specified federal provisions. Those include part of the Civil Rights Act of 1964, the Internal Revenue Code, or the first, fourth, or fifth amendment to the United States Constitution. The circuit court judge can award actual damages and attorney fees and costs for Civil Rights or Internal Revenue Code violations. The circuit court judge can award actual damages, attorney fees and costs, and punitive damages for any violation of the United States Constitution.

The bill revises an existing reporting provision related to payment settlement entities (credit cards, payment applications, and payment processing systems).

The bill also requires all state financial institutions, subsidiaries, and service corporations to report quarterly the total number of inquiries, requests, summons, subpoenas, or other requests for information or records received from the IRS for account holders in Florida. The Office of Financial Regulation is then directed to provide all such reports annually in a single report to the Financial Services Commission, the President of the Senate, and the Speaker of the House of Representatives.

The bill is effective July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Internal Revenue Service

The Internal Revenue Service (IRS) is a federal agency organized to carry out the responsibilities of the United States Treasury secretary.¹ The IRS is headed by the Commissioner of Internal Revenue, appointed by the President of the United States.² The IRS identifies their mission as “to provide America’s taxpayers top quality service by helping them to understand and meet their tax responsibilities and to enforce the law with integrity and fairness to all.”³

In 2022, Congress passed Public Law 117-169, commonly known as the “Inflation Reduction Act.” Among many things included in that act was supplemental funding to the IRS and related agencies of nearly \$80 billion, to be used through the end of FY 2031 to increase taxpayer services and to bolster enforcement of the tax code.⁴ The Congressional Budget Office estimated the total additional revenue collected by the federal government as a result of enhanced IRS enforcement capabilities under the Inflation Reduction Act to total more than \$203 billion over the next ten years.⁵

The United State Tax Court

The United States Tax Court is a Federal trial court based in Washington, D.C. and has jurisdiction to hear cases involving taxpayer disputes over IRS determinations.⁶ Its mission is to provide a national forum for such cases, to carefully consider each case, and to ensure a uniform interpretation of the Internal Revenue Code.⁷ The U.S. Tax Court strives to provide taxpayers, most of whom are self-represented, with a reasonable opportunity to appear before the Court with as little inconvenience and expense as is practicable.⁸

Generally, cases before the Court are commenced by a taxpayer filing a timely petition in accordance with statute.⁹ Anyone can file a petition with the Court who has received a notice of deficiency, a notice of determination, or a notice of certification from the IRS, or anyone who filed a claim with the IRS for relief from joint and several liability and the IRS has not issued a determination letter six months after filing.¹⁰ Petitioners may request their case be tried in one of 74 U.S. cities, including Washington, D.C.¹¹ Cases before the Court are classified as regular cases or S cases. Petitioners with a qualifying case may request S case procedures, or “small procedures,” for resolving disputes between taxpayers and the IRS concerning \$50,000 or less.¹² Decisions in regular cases may be appealed to a U.S. Court of

¹ 26 U.S. Code s. 7801

² 26 U.S. Code s. 7803(a)(1)(A)

³ “About IRS,” <https://www.irs.gov/about-irs> (last visited March 24, 2023).

⁴ *IRS-Related Funding in the Inflation Reduction Act*, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/IN/IN11977> (last visited March 24, 2023).

⁵ Congressional Budget Office Cost Estimate, https://www.cbo.gov/system/files/2022-08/hr5376_IR_Act_8-3-22.pdf#page=3 (last visited March 24, 2023).

⁶ United States Tax Court, *Guidance for Petitioners: About the Court*, https://www.ustaxcourt.gov/petitioners_about.html (last visited March 22, 2023).

⁷ United States Tax Court, *Mission Statement*, <https://www.ustaxcourt.gov/mission.html> (last visited March 22, 2023).

⁸ United States Tax Court, *Mission Statement*, <https://www.ustaxcourt.gov/mission.html> (last visited March 22, 2023).

⁹ United States Tax Court, *Guidance for Petitioners: About the Court*, https://www.ustaxcourt.gov/petitioners_about.html (last visited March 22, 2023).

¹⁰ United States Tax Court, *Guidance for Petitioners: Starting a Case*, https://www.ustaxcourt.gov/petitioners_start.html (last visited March 22, 2023).

¹¹ United States Tax Court, *Places of Trial*, https://www.ustaxcourt.gov/dpt_cities.html (last visited March 22, 2023). The U.S. Tax Court conducts trials in four Florida cities: Jacksonville, Miami, Tallahassee, and Tampa.

¹² United States Tax Court, *Guidance for Petitioners: Starting a Case*, https://www.ustaxcourt.gov/petitioners_start.html (last visited March 22, 2023).

Appeals,¹³ however there is no right to appeal to a U.S. Court of Appeals from a decision in an S case.¹⁴

Attorney Fees and Costs

Taxpayers are generally responsible for their own attorney fees and costs related to United States Tax Court cases, although the IRS can be responsible for paying the taxpayer for those costs if the following criteria are met:¹⁵

- The taxpayer is the prevailing party, meaning:
 - The taxpayer has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented; and
 - The position of the United States was not substantially justified in its position (they did not follow applicable published guidance and/or did not follow the outcome of substantially similar cases in court of appeal for other circuits);
- The costs are related to administrative proceedings or court proceedings involving the IRS and are reasonable in nature;
- The taxpayer exhausted all administrative remedies available within the IRS;
- The taxpayer applies for administrative costs within 90 days after the date of the final decision;
- The taxpayer has a net worth that does not exceed \$2 million (if an individual) or \$7 million (if a business);¹⁶ and
- The taxpayer has not unreasonably protracted the proceeding.

No current state funding exists for taxpayer disputes with the IRS.

Form 1099-K Reporting Requirement

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third party merchants.¹⁷ The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.¹⁸

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of \$20,000 over more than 200 transactions.¹⁹ These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama,²⁰ Tennessee,²¹ North Carolina,²² and New York.²³

Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue electronically within 30 days of filing the federal return.²⁴ The copy

¹³ 26 U.S. Code s. 7482

¹⁴ 26 U.S. Code s. 7463(b)

¹⁵ 26 U.S. Code s. 7430

¹⁶ 26 U.S. Code 7430(c)(4)(D), 28 U.S. Code s. 2412(d)(2)(B)

¹⁷ 26 U.S. Code s. 6050W(e)

¹⁸ <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited March 24, 2023).

¹⁹ <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited March 24, 2023).

²⁰ <https://www.revenue.alabama.gov/new-1099-k-filing-requirement/> (last visited March 24, 2023).

²¹ <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales-16-01.pdf> (last visited March 24, 2023).

²² [https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-\(1099k\)](https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k)) (last visited March 24, 2023).

²³ https://www.tax.ny.gov/bus/multi/reporting_requirements.htm (last visited March 24, 2023).

²⁴ s. 212.134, F.S.

can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with an address in Florida.²⁵

Financial Institution Reporting

Each state financial institution, subsidiary, or service corporation is required to submit a quarterly report to the Office of Financial Regulation in accordance with the rules of that office.²⁶ For state banks and associations, the report is the quarterly bank Consolidated Reports of Condition and Income filed with the Federal Financial Institutions Examination Council as required by federal law.²⁷ For state trust companies, the report is Form OFR-U-130A, "Consolidated Financial Reports for Non-Deposit Trust Companies."²⁸ For credit unions, the report is the quarterly Call Report prepared and filed with the National Credit Union Administration as required by federal law.²⁹

Effect of Proposed Changes

Attorney Fees and Costs

The bill allows the Chief Financial Officer to reimburse owners of small businesses for their attorney fees and costs in actions in the United States Tax Court in specified circumstances.

The reimbursement can be provided if:

- The IRS initiates proceedings in the United State Tax Court,
- The small business is domiciled in Florida, has 50 or fewer employees, and generates an average gross revenue of \$4 million or less per year for the preceding two years,
- The small business owner is the prevailing party in the United States Tax Court proceedings,
- The United State Tax Court determines that the proceedings were retaliatory,
- The application includes a copy of the attorney's retainer agreement and fee or billing statement,
- The small business owner has not been previously awarded attorney fees or costs related to the proceedings, and
- The application is submitted with documentation to the Department of Financial Services within 90 days after receipt of final order concluding proceedings before the United States Tax Court.

If those conditions are met, the Chief Financial Officer will reimburse the attorney fees and costs out of the Internal Revenue Service Civil Liability Trust Fund created by House Bill 509.

Cause of Action Against IRS Employee or Contractor

The bill also creates a new civil cause of action in circuit court against an officer or employee of the IRS, or any contractor employed by the IRS, if in federal district court the employee, officer, or contractor is found to have violated one or more specified federal provisions in connection with the collection of federal taxes.

²⁵ s. 212.134(1), F.S.

²⁶ s. 655.045(2), F.S.

²⁷ Rule 69U-120.0451(1)(c), F.A.C.

²⁸ Rule 69U-120.0451(1)(c), F.A.C.

²⁹ Rule 69U-110.045, F.A.C.

The applicable federal provisions are:

- Title VI of the Civil Rights Act of 1964,
- Title VII of the Civil Rights Act of 1964,
- Title 26 of the Internal Revenue Code of 1986, as amended,
- The First Amendment to the United States Constitution,
- The Fourth Amendment to the United States Constitution, and
- The Fifth Amendment to the United States Constitution.

Upon a finding in a federal district court of competent jurisdiction that a violation of one of those provisions has occurred, a circuit court judge can award the following:

- For violations of the Civil Rights Act of 1964 or the Internal Revenue Code: actual damages and attorney fees and costs.
- For any violation of the specified amendments to the United States Constitution: actual damages, attorney fees and costs, and punitive damages.

Form 1099-K Reporting Requirement

The bill provides that for purposes of complying with a reporting requirement to the Florida Department of Revenue, third party settlement organizations are required to issue 1099-K returns to the Department for participating payees with an address in Florida that have aggregate transactions for goods and services in excess of \$600. The bill also requires paypal-type entities (those entities participating in third-party network transactions) to maintain records that clearly identify whether a transaction is for goods or services or both if that information is available at the time of the transaction.

Financial Institution Reporting

In addition to existing reporting requirements, the bill also requires all state financial institutions, subsidiaries, and service corporations to report quarterly the total number of inquiries, requests, summons, subpoenas, or other requests for information or records received from the IRS for account holders in Florida. The Office of Financial Regulation is then directed to provide all such reports in a single report to the Financial Services Commission, the Speaker of the House, and the President of the Senate each year by January 30.

The bill is effective July 1, 2023.

B. SECTION DIRECTORY:

- Section 1. Creates s. 17.45, F.S., to allow for reimbursement of attorney fees and costs for certain lawsuits related to federal income taxes.
- Section 2. Creates s. 72.042, F.S., which provides a civil cause of action for certain violations of federal law, if such violations occur as part of the collection of federal taxes.
- Section 3. Amends s. 212.134, F.S., to provide limitations on reporting requirements for certain payment processors.
- Section 4. Amends s. 655.045, F.S., to require quarterly reporting by financial institutions to the Office of Financial Regulation related to requests received from the IRS.
- Section 5. Provides that the bill is effective July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides for payments to small business owners in specified circumstances. It is unknown what the total amount of such payments may be, but they will be limited by the amount, if any, appropriated to the trust fund created in HB 509.

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. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Financial Services to adopt rules to implement the reimbursement provisions in section 1 of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2023, the Ways & Means Committee adopted a strike all amendment that:

- Clarifies that the determination of whether an action by the IRS is retaliatory is determined by the United States Tax Court.
- Revises the reporting requirements in section 3 of the bill to specify that the restrictions apply to reports provided to the Department of Revenue, that such reports include participating payees in Florida, and that third-party settlement organizations are limited in the reports they send to the Department of Revenue to those payees with aggregate third party network transactions for goods and services that exceed \$600.
- Retains the requirement that third-party settlement organizations must create and maintain books and records that identify whether a transaction is for goods and services, but clarifies that

it applies to transactions where that information is available to the organization at the time of the transaction.

- Revises the effective date to July 1, 2023.

This analysis is drafted to the bill as amended by the Ways & Means Committee.