

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 509 Trust Funds/Internal Revenue Service Civil Liability Trust Fund/DFS

SPONSOR(S): Overdorf

TIED BILLS: HB 507 **IDEN./SIM. BILLS:** SB 374

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

SUMMARY ANALYSIS

The bill creates the Internal Revenue Service Civil Liability Trust Fund within the Department of Financial Services. Funds for the trust fund will come from appropriations and interest earning. The trust fund is to be used solely to reimburse small business owners for attorney fees and costs pursuant to s. 17.45, F.S., as created by HB 507.

The trust fund balance does not revert at the end of the fiscal year. The bill states that the trust fund is exempt from termination pursuant to s. 19(f)(3) of Article III of the Florida Constitution.

The bill is effective the same day that HB 507 takes effect, if HB 507 or similar legislation is adopted.

Article III, s. 19(f) of the State Constitution requires every trust fund to be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. The bill creates a trust fund; thus, it requires a three-fifths vote for final passage.

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.

Effect of Proposed Changes

The bill creates the Internal Revenue Service Civil Liability Trust Fund within the Department of Financial Services. Funds will be credited to the trust fund through appropriations and interest earnings. The trust fund is to be solely used to provide reimbursement of reasonable attorney fees and costs incurred by small business owners pursuant to s. 17.45, F.S., as created by House Bill 507.

The bill provides that funds do not revert at the end of the fiscal year, and stay in the fund for carrying out the purpose of the trust fund.

The bill provides that pursuant to s. 19(f)(3), Art. III of the State Constitution, the trust fund is exempt from the automatic termination provision found in s. 19(f)(2), Art. III of the State Constitution.

The bill is effective on the same date that HB 509, creating the trust fund referenced in the bill, takes effect, or the same date similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

Section 1. Creates the Internal Revenue Service Civil Liability Trust Fund.

Section 2. Provides that the bill is effective on the same date HB 507 becomes effective.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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)

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

2. Other:

Article III, section 19(f)(2) of the State Constitution requires all newly created trust funds to terminate not more than four years after the initial creation of the fund. Article III, section 19(f)(1) of the State Constitution requires a newly created or re-created trust fund to be adopted by three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating or recreating the fund. This bill creates a trust fund; thus, it requires a three-fifths vote on final passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES