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TAXPAYER BILL OF RIGHTS 2

HEARINGS

BEFORE THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST AND SECOND SESSION

ON

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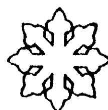

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CONTENTS

TUESDAY, DECEMBER 10, 1991

OPENING STATEMENT

Page

Pryor, Hon. David, a U.S. Senator from Arkansas, chairman of the subcommittee 1

COMMITTEE PRESS RELEASE

Pryor Calls Hearing on Taxpayers Bill of Rights 2, Tax Fairness Debate Should Include IRS Fairness, Senator Says 1

CONGRESSIONAL WITNESS

Lovelady, John, Assistant Director, General Accounting Office, Tax Policy and Administration Issue Area 33

PUBLIC WITNESSES

Portillo, Ramon, accompanied by his counsel, David Leeper, and Ramon Portillo, Jr. 3
Leeper, David, counsel for Ramon Portillo 5
Goldstein, Benson S., manager, Tax Policy Center, U.S. Chamber of Commerce, Washington, DC 14
McCormally, Timothy J., tax counsel, Tax Executive Institute, Washington, DC 16
Podolin, Leonard, chairman, Tax Executive Committee, American Institute of Certified Public Accountants, Washington, DC 20
Zaleski, Robert T., vice chair, Federal Taxation Committee, National Society of Public Accountants, Alexandria, VA 21
Keating, David L., executive vice president, accompanied by Jack Wade, board of advisors, National Taxpayers Union, Washington, DC 26
Desfosses, Paul J., president, National Coalition of IRS Whistleblowers, Washington, DC 28

FRIDAY, FEBRUARY 21, 1992

OPENING STATEMENTS

Pryor, Hon. David, a U.S. Senator from Arkansas, chairman of the subcommittee 47
Grassley, Hon. Charles E., a U.S. Senator from Iowa 47
Breaux, Hon. John, a U.S. Senator from Louisiana 48

COMMITTEE PRESS RELEASE

"T2"—Taxpayer Rights Bill—To Be Subject of Hearing, Current, Past IRS Commissioners to Testify 39

ADMINISTRATION WITNESSES

Peterson, Shirley, D., Commissioner, Internal Revenue Service, Washington, DC, accompanied by David Blattner, Chief Operations Officer; and Michael Dolan, Deputy Commissioner 50
Goldberg, Fred T., Jr., Assistant Secretary for Tax Policy, Department of the Treasury, Washington, DC 55

Page

CONGRESSIONAL WITNESSES

Reid, Hon. Harry, a U.S. Senator from Nevada 40
Fowler, Hon. Wyche, Jr., a U.S. Senator from Georgia 41
Livingston, Hon. Bob, a U.S. Representative from Louisiana 44

PUBLIC WITNESSES

Bettencourt, Carol, Raleigh, NC, accompanied by Bob Kamman, counsel, Phoenix, AR 71
Kamman, Bob, counsel for Carol Bettencourt, Phoenix, AR 72
Joslin, Stewart, New Orleans, LA 75
Coble, Larry, proprietor, Trophy Arts, Fort Worth, TX, and president, National Association of Private Enterprise, accompanied by Jeff Trinca, counsel, National Association of Private Enterprise, Washington, DC 83
Jones, Charlie, vice president-operations, accompanied by Laurie Conner, collection representative manager, Tax 1, Atlanta, GA 85
Shulman, Harvey J., general counsel, National Association of Computer Consultant Businesses, Washington, DC 88

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Bettencourt, Carol:
- Testimony 71
- Prepared statement 95

Breaux, Hon. John:
- Opening statement 48

Coble, Larry:
- Testimony 83
- Prepared statement 96

Desfosses, Paul J.:
- Testimony 28
- Prepared statement 98

Fowler, Hon. Wyche, Jr.:
- Testimony 41
- Prepared statement 102

Goldberg, Fred T., Jr.:
- Testimony 55
- Prepared statement 103

Goldstein, Benson S.:
- Testimony 14
- Prepared statement 123

Grassley, Hon. Charles E.:
- Opening statement 47
- Prepared statement 126

Jones, Charlie:
- Testimony 85
- Prepared statement 127

Joslin, Stewart:
- Testimony 75
- Prepared statement 130

Kamman, Bob:
- Testimony 72
- Prepared statement 133

Keating, David L.:
- Testimony 26
- Prepared statement 135

Leeper, David:
- Testimony 5
- Prepared statement 140

Livingston, Hon. Bob:
- Testimony 44
- Prepared statement with attachments 142

Lovelady, John:
- Testimony 33
- Prepared statement 151
- "Assessment of the IRS Implementation of the 1988 Taxpayer Bill of Rights" 154

Page

McCormally, Timothy J.:
- Testimony 16
- Prepared statement with attachment 176

Peterson, Shirley, D.:
- Testimony 50
- Prepared statement with attachments 184

Podolin, Leonard:
- Testimony 20
- Prepared statement 214

Portillo, Ramon:
- Testimony 3
- Prepared statement 220

Pryor, Hon. David:
- Opening statements 1, 47
- Prepared statement with attachments 220

Reid, Hon. Harry:
- Opening statement 40
- Prepared statement 253

Shulman, Harvey J.:
- Testimony 88
- Prepared statement 256

Zaleski, Robert T.:
- Testimony 21
- Prepared statement 262

COMMUNICATIONS

American Supply Association 267
Coalition for Independent Contractors 268
National Association of Enrolled Agents 271
Private Care Association, Inc. 272
National Federation of Independent Business 273
West Memphis Petro Co., Inc. 274

TAXPAYER BILL OF RIGHTS 2

TUESDAY, DECEMBER 10, 1991

U.S. SENATE,
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
OVERSIGHT OF THE INTERNAL REVENUE SERVICE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:02 a.m., in Room SD–215, Dirksen Senate Office Building, Hon. David Pryor (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

[Press Release No. 53, Dec. 3, 1991]

PRYOR CALLS HEARING ON TAXPAYER BILL OF RIGHTS 2, TAX FAIRNESS DEBATE SHOULD INCLUDE IRS FAIRNESS, SENATOR SAYS

WASHINGTON, DC—Senator David Pryor, Chairman of the Senate Finance Subcommittee on Private Pension Plans and Oversight of the Internal Revenue Service, announced Tuesday a hearing on proposals to be included in the Taxpayer Bill of Rights 2 (T2).

The hearing will be at *10 a.m. Tuesday, December 10, 1991* in Room SD–215 of the Dirksen Senate Office Building.

Pryor (D-Arkansas) said the hearing will examine the taxpayer rights proposals that he outlined in a speech on the floor of the U.S. Senate on November 6, 1991.

"As the debate heats up on how to achieve tax fairness for middle-income Americans, I believe the debate must also focus on whether middle-income Americans are treated fairly by the Internal Revenue Service," Pryor said.

"The proposals contained in T2 will help the IRS achieve higher standards of accuracy, timeliness and fair play in providing taxpayer service. At the same time, these proposals do not diminish the power of the IRS—they simply make the IRS accountable for its actions," Pryor said.

"The American taxpayer should not be required to pay the price for IRS mistakes and improper action," Pryor said. "Safeguards must be built into the law to protect the taxpayer against the potentially devastating effect of such mistakes and actions."

OPENING STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS, CHAIRMAN OF THE SUBCOMMITTEE

Senator PRYOR. Good morning, ladies and gentlemen. Our committee will come to order this morning. We welcome all of you here for this hearing on the Taxpayer Bill of Rights 2 that will be referred to as "T2".

Everyone here is very keenly aware that Congress is now holding hearings to discuss the fairness of our overall tax system toward middle income Americans. I believe an issue inseparable from this debate is whether the tax collector, the Internal Revenue Service, is treating middle income Americans fairly.

Today's hearing is about fairness. It is about due process. It is about respect. And also, it is about accountability. We look to our

citizens to respect the system and the agency of government assigned the very difficult task of administering it.

On the other hand, we also have a right to expect the men and women of the IRS to respect the taxpayer and to demonstrate that respect through courtesy, competence and certainly cooperation when necessary.

The IRS is composed of 120,000 employees who are in the business of collecting the proper amount of tax. This, basically, is the mission of the Internal Revenue Service. In doing this, the IRS processes over 100 million tax returns; it collects over $1 trillion each year.

In carrying out its mission, the IRS is going to make some mistakes and a few IRS employees are going to overstep their bounds. We saw this throughout the debate in 1987 and 1988 which resulted in the original Taxpayer Bill of Rights. Our tax law must reflect this reality by providing safeguards to protect the taxpayer from the potentially devastating affect of such mistakes and misdeeds.

I submit that the cost of providing these safeguards is a normal cost of doing business, and the price of IRS mistakes and misdeeds should not be borne by an innocent, well-meaning, good faith taxpayer.

Almost 5 years ago I introduced the first Taxpayer Bill of Rights. That bill formed the basis of the Omnibus Taxpayer Bill of Rights which was enacted into law in 1988. Many times since then I have referred to that legislation as a "good first step."

Last month I offered a list of proposals that will form the nucleus of the Taxpayer Bill of Rights 2. I believe these proposals are the logical next step. They build upon the foundation provided by the original Taxpayer Bill of Rights.

T2's goal is to help the IRS achieve higher standards of accuracy, timeliness and due process in providing taxpayers service. We do not seek to diminish or increase the power of the Internal Revenue Service, but T2 will simply make the IRS more accountable for its actions.

My purpose in introducing T2 in proposal form was to allow those persons interested in the administration of our tax laws the opportunity to study and comment on the proposals, also to offer their suggestions for this legislation.

Today, as a part of this continuing process, we will hear from persons representing the interests of a broad spectrum of American taxpayers. Also, we will hear the General Accounting Office report on its findings from a study I requested on the IRS implementation of the original Taxpayer Bill of Rights.

I would especially like to welcome Mr. Ramon Portillo, a house painter from El Paso, TX. He is here with his lawyer, David Leeper. They will explain Mr. Portillo's experience with the Internal Revenue Service, and a problem common to many, many taxpayers across our land today.

The problem basically arose when Mr. Portillo received a Form 1099, which reported him receiving some $37,000 in income from a general contractor. However, Mr. Portillo claimed, and the contractor's records showed, that Mr. Portillo had received only $14,000 approximately.

The IRS took the position that, even though the information in the 1099 could not be substantiated, Mr. Portillo bore the burden of proving the 1099 was wrong. The IRS pursued this taxpayer. They pursued Mr. Portillo all the way to the 5th Circuit Court of Appeals where ultimately the court this summer determined that the Internal Revenue Service's position to be "clearly arbitrary and erroneous."

We are going to see what happened to that case. We are also going to see what happened to Mr. Portillo during that several year battle with the Internal Revenue Service. It has been a real honor to have worked with Mr. Portillo for the last several weeks in trying to figure out this particular case so that we could present it to the general public this morning.

[The prepared statement of Senator Pryor appears in the appendix.]

Senator PRYOR. Mr. Portillo, you have been through a long nightmare. We welcome you to Washington for your first time, together with your attorney, Mr. Leeper, together with your son, Mr. Ramon Portillo, Jr. We ask the three of you, if you would, to take the stand at this time.

Mr. Portillo, you have a short statement, I believe, and then I will follow with a few questions if that is permissible with you. We welcome you to the committee this morning. We look forward to hearing your statement. You may proceed, thank you.

STATEMENT OF RAMON PORTILLO, ACCOMPANIED BY HIS COUNSEL, DAVID LEEPER, AND RAMON PORTILLO, JR.

Mr. PORTILLO. My name is Ramon Portillo. I am 72 years old. I am married. My wife and I have five children and twelve grandchildren. For most of my life I have painted buildings.

I was born in Juarez, Mexico. I went to school in Mexico till 9th grade. I came to the United States in 1955. It was after I got my residence that I began to work as a painter. I worked for 3 years and I saved my money so I could buy a small house. A few months later, I brought my family to El Paso. In 1960, I got my painting contractor's license from the State of Texas.

I have painted a lot of houses and buildings in El Paso and have worked for a lot of contractors. I put everything they pay in my papers and keep them in my truck. In 1984 I give all my papers to Irma Bonzales, my bookkeeper. She make my return and send it to the IRS. In 1986, I got a letter from the IRS. They said that when I filed my return, I showed that Mr. Navarro paid me $13,000 for the work I had done for him. But he showed that he paid me $37,000. That was when the IRS said I owed them $13,700.

I did not know what to do, but since I had painted David Leeper's house and had done work for his brother who is a contractor, I went to see him. I explained everything to David, and he said he would take the case and help me. The IRS never called me again.

The next year we went to court. This was in 1988. The Judge from Washington, DC and two lawyers from Austin, Texas were there. The Judge decided I owed the tax to the IRS which was now $17,000 because of the interest and fines.

I remember that I was angry and embarrassed, but what could I do? I wanted to stop the interest and fines. The interest was growing every day. It would soon be $24,000 or $25,000. I decided I would rather pay that to my family, so I went to them and I asked if they could loan me some money. With everyone's help, I got enough together to pay the IRS.

Then David appealed the case. This took over a year. In 1990 he went to New Orleans, and in 1991 he won. So we waited. But nothing else happened until this year when David called me. He said the IRS had a period of time to appeal the case which lasted until August 25 of this year. Then it was extended four more weeks. Finally, David told me they dropped the case. But I still don't have any money from them.

It has been 5 years since the trouble started. In all this time, it has been very hard on my wife. She became very nervous thinking about the debts. She has been sick a lot and spent many nights crying. I did not get sick so much because I was working, but my wife has suffered a lot.

I am a man who has worked hard all my life, but I am not a rich man. I am 72 years old and I go to work every day. We have money enough just to live and pay back all the loans. It is good that at least we can keep our house.

But we are still waiting for our money. And at my age, I fear we will die before we get it.

That is it, Senator.

Senator PRYOR. Mr. Portillo, thank you.

[The prepared statement of Mr. Portillo appears in the appendix.]

Senator PRYOR. Your case has become a very, very famous case in legal circles. In fact, it is my understanding that some of the law schools now are now referring to this as the Portillo case, and one of the wire services wrote a big story when you won your case against the IRS.

How do you feel about all the fuss and all the publicity being made about your case, with the Internal Revenue Service? How do you feel about that?

Mr. PORTILLO. Well, I feel happy about that, sir.

Senator PRYOR. You feel happy, but it is my understanding that you had to go to your relatives in Mexico and borrow the money to pay to the Internal Revenue Service.

Mr. PORTILLO. Right.

Senator PRYOR. And I believe with penalties and interest it was something like $25,000 that you had to give to the Internal Revenue Service. So they kept that money for a long time and you have won your case. They decided not to appeal from the Circuit Court to the Supreme Court. Now have you gotten your money back yet?

Mr. PORTILLO. They have not paid me yet.

Senator PRYOR. They have not sent you your money back. Do you know when they might send your money back to you?

Mr. PORTILLO. I do not know, sir.

Senator PRYOR. Do you know if they are going to be paying you any interest on the money that they are keeping that is your money?

Mr. PORTILLO. I hope so, sir.

Senator PRYOR. You hope so, but you do not know so.

Now you are very fortunate, and I must say that many Americans, Mr. Portillo, are not as fortunate as you are. You are fortunate because fate or the supreme being or someone intervened when, one day you were painting the home of an attorney, Mr. Leeper. And you went back to him when you got in trouble and he took your case. Is this correct?

Mr. PORTILLO. Yes, that is right, sir.

Senator PRYOR. Now we are going to get testimony from Mr. Leeper after a while as to how good or how bad a house painter you are. We are going to know all about that in a moment. But do you think that you had good representation? Has he been a good lawyer?

Mr. PORTILLO. Yes, the best.

Senator PRYOR. How much has he charged you for this case?

Mr. PORTILLO. Nothing.

Senator PRYOR. You have paid him nothing. And he has even paid all the expenses thus far, is this correct?

Mr. PORTILLO. Yes.

Senator PRYOR. You do not find many lawyers that do this. I want you to know this. And you are very, very fortunate, indeed to have had Mr. Leeper as your lawyer.

Now, how did you feel when Mr. Leeper had told you that you had won your case in the Circuit Court?

Mr. PORTILLO. The same thing, I feel happy. I do not want anybody else to suffer like me in this case. That is it.

Senator PRYOR. Were you afraid of actually losing your home, your truck, or your business because of your so-called liability to the Internal Revenue Service at this time?

Mr. PORTILLO. Yes, sir.

Senator PRYOR. Mr. Portillo, I may come back to you in just a moment. If you will bear with us, I am going to move now to Mr. Leeper. I am going to have Mr. Leeper, if he would, set out his description of this case and what it means in our whole system of tax collection, our relationship between the taxpayer and the Internal Revenue Service. We are going to ask Mr. Leeper now if he would give his short statement.

Mr. Leeper?

STATEMENT OF DAVID LEEPER, COUNSEL FOR RAMON PORTILLO

Mr. LEEPER. Thank you, Senator.

It is a great honor to be invited to testify before this prestigious Subcommittee. Thank you for the opportunity and for your efforts at improving our system of Federal taxation.

My name is David Leeper. I am a tax lawyer from El Paso, Texas. Our practice is limited to litigation against the Internal Revenue Service. I have an L.L.M. in Taxation from New York University and I have been in a private practice approximately 14 years.

Typically, my work involves reading and interpreting laws that you write. It is a unique experience for me to be involved at this stage of the proceedings. I feel particularly fortunate because I

have the opportunity to tell you of Mr. Portillo's plight and to tell you that this is the type of case that I see all too often.

In 1987 Mr. Portillo was audited by the Internal Revenue Service for his 1984 tax return. The facts are very simple. The information on Mr. Portillo's return did not match a Form 1099 filed by general contractor, Mike Navarro.

The contractor claimed that he paid Mr. Portillo $35,000 approximately, which he deducted on his own tax return. Mr. Portillo claimed he only received approximately $14,000. The IRS auditor interviewed the general contractor and discovered that he had no checks to confirm these payments, nor did he have any receipts from Mr. Portillo. Instead, the general contractor at age seventy-one claimed that he could from memory remember how much he paid Mr. Portillo on a weekly basis 1 year earlier.

The auditor disbelieved Mr. Navarro and this is in evidence in the following quote from the Service's file.

Senator PRYOR. Excuse me. The IRS auditor at this stage believed what?

Mr. LEEPER. The auditor interviewed the payor and did not believe the payor's statements.

Senator PRYOR. He did not believe that actually Mr. Portillo had received $35,000. Is this correct?

Mr. LEEPER. Yes, sir.

Senator PRYOR. All right.

Mr. LEEPER. The payor did not have any checks to Mr. Portillo for the difference, nor did the payor have any checks to cash in which to pay Mr. Portillo. And he did not have any receipts from Mr. Portillo showing that he had actually paid him.

Senator PRYOR. So the IRS did not believe the contractor, but they went ahead against Mr. Portillo anyway?

Mr. LEEPER. Yes, sir.

Senator PRYOR. All right. Now I have interrupted you. Please continue.

Mr. LEEPER. No, no, that is okay. There is great irony in this because the Government would never allow you to deduct a payment based upon mere recollection. But they are sure willing to allow you to be taxed on that income based on mere recollection. So there is a great irony in that statement.

The quote from the Service's file is, "Third party contact with Mike Navarro appears to indicate the taxpayer was paid less than the amount indicated on the 1099."

In spite of this, the auditor then attempted to prove that Mr. Portillo still received the money by application of what is called an indirect method of reconstructing Mr. Portillo's income. However, once again, that also indicated that Mr. Portillo did not receive the money. And once again, that too is in the Service's file. "The indirect method does not support the adjustment."

As you know, the indirect method is a way of reconstructing an individual's income. In this case they used that method on Mr. Portillo and it showed that he did not receive the income.

Not to be deterred, the IRS having no credible evidence supporting the claim that Mr. Portillo actually received this money nevertheless proposed the full amount of the liability against him. At a conference with the auditor and a group manager, which I at-

tended, that position was formally stated and recorded in the Government's file again. "The 1099 is correct unless the taxpayer can prove otherwise with proper documentation."

This was at the conclusion of the audit. So we did not discuss the facts because they had no facts. I mean we went over them and they had no evidence against Mr. Portillo. But they decided nevertheless to go forward and rely on the naked presumption that they are presumed correct because they are the IRS.

Senator PRYOR. In other words, the IRS presumed at this stage in the proceeding that the taxpayer was guilty?

Mr. LEEPER. Yes, sir.

Senator PRYOR. There was a presumption of guilt, rather than a presumption of innocence at this stage. Is that correct?

Mr. LEEPER. Yes, sir. That is right.

Senator PRYOR. Thank you.

Mr. LEEPER. The technical way of describing that is that the Service suspected that Mr. Portillo may have received the money. But because they could not develop any evidence against him they decided that they would rely on the legal fiction that they are presumed correct.

Senator PRYOR. This debt was how much to the Government?

Mr. LEEPER. It was $8,400, sir.

Senator PRYOR. $8,400 to the Government. How much did the Internal Revenue S--vice expend in trying to collect this $8,400?

Mr. LEEPER. I would say they spent way over $100,000.

Senator PRYOR. Why did they pursue this case so aggressively? I mean, as they say, there are a lot of whales out there and there are a lot of big, huge cases out there. Why do they go after a little 72-year-old house painter from El Paso, TX for an $8,400 debt with this degree of intensity?

Mr. LEEPER. There is a couple of answers to that, Senator. One of them is they were responding to Mr. Portillo's courage.

Senator PRYOR. They were responding to what?

Mr. LEEPER. They were responding to Mr. Portillo's courage. Most people in his situation would lay down and die and he did not. He was willing to absorb this abuse for 4 years, 5 years now. And it is continuing. So the Government is not used to and does not like this kind of aggressiveness.

Mr. Portillo did not receive this money and he was not going to roll over and say that he did; and so he fought them.

The other reason is that the Service, it is within the system itself, sir, the Service relies on its presumption of correctness on a broad spectrum of cases. Many times it will introduce no evidence at all. And because of the legal fiction that it is presumed correct, then they can win their cases.

In this case Mr. Portillo had the very difficult burden of proving that he did not receive the income. Now I say to you, sir, you go back 4 years and try to prove that you did not receive income from somebody else that claims he paid it to you in cash, and he had no receipts and he had no checks to you, and he could remember paying you.

Am I talking too long, sir?

Senator PRYOR. No, you are doing fine. I keep interrupting you. If you want to go ahead with your statement.

Mr. LEEPER. Please do. No. No. Feel free to interrupt me.

Senator PRYOR. You go right ahead with your statement because I think what you say is very relevant throughout your statement.

Mr. LEEPER. I am honored to be here, sir. I will speak in the order you would like me to.

Senator PRYOR. You are doing fine.

Mr. LEEPER. The District reviewer in Austin felt there were several ways of determining whether Mr. Portillo had, in fact, received that income. She wrote in her file the following quote, "Appears to be several ways to follow up to check if the taxpayer could have possibly received the cash. It appears it is the taxpayer's word against the contractor. The contractor has not proved that he gave the taxpayer the $35,000 in cash on the 1099. He only verified $13,900 in checks."

However, once again, rather than undertake this requested investigation the group manager chose to rely solely upon the legal theory that the IRS is presumed correct and the taxpayer has a burden of proof that he did not receive the additional income.

Once again, the group manager in responding to the request from the reviewer said the following, "The information"—this is referring to that investigation—"would tie up loose ends, but not change the tax liability and would take more time to develop than is possible in an office audit. The IRS does not have to prove to the taxpayer that 1099's filed by third parties are correct."

So Mr. Portillo suffered because the Government did not want to spend the time to do the investigation that the reviewer had asked her to make.

The Service then issued a Notice of Deficiency. I filed a Petition in the United States Tax Court here in Washington on behalf of Mr. Portillo requesting a redetermination. The IRS attorneys in Austin refused to meet and even discuss settlement, claiming that there are no hazards of litigation to them. That this is an all case.

To Mr. Portillo it was very clear the IRS felt they could not lose this case.

Senator PRYOR. Why did the IRS refuse to meet and talk? I do not understand that.

Mr. LEEPER. The reason, sir, is that the IRS wants to train its young attorneys and so they engage in cases, litigating cases, in order to train their young attorneys and this was one.

Senator PRYOR. Do they normally find "guinea pigs" like Mr. Portillo out there to practice on so their attorneys can practice on poor taxpayers like Mr. Portillo? Is that the way they train the IRS attorneys?

Mr. LEEPER. Yes, sir, they have. They have disclosed that to me. And at the recent calendar in El Paso they disclosed it once again and tried it on that basis.

Senator PRYOR. You know, if they wanted to train their attorneys on—let's say if they went after Donald Trump or Lee Iaccoca that might be something. But going after Mr. Ramon Portillo, house painter from El Paso TX, I do not know that that is quite what I think Abraham Lincoln envisioned the Internal Revenue Service to become eventually. So I am surprised to hear this. This is certainly educational to me.

Mr. LEEPER. Sir, again I mention again the Service did not believe that Mr. Portillo received this income. So it is especially egregious in the sense that they are pursuing him in order to train their attorneys and to protect their presumption of correctness against somebody who does not owe the money.

Senator PRYOR. They sort of used him as target practice it sounds like to me.

Mr. LEEPER. Yes, sir; and myself included.

Senator PRYOR. Okay, sir.

Mr. LEEPER. On appeal before the 5th Circuit Court of Appeals an attorney for the Department of Justice, the Tax Division, represented the IRS. She advised me privately and candidly that no competent tax lawyer would have represented the taxpayer in this case; and that her office had voted this case the least likely to succeed in 1990.

In stark contrast, and I can only imagine in great surprise to her, the 5th Circuit, both at oral hearing and in its opinion, was outraged. The court reversed the Tax Court and found for Mr. Portillo ruling, "In this case we find the Notice of Deficiency lacks any ligaments of fact." And later in that opinion, "The deficiency determination is clearly arbitrary and erroneous."

To anyone knowledgeable about tax matters these are punitive words in the tax law.

In September, 1991, Mr. Portillo and I filed a motion for attorney's fees with the U.S. Tax Court in Washington. The Service once again opposed that motion on the grounds that its position was substantially justified in its reliance upon the legal fiction that it is presumed correct.

In summary, the Internal Revenue Service forced Mr. Portillo, an elderly and impoverished grandfather, into Tax Court litigation based upon the mere suspicion that he may have underpaid his taxes. At trial the Service relied solely upon its presumption of correctness to sustain its position. Mr. Portillo could not prove that he did not receive the money 4 years earlier.

In 1991 the U.S. Court of Appeals for the 5th Circuit ruled the Service's naked reliance upon its presumption of correctness was clearly arbitrary and erroneous. And now before a hearing in the U.S. Court on attorney's fees, the Government is still arguing that the Government's position was reasonable, substantially justified in its naked reliance upon the presumption of correctness.

My point is this, sir, no matter how offensive the facts, no matter how strongly worded the court's opinion, no matter how offended this country becomes, nor no matter how damaged the individual taxpayer, we have a formidable and unyielding adversary in the Internal Revenue Service whose powers have long gone unchecked and unchallenged. This calls for strong legislation.

As for the future, in my opinion there are three things you might consider to alleviate future Portillo situations. The first, codifying Portillo relief provisions in your bill is an excellent first step. The poor and all of the others that the Service pursues on mere suspicion must have some measure of protection under the law.

Secondly, not all taxpayers are lucky enough to hire an attorney willing to aggressively pursue a matter to an Appeals Court. Your bill will remove the obstacles for obtaining attorney's fees by in-

creasing recoverable fees to market rates, expanding the time period for which these may be recovered, and by shifting the burden of proof to the Internal Revenue Service when a taxpayer substantially prevails.

In my view nothing creates more careful consideration by an IRS auditor or attorney as surely as the possibility that he or she may be accountable for his or her work or lack thereof as in this case.

Finally, we must redevelop the Internal Revenue Service's training procedures and increase its pay scales. The Service should not be seen as a training ground for apprentices. While there are some good people in the Service, there are far too many who leave after the training process has concluded.

Many of those who remain suffer from a bunker mentality. That is, they become entrenched and inflexible in their thinking. Agents need to learn the taxpayer is not an adversary or potential victim or as in many cases not a springboard for personal advance within the Service, but a human being with rights and responsibilities just like Mr. Portillo.

Senator PRYOR. Mr. Leeper, thank you very much.

[The prepared statement of Mr. Leeper appears in the appendix.]

Senator PRYOR. Once again, I repeat that Mr. Portillo was very fortunate, indeed, to have an attorney like yourself who came to him and has stayed with him these years without being compensated one cent up until this point.

I am curious about something. You stated that the attorney representing the Department of Justice, the Tax Division of the IRS, I guess, that she advised you privately that "no competent tax attorney"—I am reading from your statement—"would have represented a taxpayer in this case." That her office had voted this case the least likely to succeed in 1990. What does all this mean? What does that mean?

Mr. LEEPER. The words that she used and the manner in which she spoke them were very abusive, sir; and they were intended to be abusive. She was making a comment upon my skills and abilities as a tax lawyer and upon my character in being willing to pursue this as far as I did.

Senator PRYOR. What did the courts say about the representation on the other side, on the Internal Revenue Service side?

Mr. LEEPER. They told her that they were outraged by the position the Government had taken in this case, that they felt like she did not understand the merits in this case, and that they did not want to listen to her arguments. They also said that they cannot understand why the Government continues to pursue all these minnows when there are so many whales that are not paying any taxes at all.

Senator PRYOR. Your degree is from New York University, NYU. Why don't you for a moment play the part of a tax professor in the law school there and you are lecturing your class. You come to the Portillo case in the tax course. What do you tell your law school class that this case means?

Mr. LEEPER. The overall holding of the Portillo case as I see it is very significant. As you know, in the United States a criminal is presumed innocent until proven guilty. In the tax law that is not

true; it is the opposite. The IRS is presumed correct unless we can overcome that presumption.

This case does away with that legal fiction. From now on the Internal Revenue Service will not benefit from a presumption of correctness unless it first engages in a thoughtful and considered determination that taxes are due. If they do not do that, and obviously they did not come close to that in this case, if they do not do that, they cannot even issue a valid Notice of Deficiency and the case will be dismissed.

Incidentally, Senator, the 5th Circuit said also to the Department of Justice attorney at the hearing that whether or not the term "determination" in the Code has a significant substantive requirement like we asked for, or a minor one like she asked for, that in this case the Government did not come close to meeting either standard.

So the first and most important matter is that the Government no longer benefits from a presumption of correctness, unless it has first engaged in a minimal evidentiary investigation.

Senator PRYOR. And in this case there was not a minimal evidentiary investigation; is this correct?

Mr. LEEPER. Yes, sir.

Senator PRYOR. And the Court of Appeals found this and established this in the Portillo case?

Mr. LEEPER. Yes, sir.

Senator PRYOR. Were there additional principals?

Mr. LEEPER. Yes, sir, there is. The second one is that even if the Government engages in a thoughtful and considered analysis that taxes are due and issues a valid Notice of Deficiency which is upheld by the court, at trial nevertheless the Government will not be able to benefit from having the burden of proof shifted to the taxpayer unless it can first prove that it has conducted a reasonable investigation into whether or not taxes are due.

So they have this second hurdle, they have to prove to the Court now that they conducted a reasonable investigation in this case and determined that Mr. Portillo actually owed these taxes. They did not conduct such a reasonable investigation.

To the contrary, in this case they refused to conduct a reasonable investigation because it would take too much time.

Senator PRYOR. Now help me out. I need some education here. I have never understood all the steps of an IRS proceeding. The determination was made by the Internal Revenue Service that Mr. Portillo, house painter, El Paso TX, owed "X" amount of dollars with the penalties and interest. He goes to Mexico and borrows $25,000 and puts this into escrow with the Internal Revenue Service. Is this right?

Mr. LEEPER. Yes, sir.

Senator PRYOR. So then the appeal is filed. This does not stop the collection of the so-called debt owed to the Internal Revenue Service during the appeal. It does not stay, that debt. Is that correct?

Mr. LEEPER. Yes, Senator.

Senator PRYOR. All right.

Now what would be the case had he not been able to borrow this amount of money to give to the Internal Revenue Service? What would have happened there?

Mr. LEEPER. The only asset that Mr. Portillo has is his pickup truck which he paints from and a little home he has in central El Paso, a small residence with his wife. So if he had not been able to pay the bond while the case was on appeal, then the Service would have begun its collection efforts and they could have taken and sold his house.

Senator PRYOR. Would they have put him out of business if they had taken his truck?

Mr. LEEPER. In a heart beat.

Senator PRYOR. They would have done it?

Mr. LEEPER. In a heart beat.

Senator PRYOR. Were they concerned about Mr. Portillo's expenses in representing himself and carrying this case forward to the Circuit Court of Appeals?

Mr. LEEPER. You are asking me if the IRS is concerned?

Senator PRYOR. Yes. Were they concerned about the expenses or about the time off from his business or the potential of losing his business?

Mr. LEEPER. Everyone involved in Mr. Portillo's case does not give a damn about Mr. Portillo.

Senator PRYOR. Within the Internal Revenue Service?

Mr. LEEPER. Within the Internal Revenue Service.

I'm sorry, was that a bad word to use here?

Senator PRYOR. No, sir; I think that was probably right. It was probably well stated. [Laughter.]

Now do you see other cases in your practice where the Service goes against the taxpayer like this and fails to cooperate, I guess you might say, at certain stages early in the game?

Mr. LEEPER. Yes, Senator. And if we had this whole day I could repeat a litany of cases to you that I have been involved in over the last 13 and 14 years. In fact, in this case the same group manager is doing the same type of thing in another case I have right now.

I am involved in another case where the Government is attempting, has levied upon the receivables of a company that employs 61 handicapped and mentally retarded individuals who are unable to pay their payroll taxes for 1 year because of a breach of contract by their customer.

So, I mean, if you want to know a list of cases I can provide you a list of cases that would prove to you conclusively that Mr. Portillo's case is not an aberration.

Senator PRYOR. This is very disturbing I think.

Mr. Leeper, I think that in the Portillo case one of the things that is so disturbing to me, and I have just gone over this, but it still comes back to haunt me about our system itself and the mentality sometimes of the Internal Revenue Service. I do not apply this across the board to 120,000 people who make up the Internal Revenue Service. But it is the lack of caring that many times we have seen them show, and the lack of cooperation, and the total—I guess you might say—disdain or unconcern about whether the taxpayer can survive economically during a case.

I do not think the tax system, nor the policy of this country, should be that an individual taxpayer has to go broke in trying to correct a wrong inflicted by the Internal Revenue Service. Right

now there seems to be a lack of caring and concern by the tax collector and I am very disturbed about it.

It was 1988 when the Taxpayer Bill of Rights became law. Since that time, in these 4 years, we would have hoped that a new mentality would have taken over in the Service. It appears that in 1990 and 1991 there is that same old mentality in the Service the Taxpayer Bill of Rights addressed itself to and certainly expressed the sense of the Congress in trying to make certain the taxpayers rights were protected.

By the way, I think it is interesting to note that in 1988, the Taxpayer Bill of Rights was the first time, the first time, in the 200 year history of this country that a specific piece of legislation was passed by the Congress to protect the basic rights of a taxpayer against the Internal Revenue Service. And, yes, we are back now with Taxpayer Bill of Rights 2. We are building on the first piece of legislation. It appears that we have to.

In the concepts that I laid out in the Senate statement a couple of weeks ago with regard to the proposals that my legislation will include, I think that we are very fortunate to have not only this case of a real taxpayer and how that taxpayer has been abused; but also we are very fortunate to have comments from people like you who are practicing in the field with regard to the proposed piece of legislation.

I think it was in your early statement, Mr. Leeper, that you said you are in the business of reading and interpreting the laws that we pass. If you can read or interpret the laws that we pass you are, indeed, a brilliant, very wise individual and certainly an attorney worthy of being a lawyer in the profession.

I wonder if there are any final comments that you have, because if not we are going to move to our next witness.

Mr. LEEPER. I have one thing I would like to ask you, sir.

Senator PRYOR. Certainly.

Mr. LEEPER. This case in your bill is very important news within the tax bar and within the accounting system. There are hundreds and hundreds of people that I have met at my own seminars who are vitally interested in this case and what you are doing.

For the very first time, someone is making an effort to take out of the back room what is happening by IRS agents and bring it out to the public. I do not know anything about politics and the dynamics of Washington. I just do not know or understand it. But I am saying to you, as an experienced tax practitioner, that I am representing when I say a lot of people—when I say this, a lot of people in the tax bar, the accounting and thousands of taxpayers that I have represented, please pass this bill.

This bill is a wonderful first step in a long process that needs to be undertaken. Mr. Portillo and I are very moved by your courage in undertaking this and we have discussed this among ourselves. I think we would like to thank you, sir.

Senator PRYOR. Thank you very much.

And thank you, Mr. Portillo, Sr. and Mr. Portillo, Jr. We are very grateful for you coming a long way today to share your experience and I think this experience, even though painful for you, Mr. Portillo, is going to be of great benefit in the future to many, many small taxpayers like yourself who operate their own businesses and

who are struggling to stay there and struggling to basically stay alive.

To Mr. Leeper, we appreciate you very much, sir, because you represent in my opinion what lawyers should be in this country; and you have certainly stood in his shoes. You have come to his rescue. I know he will be eternally grateful. I look forward, and I know all of you look forward, when the IRS pays you the money that they owe you.

Now if you owe them money, as you know, they will take your house. They will take your truck. They will take your paint brushes. They will take everything you have to satisfy that debt. But I think they are pretty slow in paying you back what they owe you and what is rightfully yours.

Well, thank you again, the three of you.

Now we will call our next panel. We will ask now Mr. Benson Goldstein, the manager of Tax Policy Center, U.S. Chamber of Commerce; and Timothy J. McCormally, tax counsel, Tax Executives Institute of Washington, DC.

Mr. Goldstein, you are certainly no stranger to this committee. We not only appreciate your past contributions in our deliberations, but we also appreciate especially you being here today. We look forward to your statement. We are going to try to limit our prepared statements to five minutes each. The entirety of your statements will be placed in the record and will be spread upon the record at the appropriate point.

Mr. Goldstein, we appreciate your statement we look forward to hearing you.

STATEMENT OF BENSON S. GOLDSTEIN, MANAGER, TAX POLICY CENTER, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. GOLDSTEIN. Thank you, Senator.

I am Benson Goldstein, manager of the Tax Policy Center for the U.S. Chamber of Commerce. We appreciate this opportunity to present the Chamber's views on the Taxpayer Bill of Rights 2 and ways to improve the sometimes troubled relationship between the Internal Revenue Service and the American taxpayer.

The first Bill of Rights was landmark legislation. It was the first legislation to strengthen the fundamental due process rights accorded to the American taxpayer. The American taxpayer is deeply in your debt, Mr. Chairman, for your tireless work to overcome a combination of indifference and hostility.

Your efforts ultimately resulted in the first Taxpayer Bill of Rights becoming law by its inclusion in the 1988 Technical Miscellaneous Revenue Act. Although more needs to be done to assure fair administration of the tax law by the IRS the first Bill of Rights has had a fair and positive impact on the relationship between the taxpayer and the Service.

Taxpayer rights will be greatly improved by the new legislation through the creation of independent ombudsman. The current ombudsman cannot effectively help taxpayers resolve problems with other IRS personnel to the extent he or she reports to the Commissioner.

The new Bill of Rights will provide the IRS ombudsman be appointed by the President and confirmed by the Senate and that local problem resolution offices report directly to the ombudsman. An independent ombudsman and strengthened problems resolution offices on the local level will contribute to an improved climate to assure a fair hearing on taxpayer problems.

Section 6621 of the Code is a classic example of a measure which can easily be labeled as anti-taxpayer. This Code provision sets the interest rate the IRS charges taxpayers on tax deficiencies in the matter of tax overpayment, what the IRS pays taxpayers in interest on tax overpayments as well.

Based on the formula found in the Code, the IRS has currently set the underpayment interest rate at 9 percent and the overpayment rate at 8 percent.

In my statement I have stated other interest rates, but apparently yesterday I understand that the IRS did reduce the interest rates on underpayments and overpayments.

The second Bill of Rights will eliminate the current interest rate differential between the interest the taxpayer pays the IRS on underpayments and the interest the IRS pays taxpayers on overpayments.

The Chamber applauds the Subcommittee's consideration of this particular proposal. By eliminating the interest differential the new legislation will help restore a sense of equity in the Tax Code and to the tax administration process.

The second Bill of Rights makes a number of important changes in the area of professional fees in terms of recovery of administrative costs. The Code limits recovery of professional fees in most cases to $75 per hour. Like it or not, most private attorneys in the U.S. charge in excess $75 per hour. The Chamber supports the proposal by Subcommittee Chairman Pryor to increase this amount to a maximum of $150 per hour from the current $75 limit, including the laudatory proposal of indexing the amount to inflation.

The Government's litigation resources are for all practical purposes virtually unlimited, enough to wipe out the average taxpayer. The Government does not have at present sufficient restraint on the ability to litigate unwarranted cases.

Under the new legislation the burden of proof in tax proceedings will be shifted to the IRS. THe new bill will permit the recovery of administrative costs if the Government cannot show that its position was substantially justified. The Chamber supports this approach and is very interested in working closely with the Subcommittee on the scope of the legislative language to implement the procedure.

The next issue I would like to get into is the designated summons. I think we should call this sort of the new frontier in tax compliance. It is an awesome power that the IRS has.

Senator Pryor should be commended for recognizing that the designated summons powers of the Code grants the IRS an extraordinary compliance tool. The IRS has the authority to issue a designated summons for the production of documents or other information in connection with the audit of corporate taxpayer.

Current law permits the IRS to issue a designated summons with just 60 days remaining on the statute of limitations. If the

taxpayer under such circumstances does not fully comply in a short period of time, the IRS can suspend the statute of limitations by initiating judicial enforcement of the summons.

In his summary of the Bill of Rights 2, Chairman Pryor accurately describes the immense powers granted the IRS under this authority. Senator Pryor comments that while there may be situations where the use of a designated summons late in the audit process may be appropriate, nonetheless the IRS should not be allowed to surprise taxpayers who reasonably and in good faith believe that the statute of limitations was going to expire.

Absent outright repeal of this onerous provision, the Chamber has a number of recommendations detailed in our written comments to even the playing field for the corporate taxpayer faced with a designated summons. I think we really have to look at this issue in terms of a good faith taxpayer should not be really hit with a designated summons.

The last issue I would like to address is the perspective effective date on Treasury regulations. The new bill will generally require that all regulations issued by the Treasury Department will effected perspectively.

Senator PRYOR. Go ahead and finish your statement.

Mr. GOLDSTEIN. The Chamber strongly supports this and is interested in working with you on implementing language.

In closing, I would like to just say that the road should be easier for you, Mr. Chairman, on working on Taxpayer Bill of Rights 2. The road for the first bill was a lonely one for you and many of the Subcommittee members. Many in Congress and the Government said the heavens would fall if you tried to address what the IRS was doing in terms of the audit and administration process.

The heavens did not fall and I think the first bill of rights is working. I think we need some further powers to help the taxpayer.

Thank you very much, Mr. Chairman.

Senator PRYOR. Thank you very much, Mr. Goldstein.

[The prepared statement of Mr. Goldstein appears in the appendix.]

Senator PRYOR. I will have a couple of questions to follow in just a moment. But Mr. McCormally is next. Now we know what the U.S. Chamber of Commerce is. Now what is the Tax Executives Institute? What is this just for the benefit of myself and the audience?

STATEMENT OF TIMOTHY J. McCORMALLY, TAX COUNSEL, TAX EXECUTIVES INSTITUTE, WASHINGTON, DC

Mr. McCORMALLY. Thank you, Senator.

Tax Executives Institute, or TEI, is the professional association of 4,700 individuals who work primarily in large corporations. Now I admit that large corporations are not the first group that you think of when you hear about taxpayer rights or the need for taxpayer safeguards.

You hear about cases like Mr. Portillo's, but that does not mean that there are not things in the tax law concerning corporate tax payers that need to be addressed, that there are not practices by the IRS that need to be remedied. We are heartened that there are

provisions in "Taxpayer Bill of Rights 2" that address the rights of corporations.

Our members are involved in large part in the IRS's coordinated examination program. This is a program under which IRS agents are present and audit on a day-to-day basis in corporate tax departments; they maintain offices in corporate facilities. Because of their continual dealings with the IRS, our members know first hand the hidden cost and the frequent unfairness that pervades certain of the tax rules.

As I said, TEI is very pleased that there are several provisions in T2 that address the rights of corporate taxpayers and that, if enacted, will restore a better sense of balance to the taxpayer/IRS relationship.

Now I wish to stress that TEI is not here to bash the IRS. We have extremely good relations with the National Office of the Service and believe we work together cooperative on a great number of issues. We also believe that since the enactment of the original Taxpayer Bill of Rights in 1988 the IRS has made great strides in ensuring taxpayer rights. Through Congress's vigilant oversight the IRS has become much more sensitive to the need of quality, accountability, fairness and evenhandedness in tax administration. But this is not to say that more cannot be done by both Congress and the IRS. There are particular cases that need to be addressed and there are cultural and systemic barriers to a truly fair tax system.

TEI believes that it is time for Congress, taxpayers, and yes, the IRS, to move forward together in a partnership to strengthen taxpayer rights and protections. We believe T2 is a logical and necessary next step in the process.

The first issue I wish to address is one that Mr. Goldstein mentioned, the interest rate differential. As he pointed out, under current law the IRS charges a higher rate of interest on tax deficiencies than it pays on refunds. It does not do this by choice. It does it because Congress enacted the law in 1986. TEI did not believe it made any sense then; we do not believe it makes any sense now.

The differential was intended to ensure that taxpayers not take advantage of above-market rates by overpaying their taxes and then claiming a refund. But this so-called abuse could only occur when the tax interest rate was not adjusted periodically and thus it could get out of whack with the market. But the rate is now adjusted on a quarterly basis—for example, it was just adjusted yesterday—and so the potential for interest rate arbitrage is minimal at most.

We think the interest rate provisions of the law should be designed to recompense a party for the time value of money and they should not change, depending on which side of the transaction the Government is on. The Federal Government should not view itself as a financial institution that is free to extract a high rate of interest from taxpayers with no negotiating power, while paying only the passbook rate. As one wag put it, the Government does not even give toasters.

TEI also urges Congress to take action to require the abatement of interest when interest accrues as the result of an IRS error or

delay. Currently, the IRS may abate interest only when the error or delay relates to a "ministerial act" and that is a term of art that the IRS has narrowly construed.

T2 would eliminate the "ministerial act" limitation and thus require the IRS to abate interest where a case languishes, for example, for months in the Appeals Division of the IRS because a needed specialist has been assigned to another matter. TEI believes that this provision is very important in light of a recent IRS peer review analysis that indicates more than one-half of all the delays in the IRS large case program are attributable to the IRS and not the taxpayers.

Like the Chamber of Commerce, TEI commends the Chairman for moving ahead on the designated summons problem. We believe that this provision, which was enacted last year, is a perfect example of why tax laws should not be developed, whether at Andrews Air Force Base or in the back rooms without hearings. It has the effect of potentially extending the statute of limitations in a one-sided, uneven manner.

Now there can be no question that the tax returns of large corporations are very complicated and that it takes considerable time for the IRS to audit those returns. But we submit it is a very big step to move from this undeniable truth to conferring on the IRS the unilateral and almost unlimited power to extend the statute, even in respect of wholly cooperative taxpayers. T2 would install several procedural safeguards into the statute and ensure that the IRS does not use the designated summons as an indiscriminate club against taxpayers.

Mr. Chairman, I appreciate this opportunity to appear before you and would be delighted to answer any of yours questions.

Senator PRYOR. I want to thank you for your statement.

[The prepared statement of Mr. McCormally appears in the appendix.]

Senator PRYOR. I thank both of you.

I have just a couple of questions if I might. Let me ask Mr. Goldstein about how he thinks the proposed structure of the Ombudsman's office under T2 is looking.

Now do you think this is the proper way to proceed? I will be honest with you, I am still not certain that is the best way to go. I am inclined that it might be. But do you have any suggestions you might like to leave with us, either you or your colleague to your right?

Mr. GOLDSTEIN. I think the first matter would be the issue there is reporting to the IRS Commissioner. I think that is where your focus has been and I think it has been rightly so. You have decided to not have him report directly to the IRS Commissioner, but be appointed by the President and confirmed by the Senate.

Now there obviously have been other proposals in the past to have the Ombudsman sort of be part of the Treasury Department. There have been some proposals around. I think that your idea, what you are proposing, is probably an excellent way to go for consideration and we fully support that.

Senator PRYOR. Well I want both of you to know or each of you to know that as we proceed down the track with the development

of this legislation that any comments you have on this structure will be very much appreciated.

Do you have any comments on this, Mr. McCormally?

Mr. McCORMALLY. Senator, Tax Executives Institute has not really taken a position on the structure of the Ombudsman's office. One thing that I would point out—and it probably again is a difference between individual taxpayers and the constituency that I represent—is that our members are tax professionals who deal with the IRS on a daily basis; quite candidly, in the last 5 or 6 years we have had very good relations with the Ombudsman and the Problems Resolution Officers. Our companies report excellent experience. And have our concern is that we not go backwards.

But we concede that, in the case of the rank-and-file, ordinary taxpayer who is representing himself or is faced for the first time with a notice there may be a need to increase the visibility of the Ombudsman and to increase the safeguards for those taxpayers.

Senator PRYOR. And also the structure—I will apply the same request for comments on the structure of the PRO, the Problem Resolution Officers, out there in the field. If you have any comments on that we would be glad to have those.

Mr. McCORMALLY. Senator, what I was speaking to is the relationship of taxpayers to both the Ombudsman and the PRO's.

Senator PRYOR. I know our PRO officer in the Little Rock office, Priscilla Graves, is a very, very fine and dedicated public servant. I probably made a mistake about a year ago when in one of my state wide newsletters I listed her name and telephone number if they had any IRS problems. I think she got several hundred calls.

Mr. Goldstein, do you have any comment?

Mr. GOLDSTEIN. We do hear positive comments, first of all I want to say that right off, that we do hear positive comments about how the problem resolution offices are working out there.

However, I think that the issue is how can we most effectively improve the process in helping taxpayers. I think an independent ombudsman with problem resolution officers reporting to the ombudsman in his independent office I think is going to improve that taxpayer rights. It is going to help them in terms of resolving disputes with the IRS and it will ultimately improve the compliance process in the long term.

Senator PRYOR. Taxpayer Bill of Rights 2 wants to make this whole process more independent—more independent of the Commissioner, more independent of the District Director, more independent of the Department of the Treasury. We want it more independent of all of the bureaucracy so that they can speak with a very, very open and free voice on behalf of the taxpayer. That is what this is about. This is what we are attempting to achieve, and I hope it will be achieved in the Taxpayer Bill of Rights 2.

We want to thank the two of you for your comments and your presence this morning. Once again your statements will be placed in the record and we thank you for your interest in this matter.

Thank you.

Our third panel this morning, Mr. Leonard Podolin, chairman of the Tax Executive Committee, the American Institute of CPAs; Robert Zaleski, vice chair of the Federal Taxation Committee, Na-

tional Society of Public Accountants, Alexandria, VA. We thank both of you for appearing this morning.

Senator PRYOR. Mr. Podolin, we look forward to your statement. We appreciate your being here.

I would like to start off by thanking the two of you and the associations that you represent for being early supporters of the original Taxpayer Bill of Rights and for your interest in the Taxpayer Bill of Rights 2.

Thank you.

Mr. PODOLIN. Thank you. And as you are about to hear we continue to be supporters.

Senator PRYOR. Thank you.

STATEMENT OF LEONARD PODOLIN, CHAIRMAN, TAX EXECUTIVE COMMITTEE, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, WASHINGTON, DC

Mr. PODOLIN. My name is Leonard Podolin, chairman of the Tax Executive Committee of the American Institute of Certified Public Accountants.

We have roughly 300,000 members and our client base ranges from every size taxpayer imaginable to the huge corporations, down to individuals, such as Mr. Portillo. We have for many years been supporters of improvements to the Federal income tax system, including tax simplification, systems modernization, improved voluntary compliance and a number of other initiatives.

We favor and support legislation for taxpayer rights so that taxpayers will perceive the tax system to be fairly and equitably administered and that will enhance their desire to comply voluntarily with the tax laws. We support almost every proposal in T2 or in the summary of T2 and we have added a couple of suggestions of our own.

For instance, we would like to see a proposal that would either eliminate the preliminary conferences that occur between revenue agents and appeals officers or somewhat less desirably to require those conferences to be transcribed and the transcripts be made available to taxpayers so that the appeals function can serve as we believe it was intended as an independent administrative hearing to evaluate the government's and the taxpayer's arguments with a view to settling the case by compromise, if that is appropriate.

Another one of our suggestions would be that we would like to see a proposal to reemphasize the taxpayers rights to be represented by a CPA, a lawyer or enrolled agent in an examination rather than to be required to appear personally and to have the examination at the representative's office if that is appropriate.

As to the ombudsman proposal, we feel that the problem resolution officers and offices are working extremely effectively from within the Internal Revenue Service and we do not think that arrangement should be disturbed.

What does seem to be needed is an elevation of the stature of the taxpayer ombudsman and the required reporting to Congress that is described in T2. I guess what we would say on the ombudsman is that it is probably one of the best things that has happened within the IRS at least from our viewpoint as CPAs and taxpayer representatives. It works. The problem resolution officers in most,

if not all, the Districts do have the support of the District Director and the relevant service center and therefore they are empowered.

They are basically like a complaint department in a store and they seem to be able to operate better from within than if they were viewed as outsiders. The employees tell the PRO what the problems are and what the successes have been and in that way the PRO gets inside information. If we move them outside the IRS it is not clear that they would continue to do so.

With that, you have our prepared statement which I understand will be on the record and I would be happy to take questions.

Senator PRYOR. Thank you. Your statement will be placed in the record.

[The prepared statement of Mr. Podolin appears in the appendix.]

Senator PRYOR. Mr. Zaleski, please.

STATEMENT OF ROBERT T. ZALESKI, VICE CHAIR, FEDERAL TAXATION COMMITTEE, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS, ALEXANDRIA, VA

Mr. ZALESKI. Good morning. My name is Robert Zaleski. I am a public accountant from Plymouth Meeting, PA. I am also enrolled to practice before the Internal Revenue Service. I appear before you today as vice chairman of the Federal Taxation Committee of the National Society of Public Accountants. Our chairman, Donnie Woods, of Nashville, AR asked me express his regrets for being unable to attend today's session.

NSPA represents some 21,000 independent accountants who provide professional services to an estimated 4 million individuals and small businesses nationwide. We have reviewed each of the taxpayer rights proposals introduced by Chairman Pryor. We have also taken the liberty of addressing some of the other taxpayer rights problems our members encounter on a regular basis.

In the balance of my allotted time I would like to highlight of the matters we have raised in our written statement and I refer you to that statement for our complete testimony.

Attorney/client privilege. NSPA supports the proposed reinforcement of the attorney/client privilege. We also recommend the expansion of the privilege to include all tax practitioners. The existing privilege applies only to attorneys. Such a proposal has been championed in the past by retired Colorado Senator Bill Armstrong and is currently included in legislation introduced by Senator Steve Symms and Alfonse D'Amato.

The tax preparer's privilege is an important safeguard in our democratic system and a long overdue addition to the Taxpayer Bill of Rights. The National Society urges the Subcommittee to give the tax preparer's privilege every possible consideration.

Tax preparation fees. NSPA was deeply disturbed by a recent IRS private letter ruling which suggested that no portion of tax return preparation fees could be allocated to activities reported on Schedule C, E or F. We believe that both the PLR's policy and its underlying technical analysis were in error.

We strongly support a legislative clarification that reasonable allocations of tax return preparation fees among Schedule C, E and F should be permitted.

Notice of examination by written notice. NSPA supports a requirement that initial taxpayer contact occur in writing and not by telephone.

Tax court practice. House Budget Committee Chairman Leon Panetta has introduced legislation to allow certified public accountants and enrolled agents to represent taxpayers in small cases before the U.S. Tax Court. Taxpayers represented by enrolled agents or CPAs who are already authorized to practice before the IRS are denied the most effective, least expensive representation before the Tax Court in such cases.

Moreover, the CPA or enrolled agent who prepared the return is already familiar with the taxpayer's case. Because the rules of evidence and procedure are waived in small cases, he or she is the logical person to carry on in such a dispute to the Tax Court.

More importantly, since the IRS is required to consider the hazards of litigation to both the taxpayer and Government in deciding whether or not to settle a case, Congressman Panetta's bill would essentially level the playing field for taxpayers in Appeals.

In this respect, NSPA views HR–1485 as both a logical extension of CPA's and enrolled agents' practice rights as well as an important procedural safeguard to taxpayers. We urge its inclusion in T2.

Place of audit. For many taxpayers, the intransigentce on the part of some IRS auditors to conduct a field audit at the practitioner's office continues to be a problem. When an audit is conducted at the practitioner's office, he or she offers complete access to records, adequate space without disruption to any of the parties, and the ability to mitigate the fees that he or she must charge the taxpayer.

While some IRS staff have shown increased sensitivity in this area, such attitudes are neither uniform nor codified. We believe that legitimate tax administration needs can still be satisfied without having to conduct an entire audit at the taxpayer's home or place of business.

Honoring the power of attorney. Tax practitioners routinely experience difficulty in having IRS field personnel honor valid powers of attorney. That is, all too often IRS employees make direct contact with the taxpayer even after receiving their power of attorney authorizing representation by an attorney, CPA or enrolled agent.

NSPA recognizes that legitimate circumstances may on occasion necessitate a direct taxpayer interview. Nevertheless, where a power of attorney is on file, such an interview should be arranged through an authorized representative and conducted in that representative's presence. This improper disregard of a power of attorney compromises the rights of both practitioners and taxpayers.

NSPA recommends establishing some appropriate form of sanctions be considered to discourage this practice.

Before concluding, NSPA would like to emphasize that the comments it has presented herein are not intended in any way to detract from the fine efforts of the Internal Revenue Commissioner, Fred Goldberg and his dedicated staff. Rather, it is the National Society of Public Accountants' hope that the proposed changes will have a positive effect for all concerned.

In closing, Mr. Chairman, I would like to again thank you for your invitation to appear before the Subcommittee today. The National Society of Public Accountants applaud your leadership and that of the members of the Subcommittee in addressing the important issue of taxpayer rights. We stand ready to assist you in your efforts in every way possible.

Thank you.

Senator PRYOR. Thank you very much.

[The prepared statement of Mr. Zaleski appears in the appendix.]

Senator PRYOR. I would like to thank both of you for your statements. Let me ask just a couple of general questions.

I noticed that the AICPA has endorsed the independent appeal system in the collection process. How might you envision this appeals process being as independent as possible and still being able to collect the tax dollars that we have to collect to run this country?

Mr. PODOLIN. I do not think those are inconsistent, Senator. I think that what we are picturing is an appeals person for the collection process that is similar to the appeals process that now occurs for examination so that they would be charged with the idea of making reasonable compromises and listening to and evaluating both sides of the base.

Senator PRYOR. Now you stated in your original statement that you believe that we should strengthen the Taxpayer Bill of Rights 1, that section which guaranteed representation of the taxpayer by an attorney, I believe, or a CPA.

Mr. PODOLIN. CPA or enrolled agent.

Senator PRYOR. Or who else?

Mr. PODOLIN. Or enrolled agent.

Senator PRYOR. An enrolled agent.

I thought that was in the Taxpayer Bill of Rights and I thought that we were coming along pretty well with that. What is wrong? What has happened?

Mr. PODOLIN. My comments there, had I expanded them, would probably have been very similar to my colleague's, Mr. Zaleski, in that it is not infrequent in our experience that an agent demands at least in the first meeting that the taxpayer meet with the agent without the representative.

We believe that the representative, as a minimum, should accompanying the taxpayer and ordinarily should represent the taxpayer and only in unusual circumstances need the taxpayer appear at all.

Senator PRYOR. Well somehow or another I was thinking that that right was given to the taxpayer to be represented and also not that he was being forced to go into that initial hearing without representation.

I also understand that in some of these provisions it varies from State to State or district to district how these provisions of the Taxpayer Bill of Rights are being implemented or carried out. In other words, in Arkansas we may have a district director who tells his agents, okay, that the taxpayer has these rights and you make certain that those rights are there and a certain other district may not communicate that same right.

Do we see a divergence, let's say of jurisdiction and a different set of rules applied in some jurisdictions than others?

Mr. PODOLIN. I think we do, but perhaps not necessarily so much by jurisdiction as by individual. There are occasions, Senator, where a particular individual may get unusually aggressive and unusually—I do not know what the right word would be—belligerent. Sometimes that is attributable to a particular District or Region. Sometimes it is across the country based on particular individuals.

Senator PRYOR. In the section of the Taxpayer Bill of Rights passed in 1988 in Part I—let's see, that would be Section 7520—what I am going to do is just, place in the record that entire Section of the legislation and hopefully this entire Section will be distributed to all of the employees in this area of the Internal Revenue Service.

So once again they will know not only what the law of the land is, but also what the intent of the Congress was. So I am going to have that reprinted in the record and hopefully our District Directors out there will disseminate that part of the record to all of those involved.

[The information appears in the appendix.]

Senator PRYOR. Now a question. Both of you, I think, sat here during Mr. Portillo's testimony and questions. Is that correct?

Mr. PODOLIN. Yes.

Mr. ZALESKI. Yes.

Senator PRYOR. Are there a lot of Mr. Portillos out there in the country, like him? I do not want to use the word harassed, but I might use the word abuse. Are there a lot of Mr. Portillos out there?

Mr. PODOLIN. That is difficult to say. I think what we are faced with here is the general rule within the Internal Revenue Code that the burden of proof in general is on the taxpayer and that is because what we have is a voluntary compliance system—a hundred and some million taxpayers and not enough revenue agents to examine each and every return or each and every transaction.

Therefore, there has to be a burden on the taxpayer to substantiate whatever it is that he claims has been his financial transactions for the year, reportable tax transactions for the year.

On the other hand, where a taxpayer has no resources to prove or disprove something of the nature that happened to Mr. Portillo, I think it is appropriate and we do support the change in the burden on that kind of thing, appropriate to shift the burden of the IRS to go behind the 1099 or other document and say, why should we believe that anymore than we believe Mr. Portillo. He has no record of tax evasion or anything of that nature, so why isn't it equally possible that the provider of the Service made a mistake or erroneously filed the 1099.

A bank can do that. A stockbroker can do it. And certainly so can an individual businessman. I just do not know how many of those people there are out there.

Senator PRYOR. Mr. Zaleski, do you have any comments on that? Are there a lot of Mr. Portillos out there?

Mr. ZALESKI. Well, I do not know if there are a lot of Mr. Portillos out there. I represent small taxpayers such as Mr. Portillo. There is always a constant stream of problems that every small preparer has that is a matter of getting them corrected.

Many of them do result from incorrect information reports—1099's, K–1s, whatever—that may come out from the originator of that document.

It takes a long time to get them corrected.

Senator PRYOR. How many people in the same or similar circumstances would have fought that case as long as he did for 5 years and taken it to the Court of Appeals? Ultimately, that case was headed to the U.S. Supreme Court. The Internal Revenue Service thought about appealing. In fact, they asked for an extension of time so they could finally make their determination whether or not to go to the Supreme Court of the United States on Mr. Portillo's $8,400 tax liability.

How many people would have fought that case that long?

Mr. PODOLIN. Probably not very many in my view. And I think if your point is that a lot of people would simply, if they could, just write a check just to be done with the matter, I am afraid you are right. That often is true because the amount of time and expense and aggravation involved in fighting even a small matter can sometimes just not be worth it unfortunately.

Mr. ZALESKI. Yes, I concur with that. There are many times a taxpayer, some that I see only once a year, will come in the following year and say, I had a notice. It was for $200 and I paid it.

So how many people would chase it that far? As many people as might be fortunate enough to paint a tax attorney's house.

Senator PRYOR. He painted the right house that day. I can tell you that.

Well, I just want to thank the both of you, each of you, for coming. Let me also extend an invitation as we proceed with this legislation to give us your thoughts. You are out there in the field everyday and you are representing thousands of people who are filling out tax returns and dealing with the real life problems of the taxpayers and we want to thank you not only for your statement, but also for the support that you are giving our legislation.

Certainly we elicit and ask you for your advice as we move forward and your thoughts on this legislation.

Mr. ZALESKI. Thank you. We plan to follow through on that.

Senator PRYOR. Thank you, sir.

Now we will call our next panel. I do have a request from Senator Grassley of Iowa who has been a long-time champion of taxpayer's rights, not only as a member of the House of Representatives, but more recently in the past 12 years in the Senate. Senator Grassley has asked this his statement be placed in the record. He could not be here for the hearing this morning.

[The prepared statement of Senator Grassley appears in the appendix.]

Our next panel consists of David L. Keating, executive vice president, National Taxpayers Union. He is accompanied by Mr. Jack Wade, a member of the board of advisors, the National Taxpayers Union; and Mr. Paul Desfosses, I believe. Is that the correct pronunciation?

Mr. DESFOSSES. Yes, Senator.

Senator PRYOR. Thank you.

The National Coalition of IRS Whistleblowers, Washington, DC.

All of you are old friends of this committee. We thank you for your past help and your support and contributions that you made to the Taxpayer Bill of Rights 1. We look forward to working with you and your associations in the development, and ultimately with hope the passage, of Taxpayer Bill of Rights 2.

So, Mr. Keating, we will ask you if you would at this time to give us your statement.

STATEMENT OF DAVID L. KEATING, EXECUTIVE VICE PRESIDENT, ACCOMPANIED BY JACK WADE, MEMBER, BOARD OF ADVISORS, NATIONAL TAXPAYERS UNION, WASHINGTON, DC

Mr. KEATING. Thank you, Senator Pryor. It is good to be back before this Subcommittee and we thank you for the opportunity to appear this morning. We commend you for your fine work not only in 1988 and prior years, but for your proposed Taxpayer Bill of Rights 2. It is a worthy sequel to the original.

Although the Taxpayer Bill of Rights that was adopted in 1988 offers important new protections for taxpayers, we fully agree with you that the job of protecting rights for taxpayers is not yet done.

I have serious doubts, for example, that it could have prevented the well documented Council family tragedy that we heard about last year before this Subcommittee. Taxpayers who have been financially harmed or devastated by IRS carelessness should also have the right to sue and recover damages.

We strongly support the proposal in the Taxpayer Bill of Rights 2 that would allow taxpayers to recover damages for negligent action by the Agency. We also strongly support raising or eliminating the cap for damages.

Kay Council's case showed that even when you beat the IRS you can still lose tens of thousands of dollars. Kay was fortunate to receive an award of attorney's fees, but it did not come anywhere near paying her total costs. That is why we strongly support the provisions in the Taxpayer Bill of Rights 2 to raise the attorney fee cap to $150 per hour.

Judges would still be limited to awarding only reasonable fees. We also think it is very important to index that cap to inflation so that inflation does not erode it over a 15-year period, which is exactly what has happened with the current cap.

We also very much like the proposal to create an independent administrative appeal procedure for certain issues unrelated to determination of a tax liability. That may help prevent a tragedy.

There is one item that is not the in the Taxpayer Bill of Rights 2 that we would like you to consider, Mr. Chairman. That is in the rare, rare cases where the IRS goes out of control Federal law largely prevents the courts from stepping in and allowing taxpayers to enforce their rights.

The Federal Tort Claims Act excludes any claim arising in respect of the assessment or collection of any tax or Customs duty. But a very unnecessarily restrictive law is the Anti-Injunction Act, which we call the Berlin Wall against taxpayers rights. And we think it is time to take at least a few chunks of that wall down, if not to tear it down altogether.

We also think that T2 should safeguard a taxpayer's right to be self-supporting. That was a flaw in the final provision of the 1988

reforms. Your original bill protected self-employed plumbers, carpenters, to keep their tools and others, allowing them their trucks so they could keep working. But, unfortunately, we only raised the amount that could be kept from $1,000 up to $1,100.

Senator PRYOR. Mr. Portillo almost lost his truck which was his office.

Mr. KEATING. And then he never would have been able to pay back his tax liability.

Senator PRYOR. That is right.

Mr. KEATING. We think it is extremely important to protect the tools of the trade for a self-employed taxpayer. Those limits must be raised, we think, at least to $10,000.

We also very much like your proposal to grant taxpayers the right to an installment agreement. We think this is particularly important, especially if it is limited to Form 1040 taxes after an audit. Let's face it, more taxpayers would be willing to concede if they knew they would have time to pay off an unexpected tax bill. This could help not only the taxpayer but the Agency because the taxpayer now has an incentive to drag the process on as long as possible, even if he is willing to concede a point.

We also fully agree with your proposal to reduce the standard of hardship to grant a taxpayer assistance order. If IRS is violating its own internal policies or procedures and the ombudsman should have power to issue a TAO. There is no reason to wait for a hardship.

We also think it is very important that the ombudsman be a political appointee. We think this is a key change in T2. We think it would make the ombudsman more responsive to the Congress and more willing to offer proposals for legislation, which is currently a problem.

We also strongly support putting into law the standard used by the Appeals Court in the Portillo case.

We would also like to make another suggestion for the Taxpayer Bill of Rights 2. That is, we think Congress should require equitable use of the levy power. Going back as far as 1976 the Administrative Conference of the United States issued a report showing widespread discrepancies in the seizure rate from District to District.

These random variations continued year after year after year. This has been 15 years now. The guidelines that exist in the IRS manuals are not enforceable by taxpayers. So we suggest that the Congress should require that the IRS issue regulations specifying the circumstances, conditions and situations where a levy will be made.

Mr. Chairman, the job of protecting rights of taxpayers will never end as long as we have a tax system and the IRS. Much progress has been made, a tremendous amount of progress in the last 3 years. But we think more legal protections are necessary and we thank you for your work and your fine proposal to get the debate started once again on the Senate side.

Thank you very much.

Senator PRYOR. Thank you, Mr. Keating.

[The prepared statement of Mr. Keating appears in the appendix.]

54-659 - 92 - 2

Senator PRYOR. Mr. Wade, I do not know if you had a statement. I know you were accompanying Mr. Keating; is that right?

Mr. WADE. Yes.

Mr. KEATING. That is right. He will be able to help you answer questions such as how many other Portillos are out there.

Senator PRYOR. That is right. Because he is in that very, very select and small number of people like Mr. David Leeper who represent these taxpayers in practices when they have problems with the Internal Revenue Service. We will ask a couple of questions here in just a moment, Mr. Wade.

Now we would like if you could, Mr. Desfosses, to give your statement. We look forward to your statement. We appreciate your being here.

STATEMENT OF PAUL J. DESFOSSES, PRESIDENT, NATIONAL COALITION OF IRS WHISTLEBLOWERS, WASHINGTON, DC

Mr. DESFOSSES. Thank you.

Mr. Chairman, I am President of the National Coalition of IRS Whistleblowers. I am a retired IRS agent with 20 years experience and I am also a certified public accountant.

Since it was created in 1985 the National Coalition of IRS Whistleblowers has been dedicated to investigating, exposing and eradicating abuses and misconduct by IRS officials.

The Coalition is a grassroots organization. Our membership consists of citizens and taxpayers from all 50 States as well as present and former IRS employees; and we have all joined together to hold the IRS publicly accountable when it infringes on taxpayer rights.

Our members strongly support measures to provide taxpayers and whistleblowers with protection from IRS abuse.

Senator Pryor, on behalf of the Whistleblowers I wish to congratulate you for moving forward with the Taxpayer Bill of Rights 2. This bill demonstrates your continuing leadership in safeguarding taxpayer rights and in creating needed forms to stem abuse of those rights.

The Whistleblowers wholeheartedly endorse your proposals and we suggest that you consider a few additional areas that might benefit from legislative reform. The IRS is the nation's most powerful Agency and perhaps the single most powerful bureaucracy in the world. Sooner or later its actions will impact upon the lives and livelihood of nearly every American citizen.

Effective IRS oversight requires not only constant vigilance by Congress but also citizens dedicated to informing Congress and the public of IRS wrongdoing. We in the Coalition believe that the single most important step in reforming the IRS is the creation of a mechanism devoted to finding and correcting problems of all descriptions within the IRS. That is why your proposal to strengthen the authority and the independence of the ombudsman system is so important.

The IRS ombudsman must be the taxpayers advocate. He should help taxpayers resolve problems and intervene on their behalf when they are not resolved through regular IRS channels. Under the current law the ombudsman is just another IRS employee. He is supervised by and reports to the IRS Commissioner and Deputy Commissioner. His loyalty is to the IRS, not to the taxpayer.

Let me cite one typical example of IRS wrongdoing that can be solved by an improved ombudsman system. The IRS has announced that millions of dependent exemptions for children and grandchildren have been removed from taxpayer returns over the past 2 years. Under this program the IRS arbitrarily disallowed entirely legitimate deductions for seven of a family's ten children, with the IRS agent telling the father, a laid off plumber, no family has ten kids these days. The IRS allowed him only three deductions for his ten children.

Although the taxpayer has provided birth certificates, Social Security cards, notarized school records, the IRS still refuses to admit its mistake and the IRS just seized over $4,000 from this family's savings and Christmas funds.

This is no isolated incident. Despite the fact that the IRS is clearly wrong, the ombudsman was unable to correct the problem and does not currently have the power and authority to effectively help this taxpayer or countless others similarly harmed by improper IRS policies or practices.

When the taxpayer went to the ombudsman office here in Washington, DC he was told by an employee to pay the incorrect taxes and "get off my back." This illustrates how hard it can be to obtain fair treatment from the IRS in even the simplest most clear cut cases.

The Whistleblowers are aware of many other cases where taxpayers have requested that the ombudsman step in to prevent severe hardship due to clear IRS errors. Yet these taxpayers have received no help from the ombudsman.

We believe that additional reform is needed to improve the Inspector General system and we recommend that you consider measures in your bill combining the functions of ombudsman and Inspector General into one taxpayer rights advocates office independent of the IRS which will report directly to Congress.

This combined entity would create a more efficient and harmonious income tax system and thus improve public confidence and compliance with the tax laws.

We support legislation to equalize interest rates between the interest paid by the IRS and that charged by the IRS. We also support strengthening the taxpayers right to award of costs and fees as well as removing the current cap upon damage awards by the IRS.

Senator PRYOR. You may proceed. You are just about through.

Mr. DESFOSSES. Thank you.

Finally, the Coalition also recommends that you include in your bill provisions amending the Anti-Injunction Act to permit taxpayers to fully enforce their fundamental rights to seek injunctive relief, yet should also be made clear that a taxpayer can sue IRS agents for damages when their constitutional rights have been violated.

The Taxpayer Bill of Rights was landmark legislation when it was enacted in 1988 and for that the American public owes you a great debt of gratitude. However, events such as with the plumber and his children over the past 3 years just demonstrate the pressing need to build on that legislation by initiating further reforms

to hold the IRS accountable for its actions and to correct the IRS abuses of taxpayers and employees that continue.

Volumes of IRS abuse cases have been reported to the Whistleblowers in just the last few months. That is why your proposed legislation is so timely and so vitally needed.

Mr. Chairman, the National Coalition of IRS Whistleblowers endorses every provision of your proposed bill. The Taxpayer Bill of Rights 2 represents an important second step to ensure that the IRS treats taxpayers with higher standards of fairness and it will guarantee that IRS employees are held accountable for their actions.

I thank you and the members of the Subcommittee for this opportunity to discuss our views to make the tax system a better one.

[The prepared statement of Mr. Desfosses appears in the appendix.]

Senator PRYOR. Thank you very much.

Let me ask the three of you, what is the number one problem today with the Internal Revenue Service or with the relationship between the taxpayer and the Internal Revenue Service I should say?

Mr. DESFOSSES. From the huge volume of mail that we are receiving from taxpayers that have been abused, I would have to say that the main problem today is the lack of effective oversight over the IRS.

There is really no one that the taxpayer can go to who is independent of the IRS and that was demonstrated in the case of this plumber. He went to three different problem resolution officers and each one of them told him, "I am sorry; we cannot help you." Finally, he contacted the Department of Justice. They referred him to the ombudsman's office here in Washington, DC.

When he went to the ombudsman he was told to pay the tax and the young lady finished up by saying, "Get off my back."

Now clearly the IRS was wrong in that case and we have hundreds of cases that are similar to this. And in many of these cases, if not most of the cases, the taxpayer has tried to obtain help from the problem resolution officer, tried to obtain help in some cases from the ombudsman and in nearly every case the taxpayer has been unable to obtain any significant help.

You have to realize that these problem resolution officers are IRS employees. They are temporarily assigned to that position. They are hoping to move up in management and they are not going to raise any waves. Their loyalty is to the IRS. They are directed by the IRS. And perhaps the last concern is the taxpayer.

Senator PRYOR. Thank you, sir.

Mr. Keating or Mr. Wade?

Mr. KEATING. I will take a crack at it and then, Jack, you fill in.

I would say a couple of problems we see fairly often are just bad notices from the IRS, various computer notices. Garbage gets in the computer, garbage comes out. It is treated as gospel.

Another problem that I see quite often that really tears at your heart is the problem with divorced spouses. I would say in most cases it is the women that get the short end of the stick. Almost every time I go on a radio show I will get a call from some woman whose husband has disappeared, she does not know where he is.

The IRS does not know where he is or if they do, they do not want to pursue him because he is too hard to catch up to. So they will go after her.

They will try to collect back taxes from her, even though these were filed on a joint return. She may never have known he had been making income on the side or overreported deductions.

I think that more needs to be done to protect innocent spouses. The innocent spouse rule in the Tax Code today—a writer in our Tax Savings Report Newsletter, Bob Kamman, calls it the "Lucky Spouse Rule." To qualify you have to be a lucky spouse, not just an innocent spouse.

I hope the Congress will try to protect more innocent spouses, instead of just the lucky ones.

Jack, I think you have a few comments.

Senator PRYOR. Jack Wade?

Mr. WADE. Yes.

Senator PRYOR. By the way, I want to take this opportunity to thank Jack Wade for what he did in 1987 and 1988 and also Mr. Keating and the organization that you represent, Mr. Desfosses. You all were very early supporters of this. We drew upon you heavily to help us in shaping that legislation.

I think all of us realized at that time and in that period that we would have to come back. So here we are. As they say it is deja vu all over again and we are starting out. I do remember when we started out during that period, I do not think anyone in this town gave the Taxpayer Bill of Rights any chance whatsoever.

Mr. WADE. That is right.

Senator PRYOR. And ultimately on the last day of that session in 1988 it became the law of the land and it would never have happened without all of you. So thank you.

Jack, do you have any comments?

Mr. WADE. Yes.

Senator, I think after 1988 we were all kind of expecting a kinder and gentler IRS. I do not think that the history shows that we do have a kinder and gentler IRS. As a matter of fact, in my representation of taxpayers I find that the people in the IRS still have the same mission minded mentality that they have had all along—the burden of proof is on the taxpayer to prove them wrong. They have all the power, and it seems to sit kind of high and mighty with a lot of IRS employees.

I think that there is really no mentality within the IRS that we need to walk with a softer step or use a smaller stick. I wrote a book in 1983 called, "When you Owe the IRS." Eight years ago. I have had hundreds of phone calls over this period of time from taxpayers all over the country who have tracked me down who have horror stories to tell about the IRS.

Those phone calls have not stopped. I think Mr. Desfosses has testified that his office is still bombarded with these kinds of phone calls.

The situation really has not changed a whole lot in spite of Commissioner Gibbs' attempt to try and bring a new mentality within the IRS. The whole idea of customer service, I think, was maybe more of a PR campaign than it was a substantive, concrete effort to try and improve the mentality of the people within the IRS.

I think that some of the proposals that you have are very constructive and I think they are still necessary in order to protect people, the taxpayers, against arbitrary use of the powers that the IRS has.

There are too many cases, too many times, the IRS has run over taxpayers just because they have the right to do it. I had an IRS collection supervisor tell me, well we have the right to do it so we are going to do it; and it did not make any difference whether it was right or wrong or whether it should be done.

That sort of summed up the attitude of most of the people that I deal with in my contacts with the Collection Division.

In response to your erlier question, are there other Portillos out there? I would say there are an enormous number of them. Just within the last year and a half the General Accounting Office and IRS's own internal audit have shown that over half of the notices that go out to taxpayers are erroneous.

We are talking tens of millions of notices in the neighborhood of hundreds of millions and maybe even millions of dollars that are going out to taxpayers that are erroneous.

Senator PRYOR. What kind of notices, Mr. Wade?

Mr. WADE. We are talking about balance due notices, where taxpayers owe additional money.

Senator PRYOR. Now is this computation errors on the part of the IRS?

Mr. WADE. I think that it is a combination of a lot of different things—erroneous interest and penalty charges, erroneous tax computations, taxes that are not owed because of discrepancies in 1099's and W–2s. I think that figure kind of represents the whole gambit.

A lot of practitioners will advise their taxpayers unless it is a fairly significant amount of money, to go ahead and pay it because it is not worth the taxpayer's time and effort and money that he has to pay the practitioner to try and work through these problems to get them corrected.

There is one problem that to me seems to be very egregious. There is a Code Section called 6020–B which allows the IRS to prepare tax returns on behalf of taxpayers who have not filed tax returns. The IRS started a substitute for returns program a couple of years ago, which they are very proud of. They will actually make up a tax return for somebody where there is not one in the system.

They will not always use the current data that they have. They will very frequently use the previous year's data or in case of a business taxpayer on a 941 return a previous quarter. I have represented at least three taxpayers within the last year who have been assessed 941 taxes and these taxpayers had gone out of business. They were no longer even in business.

So what we are finding in the Collection Division instead of them closing these cases out because they cannot find the taxpayer or the taxpayer is no longer in business, they are making arbitrary assessments and then they are filing liens against taxpayers.

So this is the kind of thing that goes on and on and on. I have had people call me and say "I have a bill for the IRS for $30,000–$40,000. I did not even make $30,000–$40,000 that year. How could that be?"

Senator PRYOR. Let me state that I think one of you talked about installment notices; maybe Mr. Keating. I am not sure.

We are finding that there is a wide discrepancy of how these installment agreements are being approached and honored and utilized from Region to Region, from District to District; and there is a vast difference in how these installment agreements are being utilized. So I do not know if you are running into that in your respective practices or studies.

Any final comments here from this panel?

[No response.]

Senator PRYOR. We would be glad to have this information. We would also state that your full statement will appear in the record. We are very indebted to each of you and the organizations you represent for participating with us again.

Mr. KEATING. Thank you very much, Senator.

Senator PRYOR. Mr. Keating?

Mr. KEATING. Well, I would just say thank you very much. We could not have done it in 1988 without you. I would suspect if we are going to get a really solid bill in this Congress it will be because of you, too.

Senator PRYOR. I might say, if I am not mistaken, we have not actually introduced the bill. I think we now have about 10 or 15 Senators who have called and want to co-sponsor it, whatever it is. So I think there is a need for it out there and I think that indicates it.

So we thank you very, very much for your support.

We will call our last witness now from the General Accounting Office. Jennie Stathis, the Director of Tax Policy and Administration Issues from the General Accounting Office from the General Government Division.

I have just been notified that Ms. Stathis became ill today and Mr. Lovelady I believe will be filling in today.

Mr. LOVELADY. That is correct.

Senator PRYOR. Good. We appreciate you being here and we look forward to your statement.

We appreciate you sitting here all morning. Maybe you have learned more about the Internal Revenue Service than you wanted to hear.

Mr. LOVELADY. Well, I think we learned quite a bit this morning.

Senator PRYOR. Thank you. We always do at these hearings. We look forward to your statement. Thank you, sir.

STATEMENT OF JOHN LOVELADY, ASSISTANT DIRECTOR, GENERAL ACCOUNTING OFFICE, TAX POLICY AND ADMINISTRATION ISSUE AREA

Mr. LOVELADY. Mr. Chairman, I am going to summarize our statement. My name is John Lovelady. I am an Assistant Director with GAO's Tax Policy and Administration Issue Area. As you noted, our Director turned up sick today so I am going to deliver our statement.

Senator PRYOR. If you would speak a little more directly into your microphone, sir. Thank you. Pull it a little closer to you.

If you would, Mr. Lovelady, if you would state those individuals accompanying you this morning for the record.

Mr. LOVELADY. Mr. Chairman, with me today is Bob Lidman on my left, our Regional Assignment Manager from Cincinnati, who directed our work for you.

Senator PRYOR. Thank you, sir.

Mr. LOVELADY. To his left is Mr. Rich Edwards, who is the evaluator in charge for that assignment. On my right, Rachel DeMarcus, our Assistant General Counsel for Tax Matters.

Mr. Chairman, we are pleased to be here today to discuss IRS implementation of the Taxpayer Bill of Rights. As an earlier witness mentioned, we can confirm that in fact the heavens did not fall with the passage of that legislation.

We are issuing today a report done at your request that concludes that IRS implementation was generally successful and that taxpayers have benefited from the Act. The most visible example is the Taxpayer Assistance Order Program, through which IRS helped about 32,500 taxpayers in fiscal years 1990 and 1991.

Some taxpayers, however, may not receive such help if they do not realize that assistance is available. IRS studies show that its employees need to do a better job recognizing hardship situations and seeking assistance on taxpayers behalf. In that connection, Mr. Chairman, in our report we recommended that IRS develop a test to better evaluate the ability of its employees to recognize those hardship situations when they hear about them over the telephone.

In a related matter we have a matter for consideration for the Congress in our report, that the Congress may want to clarify IRS authority to withdraw notices of liens that have been placed on taxpayers property. The IRS, I believe, has requested that sort of legislation earlier.

In terms of providing taxpayers with a clear understanding of their rights, the IRS prepared a pamphlet to advise taxpayers of their rights as required by the Act. The IRS provides the pamphlet to taxpayers notified about a collection or determination of tax liability such as the notice IRS sends to arrange an audit interview.

It is important that taxpayers under their rights before the interview because they have flexibility in setting the interview arrangements. And as you brought out earlier, the law requires they have the choice of whether or not to attend that initial interview or to send a representative. They are not required in normal circumstances to attend that interview if they do not choose to do so.

However, if they do not know what their rights are before that interview, they do not have the option of choosing.

A matter related to installment agreements. We learned that IRS District Offices and Service Centers follow different procedures when installment agreements to pay taxes are cancelled for failure to pay on time.

To avoid the potential for inconsistent treatment of taxpayers GAO believes IRS should establish and follow consistent procedures for notifying taxpayers, pending cancellation of installment agreements. The IRS has agreed with that recommendation and laid out steps designed to implement it.

The IRS notifies taxpayers of levies on their bank accounts 7 days after the bank is notified. This allows taxpayers 14 days out of the 21 day holding period required by the Taxpayer Bill of Rights to resolve errors before the levy proceeds are forwarded to

IRS. IRS purpose in doing this is to reduce the possibility that taxpayers can withdraw funds before the bank has the opportunity to freeze the account.

The legislative history nor the Act is not explicit about what that 21 day period is intended to provide, Mr. Chairman. Congress may want to clarify how much time taxpayers should have in this regard. That, too, is a consideration that is presented in our report.

Mr. Chairman, in conclusion it is important that all citizens pay their fair share of taxes. It is equally important for IRS to treat all taxpayers fairly. We are generally satisfied with IRS implementation of the Taxpayer Bill of Rights. We believe that most IRS employees work diligently to treat taxpayers fairly and equitably.

But in an organization of 120,000 employees scattered over 700 locations, it is likely that some taxpayers will not receive the treatment to which they are entitled.

The IRS needs to continually emphasize the Act's requirements and measure performance in meeting the Act's intent. We support your efforts to further enhance the protection of taxpayer rights and we will be glad to work with you as you consider additional taxpayer rights legislation.

Mr. Chairman, this completes my statement. We will be happy to take your questions.

Senator PRYOR. Mr. Lovelady, thank you and I thank your colleagues there to your right and left.

[The prepared statement of Mr. Lovelady appears in the appendix.]

Senator PRYOR. If you do not want to answer this question you certainly may defer to one of your colleagues. What today do you find to be the determining factor or the definition given by the IRS to a "hardship case"?

Mr. LOVELADY. This is a fairly complex situation, Mr. Chairman.

I thought I would like to give you two sets of terms that are used in IRS definition of significant hardship. In its regulations the IRS includes terms such as these, and I will quote just some paraphrases for you: "Serious privation caused or about to be caused to the taxpayer; more than an inconvenience to the taxpayer; more than financial hardship alone." Finally, I like this one, "action or proposed action that would offend the sense of fairness of taxpayers in general, were they aware of all the facts and circumstances surrounding the situation."

Obviously, Mr. Chairman, these are legalistic definitions which I suppose are appropriate in regulations. But I thought more useful definitions are provided in the IRS problem resolution handbook. At least they are definitions that I think I can relate to.

For example, the problem resolution officer is supposed to deal with potential hardships by answering questions such as these: Will the taxpayer be able to retain housing, food, utilities, transportation to work, medical treatment and so forth? The handbook also recognizes that a taxpayer can be emotionally overwhelmed by a tax problem and alerts them to take that into account if they are contacted by a taxpayer who is crying, who makes threats to their own personal harm or that of others.

We would be happy to provide these documents for the record that spell all those definitions out. But those are the kinds of definitions that are applied by the problem resolution office.

[The information appears in the appendix.]

Senator PRYOR. If we took those definitions, whether they be in the PRO handbook or the Internal Revenue Service Code or the regulations at the national office that we assume are distributed, let's apply any of those definitions to Mr. Portillo.

Would he have been a hardship case under the definition of any of these?

Mr. LOVELADY. I guess it is hard to understand why he would not have been, Mr. Chairman, given the circumstances that were given this morning. Obviously, I have no more information about that than we heard this morning. But given these definitions, it is hard to see how he would not have been judged a hardship.

Senator PRYOR. I think in your report you also indicated by almost availed implication that the IRS was not today really publicizing the rights of the taxpayers perhaps as much as they could. Did I draw the correct inference here?

Mr. LOVELADY. I think what we intended to show in our report was not so much that they are not publicizing the rights of taxpayers in a general way. We did find several instances where letters were being sent out to taxpayers alerting them to the need for an audit interview, for example, and those letters did not in any way indicate that the taxpayer had the right not to attend that interview themselves. As a matter of fact, to the contrary, they went in the other direction.

We looked into those particular circumstances and found that they seemed to be caused by really I guess you would say an administrative error. Some of the agents were using outdated computer tapes to prepare their letters. We brought this to the attention of the appropriate officials and they agreed to correct that situation.

However, perhaps more broadly we did recommend in our report and I am pleased to report that IRS agreed with us, that they are going to do a better job or going to try to do a better job in making sure that taxpayers who are contacted for an audit interview know before they agree to that interview that they do not have to attend if they do not wish to do so in normal circumstances and they also have a degree of flexibility in when and where that interview will take place.

Senator PRYOR. There is a great deal of intimidation at this stage of any relationship between the taxpayer and the IRS, especially if the taxpayer has received a notice for his or her first interview. If they have never had, let's say, an encounter with the IRS. To go into the cold gray walls of an IRS office and have two or three IRS agents there across the table from you, I imagine it gets pretty cold and barren and lonely in there.

I think the IRS can do a much better job of making certain that at this stage the taxpayer knows his or her rights. This is one thing the Taxpayer Bill of Rights 2 is all about.

You have some very fine colleagues who have assisted you. Are there any comments from any of the other ladies and gentlemen here on the panel?

[No response.]

Senator PRYOR. If not, we will say thank you. This hearing we have had now five panels. We have completed our work in approximately two hours. This hearing is really about three very, very simple principles. It is about fairness. It is about due process. And it is about accountability in the tax system between the tax collector and the taxpayer.

And no matter what we legislate into law, we are always going to certainly require that this body who originally created the office of the tax collector, the Internal Revenue Service, that we maintain a constant vigilance and oversight to make certain that there are not abuses.

But when there are abuses, we do not feel that a taxpayer should go broke, nor lose their life and health in worrying about the situation. We feel that there are reasonable ways to work out differences. We know we have to collect taxes to keep this government going. We all understand that. But we just sense that there can be a better sense of fairness in fair play. That is what exactly the Taxpayer Bill of Rights 2 is going to be all about.

We appreciate your comments, your work. And with that we will conclude this hearing.

Mr. LOVELADY. Thank you, Mr. Chairman.

Senator PRYOR. The hearing is concluded. Thank you.

[Whereupon, the hearing was adjourned at 12:06 p.m.]

TAXPAYER BILL OF RIGHTS 2

FRIDAY, FEBRUARY 21, 1992

U.S. SENATE,
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
OVERSIGHT OF THE INTERNAL REVENUE SERVICE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:40 a.m., in room SD–215, Dirksen Senate Office Building, Hon. David Pryor (chairman of the subcommittee), presiding.

[The press release announcing the hearing follows:]

[Press Release No. H-8, Feb. 14, 1992]

"T2"—TAXPAYER RIGHTS BILL—TO BE SUBJECT OF HEARING, CURRENT, PAST IRS COMMISSIONERS TO TESTIFY

WASHINGTON, DC—Senator David Pryor, Chairman of the Senate Finance Subcommittee on Private Retirement Plans and Oversight of the IRS, Friday announced a hearing on the Taxpayer Bill of Rights 2, also known as "T2."

The hearing will be at 9:30 a.m. on Friday, February 21, 1992 in Room SD–215 of the Dirksen Senate Office Building.

"At a time when Congress is addressing the issue of tax fairness, we need more than ever to make sure that we also have fairness in the collection of taxes," Pryor (D., Ark.) said.

"With that in mind, I was proud to sponsor the original Taxpayer Bill of Rights in 1987 and see it enacted law the following year," Pryor said. "Now it is time to build upon that success, using the original bill as a foundation."

Pryor said witnesses will include Fred Goldberg, Assistant Treasury Secretary for Tax Policy and former IRS Commissioner, and new IRS Commissioner Shirley Peterson.

The Subcommittee also will hear testimony from taxpayers alleging IRS abuse: Carol Bettencourt of Raleigh, NC and her lawyer, Bob Kamman of Phoenix, AR, and Stewart Joslin of New Orleans, LA. Also testifying will be a representative of Tax 1, a taxpayer representation service made up of former IRS employees, and Larry Coble of Fort Worth, TX, President of the National Association of Private Enterprises.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS, CHAIRMAN OF THE SUBCOMMITTEE

Senator PRYOR. Ladies and gentlemen, good morning. We welcome all of you to the hearing this morning. Because of votes we are not going to totally follow the agenda that you have been given this morning. We are going to sort of hop skip around a moment.

Rather than give an opening statement right now, I am going to call on one of our very original co-sponsors of the Taxpayer Bill of Rights 2 because he has a plane leaving at 10:30 am. That is Senator Wyche Fowler of Georgia. I thought Senator Fowler was in the room.

Well, I am not going to call on Senator Fowler. I will call on him momentarily. But we will begin our hearing.

Why don't we at this time first call on Senator Harry Reid of Nevada, who is also one of the original co-sponsors of the Taxpayer Bill of Rights 1.

Senator Reid, I understand that you have a statement and we look forward to hearing from you at this time.

Senator REID. Also, Mr. Chairman, if you would just give me the nod when our colleague arrives, I would be happy to terminate my remarks and pick them up later if necessary.

Senator PRYOR. Thank you.

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM NEVADA

Senator REID. Mr. Chairman, I would ask permission of the Committee to have my full statement made part of the record.

Senator PRYOR. Without objection it is so ordered.

[The prepared statement of Senator Reid appears in the appendix.]

Senator REID. Mr. Chairman, the story of the Taxpayer Bill of Rights, as far as I am concerned, started in Las Vegas when a number of car dealers, roulette dealers, and people who worked in the gaming industry came to me upset that they were being treated unfairly by the Internal Revenue Service. They were being treated unfairly in a number of instances.

But, primarily, what raised the most consternation among the thousands of dealers in Nevada was the fact that it had become the law that gratuities or tips were now a part of gross income and they had to pay taxes on it. This had been in the court process for decades.

Once that decision was made, the dealers realized they had to pay the taxes. So they entered into agreements, with the Internal Revenue Service to pay the back taxes that they owed. They would enter into these agreements based upon what their present income was and how much they owed.

As a result of that, Mr. Chairman, they would enter into agreements where they would pay various sums each month. What happened, basically, is that they were obligated to pay $500 or $400 a month. This would go on for a couple of months and then they would be contacted by a revenue agent and they would say you have to start paying $1,000 a month or some other figure.

They said, well, we made an agreement with you that was in writing.

Here is Senator Fowler. I will be happy to step aside since you have a plane to catch.

Senator PRYOR. Senator Fowler, we have already announced to our colleagues here that you are going to lead off this morning. I have not given an opening statement yet. We have announced that you have a 10:30 plane to catch. So why don't you, if you would, make your statement.

If you do not desire to make the entire statement we will put the entirety of it in the record.

Senator Fowler of Georgia, we look forward to hearing your statement.

STATEMENT OF HON. WYCHE FOWLER, JR., A U.S. SENATOR FROM GEORGIA

Senator FOWLER. Mr. Chairman, I thank you, and the members of the Committee, and my good friend, Senator Reid, for your extraordinary courtesy in allowing me to interrupt the proceedings and go first.

Mr. Chairman, it goes without saying that I am very pleased to join you and others in our renewed fight on behalf of the American taxpayer. As hopefully the winter begins to thaw and the warmth begins to come back into our bodies and souls, there is another rite of spring to consider. In the words of Benjamin Franklin that is "the inevitability of death and taxes."

That our Nation must levy and collect taxes for the public good is inevitable, Mr. Chairman. But that any citizen should see their legal rights denied or their human dignity abused by the tax collectors is simply intolerable. Your leadership in underscoring this principle is important for our republic.

As a co-sponsor of the original Taxpayer Bill of Rights that you authored in 1988, I want to voice my strong and unequivocal support for this next step in the process of providing what I would like to call rock solid protection for the American taxpayer against abuse and ill treatment at the hands of the IRS.

The members of this Subcommittee have all heard the horror stories—Senator Reid was in the midst of telling one—that pour into our offices daily about the difficulty average Americans experience in getting a fair hearing and efficient service from some members of the Internal Revenue Service.

Often these stories border on humorous, but I can assure you they are no laughing matter. You already know some stories and this hearing will reveal others of individuals, and small business owners who complain about the maze of the tax laws and say they are badgered about tax accounts they have already paid.

I just want to tell you about one family and then I will submit my statement. Betty and Wesley Campbell of College Park, GA recently wrote me about a lien that had been placed on their home by the Internal Revenue Service.

Ms. Campbell writes me: "My husband and I have always paid our taxes in a timely manner and do not have outstanding IRS debts. We attempted to reach the IRS about this matter but to no avail." She goes on to write about the difficulties—put on hold, the conflicting reports that she obtained from people on the other end of the line as representatives of our government and the outcome was as you might expect.

Mr. Chairman, in light of those members of Congress wishing to testify both from our house and the other body, I just want to tell you that your efforts have borne fruit. I think we are doing better. I think the Internal Revenue Service is beginning to understand that we have got to get a little less revenue sometimes and a little more service if we are going to have respect for the tax collecting unit of our government and citizen confidence under a voluntary system of taxpayment in this country.

We can make several changes that will ensure that taxpayers know that we are on their side. They are going to pay their taxes. but no more. This next step legislation which I am pleased to join

Senator Pryor in co-sponsoring, will give our people, the American people, confidence that we are not going to let any agency of the government trample on their rights.

I thank you for your patience.

Senator PRYOR. Senator Fowler, thank you.

[The prepared statement of Senator Fowler appears in the appendix.]

Senator PRYOR. By the way, Senator Fowler, I appreciate the invitation that we have received to be in your State in April. We are going to hear from some of those taxpayers in the State of Georgia and we look forward to joining you there for a hearing in your home State. We thank you for your statement.

Senator FOWLER. Thank you, Mr. Chairman. I will try to have them calmed down and ready to receive you. Thank you very much.

Senator PRYOR. We are going to continue now with Senator Reid's statement and then we will turn to our colleagues here.

Senator REID [continuing]. Mr. Chairman, Senator Grassley, Senator Breaux, as I indicated these dealers had made arrangements with the Internal Revenue Service and the Revenue Service, after these people entered into a good faith agreement, would change these agreements. They did it all the time; and say, well, I am a new revenue agent. They had no authority to do that.

As a result of that and many other instances of wrongdoing, I came to Washington as a member of the House of Representatives with the idea to introduce what I refer to as a Taxpayer Bill of Rights. I introduced that legislation when I served in the House of Representatives.

The day that I introduced that legislation I appeared on the Charlie Rose Show, a program called "Nightwatch" that came on from 2:00 to 5:00 in the morning, not realizing that there were people up watching television at that time of the morning. I came to work the next day and literally was buried with telephone calls, telegrams and ultimately letters from people who had watched that program saying, this is not a Nevada problem, this is a problem we have in our country.

In the House we had numerous co-sponsors, but because of the arrangements over there, the Subcommittee Chairman was unwilling to move that legislation and so nothing happened in the House other than a lot of talk.

I came to the Senate and gave my maiden speech in the Senate. The morning I gave that speech the Chairman of this Subcommittee, David Pryor of Arkansas was presiding and also watching the proceedings that day was Senator Grassley of Iowa. It was fortuitous, but for me it was very fortunate. Because as a result of my giving this floor statement, Senator Pryor indicated in a note written to me, handed to me by a page, that he was interested in this legislation and wanted to go forward.

That same day I received a communication from Charles Grassley of Iowa saying, this is something I have been interested in for a long time. I want to do something about it.

The reason I mention that this morning, Mr. Chairman and members of the Committee, is that but for the able work of the Chairman of this Subcommittee and the assistance of Senator Grassley, but especially—and I underline—the work of the Chair-

man of this Committee this would not have happened. The passionate feeling of someone in a position to do something made this legislation possible.

I think, this legislation is an example of the fact that around these halls, both in the House and the Senate side, there are a lot of good ideas floating around. And that good ideas are not always enough. I had a good idea, but without someone with the ability to move the legislation, namely you, in having the unique ability, the singular ability, to call hearings; nothing would have happened. It was a result of the hearings that you called that we heard a parade of witnesses come to us and tell horror stories. There is no other way to describe how the American taxpayer was treated by the Internal Revenue Service. We did not have one hearing; we did not have two hearings; we did not have three hearings; we had a number of hearings and each one was just as important as the last.

Mr. Chairman, you will remember the one hearing where we had a very courageous Internal Revenue agent who came from California to testify with the knowledge that his career was in jeopardy. At that time he testified, it was true that Internal Revenue agents, Internal Revenue employees, got promotions based on how much money they collected.

Now we had been told by Internal Revenue Service that that was not the case. But he came and told us it was true. In fact, where he worked, on a large glass window, you will recall his testimony, he said it was written, "Seizure Fever, Catch It!" meaning the more they seized people's property the better off they would be.

Well, as a result of the testimony that was given and your ability to work late at night and the closing days of the Congress, this legislation moved forward and a Taxpayer Bill of Rights came into being. We have made significant steps forward.

I think it is fair to say, Mr. Chairman, that Commissioner Goldberg, when he was the IRS Commissioner, testified openly that he thought the Taxpayer Bill of Rights was a good piece of legislation and that it should be implemented and as Commissioner he did go a significant way to implement that legislation.

There is more that we have to do. That is why we are here today. The Taxpayer Bill of Rights 2 is important. It is necessary. I am not going into the details of why that legislation is necessary. That will be covered by the Chairman and Senator Grassley in your opening statements.

But I want each of you to know that I will do whatever I can to help move this legislation along. I will make phone calls to other Senators. I will contact my friends on the House side. I will do whatever I can to move this legislation. This is important legislation. It is important because we want, each one of us, every dollar that is due the Federal Government to be collected.

But we also feel as passionately there that should not be a single penny collected that is not owed to the Federal Government. The sad part is that there has been much money collected that the Federal Government should not have collected. Why? Because it was easier for people just to cave in to the IRS than go through the process for a number of reasons.

Legally, even if they have counsel, it is difficult to fight the process. But if they have no professional help, it is impossible. There

are going to be stories told here today that will certainly bring tears to one's eyes, as they should. But I just want this Committee to know, although I am not a member of this Committee, that I will do what I can.

This is important legislation and we should not let the debate dealing with the economy override the fact that this legislation affects people in the street, common people, people in Searchlight, NV; Little Rock, AR and all over the country.

Senator PRYOR. Senator Harry Reid, thank you.

Senator Reid, whatever I do in the United States Senate I want you on my side. We have been on the same side of this issue and I thank you very much for your leadership and your conviction about it.

I remember you as one of the original co-sponsors of the Taxpayer Bill of Rights with Senator Grassley and just a very few others. In fact, at that time Senators were afraid to sign the Taxpayer Bill of Rights 1. They were afraid that they, too, might be audited by the IRS or what might happen to them.

But we are very proud to have you once again as an ally. I would like to say that I am sorry we have to have a Taxpayer Bill of Rights 2. But under the circumstances we do. We are going to talk about some of those circumstances in just a moment. For your help and your leadership, we will always be grateful.

Senator REID. I would just in closing indicate, Mr. Chairman, that I thought it was unique yesterday when you introduced that legislation I was the presiding officer, where several years ago it was just the opposite.

I think yesterday, as you will do today, you will outline the need for this legislation. The most dramatic statement that you made yesterday dealt with the retroactivity of regulations. I would hope that that is something we put to an end real quickly.

Senator PRYOR. We are going to address the retroactivity in just a moment. I hope you could stay and we urge you, if you would like, to join us. I know you have a tough schedule like everyone else. But we do appreciate your participation.

I do have the permission of my colleagues now to call at this time on Congressman Bob Livingston of Louisiana. This is another gentleman with a tough schedule this morning as all of us.

Bob, we are going to probably start some votes in the Senate very soon and we would appreciate your filing your full statement with the record. We look forward to your summary and thank you very much for attending.

STATEMENT OF HON. BOB LIVINGSTON, A U.S. REPRESENTATIVE FROM LOUISIANA

Representative LIVINGSTON. Thank you very much, Mr. Chairman, and thank you Senator Grassley and Senator Breaux, and all the members of the Committee for allowing me to testify. I will try to keep my remarks as brief as possible.

I want to congratulate Senator Reid and all of you for prompting this legislation. I do think that this legislation is necessary. I might not have been convinced about it a year or so ago. But, two cases have arisen in my district that just knocked my socks off, and have

literally convinced me that the Taxpayer Bill of Rights 2 is critically necessary in order to protect the rights of American citizens.

Mr. Chairman, one of those constituents, Stewart Joslin, is here today and will testify before the committee. He is a gentleman who has been much aggrieved by an outrageous case and I will let him go into the details on his own about that particular situation.

His situation brought to mind that we had a real problem and then within three weeks after I heard about his case I got another one involving a Mrs. Ehret in my District. I would like to tell you a little bit about that particular case. She could not be here today. But I think that her situation is important to understand and to appreciate how important this particular legislation is.

I would like to take an opportunity just quickly to tell you that Title VII of the Taxpayer Bill of Rights 2 is indeed needed. It ameliorates the unduly harsh and unforgiving provisions presently found in Section 6672 of our Tax Code dealing with the nonpayment of Social Security withholding taxes by employers.

Specifically, Section 6672 imposes personal liability on responsible parties for the unpaid taxes plus a penalty of up to 100 percent of the unpaid taxes. Responsible parties are those people within a company who have had the authority to direct dispersement of company funds and broadly defined responsible party includes, and thus exposes to liability, such people as corporate officers, shareholders, directors, accountants, bookkeepers and various other people, depending upon the circumstances of the case.

The current situation of the present law, Senators, is that Section 6672 is absolute and it is imposed without benefit of administrative review. There is often more than one person who meets the definition of responsible party. Since each is joint and severally liable the IRS can collection from any responsible party—and I stress the word any—regardless of individual culpability or responsibility for the nonpayment of the taxes in question.

Responsible parties are not allowed to know details about the collection efforts of the IRS against other responsible parties. As Mr. Joslin will tell you later on, notifying the IRS of your company's nonpayment of Social Security withholding taxes will not protect you from liability. And, in fact, could likely expose you to liability if you meet the definition of a responsible party.

The Taxpayer Bill of Rights 2 will change the onerous provisions of the existing law. I do not want to go into detail on that except to tell you that it is desperately needed. I will submit a statement on that for the record.

[The prepared statement of Representative Bob Livingston appears in the appendix.]

Representative LIVINGSTON. It is important to understand Patricia Ehret's story, Mr. Chairman. It is one of a family totally and utterly destroyed by the misguided collection efforts of the Internal Revenue Service. Patricia Ehret was an employee with a company called Monitoring Technology and she earned $7.50 an hour.

She kept their books. She had check signing privileges and sometimes she ran the office when the two owners were working off in the field. One month in 1987 her boss directed her not to send the Social Security withholding for that month because business was

bad and the company needed money. A month later she was laid off. So during the offending period she worked for them 1 month.

The company went defunct. One of the owners moved to California; the other stayed in Louisiana. In 1989 the IRS contacted Patricia Ehret, told her she was the responsible party, and demanded payment of the unpaid Social Security taxes and penalties amounting to approximately $40,000.

Her wages were garnished to the tune of $500 a month. The IRS would not give her any details about the collection efforts against the former owners of the company. The IRS was unhappy with the $500 a month they were garnishing and stepped up their collection efforts by continuing to harass Mrs. Ehret by phone at work and at home, and her family.

The IRS agent demanded that the Ehrets take their daughter out of a private Catholic school she was attending where she was earning a 4.0 average so that more money would be available to pay the IRS. The stress of the harassment by the IRS aggravated a preexisting stomach problem which Mrs. Ehret had. She had had 12 feet of her small intestines removed in 1975. She then lost 35 pounds, going from 125 to 90 pounds, even though she was regularly seeing a gastrologist, all because of the pain and emotional trauma inflicted by the IRS.

The IRS agent threatened to take the family home away unless the debt was promptly paid. She and her husband decided to refinance the family home and raised $40,000 to pay the remaining debt; and then the IRS approached her self-employed husband who was having difficulty finding work and demanded payment of an additional tax liability, his quarterly income tax.

When he told them that he wasn't working and he would pay his tax at the end of the year, along with the corresponding penalty, the IRS agent threatened to cancel a settlement agreement made the prior day, the previous day, unless he immediately paid $1800 in quarterly taxes.

Well, soon thereafter her husband, Frank Ehret, was committed to a mental institution, a forty-nine year old man—broke, carrying a new mortgage on his home in order to pay off a $40,000 debt for his wife who had incurred a liability because she was making $7.50 an hour—went to a mental institution.

Patricia Ehret and Frank Ehret today are separated. He is out of the mental institution. He is working, but their family is destroyed.

Now, Mr. Chairman, when an Agency of the United States government inflicts this kind of pain and anguish on an innocent albeit naive clerical worker, something is terribly, terribly wrong with the system. Mrs. Ehret followed a direct order of her boss. She did fail to send in 1 month's Social Security withholding taxes at a time when she was making $7.50 an hour. She did not know that 1 day she could be held personally responsible and liable for the full amount of the unpaid tax, $40,000.

The law that allowed the IRS to devastate her life must be changed. I thank you for allowing me to testify.

Senator PRYOR. Congressman Livingston we thank you very, very much. We look forward to working with you on the development of

this legislation on the other side of the Capitol. Thank you very much.

Representative LIVINGSTON. Mr. Chairman, I assure you I will do everything in my power to see to it that these changes are enacted.

Senator PRYOR. Thank you very much.

OPENING STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS, CHAIRMAN OF THE SUBCOMMITTEE

Senator PRYOR. I am going to make a very brief summary. I am going to put my statement into the record. I have said before, as I think I mentioned to Senator Reid, I am sorry we have to have a Taxpayer Bill of Rights 2, but under the circumstances I think we have no other alternative.

Today when I chair this subcommittee and see the interest of our colleagues—Some 35 Members of the Senate yesterday joined with us in introducing the Taxpayer Bill of Rights 2, that we call T2. We will refer to it as T2 from time to time. We think that is indicative of the wide range of support from liberals and conservatives, Democrats and Republicans, and Senators and Congressman and we look forward to working with each and every one of those.

T2 very simply is designed to build-in some very basic protections for those taxpayers who are often innocent victims of a very massive and complex system. Many times these taxpayers are caught by mistake in a vast system that routinely processes over 100 million tax returns each year, collects over $1 trillion in tax annually, and has over 117,000 employees.

Most of these employees are good people, but some of these employees abuse the system. Some of these employees take advantage of the taxpayer, especially that smaller taxpayer who does not have a battery of CPAs, who does not have a building full of tax lawyers. But the IRS does make mistakes and usually those mistakes are unintended. Nevertheless, they are often too difficult to ever put right.

The tax collection process is so big, so complex, and the rules of the tax laws so complicated, that any one individual caught up in this morass or caught by mistake in the system too frequently faces burdensome legal costs, and years of emotional, physical, psychological strain and stress before a correction can ever be made.

It is an unacceptable situation. Therefore, the Taxpayer Bill of Rights has been now introduced and this is our second hearing on it. One of the champions of the Taxpayer Bill of Rights last time, in 1988, was our friend, Senator Grassley from Iowa. Senator Grassley, we are glad that you are here with us to preside over this hearing today.

Senator Grassley of Iowa.

OPENING STATEMENT OF CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Well, thank you. Of course, we are in the midst of the tax filing season, so the issue of taxpayers' rights takes on a special kind of importance. Although most IRS employees provide valuable and responsible service—and the Chairman said that even more strongly than I do, but I agree with the

strength of the Chairman's statement—we still have to admit that taxpayer abuse exists.

Accordingly, I am very happy to join Senator Pryor, Senator Reid and others in introducing the Taxpayer Bill of Rights 2. This is very necessary legislation. It builds upon the original taxpayer bill of rights that we passed into law in 1988. Senator Pryor needs to be commended for once again taking the lead in promoting further taxpayer protections against Internal Revenue Service abuse.

For me the long process of trying to ensure taxpayers' protection began in the early 1980's when I was a member and then Chairman of the Finance Subcommittee on IRS. We made progress, but it was only the beginning.

Senator Pryor continued the cause when he succeeded me as Chairman in 1987. At that time he took the initiative and asked me to work with him in pushing for a Taxpayer Bill of Rights by expanding legislation that I, as well as Senator Reid, had introduced. It took nearly 2 years, but we ultimately succeeded in achieving the goal.

We now have a 3-year record of implementation regarding that bill. Great strides towards taxpayer protection were achieved through this legislation. However, the Taxpayer Bill of Rights of 1988 was never expected to be a final chapter in a book of taxpayer protection. It was a major step in the continuing process of stamping out taxpayer abuse. That process continues today as we look into ways today at this hearing to improve the current law.

In reviewing the record it is clear that much more needs to be done. There is no question that breakdowns in implementing the law have occurred and there are gaps in the law that need to be filled.

As ranking member of this Subcommittee I have worked with you, Mr. Chairman, in developing legislation before us, addressing these concerns. I certainly want to do what I can to help in making this legislation become law. Both you and Senator Reid can well remember the difficult time that we all had when we began the process in 1987.

We have won over a lot of converts over the time and now with the House side pursuing a similar package I am very encouraged that we will see results in the next few months.

I thank the witnesses who are going to appear today, and in particular the leadership of Treasury and IRS for their cooperation in this hearing.

Senator PRYOR. Senator Grassley, thank you very much.

Another strong advocate for the basic rights for the American taxpayer is Senator John Breaux of Louisiana, one of our original co-sponsors. Senator Breaux, we thank you for being with us this morning and we look forward to your statement.

OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Well, thank you, Mr. Chairman. Let me congratulate you as others already have in recognizing the need for T2. I had thought when T1 was adopted under your leadership and authorship that we had successfully addressed and solved the problems. But, it is very obvious that a second round of legislative ac-

tion from the Congress is essential because the problems are still there. You are to be congratulated for putting together a package which I think addresses the problem once again.

I am very pleased to be able to sign on as a co-sponsor of T2 and look forward to its passage. There is probably no agency in our government that strikes fear in the heart of citizens more than the Internal Revenue Service. It really should not be like that. This is our country and it belongs to the citizens and they should never ever have to fear their government or any agency of their government.

I think the real desire here is to strike a proper balance, a balance between going after tax cheats and going after innocent taxpayers. It is clear that this country has people who simply ignore their responsibility as citizens and refuse to pay taxes. They are tax cheats. And, as a result of their actions others have to pay more.

There is no room for tax cheats in this country. They should be aggressively sought out and prosecuted. They should be required, like every citizen, to pay their fair share of what is due their government for the things that the government does for the citizens of this country.

But there is another question. That is, innocent taxpayers who sometimes may be caught up in a web of a bureaucracy and who make innocent mistakes. These are not tax cheats. These are innocent citizens who have legitimate problems and they ought to be able to look to their government for help, not for prosecution and not to be scared halfway to death by the actions of their own government.

The Administration's position is somewhat disturbing to me Mr. Chairman. Looking over the bill and their testimony, there is a lot more "we oppose" to every section than there is "we support." Section 101, we oppose. Section 102, we oppose. Section 201, we oppose. Section 203, we oppose. Section 301, we oppose. Section 303, we oppose. Section 401, we oppose. And it goes on and on. They may say they really support this Taxpayer Bill of Rights but they sure do not show their support for the legislation.

I think that we need people who administer the laws to realize that the laws are not just for those who administer them, but they are for the people of this country. I think your legislation brings back that proper balance.

Thank you.

Senator PRYOR. Thank you, Senator Breaux.

We are going to call our first panel this morning. We are going to ask Fred Goldberg, Jr., the Assistant Secretary for Tax Policy, Department of the Treasury and Shirley D. Peterson, the new Commissioner of the Internal Revenue Service from Washington, DC, to come forward at this time. We welcome both of you to our subcommittee hearing this morning.

Let me first start out by thanking Mr. Goldberg for something. A couple of weeks ago I asked you to look into a matter. That matter was the request that the full Finance Committee made which asked the Treasury Department to delay hundreds of pages of new regulations dealing with pension plans, commonly referred to as

the 401(a)(4) regulations. And just a week later Mr. Goldberg, the Treasury Department did just that, a delay for 1 year.

I want to thank you. You were responsive and we appreciate that. And now we have to work out something where we can have some private pension plans out there in this country that are not too expensive nor too cumbersome. So we look forward to working with you on that.

But we are dealing with another issue this morning and we look forward to your statement, and also the follow-on statement of Ms. Peterson, our new Commissioner, and then we will have questions from the Committee.

Mr. Goldberg?

Mr. GOLDBERG. Thank you, Mr. Chairman.

The Commissioner has requested the opportunity to speak first and I have acceded to her request.

Senator PRYOR. The Commissioner is certainly recognized.

Commissioner PETERSON. As the new kid on the block I thought I would like to go first. I hope you do not mind, Senator.

Senator PRYOR. We welcome you this morning.

Commissioner PETERSON. Thank you very much.

STATEMENT OF SHIRLEY D. PETERSON, COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY DAVID BLATTNER, CHIEF OPERATIONS OFFICER, AND MICHAEL DOLAN, DEPUTY COMMISSIONER

Commissioner PETERSON. Mr. Chairman, I am pleased to be here today in my first public testimony as Commissioner to address this important subject, taxpayer rights. With me today are Deputy Commissioner Michael Dolan and our Chief Operations Officer Dave Blattner.

I would also like to acknowledge the man sitting beside me, Fred Goldberg, who served with great distinction as Commissioner. The dynamic change taking place in the IRS today is a legacy of Fred Goldberg's outstanding service and I hope to build on that legacy.

Mr. Chairman, we applaud your continuing interest in protecting taxpayer rights. You have provided the oversight that is so important in ensuring that the IRS has the equipment, the procedures, the resources and the attitudes that are appropriate to meet the needs of the taxpayers of this country.

Although I have been Commissioner only a few short weeks I have had long experience in the tax field, first in private practice and more recently as the Assistant Attorney General in charge of the Tax Division in the Department of Justice. I know from my own experience that the most important factors in protecting taxpayer rights are first of all simplification of the laws; and, second, a good tax administration system.

Simplification should be our number one legislative priority. Beyond that, we must work together to ensure that the Internal Revenue Service administers the law properly. Mr. Chairman, we cannot legislate judgment but we can insist on it. We cannot legislate good taxpayer service, but we can put in place equipment and systems that will make good service possible. We should not legislate changes in basic procedural rules, many of which have been in

place for more than half a century or longer without fully understanding the impact of those changes.

But we can and should continually review our procedures to determine whether they are fair, whether they are uniformly applied and whether they can be improved. Our mutual goal is to reduce unnecessary burdens on taxpayers who are trying to comply with our tax laws. And I look forward to working with you and this Subcommittee in achieving that goal.

Mr. Chairman, the Internal Revenue Service is at a crossroads in its history. The IRS has embarked on a program of radical change that will fundamentally alter the way that we do business. Working in concert with various outside stakeholders, including you, we, within the Internal Revenue Service, hope to transform tax administration within this decade.

We have three simple goals. The first is to increase voluntary compliance. The second is to reduce the burden on taxpayers. And the third is to increase productivity and customer satisfaction.

In the brief time that I have with you today I cannot describe the strategies that we will use to accomplish those goals. However, two of our strategies do bear emphasis here today.

Tax Systems Modernization is a ten-year initiative to update the Service's outdated computer and information systems. TSM is absolutely crucial to accomplishing the changes that we envision because it will give us the technological capability to do business in new ways.

We have also adopted a new philosophy of tax administration called Compliance 2000. Through this new approach to compliance we intend to focus much of our effort on taxpayer assistance and education. An essential goal of both of these long-term efforts is to reduce taxpayer burden. In sum, we want to make it easier for our citizens to comply with the tax laws.

We believe that the first and foremost right of all taxpayers is to a tax system that meets their expectations regarding the conduct of their government. They have a right to expect a system that treats them fairly and that enables them to meet their tax obligations without unnecessary burden.

In this regard, it is important to bear in mind that taxpayers view the system from two perspectives. First, in their individual dealings with the Internal Revenue Service taxpayers have a right to expect an organization that strives to reduce the burden of complying with the tax law; IRS employees who are fair, courteous, respectful and honest; and IRS actions that are timely, accurate and complete.

In their capacity as owners of the enterprise, that is as the citizens who finance our government, they have the right to expect that we will deal uniformly with all taxpayers, assure that all taxpayers pay their fair share and make the best use of our resources and their tax dollars.

We are making significant progress towards guaranteeing those rights and I expect to see the pace of that progress accelerated during my tenure as Commissioner.

Our efforts to reduce burden include both long-term and short-term efforts. As a preliminary matter we have defined taxpayer burden to provide a focus for our efforts. Taxpayer burden consists

of the time, expense and dissatisfaction experienced by taxpayers, practitioners and others in filing returns and paying taxes. And as I have mentioned, reducing that burden is one of our principle goals.

We have made burden reduction a free-standing objective for one very good reason. It serves as a constant reminder that in a democratic society, the government should serve the public and not the other way around. Our citizens' time and money are not free goods that the government can consume at will. We must always assess the impact of our policies, programs and actions in terms of the costs that they impose on our citizens.

We have already initiated a number of cross-functional projects to reduce burden. They are outlined in some detail in my statement and I will not take time to go through them here. But I just want to mention a couple of them to you.

The first is one-stop service. This is an initiative that will allow IRS employees to resolve 95 percent of taxpayer account inquiries as a result of the initial contact. Another is that we are testing many different ways or alternative means of filing tax returns. Again, trying to make it easier for our citizens.

In one State we have a test this year called Tele-File, which allows taxpayers to file simple tax returns by touch-tone telephone. We are simplifying our forms. We are looking at better ways to handle our collection process. We are cooperating with States to try to reduce burden that way. We are using Tax System Modernization. We are trying to improve our service.

I also want to emphasize ethics and diversity this morning, Mr. Chairman. We have an ethics initiative underway which is designed to enhance and renew the ethical awareness of our employees in our relationships with taxpayers, practitioners, and other customers. Our managers have already had new ethics training and we have in process a program of ethics training for all of our employees in the near term.

Senator PRYOR. Ms. Peterson, let me interrupt. I do apologize. We are in the last five or six minutes of a vote on the Senate floor. Senator Breaux has gone to vote. Maybe he will come back soon. I hope he will. Senator Grassley and I are getting ready to go. If we could conclude your statement upon our arrival back, would that be permissible?

Commissioner PETERSON. Certainly. Absolutely. No problem at all.

Senator PRYOR. Otherwise we will miss a vote and those people back in Arkansas are going to wonder why I missed that roll call vote.

Commissioner PETERSON. You go right ahead. We will be here when you get back.

Senator PRYOR. We will be back in about five minutes.

Commissioner PETERSON. No problem.

Senator PRYOR. Thank you.

[Whereupon, the hearing recessed at 10:26 a.m. and resumed at 10:41 a.m.]

Senator GRASSLEY. Senator Pryor has asked me to reconvene the meeting. He will be here in just a couple of minutes.

Continue with your testimony, Ms. Peterson. Please.

Commissioner PETERSON. Turning now to taxpayer rights legislation. It is appropriate first to determine whether the previous Taxpayer Bill of Rights legislation was properly implemented. And as you know the GAO issued a report in December 1991 entitled, "IRS' Implementation of the 1988 Taxpayer Bill of Rights." We are pleased with the reports very positive findings concerning our efforts.

GAO found that our implementation of all 21 provisions had been completed and was successful. GAO also made a few recommendations for improving aspects of our current programs that we fully agree with and we are adopting. And we appreciate GAO's work.

This brings me to the subject of the current proposed legislation. I am convinced that for most taxpayers, tax simplification is the number one legislative priority. If we really want to protect the rights of our taxpayers, we will simplify the tax rules.

The most important thing that you and your colleagues could do to protect the rights of taxpayers is to push for the prompt enactment of the tax simplification proposals now under consideration by Congress.

Turning now to the proposed legislation before us today, I want to comment on Senator Breaux's reference to our opposition. I want to stress that our opposition to many of the proposals that are put forth in this draft legislation are not philosophical, Senator. They are practical. We share your goals.

Senator Breaux made a very eloquent statement that I would be willing to stipulate to. The only thing we have any disagreement with you about is how we go about achieving those goals. I want to do it in the most fair and efficient manner that we can do it. I do not favor more bureaucracy. I do not favor more red tape. I do not favor enacting statutes that are simply going to end up costing all taxpayers a lot of money. But I am in favor of finding ways to meet the goals that you all have. I am absolutely willing to work with you toward that end.

I am not convinced that some of the legislation under consideration here today would help taxpayers. Although some provisions included in the bill would be helpful, there are other provisions that would undermine our tax administration system and still other provisions that would not achieve their intended purpose.

In particular, I refer to the provision tha' would make the Taxpayer Ombudsman position a political appointee. There is no evidence that a political appointee would be more effective and there is substantial reason to doubt the wisdom of politicizing this function.

Almost all of the testimony heard by this Committee and others has attested to the fact that the Office of the Taxpayer Ombudsman is effective as it is currently structured. There is substantial reason to believe that the new rules mandated by the proposed legislation could decrease the effectiveness of the Taxpayer Ombudsman's Office.

We believe that the Committee's objectives for reporting by the taxpayer ombudsman could be met through oversight rather than through statutory changes.

Also, I would note that the statutory fixes that we are considering today are, almost without exception, designed to help taxpayers who have not paid the correct amount of tax when they filed their returns. A quick review shows that we are talking about installment agreements, liens, abating interest, and other provisions designed to help taxpayers who have not or cannot pay their liabilities when due.

We would urge the Subcommittee to exercise caution in legislating quick fixes to individual problems. Such legislation may encourage increased litigation, increase our administrative costs, and increase accounts receivable by delaying receipts. These increased costs are ultimately borne by all taxpayers.

For this reason we urge the Subcommittee to assess the impact on all taxpayers before enacting any statutory remedies to problems encountered by a few taxpayers.

Two examples of provisions in the bill that trouble me are the proposed changes to the rules governing the collection of trust fund taxes and the proposal that would shift the burden of proof in civil tax matters. We have to be very careful in changing rules that govern responsibility for withholding and paying over trust fund taxes to the government.

These taxes are Social Security and income taxes withheld by employers from their employees' paychecks. These taxes are held in trust to be paid to the government. Trust fund taxes account for about $800 billion of the $1.1 trillion collected each year. Up to 40 percent of our accounts receivable inventory stems from failures by responsible officers to meet these obligations.

Similarly, I am very concerned that civil tax enforcement could come to a screeching halt if we shift the burden of proof to the government. IRS research indicates that about $61 billion of the $94 billion individual income tax gap is from understated and unreported income.

The Information Returns Program which matches information from third party payers with information reported by taxpayers on their returns is the primary means that we have of discovering unreported income. Last year this program uncovered more than $20 billion in unreported income. We believe that the statutory changes under consideration here would jeopardize the matching program and very soon erode the entire system of voluntary compliance.

It is also essential to keep in mind the size and scope of the Internal Revenue Service's workload. Statutorily mandated procedures must be appropriate for across-the-board application as the IRS processes 200 million tax returns, 1 billion information returns, and it collects $1 trillion each year. This country cannot afford to tinker with longstanding procedural rules governing these processes without knowing the impact on tax administration as a whole.

In this regard, we are seriously concerned about several of the provisions under consideration here today. Some provisions may help a few taxpayers but could generate millions of dollars of cost for all other taxpayers.

For this reason I would urge the Subcommittee to work closely with the Internal Revenue Service and with the Department of Treasury to draft provisions that meet our common goals to pro-

mote the long-term well-being of tax administration for all taxpayers.

Some of the legislative proposals in your bill, Senator, do reduce burden and we support them and they are listed in my written statement. I will not go through all of them, but we do favor extending the interest-free period. It was our idea to permit a change in filing status for joint taxpayers without full payment. We agree with you about the withdrawal of notice of tax liens. We want to work with you on some modifications there, similarly with regard to the levy and the offer-in-compromise provisions.

So there are many provisions that we think have merit and that we would like to work with you on.

Mr. Chairman, I have not commented on each of the provisions in your bill in my oral statement today because we received the statutory language less than 48 hours ago. Based upon the information currently available to us, we support some of the provisions and oppose others.

I just want to be sure that we do not enact any provisions that are unnecessary and that could be costly to the system and ultimately to the American public. These costs are incurred whenever incentives to current payment are removed, when rules encourage litigation and when the government is required by statute to incur needless administrative costs.

If we are not careful, the Taxpayer Bill of Rights will be just one more bill that the taxpayers have to pay.

Mr. Chairman, we invite you and the American public to join with us in a new partnership, dedicated to proceeding in a spirit of cooperation to make the system work better for all of our citizens. Together we have the opportunity to transform this system. Let us seize this opportunity.

I will be sharing this message on our automated SAM system, with many of the IRS employees this afternoon.

Mr. Chairman, thank you for your patience. My colleagues and I will be happy to respond to your questions.

Senator PRYOR. Thank you very much, Ms. Peterson.

[The prepared statement of Commissioner Peterson appears in the appendix.]

Senator PRYOR. I am going to ask Mr. Goldberg to make his statement and then we will have questions.

Mr. Goldberg?

STATEMENT OF FRED T. GOLDBERG, JR., ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. GOLDBERG. Thank you, Mr. Chairman. I have a rather lengthy written statement that lays out the Administration's position on each proposal. I would like to submit that for the record.

Senator PRYOR. Your statement will be placed in the record.

[The prepared statement of Mr. Goldberg appears in the appendix.]

Senator PRYOR. By the way, I have, and we will place this preceding that statement we will have a summary of each provision of the Taxpayer Bill of Rights 2 and then the Treasury Department's comments on those provisions. So they will be in there in the near vicinity of each other.

Excuse me, Mr. Goldberg.

Mr. GOLDBERG. Thank you very much. I will limit my comments to a few brief remarks and then be happy to turn to questions.

I would like to start by emphasizing the importance of taxpayer rights and the priority that I think all of us place on protecting and meeting the expectations of our citizens. It has a lot to do with much more than tax compliance. It has to do with being a democracy. It has to do with how citizens in a free country have the right to own their government and control their government.

I think that the contributions that you personally have made, that Senator Grassley has made, that your colleagues have made in this area are extraordinary. The legislation has been referred to a number of times today. The existing Taxpayer Bill of Rights, I believe has made enormous contributions in its own right by reason of its substantive provisions.

But I think far more importantly, the initial Taxpayer Bill of Rights legislation caused and to some extent reflected a fundamental change in the thinking of the tax administrator, in our thinking of how we should do our job. I think that revolution, that transformation, is far more important than any specific piece of legislation.

I would like to talk for a minute about what we mean when we talk about taxpayers' rights. I think it is terribly important to never lose that focus. In one respect taxpayers have the absolute right to be certain that all citizens pay their fair share. Taxpayers also have the right to be certain that the government makes the best use of their tax dollars. It is not our money. It is theirs.

Third, taxpayers have the right to demand that we minimize the burden we place on them as the government. Their time and their money is not a free good that we can consume at will. It is important to note that these three rights—compliance, good use of the taxpayers' dollars, and reduction of taxpayer burden—are now the three overall objectives that will guide the IRS for the next decade.

The harmony between the rights of taxpayers and the definition of where tax administration must go is terribly important. Every provision in legislative context and every administrative action should be assessed against these three rights and these three objectives.

The other point is the need for choices. As individuals, we have to choose. Sometimes the choice is between a downpayment on a new car or a vacation, a choice between going out for the glee club or playing field hockey. In our private lives we have got to make choices. The government has got to make choices. And in my opinion, Mr. Chairman, the government does not do a very good job at that task.

We have got to make choices when we take any action, enact any law, or refrain from any action in terms of its consequences, in terms of what we are foregoing and in terms of its cost. Now in reviewing the legislation before us, we have tried to set out a series of guidelines against which we test any specific provision.

First and foremost is how does that provision affect all of the rights of taxpayers in terms of compliance, wise use of government resources and reduction of taxpayer burden and protection of the taxpayer from government intrusion and unreasonable action.

Secondly, it is important to test each proposal against the standard of the vital few. How important is it, recognizing that every hour we spend and every dollar we spend on any particular matter precludes us from spending that same hour and that same dollar on something else.

The third criterion is treating symptoms versus finding cures. It is terribly expensive and ultimately futile to continue to try to correct mistakes and problems after they happen. It is terribly important that we find the cures to prevent the problems from arising in the first place.

The fourth factor is administrative action versus the need for legislation. If legislation is necessary to remove barriers, if legislation such as that described this morning by one of your colleagues, is by its terms imposing unfair burdens on taxpayers, is causing us as the messenger, to do unfair things to taxpayers, is precluding us from doing what taxpayers expect, then legislation is necessary.

But if we, as the Executive Branch, can accomplish your objectives today without the need for legislation I believe we are all far better served if we simply get about the business and get the job done.

We need to be careful about administrable standards. It would be wonderful to have legislation saying, be fair. As a former Commissioner I can tell you I often wanted to issue an edict, "We shall always be fair." You need to be very careful as you go down that road. If you do not have administrable standards you will inevitably cause inconsistency and I believe ultimately you will cause significant, unethical conduct among government employees and among the taxpayer community. It is imperative that the standards be administrable.

Finally, we need to be aware of the law of unintended consequences. Anything we do will by definition have unintended consequences. It will create unintended beneficiaries and it will create unintended victims. We tried to apply these standards in assessing and developing our position on each measure in the Taxpayer Bill of Rights.

I would be happy to summarize our position, but I think perhaps at your pleasure we will be happy to go through whatever questions you have.

Thank you, Mr. Chairman.

Senator PRYOR. Mr. Goldberg, thank you very much.

I think what Senator Grassley and I will do now is each of us will take a 10 minute question period each if that is satisfactory with my colleague, Senator Grassley.

Senator GRASSLEY. Yes, sir.

Senator PRYOR. I will take the first ten minutes and then yield to him for ten minutes and we will go back and forth a couple of times here. But whoever is running that clock, let's set it on a ten minute sequence if we can.

Mr. Goldberg, first, in the Taxpayer Bill of Rights—now I do not think Ms. Peterson or you commented on it, I may be wrong, I may have missed it—we have a provision in here—Senator Grassley I have talked to at length about this provision and I think he feels as strongly as I do—that is the need for prospective regulations

rather than retroactive regulations and rules issued by the Internal Revenue Service.

I think one of the more disturbing trends that I see in the Federal system, is the tendency to move toward more rather than less retroactivity. In this room in 1986—and I sat right over there in that corner; I was the junior member then—I wanted to vote against the 1986 tax bill. I wish I had voted against it for other reasons. [Laughter.]

Senator PRYOR. But I sat there and I was in a dilemma because I saw that the 1986 tax bill had retroactive provisions that I did not like. I just wish I had voted against it. I did not.

Now, the IRS issues retroactive regulations. Businesses, small and large, especially small, are confronted with this constantly. I do not think it is justified. I do not think it is fair. In fact, I do not even think it is legal. I think when you issue a retroactive regulation that does not comply with the Administrative Procedures Act—when the citizen out there is not even given the right to public comment—we are going to try to change that in the Taxpayer Bill of Rights 2.

I would like Mr. Goldberg's comments.

Mr. GOLDBERG. A number of comments, Mr. Chairman. First of all, the decision about the effective dates with respect to any regulation I personally view—and viewed as the Chief Counsel and viewed as the Commissioner as well as in my current capacity—is one of the most difficult decisions we have to make.

I would suggest—and I will be happy to submit for the record—the data that I believe will demonstrate that over the past several years we have made a dramatic change in the effective date procedures that we adopt on regulations. There may be an example that will trouble you or a colleague. I am sure of that. But I will provide for the record examples of when regulations are retroactive, when they are prospective and how we have handled intervening periods. And I would urge you to take a look at that.

[The information requested was not received at press time.]

Mr. GOLDBERG. Because I share your concern, I think it is terribly destructive to willy-nilly write retroactive rules. However, I would point out that there are numerous situations where the retroactive application of regulations is a substantial benefit to taxpayers. I would point out that there are situations where regulations by their nature require choices. Some taxpayers may be benefited; others may be harmed. A consistent rule is in the system's best interest.

I would point out that there are numerous situations where in the absence of regulations the taxpayer is left to the mercy of the individual revenue agent or IRS employee, and that there are many situations where retroactive regulations can protect the taxpayer.

You will find that in many of the regulations we have issued of late we are saying to taxpayers you do what is fair, but if you want to rely on the regulation for your protection you can do so. So we are trying to deal with that issue reasonably. There are also situations where taxpayers, those folks you were talking about before, with buildings full of lawyers and accountants and high-priced advisors, will argue for positions. It might even make them a little

uncomfortable when they look in the mirror at night, but they will argue for those positions.

And if the government is precluded from dealing with those rare cases I believe that we will be rewarding inappropriately aggressive behavior. We will not be protecting practitioners who are willing to say no. And by failing to protect practitioners who are willing to say no we will undermine the system.

So while I share your concern I would urge you to review the actions we have taken over the past couple of years. I would also urge you not to enact the legislation you have proposed.

Senator PRYOR. Well, I strongly believe we have got to have as a part of this measure a very, very certain rule that retroactivity is not going to further be allowed.

I have a larger question. It is: The Congress created the Internal Revenue Service, gives it powers, or reigns it back in or takes back powers and authority from time to time, very seldomly. Now, do you think that we as a Congress shall delegate to the Internal Revenue Service the retroactive rulemaking authority that maybe hurts some taxpayers out there arbitrarily or maybe from time to time helps a taxpayer? You have said that these retroactive rules sometimes help a taxpayer, sometimes they hurt a taxpayer.

Why don't we all play by the same rules? Why don't we all have the same rules? I think that is what the taxpayers are asking for.

Mr. GOLDBERG. I agree, Mr. Chairman; and that is, I believe, one of the compelling reasons for sometimes issuing retroactive regulations.

But these regulations are interpretative regulations. The law is the law. You have a Code provision on the books. You have a taxpayer who will take a position one way or the other interpreting that statute that the Congress has enacted. In the absence of regulations they will still take their position and our revenue agents will still take the position of the government. We cannot avoid the issue.

Senator PRYOR. Ms. Peterson?

Commissioner PETERSON. I just wanted to add one footnote to your question. That is, you need to focus in on the fact——

Senator PRYOR. I need to do what now?

Commissioner PETERSON. I want to be sure that you understand that if you enact the retroactivity provision—and let me say, I have some sympathy for the concern that you express here. However, I want to be sure you understand that if you do this, you are encouraging a lack of uniform treatment of taxpayers. I regard that as a very unfortunate situation.

Because basically between the time the statute is enacted and the regulations are issued, one taxpayer will interpret the law one way, another taxpayer will interpret it another way, and you may have 15 different approaches to the application of that statute. You absolutely abolish uniformity between the date of the enactment of the statute and the date the regulations are issued if you go forward with this provision.

Senator PRYOR. Question. Why then do we have the provision that excludes public comment on retroactive regulations? How can that be?

Mr. GOLDBERG. Mr. Chairman, I will——

Senator PRYOR. How does that pass muster with the Administrative Procedures Act?

Mr. GOLDBERG. Mr. Chairman, I am unaware of the provision you are talking about. My understanding of the procedures generally, and my knowledge of the procedures we follow is, as an example we issue a proposed regulation in 1992 interpreting a statute that Congress enacted in 1990. That proposed regulation which interprets that 1990 statute is effective from 1990. It is a proposed regulation where taxpayers have the opportunity to comment before the regulation goes final.

Senator PRYOR. I think the temporary regulations—I have just been handed a note—these are temporary and they are in full force and effect.

Mr. GOLDBERG. Whenever we issue temporary regulations we also issue at the same time proposed regulations that permit taxpayer comment. The purpose behind temporary regulations that are effective pending the issuance of final regulations, in virtually every instance, is to give the taxpayer something that the taxpayer can rely on.

Senator PRYOR. Now wait a minute. How many temporary regulations do we have right now on the books?

Mr. GOLDBERG. Far too many.

Senator PRYOR. How many?

Mr. GOLDBERG. I do not know exactly.

Senator PRYOR. We have temporary regulations in the Internal Revenue Service Code and regulations pursuant thereto that go back for 20 years. They have been on the books for 20 years.

Mr. GOLDBERG. Mr. Chairman, there has been, I believe, something in excess of an 80 percent decline in the issuance of temporary regulations over the last 2 years. There has been something like close to a 100 percent decline in the issuances of notices in the absence of regulations. I think that the proper procedure in virtually every case is to issue a proposed regulation, obtain comment and then issue final regulations.

There are rare cases where a temporary regulation is necessary, either to permit taxpayers to rely on interim guidance or to deal with a situation that is undermining tax compliance.

Senator PRYOR. Final question. My red light is just about on.

The original Taxpayer Bill of Rights signed into law in 1988 by President Reagan provided that a taxpayer could recover out-of-pocket costs, requested the IRS to prescribe those regulations for taxpayers to follow. Four years later, to my knowledge, there are no regulations, there are no taxpayers recovering out-of-pocket costs at the administrative level. Why? [Laughter.]

Mr. GOLDBERG. Should I say saved by the bell?

Senator PRYOR. You think you are saved by the bell. [Laughter.] I am not letting you off that easy.

Mr. GOLDBERG. Mr. Chairman, I will have to get back to you. Do you have a specific section in mind so we can get back to you on the regulation?

Senator PRYOR. I will give that to you.

Mr. GOLDBERG. Okay.

Senator PRYOR. Senator Grassley?

Senator GRASSLEY. In trying to help our constituents and doing it often with the IRS over the last few years, it has been my experience that the Problem Resolution Office has not been helpful in a number of situations. At least some of the problem, I believe is that the office is too beholden to the IRS bureaucracy.

For instance, in at least one case after the filing of a taxpayer assistance order the Problem Resolution Officer appeared to merely call up the Collections Officer and then repeat what the officer said as the findings and then deny assistance.

To me or for any taxpayer for that matter, there did not appear to be any advocacy at all, except on the part of the IRS. Now this is clearly not what we in Congress intended, when we passed it, how the process ought to work.

So my first question: How do you view this process and do you agree that improvements need to be made?

Commissioner PETERSON. Senator Grassley, let me respond to that. I would be the first to say that we can always make improvements. We are trying and we will continue to try, with your help and your guidance, to improve the way we do business, including the Problem Resolution Office.

However, it is my impression during the brief period that I have been here that this particular aspect of our program is one of the most successful things that we do. We receive many compliments on the way the PRO's do their job.

Indeed, we have found that there are many, many requests that come into our system that never reach the formal level of needing a taxpayer assistance order because the PRO simply goes to the relevant revenue agent, revenue officer, whatever, and says, hey, why are you doing that and they fix it.

So I think the number I recall, and I will ask my colleagues here to correct me if I get it wrong, but I think that within the past few years, since this office was created we have responded to about 400,000 requests for assistance to the Problem Resolution Office annually. To the best of my knowledge most of them have been handled very successfully. In addition, there are about 25,000 applications for taxpayer assistance orders filed annually. They are usually worked informally. It is very rare that we actually have to go as far as a TAO to get the job done.

But to the extent we are not getting it done, let us know; we will fix it.

Senator GRASSLEY. Out of that number you gave me, how many got relief as a result of that?

Commissioner PETERSON. I do not have all of those figures here with me, but it is my impression that most of them are resolved. Now when you get to the question of whether or not an actual hardship occurred sometimes there is a disagreement as to whether or not there is real hardship. But it is my impression that a very, very high percentage of the requests of the Problem Resolution Officers are taken care of very promptly and efficiently.

Senator GRASSLEY. Out of that number that you refer to GAO would say that six were resolved.

Mr. DOLAN. I think if I might, Senator, I might be able to help put it in context. Often times a number looked to is the number of actual taxpayer assistance orders issued. I think the thing that

we have tried to look at with respect to context is that last year there were in excess of 25,000 applications for taxpayer assistance orders. Those are instances in which somebody comes in using the PRO offices. Actually 5,000 of those instances were IRS employees identifying the potential issue that a taxpayer had not identified for themselves, and saying that maybe they should be available for this provision.

Of that 25,000, 80 percent of those people applying under that mechanism got some form of relief. Many of them were outside the formal and strict definitions of hardship, but nonetheless got relief. Of that, I believe only five or six ever lent themselves to a formal Taxpayer Assistance Order. But it was primarily because of the Commissioner's earlier point that the job got done prior to issuance of an order being required.

Senator GRASSLEY. Under Section 7811 the Ombudsman can on his or her own initiative issue a taxpayers assistance order without any application. To your knowledge, has this ever been done?

Mr. DOLAN. I am unaware of it happening without an application.

Senator GRASSLEY. Would that not kind of send a signal that there is something wrong, whether or not the Ombudsman is really serving the purpose?

Mr. DOLAN. Again, I guess I would make the point, and I want to be sure that I am not misunderstood, I think the instance of relief for which I gave the example of 5,000 employees coming forward and saying that there are instances in which relief ought to be provided; those did not end up in a formal Taxpayer Assistance Order being issued. But there were 5,000 instances of relief being generated because of the internal identification process.

I do not know whether I am being responsive or not.

Commissioner PETERSON. And also, I would just point out, Senator, that in the bill that you have under consideration here today, there are a number of procedural changes, improvements in the law, that we are seeking that were suggested by our Ombudsman.

Senator GRASSLEY. At this point, just let me kind of give a philosophical point of view in regard to these aspects of IRS that are supposed to be somewhat—well, I think not somewhat, but just plain independent or to take an independent view, not necessarily advocacy for the taxpayers, but to see that problems are solved independently of the bureaucracy.

You know, within any bureaucracy there is an extreme amount of peer pressure to go along to get along. It seems to me that as much as you might have a good faith effort to make these systems work, you just have to take, because of this peer pressure, in other words how the bureaucracy generally works under any administration, people in your position of leadership and particularly representing a President with a mandate to run things, have to just take extraordinary action to see that that peer pressure is overcome.

You know, it just cannot be business as usual. I would say that that is extremely important for the IRS, where I think this peer pressure is greater than in most bureaucracies, maybe on second to the Department of Defense. The Chairman and I have had lots of problems dealing with the Department of Defense and I would

say that they are worse than the IRS. This problem of peer pressure is what I am talking about. I just want to limit my remarks to peer pressure and to make the system work, and it does not seem to work the way Congress intended.

We intended in this instance that decisions be made and a voice be heard that does not have this peer pressure coming down on it.

Commissioner PETERSON. Senator, it is certainly my impression that the PRO's (the Problem Resolution Officers) are regarded very highly within the organization. Now I am new to this organization and I would be the first to tell you there may be problems in the agency that I do not know about.

But it is my impression from conversations within the agency and with those on the outside that this portion of our program is working very well. I do not think the Problem Resolution Officers are subject to that sort of pressure. Our Ombudsman is doing a very good job.

Senator GRASSLEY. Well, I hope your conclusion is right because the law is better administered. But I think you have got to get your opinion directly yourself from the people that both use the system as well as the people that work within the system and not let that come up through the bureaucracy to you.

Mr. DOLAN. If I might, Senator, if I could just make a comment. Last evening, Senator Pryor made the point that he would like to see some of the effectiveness of the Problem Resolution Office emulated in other parts of the organization. I think that an objective that we have across the board, is to use reverse peer pressure and I think it is working. I think it will work as a function of some of our Tax Systems Modernization initiatives.

What we have done, for example, in the line organization under the guise that the Commissioner talked about earlier, is one-stop service. What we are attempting to do is put in the hands of our front-line tax assisters, and revenue officers, and ACS employees, is the capability to hear only once from the taxpayer and solve the problem with the same alacrity that the Problem Resolution Officers have been able to do over the years. So it really is our objective to use that peer pressure in a positive way.

Senator GRASSLEY. Let me go on, please, to another point.

I have in my hand what a constituent gave me and he told me that it came from within the IRS. He gave me a copy of an IRS list with his name on it and the heading on this is listed "potentially dangerous taxpayer list," dated Friday, January 18, 1991. So I presume it is updated.

Anyway, this constituent is undergoing a protracted audit and has had a number of disagreements with IRS personnel. I am interested in knowing how someone is placed on this list and what it means. I have to tell you, I have never heard of this list before.

Commissioner PETERSON. Senator Grassley, I am going to ask Dave Blattner to respond specifically to your question. But I just want to say that as you know the tax collector is not always the most beloved person in the country; and sometimes our employees are threatened.

Dave, would you respond?

Mr. BLATTNER. This list is developed and maintained by our Chief Inspector, who is outside of Operations and is the arm that

ensures proper integrity within the Service as well as maintains the potentially dangerous taxpayer list.

To get on that list an individual has to do something. Generally it is threatening an employee. That information is submitted to the Chief Inspector's Office. It is reviewed, evaluated, and they make the decision that this person could pose a potential danger to an IRS employee.

That person is then maintained on that list, and reviewed periodically to be taken off. And if the person is selected for an examination or the return comes out for a collection action, the file is designated that, employee, you need to be sensitive to the fact that this person may have demonstrated past behavior that could prove to be dangerous.

Senator GRASSLEY. Thank you.

Senator PRYOR. How many of these threats do you get? I have never heard of this list. These are just dangerous taxpayers out of Des Moines. I knew you had a lot of dangerous people there. [Laughter.]

My gosh, this is like a Sears Roebuck catalog. Half of the people in Des Moines are on here.

Mr. DOLAN. Senator, if I might, as somebody who grew up in Dubuque and not Des Moines, I know that all the dangerous people are in Des Moines.

Senator PRYOR. What do you all drink in the water there in Des Moines? [Laughter.]

Senator GRASSLEY. Well, it has a surplus of farm chemicals in it.

Mr. DOLAN. If I can be helpful, Senator, we can furnish you the information in response to your question regarding how many people are identified as potentially dangerous. The list that you have is not a list that is publicly available, and is not a list that is trafficked internally. It is a list that is maintained by the Chief Inspector and it is maintained under his threshold and under his ground rules so that it will be carefully used only to detect those instances where an employee may be in danger.

That is the primary use of the list and it has been set up and maintained in a way that we think fosters only that use of the information.

Senator PRYOR. One of our colleagues just returned from the Soviet Union and they took him, he was telling me yesterday at lunch, they took him to the old KGB building. They said, would you like to go to any part of this building. He said, sure. They wandered all around, opened up file cabinets, had a translator, and opened up the drawers and took out files on people and read files about people who were dangerous and read files on people who might be threatening and conspiring against the government and may need to be watched.

I think that is maybe what Senator Grassley and I are concerned about here. We get a little bit worried about this.

Mr. DOLAN. To the extent that we create or contribute to that inference, Senator, we would do a grave injustice both to you and to our internal people. This is used exclusively to protect our employees, particularly revenue officers, who frequently find themselves in tremendous exposure to danger.

Senator PRYOR. Right.

Mr. DOLAN. And it was inflamed in the tax protestor days when many revenue officers went unsuspecting to places only to find one or more armed people in circumstances that were very compromising to their physical well-being.

Senator PRYOR. Right.

Mr. DOLAN. That is the exclusive use of that list.

Senator PRYOR. Well, we want to protect the revenue officers. They have a tough, hard job out there. But I think it upsetting for lists like this to even circulate outside of the Internal Revenue Service. I have never heard of a list like this.

Mr. BLATTNER. Senator, that list does not circulate within the Internal Revenue Service.

[Additional information follows:]

Internal distribution of the Potentially Dangerous Taxpayer (PDT) list within the District or Service Center is at the discretion of the respective Director. IRS employees have the option of checking the District or Service Center list or contacting the Regional Inspector for PDT information. Since PDT information is considered tax return or return information, unauthorized disclosure of the information is a violation of Title 26, United States Code, Section 7213.

While the PDT system is clearly intended for internal IRS use, the only avenue open for distribution of the PDT list outside of the IRS is the Federal-State exchange agreements which are in accordance with Internal Revenue Code Section 6103(d) (1). States which receive PDT lists (as with all return information) are subject to disclosure restrictions and safeguard reviews by the IRS.

Senator PRYOR. Well, it is certainly right here. It is in a public hearing.

Mr. BLATTNER. That concerns me.

Senator PRYOR. Let's see, I do not see your name on here.

Mr. BLATTNER. I have never resided in Iowa. Wisconsin, yes. Iowa, no.

Senator GRASSLEY. I am going to ask if I could make just one comment on this.

Senator PRYOR. Go ahead, Senator Grassley.

Senator GRASSLEY. Obviously, there are problems like you demonstrated. It just seems to me like there are an unusually large number of people on this list. I would not say that there should not be some people on a list like that because obviously I have read of some problems in the Des Moines Register that IRS agents have had with a family here or there in Iowa.

But I think of it in terms of being a handful of people as opposed to—you know, I did not count these—but it would look to me like there would be at least 150 people here.

Mr. BLATTNER. Senator, I would appreciate getting the date of that list or some way that I could go back and try to look into the matter.

Senator GRASSLEY. The date is Friday, January 18, 1991. I want to suggest to you, I have not made this public and I will not make it public. But it is identified as you suggest here. By the way, they are not all from Des Moines. It is the Des Moines District. There are different communities within Iowa.

Commissioner PETERSON. Senator, it might be helpful to you if we also provided to you the criteria that we use for selecting people that we consider dangerous. We would be happy to do that.

Senator PRYOR. That would be very helpful, yes.

[The information requested follows:]

On May 9, 1984, as a result of an increase in threats and assaults to Internal Revenue Service personnel, the Commissioner assigned to the Office of the Chief Inspector the responsibility of developing a system that would improve the Service's ability to identify taxpayers who represent a potential danger to IRS employees carrying out their official duties. The Potentially Dangerous Taxpayer (PDT) system was developed and put into effect in October, 1984. (Note that in Fiscal Year 1990 and 1991, there were 737 and 726 threat and/or assault cases initiated, respectively. Currently, there are 7,974 PDTs in the database.)

In order for a taxpayer to be placed in the POT system, he or she must meet one of the seven criteria used to designate a taxpayer as a PDT. These criteria were developed by the IRS' Chief Inspector and approved by the Chief Counsel's Office. These criteria are reported in the Inspection System of Records in the Federal Register. In the most recent publication of the record, in accordance with the Privacy Act, the Service identified the seven PDT criteria [See 53 Federal Register 6436–6457 (March 1, 1988), as amended by 54 Federal Register 24785 (June 9, 1989)] as follows:

1. Taxpayers who physically assault an IRS employee.
2. Taxpayers who attempt to intimidate IRS employees with a show of weapons.
3. Taxpayers who make specific threats of bodily harm to IRS employees.
4. Taxpayers who use animals to threaten or intimidate IRS employees.
5. Taxpayers who have committed the acts set forth in any of the above criteria but whose acts have been directed against employees of other governmental agencies at Federal, State, county, or local levels.
6. Taxpayers who are not classified as POTs through application of the above criteria but who have demonstrated a clear propensity toward violence through acts of violent behavior within the 5-year period immediately preceding the time of classification as potentially dangerous.
7. Persons who are active members in tax protest groups that advocate violence against IRS employees.

The decision to designate a taxpayer as potentially dangerous is made by the District or Service Center Director having jurisdiction over the locale where the assault or threat occurred. Inspection also has the authority to make POT designations based on its own information gathering. Should Inspection disagree with a District or Service Center Director's POT determination, the matter is presented to the Assistant Chief Counsel for resolution. Inspection has the responsibility of inputting POT designations to the master file, maintaining the database of background information to each designation, and reevaluating the status of PDTs every 5 years.

Senator PRYOR. Senator Grassley has talked about the PRO (the Problem Resolution Officer). Let me ask a question about the PRO. Do you know of any instances out there—and the District Director chooses the PRO basically the mini-ombudsman within each office; is that correct? The District Director?

Mr. DOLAN. Typically, yes. I think it may vary some, Senator. But typically that District Director is joined by the Regional Problem Resolution Officer who reports to the Regional Commissioner and that person is also a party to the selection process.

Senator PRYOR. All right.

Now given that information, do you know of any instances out there in any office, any Internal Revenue Office in the country, where the Problem Resolution Officer is also working for the Collection Department or the Collection Office?

Mr. BLATTNER. I do not know of any situation in this country where the Problem Resolution Officer is working for the Collection Office. There are some people who work for the Problem Resolution Officer that will work in Collection to try to resolve the issues that have been brought to that individual's attention that are from collection.

As an ex-District Director, the Problem Resolution Officer in the District that I worked in was an equal to the Chief of Collection

and provided me advice about problems that were accruing in collection and how to resolve those problems.

Senator PRYOR. If it is true, and we may have one case, and may have two—we are going to talk about this—but if that is true this is an incredible conflict. We are going to be talking about that in just a moment.

Now let me ask this, if I might, in 1988 the candidate for President, I should say, in 1988, then-Vice President Bush, he supported the original Taxpayer Bill of Rights. In fact, in a debate with the Democratic nominee, Governor Dukakis, Mr. Bush came out and said he was for the Taxpayer Bill of Rights then pending. Now I wonder if he would support this now or I wonder if you all are going to support it.

Senator Breaux read off about 19 provisions that you opposed. What is going to be the official position here?

Mr. GOLDBERG. Mr. Chairman, there are specific provisions here that we support. As you know, there are other provisions that we urged you to enact. There are some provisions we oppose. Our opposition to those provisions fall into one of several categories. The opposition can be based on the fact that we can accomplish what you want to accomplish now without the need for legislation, and that the government, at least in my judgment will work far better if we listen carefully to what you say and just go get the job done now.

The opposition is therefore not to the approach but to the need for legislation. There are some instances where the opposition is based on the fact that the revenue cost would be enormous. There are others where we simply disagree because we think it will hurt taxpayers, not help them. But in terms of support for taxpayers' rights, we are with you.

Senator PRYOR. Mr. Goldberg, this is an age old discussion about whether we should by administrative decision or by statute, change the way we operate. It appears to me that when you change an administrative rule somehow or another it takes a lot longer for that to filter down through the system and the process than it does the law of the land as a statute.

Do you have a comment on that?

Mr. GOLDBERG. Again, Mr. Chairman, I go back to what I said before. I am quite serious in saying that I think the legislation that was enacted, the first Bill of Rights, really did contribute materially to a change in how we view the world, and saying, hey, this stuff matters.

I think with respect to any specific proposal—if I can just give you two examples—the Service has now made fundamental changes in its ruled governing offers in compromise and its procedures governing installment agreements.

In my judgment, those are two of the more fundamental things we should be doing right now to protect taxpayers and deal with accounts receivable. I think that the most effective way to assure that implementation, particularly since I will not be here, is to call these folks up every 3 months or every 6 months and say, how are you doing, show us the results, where is the beef. I think that a naked statute on the books may or may not be effective. I think the

power of your oversight position is the most effective way to prompt action.

Senator PRYOR. I must say I do not feel real powerful, but I do feel like we can watch and do a better job of watching the IRS. My thinking is that I cannot help but go back three or 4 years when we were doing hearings. Mr. Gibbs was then the IRS Commissioner, a very fine Commissioner. I remember he sort of coined the phrase, "treating the taxpayer as a customer." I think that is a very good concept, although we opposed each other it seems almost daily in hearings. But I respected him very much.

But he used to say that the IRS was going to have to close its doors and stop collecting any taxes if the Taxpayer Bill of Rights were enacted. That we just would not have an IRS, or be able to collect any taxes. We would not have any revenue if the Taxpayer Bill of Rights passed. He did not really say it that bad, but he was very negative about it.

I find the same negativism here about Taxpayer Bill of Rights 2, basically which is just to expand on the Taxpayer Bill of Rights 1. I know that we will have several periods of negotiation about it, but we really feel strongly about some of these positions.

I was very taken, I must say, Ms. Peterson, with your plea there in your last paragraph to let's all get together, let's form a new partnership; and that sounds good. Here we are in Washington, DC, and it is Friday noon and there are a few of us here who represent this side of the table and a few who represent your side of the table, but there are 117,000 IRS employees out there who are probably not listening to us.

Now how are you going to tell them we are going to form a new partnership?

Commissioner PETERSON. Well, the first thing I am going to do when I leave here, Senator, is go back to my office and get on my telephone and read that last paragraph and some other portions of my testimony here this morning to 7,000 people. I will ask them to pass it along to their colleagues and their peers.

Then beyond that I am going to do what I promised you in my confirmation hearing. I am going to hit the road and I am going to take this message on the road. I am going out to personally talk to as many of our employees as I can. We are going to do teleconferencing where I speak to our employees. I am going to do everything I can to communicate our new philosophy and the attitudes of Compliance 2000 to 115,000 people; and with your help we will make it.

Senator PRYOR. Thank you.

Do you remember a question that I asked you in your confirmation hearing in this room a few weeks ago? the question went something like this: Have you ever in your practice of the law any small taxpayers?

Commissioner PETERSON. And I think I told you I had represented hundreds of them.

Senator PRYOR. Yes, and I am very glad of that.

When you go out into the country in addition to talking to those fine employees of the IRS, I hope you will also watch some of those small taxpayers as they come into the IRS office. Fear and trem-

bling would be I think a proper description of them in many instances.

Commissioner PETERSON. Senator Pryor, you and I have a lot more in common, I think, than may have been apparent in our discussion here today because we are thinking alike.

You might be interested to know that I have already asked the people who handle my schedule to set up town meetings. I am going out to meet with the taxpayers. I will be inviting them in to tell the Commissioner what their problems are.

Senator PRYOR. Thank you.

There are two taxpayers who are getting ready to come to the witness stand right now. I know that you might have a busy schedule. However, I would, if you can, really appreciate it if you would listen to these two taxpayers. I really hope that you will stay and listen to them.

Pardon me. Senator Grassley has stepped out of the room. I wonder if he has further questions. Do you know? He is on the phone with one of these people on this list from Iowa, I think, is calling him. [Laughter.]

Senator PRYOR. I am not sure.

You might tell him I am about to excuse our distinguished panel and call the next panel. I do not want to cut him off.

By the way, Mr. Goldberg, as a parting shot, do you have any advice for our new Commissioner?

Mr. GOLDBERG. I am so desperate looking for help myself, Mr. Chairman, I do not have any advice for a soul. [Laughter.]

Senator PRYOR. You know, you should not hire any of her people because the Internal Revenue Service has still 117,000 employees. The Commissioner just gets to hire four people; and the rest of them are sort of career types. So do not go and try to rob any of her top people because she only gets to hire four.

Commissioner PETERSON. Well, Senator, these career types are just wonderful though. They are very good people.

Senator PRYOR. I understand that.

Senator Grassley, I am about to dismiss this panel and call the next panel. I did not know if you had another question.

Senator GRASSLEY. Yes, please.

We have been told that in preliminary interviews with the taxpayers many agents demand that the taxpayer be present, even though the law allows them to be represented. The General Accounting Office also reports that many times people are led to believe in notices that they must attend these interviews. Simple, are you looking into this to see that the law is abided by?

Mr. BLATTNER. Yes, we are, sir. We have had an extensive training program for all of our agents and all of our examination managers. We have heard and have evidence of the problem that you have described. We have taken action to stop it in every case that we have found.

I think it is more important. though I have to make sure, that the systems are in place to catch it before it happens. But I ask you and your colleagues to bring it to my attention at the earliest opportunity that you see that being the situation.

Senator GRASSLEY. To me it is simple. So let me ask you, as simple as just a little notice in every letter or whatever you put out

that you can be represented and you do not need to come if you want to send a representative.

Mr. BLATTNER. Our letter does say that. The problem that we have experienced is that sometimes a different letter is used. What we are doing is trying to take actions to make sure that does not happen, sir.

Senator GRASSLEY. According to the GAO and apparently an internal IRS audit, one-half of the balance due notices contain some kind of error. Is this being corrected?

Mr. GOLDBERG. Mr. Grassley, I believe that that report reflects a review that was done approximately three or 4 years ago. Using that same system analysis, I believe, that the accuracy of correspondence is now pushing 90 percent.

Senator GRASSLEY. You say you believe and I hope you are right. Would you check it out and verify it?

Mr. GOLDBERG. It is an 85–90 percent range. I do not have the exact number.

Senator GRASSLEY. But you are certain of that?

Mr. GOLDBERG. We will provide you the exact detail on it, Senator.

Senator GRASSLEY. Okay.

[The information requested follows:]

Overall IRS notice accuracy is currently at 87 percent. The IRS does not break down notice accuracy by specific type of correspondence but balance due notices are among those sampled to determine overall notice accuracy.

Senator GRASSLEY. Apparently when the IRS fills out forms under Section 6020(b) which gives the IRS authority to fill out tax returns out-of-date forms are sometimes used. Is this a real problem or did it only happen to people that we have talked to?

Mr. BLATTNER. I am not aware of us using out-of-date forms on the 6020(b) procedures, but I would be interested in any information that would indicate, in fact, that is occurring. I have not heard of that until this moment.

Senator GRASSLEY. If I have any more questions, I will submit them in writing.

Senator PRYOR. Fine. Thank you. We may, the two of us may, have some questions in writing we will submit.

We want to thank you. We pledge to you that we will work very carefully, closely with you. We look forward to that continuation of our mutual effort.

Thank you very, very much.

Commissioner PETERSON. Thank you very much.

Senator PRYOR. We will now call our next panel. Our next panel consists of two taxpayers. Not taxdodgers, by the way, but taxpayers. Carol Bettencourt, who is accompanied by Bob Kamman, who is her counsel; and Stewart Joslin of New Orleans, LA.

We are going to hear now two stories from individual taxpayers. Carol Bettencourt, I believe now that you live in Raleigh, North Carolina and most of your travails, I guess, with the IRS started off in California, then all the way to Arizona, and now are bringing you to Washington, DC. We want you to know how much we appreciate your being here. We want you to tell your own story. Then we may have some questions for you or your counsel, Mr. Bob Kamman.

Bob, am I pronouncing that correctly?

Mr. KAMMAN. Kamman.

Senator PRYOR. Kamman. Thank you very much.

Then we will go to Mr. Joslin.

Ms. Bettencourt, you may go with your statement now.

STATEMENT OF CAROL BETTENCOURT, RALEIGH, NC, ACCOMPANIED BY BOB KAMMAN, COUNSEL, PHOENIX, AZ

Ms. BETTENCOURT. My name is Carol Bettencourt. I have come here today to share a very disturbing story that took place with the Internal Revenue Service.

The story begins in 1990 after filing returns from both 1988 and 1989 tax years in which I expected refunds totalling $833 due to me. At that time I was a single working mother of three, receiving no child support for my children. With little education I was working as a cook for $4.50 an hour. Also at that time I was attending night school in hopes of furthering myself and my children's futures.

The refund due to me was like winning the lottery. After a very anticipated wait, what I believed to be my refund check was a notice from the IRS stating that they had seized both refunds for a prior outstanding balance. I was so shocked that I immediately phoned the number at the top of the letter. I spoke with the gentleman who said he was not at liberty to discuss my case with me. The only information I was able to obtain was that the debt concern was for the 1983 tax year.

After waiting another couple of weeks I did receive a letter informing me that my ex-husband had failed to claim income for that year and in addition still owed $3,600 which they intended to collect from me.

My ex-husband and I separated in 1983. Although I allowed him to claim the children and file a joint return my children and I did not benefit from his income.

At this point I phoned back the IRS and I explained my situation. They told me that because my ex-husband and I were still legally married at that time, and since they were unable to locate him, I was being held responsible for his debt. They did, however, refer me to their Problem Resolution Officer.

At this point I was almost relieved thinking that somebody would finally help me. I spoke with a woman from the IRS Problem Resolution Office who listened to my story and offered me this advice: If you do not want to pay us, we can garnish your wages or collect in any way we can. At that time I was making $4.50 an hour.

After that I received a couple more calls at work harassing me. At one point the IRS representative told me that if I were on welfare the IRS could not touch me. Not until E.J. Montini from the Arizona Republic printed my story was I to be spared from what I felt to be a horrible nightmare.

At that point Bob Kamman read the newspaper article and offered me his services at no charge. Indeed, I must say, my savings grace. I feel compelled to tell you that the response to the newspaper articles have been overwhelming. The stacks of letters I have received from people telling me their own nightmares are so shocking to me. I never thought that an agency of the U.S. Government

could ever treat honest taxpaying citizens like that. To date the stories have not stopped.

I would really like to know what type of justice there is in all this. I sincerely hope that Senator Pryor's proposal here today will be dealt with swiftly.

Thank you.

Senator PRYOR. Thank you very, very much.

[The prepared statement of Ms. Bettencourt appears in the appendix.]

Senator PRYOR. We are going to ask your attorney now, Mr. Kamman, to make a comment.

STATEMENT OF BOB KAMMAN, COUNSEL FOR CAROL BETTENCOURT, PHOENIX, AZ

Mr. KAMMAN. Thank you, Mr. Chairman. My name is Bob Kamman. I am a lawyer and I am from Phoenix, AZ. I represented Carol Bettencourt in 1990 when the IRS seized her tax refunds and told her that she still owed another $3,600.

Carol and I are here today to tell two stories. The first story is Carol's. What her case shows is that with the help of a newspaper columnist and an attorney someone might eventually win a tax dispute with IRS. The other story is that perhaps thousands of other taxpayers with tax problems like Carol's have not been as successful.

I learned of Carol's case through a column by E.J. Montini in the Arizona Republic, the State's largest newspaper. Because I was familiar with similar cases in which taxpayers have succeeded, I volunteered to help Carol for no fee.

Generally, there are two actions that can be taken when one ex-spouse learns that an audit assessment has been proposed or completed involving unreported income or overstated deductions on a joint return filed with the other ex-spouse.

One is the innocent spouse rule. But this rule gives the IRS considerable discretion in deciding whether abatement of tax is equitable. So since the 1988 tax court decision in the Abless case, the first alternative to consider is whether IRS mailed the Notice of Deficiency to the last known address of the ex-spouse from whom it attempts to collect the tax.

I interviewed Carol and determined that by the time the audit assessment on the 1983 joint return was made she would have filed two returns showing a new address. She did not recall receiving any certified mail from IRS at this new address and in my experience IRS at that time usually sent only one Notice of Deficiency and it went to the ex-husband.

Because there was substantial evidence that the 1983 tax was not collectable from Carol, I filed an Application for Taxpayer Assistance Order on IRS Form 911 with the Phoenix District Problem Resolution Office. I asked that Carol be sent her 1989 refund and that no further efforts be made to collect the balance due from her.

In order to receive relief in the form of a Taxpayer Assistance Order from the Problem Resolution Office, a taxpayer must show significant hardship. In the Form 911 I pointed out that Carol was a single, divorced mother of three, who is going to college and working full-time at a low hourly wage, while not collecting any

child support from the children's father. She needed the money to pay the family's bills. The Problem Resolution Officer wrote back that this was not a hardship.

In the Form 911 I also quoted IRS policy statement T–47, which states that an exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law in violation of the 5th Amendment to the U.S. Constitution.

I argued that violation of Carol's constitutional rights qualified as a hardship. The Problem Resolution Officer disagreed.

When it is important to the IRS the agency can retrieve a tax return in related case file from the Federal Record Center in a matter of days. In Carol's case they took several weeks. Once it was established that the Notice of Deficiency had not been mailed to Carol's address, the Problems Resolution Office caseworker told me that they would probably abate the tax and issue a refund.

Although the Problem Resolution Office is supposed to be independent it relies for much of its work on liaison personnel from other IRS Divisions. The caseworker initially assigned to Carol's case was a Collection Division employee. She had to send the case to an Examination Division employee to make what she called the final determination.

After another two and a half weeks the Examination Division had completed its look at Carol's case. They found that, indeed, she did not owe the tax. Another Problem Resolution caseworker informed me that it could take up to 3 months to correct the IRS records, but that the refund itself might take less time. It was five weeks later that Carol received her refund. It had been seized by the IRS on April 23. The check finally arrived on August 1.

Because IRS saw no hardship Carol waited for more than three months. Carol's victory was reported by E.J. Montini, the newspaper columnist, and then the phone calls to my office began. I received more than 30 calls from women, and a couple men, with similar stories. They were divorced. They had filed joint returns when they were married. And now IRS said they owed money. Often the first they knew about it was when a refund check was kept or a final notice before seizure was received.

I wrote a four-page fact sheet advising these callers on how to determine if they had received a notice of deficiency at their last known address, when to claim the innocent spouse rule, how to determine if the time limit for IRS collection actions had expired, and whether as a last resort the taxes were dischargeable in bankruptcy.

Some of them called back to report that mentioning Carol's name helped them get the attention of IRS and their problem was solved. Others were not as successful and I took on several of these cases. My usual fee would be the interest paid by IRS when it refunded the taxes that were wrongfully collected.

I still receive a call every month or so from a taxpayer or tax practitioner with a Carol Bettencourt case. If a column in one daily newspaper in one city can alert so many people that they may be paying taxes they do not owe, I wonder how many thousands of Americans have not yet heard of Carol but should have.

Unfortunately, not everyone at IRS reads the newspaper. Six months after Carol won another client had her wages levied because a collection representative ignored a letter from me in which I cited the same law as had helped Carol.

I am sometimes reluctant to seek the help of the Problem Resolution Office because they have not reacted kindly to my criticism of its program. In December 1989 I wrote an article for the Op-Ed page of the Wall Street Journal describing how the local Problem Resolution Office had botched a case and the IRS Ombudsman here in Washington had refused to get involved.

The next time I filed a Form 911 the Problem Resolution Officer took it upon herself to audit rather than assist my client. IRS taxpayer service personnel were assigned to investigate the case and the Problem Resolution Office assessed $137 in FICA, Social Security tax, which my client's employer had failed to withhold from his wages 4 years earlier.

When this happened I asked an assistant to the IRS Ombudsman here in Washington whether it was common for Problem Resolution Officers to audit returns. "I cannot say that I have not seen it happen before," she told me. So in offering to help Carol I had to warn her that she might suffer the same consequences.

Nevertheless, I do not want to speak here today without giving a balanced evaluation of the Internal Revenue Service. The IRS is one of the better managed Federal agencies and it has many dedicated and hard-working employees who do their best to give the taxpayer an even break. I know, I used to be one of them. I worked in the IRS Taxpayer Service Division for 5 years during the 1970s.

It is not enough, however, for the IRS to do the right thing most of the time. It should try to act correctly in every case. A good place to start would be to train IRS personnel in how to recognize cases in which tax on a joint return may not be collectible from a divorced taxpayer. This information should also be made available in taxpayer publications.

Finally, procedures should be changed so that when tax is owed by both ex-spouses collection action can proceed against both of them even when they live in difference Service Center areas. In several cases I have represented a client in Arizona whose case is assigned to the Ogden Service Center when the ex-spouse lives in California, which is handled by the Fresno Service Center. I have been told that there is no way for the case to be assigned to IRS field offices in both States at the same time.

In conclusion, I would like to thank the Committee for the opportunity to make these remarks. I especially thank Carol for having the courage to discuss in this public forum many of the private aspects of her family and financial situation so that others with the same problem might find out how to solve it.

Senator PRYOR. Thank you very much, Bob.

[The prepared statement of Mr. Kamman appears in the appendix.]

Senator PRYOR. Senator Grassley has a plane to catch. You all sure are catching a lot of planes around here today. But anyway, I know you have to go and you have asked to proceed with questions. Feel free to go forward, Senator Grassley.

Senator GRASSLEY. Yes. There will not be a question. It was just a comment based on Ms. Bettencourt's strong evidence that the problem she stated, and particularly with the Problem Resolution Office, said it is not necessarily working like it should be. I think you laid that out very carefully. I am particularly happy that Ms. Peterson heard that and has stayed to listen to these concerns not only of Ms. Bettencourt but other witnesses as well.

I think maybe as we lay out a very good record there will be presented a very good case for changes to be made. I thank you for your consideration, but most importantly for your going above and beyond the call of duty as a citizen to come here and testify.

Thank you.

Senator PRYOR. Thank you, Senator Grassley.

We appreciate both of your statements. We will have Mr. Joslin's statement now and then I will have a few questions.

Mr. Joslin?

STATEMENT OF STEWART JOSLIN, NEW ORLEANS, LA

Mr. JOSLIN. Thank you, Mr. Chairman, and Senator Grassley. My name is Stewart Joslin and I am from Kenner, Louisiana. I thank you for this opportunity to tell you about my problems with the Internal Revenue Service and for this chance to ask for your help.

My problem in a nutshell is that the IRS is holding me liable for back taxes owed by my former employer. They are doing this to me in spite of the fact that my former boss, the CEO of the company, told the IRS that I was in no way responsible for tax liability. They are doing this to me in spite of the fact that it was I who initiated all actions that led to the IRS getting any of the money owed by my former employer.

But maybe I should tell you exactly what happened and when so you will understand my problem better. In January 1987 I separated from the U.S. Army as a senior captain after 14 years of service. The separation was due to a congressionally mandated reduction in officer strength. I found a job with a small computer company in New Orleans. I was the operations manager for the company, which involved, among other things, assisting the CEO and company president in many projects.

The president, who was responsible for dealing with vendors and for payroll gave me a list of selected vendors that I was supposed to take care of. In order to help the company president with vendors I was authorized to sign checks for the company. I was one of three people authorized to sign checks. The other two were the company president and the company vice president. The true power of the company and the real owner was the CEO who was not among those people authorized to sign company checks.

I should point out that I had authority to pay funds to specific vendors. I did not have the power to decide which checks to write, other than for those, and I had no involvement of any kind with payroll.

At first I only signed payroll checks if the company president and vice president were not available. However, by the fall of 1987 I started signing payroll checks on a routine basis. At that time the

company's bookkeeper told me the company was way behind in paying its withholding tax liability.

I was concerned that the company was not paying the taxes and I talked to the CEO about it. He told me a big contract was expected. He said that the proceeds of that contract would cover the liability by the end of the year. He and I had become very close friends, so I trusted him and believed him. This was October 1987. By year's end, there still had been no payment of the withholding tax liability. The contract was completed, but the profits never materialized.

In January 1988 I convinced the CEO that we needed to have what I called an organizational effectiveness meeting. At this meeting I informed all company supervisory personnel about the tax problem. All those present understood the need to pay those taxes. They were visably upset to hear about the problem.

Together we convinced the CEO that the taxes had to be paid. He said that the entire amount due would be available by May 1988. But May came and went and the taxes still were not paid.

Finally, I got so concerned that I asked our CPA during the first week of June 1988 to contact the Internal Revenue Service. When I informed the CEO that we had requested a meeting with the IRS he said he understood that we had a problem and that we needed to talk to the IRS about solving it.

In July 1988 I met with an IRS investigator who threatened to hold me responsible for failure to pay the delinquent taxes. The investigator then asked to talk to all the principals of the company. I arranged for a meeting in August 1988. The CEO, president, vice president and I attended the meeting.

The other three were principals of the company. Even though I was not a principal, I attended the meeting as a potentially responsible party. At that meeting the CEO took full responsibility for the tax debt. He told the IRS investigator that neither the president, nor the vice president, were responsible and that I only sent checks to where I was told to send them.

He laid out a schedule for payment of the liability and told the IRS investigator that the company would be sold. The IRS investigator accepted the CEO's statement, including his claim that the president and vice president were not involved. However, for some reason I was still on the hook, even though from that point on all communications on tax liability were between the CEO and the IRS investigator.

At this point the CEO arranged for some funds to be paid to the IRS. In the presence of the IRS investigator he directed me to prepare checks since I was the one on the signature card and he was not. I did so and he gave them directly to the investigator.

In November 1988 the IRS sent me a bill for $120,000 worth of the employer's liability.

Senator PRYOR. Now wait. That was a personal bill?

Mr. JOSLIN. That was a final notice with intent to Levy, sir.

Senator PRYOR. To you personally?

Mr. JOSLIN. To me personally, yes, sir.

Senator PRYOR. Not to the company for which you were working?

Mr. JOSLIN. No, sir; to my home address, sir.

Senator PRYOR. All right, sir. Thank you.

Mr. JOSLIN. I guess the IRS investigator's threat to hold me liable were to be taken seriously. In November 1988 the CEO got $30,000 to pay to the IRS. I called the investigator who told me to send the $30,000 to the Internal Revenue Service's Dallas office. I did so. The Dallas office applied the funds to other taxes owed by the company which I was not aware of and no amount of arguing has convinced them to apply that money to the delinquent account for withholding.

In December of 1988 negotiations began for the sale of the company and part of that agreement was that the buyer would assume responsibility for part of the tax debt, about $35,000. The buyer of the company would pay the $35,000 directly to the IRS. However, the sale of that company never occurred.

Also in December 1988 I heard the CEO inform the Internal Revenue Service investigator that the proceeds from the company's new computer installation contract with a bank would be used to retire the tax debt. The computer installation job was scheduled to be completed in March of 1989. The IRS investigator accepted that.

However, by February of 1989 the bank had changed the completion date for the computer installation job, first to June of 1989, then to December of 1989. In the meantime the IRS put a lien on my home because of the unpaid tax bill; and in June, 1989 the company was purchased.

Once the company was sold responsibility for the completion of that computer installation project was transferred to the new company. The CEO told me that the profits from that contract would be used to pay the tax debt owed by the old company. Both the CEO and I went to work for the company that took over the installation project.

In June of 1989, after sale of the company, the CEO showed me a cashier's check for $10,000 and told me that he was on his way to the IRS to make payment. In August of 1989 I found out from the CEO that he instead had the bank remake the check and used the money to pay debts of another of his companies. He said the IRS would wait for its money.

At this point I retained a lawyer. In November of 1989 the CEO was fired by our new employer. I was not. In fact, our new employer temporarily placed me in the position the CEO had held and I held that position until the company found a replacement. The CEO blamed me for his firing.

You can guess now why I am at my wit's end. Senator Pryor, I have tried to get those taxes paid since the fall of 1987. I informed the whole company of the problem in February 1988. I brought the IRS in in August of 1988. My persistence did get the IRS some money. I did what I thought a reasonable man would do.

In June 1990 my lawyer and I met with a new IRS agent. He was the appeals agent, sir. I gave him all this information. Almost a year later, in May 1991, he called my lawyer to say that we had ten days to provide any additional information but he thought the IRS would probably hold me liable for the company's tax debt, including 1 year, 1986, when I was still in the Army and had not yet even started working for the company.

My lawyer asked the agent if he had spoken with the first IRS investigator. He said no. But that speaking to her would probably

not change anything even if the first IRS investigator confirmed the CEO's admission of sole responsibility for tax liability. The second IRS agent thought the CEO's statement was probably simple boastfulness anyway.

The CEO, president, vice president and bookkeeper are all either related or best friends from childhood. However, I provided a statement from the only impartial person in the whole scenario, the president of the old company's bank who said that in his opinion I was an adviser to the CEO and that, in fact, all decisionmaking was done by the CEO.

To add salt to the wound, the IRS investigation of the CEO is now on hold for some reason I do not know. And to my knowledge the company president and vice president are not even being investigated by the IRS. Can you imagine that?

The CEO's remarks in that interview with the first IRS investigator allowed the company president and vice president to walk away, but that statement was considered a boastful comment as it applied to me.

Senator Pryor, I need your help. I was in the Army for 14 years. I am in the Reserves now. I helped plan Dessert Shield and Dessert Storm. I planned the redeployment of our Reserves to the U.S. from Dessert Storm, but I have never been subjected to anything like this.

I have asked my Congressman, Representative Bob Livingston, for help. He helped all he could and I thank him very much for that. In fact, it is his impetus that brought me to you, sir.

We have answered every question asked by the IRS. We have provided every document they have requested. No matter what we do my lawyer and I seem to have no effect on the Internal Revenue Service. It seems that nothing we can do, short of going to court, will move the IRS.

Sir, this is not right. I cannot afford the legal expense of going to court. My legal expenses are already more than $10,000. I am not responsible for this debt. I had no control over my employer's decisions not to pay those taxes. I tried everything I could to get the company to pay its tax debt and because of me the IRS got at least some of the money. I have done my best. Please help me and my family.

Thank you.

Senator PRYOR. Mr. Joslin, thank you.

[The prepared statement of Mr. Joslin appears in the appendix.]

Senator PRYOR. Mr. Joslin, when I first heard about your case I did not believe it. I said, no, no, this did not happen; this could not happen and someone is missing a link in here. But evidently it did happen. I have reinvestigated this case and our staff has.

Question. Let me see if I can summarize this. You worked for a company. You were not an officer of this company; is that correct?

Mr. JOSLIN. That's correct, sir.

Senator PRYOR. Were you a stockholder of the company?

Mr. JOSLIN. No, sir.

Senator PRYOR. Were you a bookkeeper or an accountant?

Mr. JOSLIN. No, sir. When I came to work for the company my responsibility was to streamline some of the administrative proc-

esses. It was my job to get the JTPA (the Joint Training Partnership Act) program on track with the company.

Senator PRYOR. Were you in the decision making strata of the company? I mean did you set policy for the company?

Mr. JOSLIN. In some cases, yes, I did, sir.

Senator PRYOR. Yes.

But it was basically, if I know the facts of your case sufficiently, I think it was you that went to the CPA for the company and the others and said, we owe a lot of taxes and we have to go to the Internal Revenue Service. Is this not correct?

Mr. JOSLIN. Initially, sir, when I found out about the large sum—I did not even know the total amount until I got with the CPA—and I went to the CEO and the other officers of the organization. I also discussed it with the banker and other supervisors throughout the organization. It was a very small company.

We talked about it at length. Finally, when nothing was resolved I did go to the CPA and asked him to please contact the Internal Revenue Service.

Senator PRYOR. All right.

When did you start working for this company?

Mr. JOSLIN. January 1987.

Senator PRYOR. When you went to work for the company, did they already owe taxes?

Mr. JOSLIN. To the best of my knowledge, yes, they did, sir.

Senator PRYOR. So there was a tax debt when you went to work?

Mr. JOSLIN. Yes, sir.

Senator PRYOR. And so you assumed their tax debt?

Mr. JOSLIN. Well, initially that was the case. But I proved with reasonable substantiation that I was still in the Army during that original tax debt and did not even know I was getting out of the Army at the time that original debt was assumed.

Senator PRYOR. What is the reason that the IRS says that they are charging you these taxes of a company that you were not an officer in, and you did not own any stock? How do they say that you are responsible for the debt?

Mr. JOSLIN. I signed checks. I paid vendors and I was on the signature card.

Senator PRYOR. On the signature card?

Mr. JOSLIN. Yes, sir.

Senator PRYOR. What is the debt that is owed allegedly to the IRS?

Mr. JOSLIN. When I finished my appeal some of the debt for the 1986 and the first quarter of 1987 was abated. It turned out to be at the time of assessment $69,500. Today it is—that was in incidentally June of 1991—$69,500. Today it is closer to $95,000.

Senator PRYOR. Is that because of interest and penalties that were being stacked on as the clock runs?

Mr. JOSLIN. Interest and penalties, yes, sir. As I sit here, sir, it continues to build up.

Senator PRYOR. Yes.

And your legal fees have been $10,000 thus far; is that correct?

Mr. JOSLIN. Well, yes, sir. My attorney at the time, right after the appeal was denied sent me a letter with his final bill and said perhaps you need to take this pro se.

Senator PRYOR. All right.

We have attempted to look at your case. We look at each of these cases not only with a human's face on them and a human's problems, but also we try to dissect each case, like yours and Ms. Bettencourt's, and we certainly make a case study. Here are the problems that this particular case presents and then we try to respond with legislation trying to rectify not only the problem that is existing now but future problems so our citizens will not get in the same trouble.

We have in the Taxpayer Bill of Rights a 30-day automatic appeal, whereby the taxpayer can go and appeal an assessment of a tax liability. Would that have helped you or not?

Mr. JOSLIN. When I first received the Notice of Intent to Levy I sent a letter. I had been given a period of time to write an appeal letter and I sent a letter, not being an attorney, I sent a letter saying, I do not owe this and here is why. They sent me a response saying, I am sorry that did not satisfy the requirements of the legalese that had to be in the letter. It was not in the right format. It did not cite specific regulations. It did not respond to regulations infinitum. It went on and on and on and on.

So my appeal was initially denied primarily because my letter denying responsibility was discounted offhand. Finally though, after I retained my attorney the Internal Revenue Service was gracious enough to go ahead and accept my appeal back through the original period. So I was able to appeal the whole time, the whole event.

Senator PRYOR. But you are still today being held liable for this debt?

Mr. JOSLIN. My appeal was denied in June; and yes, today, I am still liable.

Senator PRYOR. How many employees did this company have?

Mr. JOSLIN. At one time it had 20 people, sir.

Senator PRYOR. Twenty people?

Mr. JOSLIN. Yes, sir.

Senator PRYOR. So it was a small business?

Mr. JOSLIN. Yes, sir.

Senator PRYOR. What had you done before that? You had been 14 years in the U.S. Army?

Mr. JOSLIN. Yes, sir.

Senator PRYOR. Were you a participant in Dessert Storm? Did you actually go there?

Mr. JOSLIN. No, sir. My participation was part of the planning and part of the force development later on as a Reservist.

Senator PRYOR. Let me ask you one more in this series of questions.

Mr. JOSLIN. Yes, sir.

Senator PRYOR. Did you get any sympathy within the IRS? I mean, did anyone ever say, well, Mr. Joslin, I think that you are right and I am trying to convince my superior.

Mr. JOSLIN. I have had five IRS agents involved, one kind of an agent or another involved, since this thing started and it would be very difficult for me to categorize any one of those people.

I did talk to the Ombudsman, Problem Resolutions Officer, in New Orleans. Basically, the results of the appeal were repeated to

me by the Ombudsman and that basically was the response that I got from that individual.

I can characterize the individuals by saying that they were single-sighted in their attempt to get their money or to get the government's money and I understand that.

Senator PRYOR. Ms. Bettencourt, let me ask you a question along the same lines. You dealt with several IRS employees during the long course of these events. Is this correct?

Ms. BETTENCOURT. Yes.

Senator PRYOR. Now did you have any of the employees ask you about your hardship situation—one, that you had three children; two, that your husband was nowhere to be found; three, that you made $4.50 an hour; and four, that you could not pay a $4,000 debt to the IRS? Did you have any concern expressed to you by any employee of the Internal Revenue Service like that?

Ms. BETTENCOURT. None whatsoever.

Senator PRYOR. What was the attitude that you ran up against?

Ms. BETTENCOURT. The attitude I encountered from the Problem Resolution Officer that I spoke to was a woman. When I explained my case to her, I thought that perhaps her being a woman would help. Indeed, she was very cold. She acted like a collection agent as far as I was concerned. She wanted to know when I was going to pay the money that was owed to the IRS, how I was going to pay it. When I explained the situation to her, she just said that was not their problem. That was her response. Very cold.

Senator PRYOR. What would you had done had you not run into your attorney, Mr. Kamman, who took your case without a fee? What would have happened to you?

Ms. BETTENCOURT. Well, I imagine I would become another statistic. Unfortunately, there is a lot of people out there that do not have the opportunity to be in here in Washington today to speak out. I know that for a fact from the letters that people I talk to every day, even now, that are in the same situation that are intimidated by this Agency. There is just not enough Bob Kammans in the world to go around.

Senator PRYOR. You were not only working two jobs as I understand you were also going to night school and trying to further your education; is this correct?

Ms. BETTENCOURT. Yes, Senator.

Senator PRYOR. All right.

Did you find that after you hired an attorney that the IRS then started paying more attention to you?

Ms. BETTENCOURT. Oh, indeed.

Senator PRYOR. Mr. Kamman, let me ask you something. We get letters all the time from people out there in the country and many times we do not know what to do about them. I have a sense that most of the letters we get are from women who are either divorced or separated and who suddenly find themselves as sort of a victim. They are the prey of the Internal Revenue Service. Now am I wrong? What do you think?

Mr. KAMMAN. There are a lot of men who are victims also. But in cases like Carol's involving joint returns and divorce, it turns out more often than not that it is the ex-wife who can be found. As Carol's story illustrates, there are a lot of ex-husbands who are

avoiding paying their child support obligation. They are not letting anybody know their address. They have stopped filing tax returns. They are working for cash under the table sometimes. They may have substantial incomes.

But it is hard for IRS to find the ex-husband. It is easiest to find the ex-wife. So it is the women who wind up being pursued for taxes owed on a joint return, even when all of the income or most of it was earned by the ex-husband.

Senator PRYOR. Ms. Bettencourt, is it true that you were told that you would be better off just going on welfare?

Ms. BETTENCOURT. That is correct.

Senator PRYOR. How was that told to you?

Ms. BETTENCOURT. At one point the woman from the Problem Resolution Office called me at work and explained to me that my wages could be garnished. I got very upset and tried to explain to her what was going on.

I don't know if I can——

Senator PRYOR. What sort of an attitude did you get from her? What did you face there? Was there any sympathy?

Ms. BETTENCOURT. None.

Senator PRYOR. Did they threaten to seize your property?

Ms. BETTENCOURT. Well, she told me that and I said I did not have anything. They said that they could either take my real property—her bottom line was that if I were on welfare the Internal Revenue Service could not touch me, which I thought was a real inspiration for single women.

Senator PRYOR. Mr. Kamman, I have one more question, I believe. We are going to call our final panel in just a moment. In your experience, what about the PRO's? You deal with the PRO's. What caliber of person are we looking at generally? We have heard some allegations that they are also working for the collection division in some instances. Is it true?

Mr. KAMMAN. The Problem Resolution Officers themselves may hold that job title exclusively and they have, depending on the size of the Districts, one or more staff members who work only on problem resolution. But at least in the Phoenix District—and again the IRS, the Commissioner's statement this morning refers to the IRS as having a decentralized administration. The IRS administration is about as decentralized as the Soviet Union is these days.

We are looking at different ways of doing things, widely different ways of doing things in different Districts. But at least in Phoenix, there are a lot of the problem resolution work is farmed out to people whose regular job is in the operating divisions. They may work for a month or two on problem resolutions cases. But where they came from was audit and collection work. And where they go back to is audit and collection work and they bring their attitudes with them and go back not having them changed.

Senator PRYOR. Well, in two instances, December and now again in February, we have had outstanding members of the Bar who have come before this Committee with their clients, who have taken their client's case against the Internal Revenue Service without fee, without charge. I want to thank you very, very much on behalf of not only Ms. Bettencourt but probably thousands and thousands of taxpayers out there.

We owe you a very deep debt of gratitude. I do not know how to express our appreciation adequately to you and other members of the Bar who take these cases. We are very, very indebted.

Mr. Joslin, you have made a plea to us, a plea for help in your case. I do not know if I can help you, but I am going to do everything that I can.

I was glad that the new Commissioner of the Internal Revenue Service sat there while you and Ms. Bettencourt told your story because often times citizens do not get to tell their story to the Commissioner of the Internal Revenue Service, but you are both in a rare situation today and you got to tell her your story. And we sat here and made them listen to you, so maybe they will see what is happening out there in these IRS offices.

We want to thank the three of you very, very much. I am going to excuse this panel.

Now we will call our last panel. We are going to take a three-minute break. If our next panel would please come forward.

[Whereupon, the hearing recessed at 12:20 p.m. and resumed at 12:22 p.m.]

Senator PRYOR. Ladies and gentlemen, we will now reconvene. We have our final panel consisting of Mr. Larry Coble of Trophy Arts Co. in Fort Worth, TX and also the president of the National Association of Private Enterprise, accompanied by Mr. Jeff Trinca, the counsel for the National Association of Private Enterprise; we also have on our panel Mr. Charlie Jones, vice president of operations, accompanied by Laurie Conner, collection representation manager, TAX 1, Atlanta, GA. These are former IRS employees who formed an association called TAX 1. We will find that interesting testimony. Mr. Harvey Shulman is a member of this panel, general counsel, National Association of Computer Consultant Businesses, Washington, DC.

Mr. Coble, we will take your statement first if we could.

STATEMENT OF LARRY COBLE, PROPRIETOR, TROPHY ARTS, FORT WORTH, TX, AND PRESIDENT, NATIONAL ASSOCIATION OF PRIVATE ENTERPRISE, ACCOMPANIED BY JEFF TRINCA, COUNSEL, NATIONAL ASSOCIATION OF PRIVATE ENTERPRISE, WASHINGTON, DC

Mr. COBLE. Mr. Chairman, I would like to thank you for this opportunity to testify today on the Taxpayer Bill of Rights 2 on behalf of the 70,000 members that we have in NAPE. And NAPE is an acronym for National Association of Private Enterprise. The Association is made up of businesses with ten or fewer employees. We really try to represent the small business in America. I think I qualify as President with 21 years in business and 6 employees.

NAPE's mission is to provide these small businesses with guidance and support to face the challenges of ownership and to act as a strong voice for our members with their elected officials.

I would like to express a special thanks to you, Mr. Chairman, and Senator Grassley, and Senator Reid for the work you have done for the small business taxpayers. Without your efforts the first Taxpayer Bill of Rights would not have passed. I congratulate you on your willingness to continue your hard work on this very important subject.

The Taxpayer Bill of Rights 2 is a host of helpful provisions and will provide relief to businesses with ten or fewer employees. Because of time constraints I will concentrate on three problems and discuss briefly how this new legislation will benefit Americans in small business.

Number one, small businesses do not have the resources to defend themselves against unfair actions of a large bureaucracy with over 100,000 employees that we have heard here today, with the limitless powers over property and finance. The IRS uses this imbalance of power and resources to get unfair settlements and concessions from small businesses.

When faced with the tax claim or a few hundred dollars in penalty, or possibly thousands of dollars in professional fees, most owners just make a simple economic decision and pay the claim without a fight.

In other instances our members have no choice but to fight because their very existence really depends on the IRS's actions.

Now, our membership realizes the importance of collecting taxes. But, it is important to keep in mind that the consequences that the erroneous IRS actions can have on a small business. They can seize your property. They can freeze your accounts. They can literally stop a business in its tracks. The problem is that we have no third party review.

Taxpayer Bill of Rights 2 has a number of excellent provisions to establish a better balance between the small business and the IRS. First, we believe that a strong, independent advocate for small business taxpayers will have a profound effect on the ability of small businesses to get a fair shake from the IRS.

The changes in the new Taxpayer Bill of Rights increases the taxpayer advocates ability to be active on the part of small business. Small business will finally have someone in their corner when they enter the ring with the IRS.

I would also like to commend you for equalizing the tax treatment of professional costs of corporations and sole proprietorships, as many of our members operate as family farms or sole owners and do not have the opportunity to deduct the cost of defending themselves against the IRS.

Small businesses survive only by maintaining flawless credit ratings. If there is a stain on that record, banks will not loan, vendors will start demanding COD payments, and lenders will call in any lines of credit. The worst credit stain a small business can get is an IRS lien. Creditors are too aware in case of default that the IRS is standing at the front of the line for collections. They are also very aware of the IRS's unlimited ability to freeze bank accounts and to seize valuable equipment.

The new Taxpayer Bill of Rights takes great steps to solve this problem by requiring the IRS to notify credit reporting agencies when a lien is incorrect. This rule will prevent thousands of small businesses from going under.

Thirdly, if a small business is to comply with government notices they have to be able to understand what the government wants. The IRS sends millions of incomprehensible forms every year. Most forms seem to be designed to obscure both the problem and how to solve it.

If I could say one thing to the IRS, I would say busy business people cannot comply with all these IRS notices unless they know why they received them and what they owe. Most notices arrive with only a reference to some Internal Revenue Code section for an explanation and a dollar amount.

The new Taxpayer Bill of Rights would save both the IRS and taxpayers time and money. It would speed up compliance and it would be positive for everyone. I can only hope that the IRS would choose to comply this time around. As this panel knows, the first Taxpayer Bill of Rights contained a similar provision but the IRS chose to ignore it.

In closing, I would again like to thank the Subcommittee for giving us the opportunity to speak today. I urge Congress to enact the Taxpayer Bill of Rights 2 as quickly as possible. It will serve the Davids of the small business a sling shot to use against the Goliath IRS.

Thank you.

Senator PRYOR. Mr. Coble, thank you very much. Thank you for your very, very fine statement.

[The prepared statement of Mr. Coble appears in the appendix.]

Senator PRYOR. I am going to call on Mr. Charlie Jones now. I believe this organization is TAX 1. Tell us about this, Mr. Jones.

STATEMENT OF CHARLIE JONES, VICE PRESIDENT-OPERATIONS, ACCOMPANIED BY LAURIE CONNER, COLLECTION REPRESENTATION MANAGER, TAX 1, ATLANTA, GA

Mr. JONES. Thank you for inviting us here today, Mr. Chairman. I am here with some uncertainty of emotion today, but with no uncertainty of resolve and commitment to T2.

I would hasten to add that much of my support is philosophical as opposed to practical because my discipline is in the collection function where I spent 28 of my 33 years.

Senator PRYOR. Now you were with the Internal Revenue Service for how many years?

Mr. JONES. Thirty-three years, yes, sir.

Senator PRYOR. When did you leave the Internal Revenue Service?

Mr. JONES. In 1988.

Senator PRYOR. So you left the Internal Revenue Service about the time we were trying to pass the Taxpayer Bill of Rights 1.

Mr. JONES. I might add that I was diametrically opposed to you at that time, sir.

Senator PRYOR. Yes, sir.

Mr. JONES. I was on the inside looking out.

Senator PRYOR. Well necessity sometimes is the mother of friendship.

Mr. JONES. Absolutely.

Senator PRYOR. Thank you.

Mr. JONES. I am accompanied by Laurie Conner. I want to make that clear before we go any further.

Senator PRYOR. Thank you for bringing her.

Mr. JONES. She is a member of our organization and is in the collection representation side of the house.

I do not know how much of my statement you want me to read. It is rather lengthy. If you would like to——

Senator PRYOR. I would prefer, if you do not mind, for us to just put it in the record.

[The prepared statement of Mr. Jones appears in the appendix.]

Mr. JONES. All right.

Senator PRYOR. Just tell us in your own heart what you would like to say.

Mr. JONES. There are some things that are very heavy on my mind. That is why I have some uncertainty of emotion today. I am kind of straddling the fence in that regard, but never in terms of what needs to be done in terms of rights for the taxpayer.

Some of what I say today I said when I was inside the organization. I said it with what I thought was a purity of heart then; it is with a purity of heart now I say the same things.

I think one of the things that needs to be done inside the organization now that is very important is there is a dire need of some modification in the organizational culture, particularly in the collection function.

Going back to 1956 when I came to IRS you were rewarded for making seizures and taking enforcement actions. You were evaluated in that regard. My first promotion was based on the number of seizures I had made.

Fortunately today people are not evaluated that way in a formal way. The problem is that the informal evaluation and promotion policy is still at work as it always is in almost any work environment. Things are not written down but people remember things that are done. Making a seizure is one of the things that has to be done in the collection function. Even today, it is part of the maturing process. You have to be able to take distraint action.

When you make that first seizure that is the day you come of age and you become somewhat taller in the eyes of your peers. That needs to be changed. That is a tough job. I do not know exactly how to go about it. I tried it for many years and failed.

Moving to Section 6020(b) which has been alluded to many times here today, my problem with that is—and I also want to emphasize that I only see the bad things where I am working now; I do not see the good things that IRS does.

Senator PRYOR. There are some good people with the IRS.

Mr. JONES. Absolutely. I want to say that when I came here this morning I saw a lot of old friends. When I leave here today I hope they will still be my friends.

Senator PRYOR. Well, do they consider you friend or foe now?

Mr. JONES. I do not know. I do see that most of them have left so I do have the rest of the day as a reprieve.

Section 6020(b) I think gives the opportunity to IRS for some very arbitrary and hurtful actions. It also produces a lot of revenue—I have to say that as well—for the people who absolutely will not file.

The ones that we have encountered that cause a real problem are those where the taxpayer has moved around a good bit and the statutory notice, the underlying document for making the assessment, goes to the last known address and then the assessment is

made. That person maybe has moved three times since that statutory notice went out. But it is the last address that IRS had.

Now collection comes on the scene and they have to track this person down. The first thing that becomes very obvious is that the taxpayer has no knowledge of what is going on. I think there is a very significant need to put a notice in those notices going out fully explaining to that taxpayer after it gets into the collection stream what has happened and what his appeal rights are now.

In fact, there are no appeal rights because this thing has gone through the statutory notice. But administratively there has to be a way, and there is—IRS provides a way for that—in many instances; in some instances they do not. They open it up administratively and look at it and do the right thing if they are approached in the right way. But it is an accident that does not need to happen. I think IRS can do something about that.

The automated collection system. I was there when we put this thing in place. I have a transcript of the first call that was ever made from an automated call system. It was our test site in Indianapolis.

Senator PRYOR. Go ahead and tell this instance if you would.

Mr. JONES. I will not get into that particular instance. The problem with ACS is that it isolates itself from the taxpayers. You cannot get to people to talk with them about the problem eyeball-to-eyeball when the account is in the ACS system. There needs to be some way to break that barrier down. There is a difficulty on the part of taxpayers trying to get at IRS if they cannot find someone that that particular account is assigned to. There has to be a credit apparently going to that person that is working the case.

So people are either unwilling—I guess unwilling is the right word—to sit down and provide a service to taxpayers. That is what it all comes down to, a service to taxpayers.

Senator PRYOR. We get letters all the time that says, "Dear Senator Pryor, would you please put me in touch with a human being in the Internal Revenue Service."

Mr. JONES. Amen.

Senator PRYOR. I think that is a lot of it right there. They talk to machines and computers and everything else.

Go ahead and make another statement if you would like, quickly, if you do not mind and then I am going to ask our final witness to make a statement and then we will have a few questions.

Mr. JONES. Okay.

I will make one statement about the power of attorney and the representation that has been alluded to earlier today. I do not find any particular problem with the revenue agents as they do give the power of attorney its proper respect. Our problem is dealing with revenue officers in the Collection Division and having them afford the power of attorney its proper respect. There seems to be a sort of rigidity that comes into play when they find out we are representing the taxpayer, and we have the power of attorney, and there is an insistence that the taxpayer come with us. I just do not think they read that section of the Code that tells what is going on here.

Senator PRYOR. I want to come back and ask you about that in a moment.

Mr. JONES. All right.

Senator PRYOR. Mr. Shulman, if you would make your statement now we would appreciate it.

Mr. SHULMAN. Thank you, Senator.

Senator PRYOR. You may summarize that statement or you may read it if it does not go over five minutes.

Mr. SHULMAN. I have a long statement.

Senator PRYOR. All right, sir, thank you.

Mr. SHULMAN. This is a summary.

STATEMENT OF HARVEY J. SHULMAN, GENERAL COUNSEL, NATIONAL ASSOCIATION OF COMPUTER CONSULTANT BUSINESSES, WASHINGTON, DC

Mr. SHULMAN. Senator, imagine—and this is not imagination, it is real—yourself being a small business owner in a situation which many of our members have called "legalized extortion," "terror tactics" or the "IRS employment tax audit from hell".

It is going on—less than 25 miles from here, Senator, in Maryland, and as far away as Los Angles, and in places like Ohio, New Jersey and New Hampshire. What I am going to say is not based on speculation or rumor. I have been at the side of clients during employment tax exams and have seen first hand many of the situations I will speak about.

Therefore, it is clear that what you are doing with T2 is not only necessary, but should be further expanded to deal with problems caused in the employment tax area. Although the situations I have described have hit the technical services industry with greater impact than other industries because of the discrimination against our industry due to Section 1706 of the 1986 Tax Reform Act, these situations are occurring in many other industries—such as nursing and construction, two that I am very familiar with in addition to the computer industry.

Here is more of what I would like you to imagine, Senator, and it is also a real situation occurring over and over again: Several years ago with virtually no money you became a self-employed business person in the computer industry and after many years you built up many clients and began subcontracting out work on various projects where it was appropriate to do so.

You also hired long-term employees and gave them all the "bells and whistles" of benefits. Today you have a $3 million business with several employees—and maybe 25 subcontractors who work on individual particular projects and who leave you when the project is over.

Then 1 day about a year and a half ago the IRS walked in and began an employment tax audit. They wanted to check whether the reimbursed business expenses and fringe benefits you gave you employees should be recategorized as taxable wages. They wanted to check out a loan that your small business made to you in order to ensure it was not taxable wages. And they wanted to examine the status of your subcontractors that you use to make sure that they are not employees for which you owe additional employment taxes.

What did the IRS do when it knocked on your door? Well, the first thing it did, Senator, is it asked to see all of your books and records and it learned the name of every single subcontractor you

have done business with, and every single one of your customers. Then you know what it did, Senator? It contacted virtually every single one of those contractors and customers and probed them in detail about their relationships with you.

I have attached as Exhibit A to my summary a letter that subcontractors got from the IRS insisting that they be present at the IRS offices here in Maryland and present their personal tax returns, all of their client lists, all of their vendor lists. These persons were not being audited. These were the subcontractor providing services to someone else who was being audited.

The auditors then show up at people's doors and demand to see them and interview them on the spot. And your subcontractors say to you, Mr. Pryor, "what are you doing wrong? I mean the IRS is asking me why I am doing business with you." Senator, imagine that the same thing happens to your customers, that the IRS knocks on the doors of all of your customers and asks them questions about doing business with you.

Now, Senator, ~~also imag~~ine that the IRS tells—as it did in Exhibit B—you that they have looked at the personal tax returns of all of your subcontractors—and they believe that based on the subcontractors personal tax returns, those subcontractors are really your employees and that your business is going to owe about a quarter of a million dollars in employment taxes.

But when you ask to see those same tax returns that the IRS says contains information that it is using against you to make an assessment, the IRS says they cannot show you those returns. Then imagine, Senator, that several months later you found out that what the auditor says was in those returns is either false, misleading, incomplete or completely taken out of context.

Imagine further, Senator, that information that the tax examiner has found which would exculpate you was conveniently left out of his other case file and not reported—because the examiner sees himself as a prosecutor not as an impartial factfinder.

Then imagine, Senator, that you get an IRS notice several months later that you owe $250,000 in back employment taxes, based on information you have not seen. You file your protest. Senator, what happens is that the auditors can hold that protest at their desk for months and months and months.

Then the auditor puts together a rebuttal. This happened in Ohio and many other places. And the rebuttal—I have included a page from one rebuttal as an Exhibit C—the rebuttal says, "This is a rebuttal to my original report" and "it is confidential and should not be disclosed to the taxpayer." And even though this is the private IRS rebuttal that the Appeals Officer is going to see when deciding your case, you do not know what is in there and you do not even know if that rebuttal has been made.

Senator, I could go on and on and on. We have made some specific suggestions in our lengthier written testimony. Please do not ignore what the IRS is doing to business taxpayers in employment tax audits. It is unconscionable. It has to be solved and we need your help to solve it.

Senator PRYOR. Mr. Shulman, your statement is of great service. You have rendered a great service, as all of you have this morning, and I want to thank you for it. Now you are going to put that infor-

mation in the record, you are going to make that a part of the record that you have given.

Mr. SHULMAN. Yes, sir. I have a longer written statement that I would like to have in the record. I also have the three exhibits that I have mentioned here—the letter from the IRS to subcontractors and two other exhibits—that I would ask to be put in the record.

Senator PRYOR. Thank you. This is very, very constructive and we thank you.

[The prepared statement of Mr. Shulman appears in the appendix.]

Senator PRYOR. Let me ask a question about the PRO's. Maybe to Mr. Jones or Mr. Coble or Mr. Shulman. How ought we to strengthen the PRO's out there across the country who are there allegedly to help the taxpayer. We have heard a little bit of disparaging comment today about the PRO's in some areas. What do you think, Mr. Jones?

Mr. JONES. Well, it is sad for me to admit this, but I think the only way to get the strength you are looking for is to provide more independence. Unquestionably, that is what has to be done.

Senator PRYOR. All right.

What about you, Mr. Coble or Mr. Shulman, do you have a comment on this?

Mr. COBLE. Well, I would like to let Mr. Trinca comment on this.

Senator PRYOR. Mr. Trinca, no stranger to this Committee.

Mr. TRINCA. I can tell you that the view is a whole lot better from up there.

The first Taxpayer Bill of Rights attempted to give the taxpayer assistants power to stop incorrect actions by the IRS, because Congress was seeing a lot of situations where there was a need for someone to step in and stop the IRS before there was harm.

I think that in retrospect that the Congress may not have gone far enough, and that what is also needed is an advocate that could take action themselves to bring something about. I think that this legislation remedies that problem.

Senator PRYOR. Thank you.

Mr. Shulman?

Mr. SHULMAN. Senator, I will tell you what one Collections Officer told me during an employment tax audit. Please note that we are not talking about a situation after the audit is over where the taxes are due, but we are talking about collections people doing examinations to see if taxes will be due.

We had a problem about the statute of limitations during that examination. They threatened to make a personal assessment. We said we were going to file a "911." The IRS fellow told us, he said: "Go ahead. You know, the Problems Resolution Officer will call me up. I will tell him what the story is and he will call you and tell you that there is not anything they can do about it."

I have not given you all of the facts of the case, but it was really an appalling case. So I have never filed a "911" yet.

Let me also say, Senator, I have dealt with some terrific IRS people. I mean I had a case where a taxpayer was erroneously assessed something and I called up the guys who did the prior audit, a Mr. Graves and Mr. Blaise, in New England. They said, "you

know, you are a customer of ours and we deserve to take care of this." The next days I got something in the mail saying they were going to change this erroneous proposed assessment.

Senator PRYOR. Thank you.

I would like to say I know in our Little Rock, AR office, we have one of the best Problem Resolution Officers and offices of any of the Districts and we are very proud of that relationship. Her name, by the way, is Priscilla Gray. We send her a lot of cases. In fact, this hearing will probably result in other cases being sent.

Mr. Jones, you are a tremendous resource. We have a difficult time sometimes finding out what really goes on in the IRS, behind the closed doors. We appreciate very much you coming forward. We appreciate your organization.

Is your organization pretty well dedicating itself right now to the representation of taxpayers; is that correct?

Mr. JONES. Yes. We represent taxpayers in almost all administrative matters before the IRS. We do not get into judicial matters because we are not attorneys. Our practice, however, is slanted to the collection side of the function because there seems to be a lack of a number of professionals out there to deal with these kinds of problems and about the only way to learn what is going on is inside the Collection Division in Internal Revenue, so that you can come back and help taxpayers who have these problems.

Senator PRYOR. How does a Collection Officer get up every morning get dressed, and drive into work, knowing what is ahead for them during the course of that day. I do not understand. I know we have to have collection offices, do not get me wrong.

Mr. JONES. I can only answer that from my own personal perspective, and my perspective was that I saw not only an enforcement role when I was out there functioning as a revenue officer, but I saw myself as an assister, one who could deal with making a good business judgment for both the Service and the taxpayer and not be unevenhanded about any of that process.

I do not know why it cannot continue that way. One of the things that I see that has kind of left the organization in terms of the way revenue officers do their work is they apparently do not push the idea of making good judgments, that it has become more check the boxes and be sure you have done everything legally correct, and you have recorded all the history, and done all those kinds of things. But do not get involved in making judgments.

Senator PRYOR. We have a new Commissioner. She just testified. Perhaps you were here to listen to her.

Mr. JONES. I was.

Senator PRYOR. She is a very fine individual, and has a very splendid reputation in the legal community and in the tax community. She stated in her last paragraph that we need now to form a new partnership between the tax collector and the taxpayer, and is urging us to join in this new partnership.

Now she said she was going back down to her office and type on some kind of machine—I do not understand all this.

Mr. JONES. It is "Send A Message," sir. SAM.

Senator PRYOR. Send a message out through the SAM system to all the IRS employees about this new partnership. How long does it take for that message to filter out there, say, to the collection

part of the IRS or to the average employee of the Internal Revenue Service.

Mr. JONES. Perhaps a better question would be: How long does it take to understand it? It does not take a long time to get that message out.

But let me underline what I just said by quoting Mr. Goldberg in the highlights of his office, 1988, I believe it was. I am kind of calling on memory. He played some of it back here today about reducing the burden on the taxpayer, which I applaud. Lord, we need that.

He also made a statement in there that he said it is time now to turn to looking at how to make things work and how to reduce the burden on the taxpayer. I am paraphrasing. He said moving away from theoretical purity. Now I think that is one of the problems with people who are out there collecting taxes today. They are too consumed with being technically correct as opposed to judgmentalyl correct and philosophically correct and making good business decisions, not only for the taxpayer but for the Service.

It can be done. It has been done many, many times by many. It is still being done by a lot of good folks in Internal Revenue. I do not want to leave here without saying that because I want to try to keep some of those friends.

Senator PRYOR. Let's take the case, if we might, of Ms. Bettencourt here, $4.50 an hour, trying to raise three children, could not find the husband, he had gone, the ex-husband ultimately. She did not seem to get any cooperation from the IRS; and furthermore, they did not, according to her, even seem to care. Is this universal?

Mr. JONES. It happens. It happens a lot. My perspective of Ms. Bettencourt's case is that it never should have gotten beyond the clerical phase of IRS. Someone should have understood her story and dealt with it; and she should have never been burdened with it.

Senator PRYOR. But she has been burdened for many, many years with this particular problem.

Mr. JONES. Those are the things that really sadden me.

Senator PRYOR. Can we change that system?

Mr. JONES. It is going to be tough, but I think it has to be changed.

Senator PRYOR. You know the longer I sit here—we are getting ready to mark up a tax bill or an economic recovery package in this room. There will be 20 members of this Committee and this room will be filled with people representing groups and everyone you can imagine. Some will be saying, as Senator Long used to say, "Don't tax him and don't tax me, tax the man behind the tree." They are going to be wanting the taxes for everyone else. But not everyone is like that, I must say. But a lot of times we find it.

Every now and then I just get to a point where I think maybe a flat tax is the answer. I say maybe it is the answer. Now you do not agree with that.

Mr. JONES. I do.

Senator PRYOR. Oh, Mr. Jones agrees.

Ms. Conner, you do not agree, do you?

Ms. CONNER. No.

Mr. JONES. She works for me, sir.

Senator PRYOR. So you have a disagreement. That is okay because I think it is interesting.

By the way, Ms. Conner, you have not said anything. Would you like to comment on that? You are welcome to if you would like, but, please, if you do, use the microphone. Then we are getting ready to adjourn.

Ms. CONNER. I think that when you have a flat tax it is regressive, like a sales tax. The people who have a lot of money are investing it and they are living on, and paying taxes on—30, 40 percent of their income. The other people who are out there spending every dollar they earn are getting taxed at a rate that makes it impossible for them to buy groceries.

So I believe in a progressive tax.

Senator PRYOR. As a politician we live with perceptions, sometimes more than with reality. A perception is that when we start writing up the tax bill that the so-called "lobbyists" are going to be here looking out for their clients and their industries and associations; and that the rich people are not going to be paying any tax or if they are paying tax it is not going to be enough.

Now that is sort of the war between the various income strata that we are facing in the country right now.

By the way, I went through the State of New Hampshire. I spent several days there in recent weeks. I could sense that that was going on and a lot of people feel that the very wealthy are not paying enough. Somehow or another we have got to restore some faith in the system.

The purpose basically of the Taxpayer Bill of Rights is that faith is being diminished by the lack of respect that the taxpayers have for the system. It is only one phase of what we must do and really what we can do. That is sort of try to restore the balance. Because right now, I think, the balance weighs in favor of the tax collector versus the taxpayer.

So having said that we are going to do our very best to shape the Taxpayer Bill of Rights 2 in a fashion that will begin the restoration of that perception of that faith in the fairness of the system.

Any final comments here?

Mr. JONES. At least a flat tax would have universal understanding.

Senator PRYOR. It would have universal understanding. We have 117,000 IRS employees. What would it do to all of those folks now?

Mr. JONES. I do not know. They can go out and make pottery or something. [Laughter.]

Mr. SHULMAN. Senator, you made an excellent point that simplification, and the substantive standards do go hand-in-hand with fairness and procedures. I hope that this Committee tackles some of the other issues—including the whole "subcontractor" issue which has given so much hell to the computer industry—with the same zeal and integrity that you are attacking the procedural issues.

Senator PRYOR. Right. The case of Mr. Portillo that we heard in December, the seventy-two year old house painter the IRS hounded from El Paso to eternity almost. He finally won in the Circuit

Court of Appeals. That was a subcontractor matter that was in dispute. They probably spent, no telling, maybe $100,000 to collect a very small alleged debt of Mr. Portillo.

Mr. Coble, Mr. Trinca, Mr. Shulman, Mr. Jones, Ms. Conner, I want to thank all of you. This has been an outstanding hearing. I want to thank all the witnesses today who came to the hearing and I think it was most constructive. We owe you a debt of gratitude, all of you. We look forward to working with you in the future.

Thank you very, very much.

Our meeting is adjourned.

[Whereupon, the hearing was adjourned at 12:59 p.m.]

APPENDIX

Additional Material Submitted

Prepared Statement of Carol Bettencourt

Good Morning. My name is Carol Bettencourt. I have come here today to share a very disturbing story that took place with the Internal Revenue Service.

The story begins in 1990 after filing returns for both 1988 and 1989 tax years, in which I expected refunds totaling $833 due to me.

At that time, I was a single working mother of three receiving no child support for my children.

With little education, I was working as a cook for $4.50 per hour.

Also at that time I was attending night school in hopes of furthering myself and my children's future.

The refund due to me was like winning the lottery.

After a very anticipated wait, what I believed to be my refund check was a notice from the IRS stating they had seized both refunds for a prior outstanding balance.

I was so shocked I immediately phoned the number at the top of the letter. I spoke with a gentleman who said he was not at liberty to discuss my case with me. The only information I was able to obtain was that the debt concerned the 1983 tax year.

After waiting another couple of weeks I did receive a letter informing me that my exhusband had failed to claim income for that year and in addition still owed $3,600 which they intended to collect form me.

My exhusband and I separated in 1983, although I allowed him to claim the children and file a joint return. My children and did not benefit from his income.

At this point I phoned back the IRS and explained my situation. They told me that because my exhusband and I were still legally married at that time and since they were unable to locate him, I was being held responsible for his debt.

They did, however, refer me to their problem resolution officer. At this point I was almost relieved thinking someone would finally help me.

I spoke with a woman from the IRS Problem Resolution Office, who listened to my story and offered me this advice, "if you do not pay us we can garnish your wages or collect in anyway we can." At that time I was making $4.50 per hour.

After that I received a couple more calls at work harassing me. At one point the IRS representative told me that if I was on welfare the IRS could not touch me.

Not until E.J. Montini from the *Arizona Republic* printed my story was I to be spared from what I felt to be a horrible nightmare.

At that point, Bob Kamman read the newspaper article and offered me his services at no charge—indeed, I must say, my savings grace.

I feel compelled to tell you that the response to the newspaper articles has been overwhelming. The stacks of letters received from people telling me of their own nightmares are so shocking to me. I never thought an agency of the U.S. Government could ever treat honest tax paying citizens like that. To date, the stories have not stopped.

I would really like to know what type of justice is in all of this. I sincerely hope that Senator Pryor's proposal here today will be dealt with swiftly. Thank you.

PREPARED STATEMENT OF LARRY COBLE

Mr. Chairman, I would like to thank you and Senator Grassley for the opportunity to testify on the Taxpayers' Bill of Rights II on behalf of the 70,000 members of the National Association of Private Enterprise (NAPE). Our association is made up of businesses with 10 or fewer employees located throughout the country. The mission of NAPE is to provide entrepreneurs with the direction, guidance, and support needed to face the challenges of business ownership, and to act as a strong voice for our members with their elected officials.

I would like to express a special thanks to you, Mr. Chairman, Senator Grassley, and Senator Reid for the fine work you all have done on behalf of small taxpayers everywhere. Without your efforts, the first Taxpayers' Bill of Rights would never have passed. I congratulate you on your willingness to continue your hard work on this important subject.

The Taxpayers' Bill of Rights II has a host of helpful provisions that will provide meaningful relief to employers with 10 or fewer workers. Because of time constraints, I would like to concentrate on 3 general problems and discuss how the new legislation will benefit small businesses.

I. SMALL BUSINESSES DO NOT HAVE THE RESOURCES OF LARGE CORPORATIONS TO DEFEND AGAINST A POWERFUL BUREAUCRACY

Unlike Fortune 500 companies, small businesses do not have the resources to defend themselves against unfair actions of a large bureaucracy, let alone an agency of over 100,000 employees with almost limitless powers over property and finance. It has been the experience of many of our members that the IRS uses this imbalance of power and resources to extract concessions and unfair settlements from small businesses. When faced with a tax claim or penalty of a few hundred dollars or the possibility of thousands of dollars in professional fees and loss of productive time, most entrepreneurs make a simple economic decision and pay the claim without a fight.

In other instances, our members have no choice but to fight. Their very existence is threatened by the IRS's actions. Our members realize the importance of strong rules for collecting employment trust fund taxes. We support the fair implementation of these rules. But, it is important to keep in mind the dire consequences that IRS errors can have on small businesses. The IRS can seize property, freeze bank accounts, and literally stop a business in its tracks without review by any third party. Many times the small business owner has no one to turn to for help because they cannot afford representation.

The Taxpayers' Bill of Rights II has a number of excellent provisions to establish a better balance between the small business person and the IRS.

First, we believe that a strong, independent advocate for the small taxpayer will have a profound effect on the ability of small business to receive a fair shake from the IRS. The changes in the new Taxpayers' Bill of Rights increase the Taxpayer Ombudsman's ability to be an active advocate on the part of small taxpayers. From finding lost refund checks to shielding businesses from wrongful collection actions, small business owners will finally have someone in their corner when entering the ring against the IRS.

Additionally, strengthening the ability of taxpayers to recover damages and professional fees will be an effective deterrence against many wrongful or abusive claims by the IRS. Only when the IRS realizes that there is a cost for sloppiness and overreaching will it exercise the same standard of care currently required of taxpayers.

We would also like to commend you for equalizing the tax treatment of professional costs of incorporated and non-incorporated businesses. Many of our members operate as family farms or sole proprietors and do not have the opportunity to deduct the cost of defending themselves against the IRS.

II. A SMALL BUSINESS LIVES OR DIES BY ITS CREDIT RATING

It is critically important for small businesses to maintain flawless credit ratings. If there is a single cloud hanging over that record, banks will not make loans, vendors will demand payment on delivery, and lenders will call lines of credit. In short, they will be out of business. A stain on a credit record can bring about swift and, often, permanent consequences. The worst credit stain a small business person can receive is an IRS lien. Creditors are only too aware that in the case of any default, the IRS stands at the front of the line of all other creditors. They are also very much aware of the IRS's unlimited ability to freeze bank accounts and seize essential equipment. Creditors do not want to take any chances with a business having trouble with the IRS.

The new Taxpayers' Bill of Rights takes great steps to solve this problem. By requiring the IRS to notify credit reporting agencies when a lien is incorrect or withdrawn, Congress will prevent thousands of small businesses from going out of business each year.

III. IN ORDER FOR A SMALL BUSINESS TO COMPLY WITH A GOVERNMENT NOTICE, THEY MUST BE ABLE TO UNDERSTAND WHAT THE GOVERNMENT WANTS

The problem here is simple. The IRS sends out millions of incomprehensible forms every year. Most of these forms seem designed to obscure both the problem and how to solve it. If I could tell the IRS one thing, I would say that busy business people cannot comply with IRS notices unless they know why they have received them and what it is they owe. This Subcommittee may think I am stating the obvious, but most notices arrive with only a reference to an Internal Revenue Code section for an explanation and a stated dollar figure.

The new Taxpayers' Bill of Rights would save both the IRS and taxpayers time and money. It would speed up compliance and be positive for everyone concerned. We can only hope that the IRS will choose to comply this time around. As this distinguished panel knows too well, the first Taxpayers' Bill of Rights contained a similar provision, but the IRS chose to ignore it.

In closing, I would again like to thank the Subcommittee for giving us the chance to speak today. I urge Congress to enact the Taxpayers' Bill of Rights II as quickly as possible. Your bill, Senators, will give the little David of small business a strong sling shot to use against the mighty IRS Goliath.

PREPARED STATEMENT OF PAUL J. DESFOSSES

Mr. Chairman and Members of the Subcommittee:

I am the President of the National Coalition of IRS Whistleblowers and a retired IRS employee with over twenty years experience. On behalf of the Whistleblowers, I wish to congratulate you for moving forward with the "Taxpayer Bill of Rights II". This bill demonstrates your continuing leadership in safeguarding taxpayer rights and in creating needed reforms to stem abuse of those rights. Senator Pryor, the Whistleblowers wholeheartedly endorse the proposals that you stated will "form the backbone" of your new bill. We also suggest that you consider a few additional areas that would benefit from legislative reform.

Since it was created in 1985, the National Coalition of IRS Whistleblowers has been dedicated to investigating, exposing and eradicating abuses and misconduct by IRS officials. The Coalition is a grassroots organization. Our members consist of citizens and taxpayers from all fifty states as well as present and former IRS employees who have joined together to hold the IRS publicly accountable when it infringes on taxpayer rights. Our members strongly support measures to provide taxpayers and whistleblowers with protection from IRS abuse of their rights.

The IRS, as David Burham notes in his book, A Law Unto Itself: Power, Politics and the IRS, is the single most powerful bureaucracy in the world. Effective IRS oversight requires not only constant vigilance by Congress, but also constant vigilance by citizens dedicated to apprising Congress and the public of IRS wrongdoing so that corrective measures can be implemented. The men and women who have the integrity and courage to blow the whistle on IRS abuse do so because they believe that IRS officials should be held accountable for their actions and that the failure to expose such abuse typically results in a pattern of repeated misconduct by the same individuals.

The Taxpayer Bill of Rights was landmark legislation when it was enacted in 1988. It was the first law designed to strengthen fundamental procedural rights of taxpayers and formed the model adopted by over 25 states to enact their own taxpayer bill of rights. For this, Mr. Chairman, the American taxpayer is in your debt.

However, events over the last three years demonstrate the pressing need to build on that legislation by initiating further reforms to hold the IRS accountable for its actions and to improve the disturbing pattern of IRS abuse that continues to come to light. The range and depth of these problems were revealed in the April 1990 hearings held by you on IRS implementation of the Taxpayers' Bill of Rights. These problems were confirmed by subsequent Congressional hearings and reports, including the October 4, 1990 House Government Operations Committee Report on Misconduct by Senior Managers in the IRS, and the September 25, 1991 hearings on taxpayers' rights issues before the Oversight Committee of the House Ways and Means Committee. Volumes of IRS abuse cases have been reported to the Whistleblowers in just the last few months. That is why your proposed legislation is so timely and so vitally needed.

Mr. Chairman, the National Coalition of Whistleblowers endorses every provision of your proposed bill. The Taxpayer Bill of Rights II represents an important step to ensure that the IRS treats taxpayers with higher standards of

fairness and that IRS employees are held accountable for their actions. Taxpayer rights are the heart of good tax administration.

IMPROVING THE OMBUDSMAN SYSTEM

The single most important step to reform the IRS is the creation of a mechanism devoted to finding and fixing problems of all descriptions within the IRS. That is why your proposal to strengthen the Ombudsman system, to make the Ombudsman one of the three political appointees at IRS, to require the Ombudsman to report directly to Congress, to place Problem Resolution officers under the direct supervision of the Ombudsman, and to require the Ombudsman to recommend legislation to correct problems or inequities is so important.

The IRS Ombudsman is supposed to be the taxpayers' advocate to help taxpayers resolve problems and intervene on their behalf when they are not resolved on regular IRS channels. Yet, the Ombudsman is an IRS employee who is paid by the IRS and who is supervised by and reports to the IRS Commissioner and Deputy Commissioner. His loyalty is to the IRS, not the taxpayer. The Ombudsman does not report systemic IRS problems that need to be rectified to Congress, because it is not his job to fix the system.

Mr. Chairman, your legislation will provide the Ombudsman with the power to correct policies and practices that are harmful, unfair, inefficient, or otherwise in need of improvement. This will help make the Ombudsman a true taxpayer rights advocate.

These improvements are critically needed. The Whistleblowers are aware of many cases where taxpayers have requested that the Ombudsman step in to prevent severe hardships due to clear IRS errors, yet have received no help from the Ombudsman.

Let me cite one unbelievable example. In this case, the IRS simply denied the existence of seven of a family's ten children.

The taxpayer was a laid off plumber with ten children. The IRS arbitrarily denied his deductions for seven of the ten for no reason at all. Although the taxpayer provided birth certificates, social security cards, and notarized school records, the IRS refused to admit its mistake and seized over $4,000. The plumber has still not been reimbursed.

When the taxpayer went to the Ombudsman's office in Washington, D.C. he was told by an employee to pay the incorrect taxes and to "get off my back".

This illustrates how hard it can be to get fair treatment from the IRS in even the simplest, most clear cut cases.

Finally, I suggest that you consider changing the Ombudsman's title to "Taxpayer Rights Advocate" in order to highlight the role of this office to the taxpayer. Taxpayer Rights Advocates exist in many states, such as California, Indiana, Kentucky and South Carolina, and such a title helps to ensure that taxpayers realize the Advocate is there to help them.

IMPROVING THE INSPECTOR GENERAL SYSTEM

I recommend that you also consider measures in your bill to reform the glaring deficiencies that also exist with the Inspector General (IG) System. The use of the Treasury Inspector General System to correct and investigate senior IRS employee misconduct, including retaliation aimed at whistleblowers who reveal wrongdoing in the IRS, has been a disappointing failure.

The functions of the Ombudsman and the Inspector General should be combined in one entity outside the IRS that reports directly to Congress. The mission of the combined offices should be to find and correct problems of all descriptions that trouble both taxpayers and the IRS itself. The new entity should function as a "doctor" to the IRS, working to diagnose, treat, and cure all of the ailments that afflict the Service. An important reasons why problems that should be easy to cure persist is that today there is simply no mechanism of this type for fixing problems.

This will not only greatly improve protection of taxpayer rights, it will also create a more efficient and harmonious system. Hopefully, if taxpayers think they are treated fairly and equitably, compliance will also improve.

Even though the House Government Operations Committee recently found that there was a disturbing pattern of senior employee misconduct in the IRS, the IG has very little real power. When the IG conducts an investigation, he simply turns over the facts he finds to the IRS, which decides if wrongdoing has occurred and what, if any, punishment is merited. The IG also does not inform taxpayers of the disposition of their complaints and does not provide Congress with detailed reports on IRS misconduct. Finally, the IG is not perceived as a protector of IRS employees who come forward to reveal taxpayer abuse. Indeed, whistleblower complaints are often referred back to IRS Inspection Division, which may violate the confidentiality of the informant. Would-be whistleblowers are reluctant to come forward because the current atmosphere in the IRS encourages reprisal, not reform. Yet, these employees are the key to effective oversight, because if they do not come forward, much abuse will remain hidden.

IRS employees' reporting of internal misconduct accounts for 50% of IRS Inspections' cases. Therefore, it is critical that a system exists that rewards and promotes high ethical standards in the IRS and fosters accountability to those standards.

I am convinced that corrective measures regarding the IG, similar to your Ombudsman proposal, will go a long way to solving misconduct and morale problems in the IRS. The IG should be vested with increased authority to correct wrongdoing and should be required to directly provide Congress with detailed reports of IRS misconduct, measures taken to correct misconduct, and recommendations to improve IRS integrity controls.

Public confidence that investigations are carried out thoroughly and impartially will greatly increase if this oversight function is carried out by a separate body answerable directly to Congress.

I would like to highlight a few other provisions of your bill that the Whistleblowers believe will especially improve the current system.

ELIMINATION OF UNFAIR INTEREST RATES

It is simply unfair for the IRS to charge a higher interest rate than it is willing to pay taxpayers. This creates a lack of confidence in the tax system. Your bill will ensure a level playing field for the taxpayer by eliminating the higher interest rate paid by the taxpayer.

STRENGTHENING SECTION 7430 OF THE TAX CODE

The bill makes another important change in the awarding of costs and fees. The bill changes the point when administrative costs incurred may be recoverable to the earlier of the date of the first notice of proposed deficiency or the date of the statutory notice of deficiency. Under the current law, most of the costs incurred by the taxpayer are ineligible for recovery even if the taxpayer prevails. In addition, the bill requires the IRS, not the taxpayer, to show that the position of the IRS was not "substantially justified" if the taxpayer prevails. There is no reason why a taxpayer should have to pay costs when the IRS makes a mistake, and shifting the burden to the IRS should enable a taxpayer to recover his costs when he is correct. The bill also provides a great service to taxpayers by raising the outdated $75 per hour cap for attorneys fees to $150 per hour to ensure that taxpayers will get adequate legal help.

Other measures, such as the much needed provision to remove the $100,000 cap for damages awards against the IRS and the right to recover for damages caused by negligent IRS conduct, and the creation of an independent administrative system outside the IRS on taxpayer rights' issues, will greatly improve taxpayers' rights.

REFORM THE ANTI-INJUNCTION ACT

Finally, the Coalition also recommends that you include in your bill the National Taxpayers' Union proposal in your April 1990 hearings to amend the Anti-Injunction Act to alleviate unfair hardships to taxpayers.

Under the Anti-injunction Act, Section 7421 of the Code, no lawsuit can be brought by any person if the court determines its purpose is to restrain the collection or assessment of any tax, except in very limited circumstances. Section 7421 should be amended to allow taxpayers to enforce their fundamental rights when necessary. Injunctions should be permitted when there has been an improper assessment; when the IRS has unlawfully determined that collection was in jeopardy; where the IRS will not release improperly seized property; where the IRS will not release property upon an offer of payment; where an assessment was made without the taxpayer's knowledge and without going through appeal procedures; or where the IRS infringes upon fundamental constitutional rights. It should also be made clear that taxpayers can sue IRS agents for damages when their constitutional rights are violated.

CONCLUSION

Mr. Chairman, your proposed bill demonstrates your continuing and unceasing efforts to safeguard the rights of taxpayers. I thank you and the members of the Subcommittee for this opportunity to discuss our views to make the tax system a better one.

PREPARED STATEMENT OF SENATOR WYCHE FOWLER, JR.

Thank you, Mr. Chairman, I'm pleased to join you once again as you renew your fight on behalf of the American taxpayer.

As we near the end of winter, I know that all of us are looking eagerly ahead to the cherry blossoms that in several weeks will mark the dawn of spring here in our Nation's capital.

In my home State of Georgia, folks will also be watching for the cherry blossoms down in Macon, for the roses in Thomasville, for the azaleas at Callaway gardens, the peach blossoms in Perry and for the dogwood blossoms that blanket the State like a spring snow storm.

But as the warmth of spring and thoughts of Easter fill their hearts, the people of Georgia and the Nation will remember another rite of spring that is likely to send the chill of winter down their spines. they will remember that, like the ice man, the tax man cometh.

As Mr. Franklin wrote over 200 years ago to his friend Jean-Baptiste Leroy of France: "In this world nothing can be said to be certain, except death and taxes."

Mr. Chairman, that our Nation must levy and collect taxes for the public good is indeed inevitable. But that any citizen should see their legal rights denied or their human dignity abused by the tax collectors is intolerable.

As a cosponsor of the original Taxpayer's Bill of Rights that you authored in 1988, I want to voice my strong and unequivocal support for this "next step" in the process of providing rock solid protection for the American taxpayer against abuse and ill treatment at the hands of the IRS.

The members of this subcommittee have all heard the horror stories that pour into our offices daily about the difficulty average Americans experience in getting a fair hearing and efficient service from the Internal Revenue Service. Often, these stories border on the humorous, but I assure you, they are no laughing matter.

I have piles of letters that document the trials of those who have braved the red tape of the tax collecting bureaucracy. My constituents say they can't get through on the phone, that their letters go unanswered, that they receive computer notices in error, and that they suffer the arrogance and personal threats of IRS employees. Small businesses owners complain about the maze of tax laws and say they're badgered about tax accounts they've already paid.

One family, Betty and Wesley Campbell of College Park, Georgia, recently wrote me about a lien that has been placed on their home by the IRS.

Ms. Campbell writes: "My husband and I have always paid our taxes in a timely manner and do not have outstanding IRS debts. We attempted to reach the IRS about this matter but to no avail."

Mr. Chairman, I think you will agree with me that taxpaying American homeowners have enough financial worries these days without having to look over their shoulder for an overreaching Uncle Sam.

Michael Griffis, of Fort Valley, Georgia, wrote me last September to see if I could help him locate a one thousand dollar refund he had never received from his *1990* Federal income tax return.

He says the IRS keeps telling him to "call back in 30 days." In desperation, he scratched out a handwritten post script on the letter that simply reads: "Senator Fowler, the IRS has really given me the run around. Help!"

Another Georgian, Kenneth Piper of Newnan, wrote he in December that the IRS, "threatened to levy against me for everything except for the underwear I had on for my refusal to send a check for payroll withholding that had been paid in 1984."

Mr. Chairman, economic hard times are plaguing the taxpayers of this Nation. In the coming weeks, the Congress will be searching for ways to relieve the tax burden on working fillies and to help them back on their feet. But all of this work will amount to nothing if working Americans can't get their refund, or if they get punched back into financial danger by the bully tax man.

The legislation this subcommittee is considering today is an essential building block in the effort to construct a system of tax fairness in this Nation.

It is an article of faith between the government and the people, not unlike the original Bill of Rights.

By creating an independent administrative appeal process to resolve disputes, by strengthening the ombudsman's role to prevent hardships to taxpayers, and by eliminating the difference between the interest Americans pay to the IRS and the interest the IRS pays the taxpayer, this legislation makes fundamental progress towards the goal of true tax fairness in America.

By enhancing the system through which taxpayers can recover out-of-pocket expenses in cases where the IRS has over stepped its bounds and by preventing the treasury department from issuing prospective regulations without the approval of Congress, the legislation restores a level of accountability to a system that has often run rough shod over the finances of individuals and businesses.

Mr. Chairman, I applaud you for your continued efforts in this area and I urge this subcommittee, the full committee and the Senate to act quickly on this bill.

As millions of Americans scrape their way through this recession by the nickel and the dime, we owe it to them to make sure that the IRS doesn't swipe their last penny. Thank you.

PREPARED STATEMENT OF FRED T. GOLDBERG, JR.

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Administration on the Subcommittee's proposals to supplement the taxpayer bill of rights legislation enacted in 1988. Before responding to the specific proposals contained in the Bill, I would like to reaffirm that the Administration is committed to administering the tax laws in a fair manner and to safeguarding the rights of taxpayers. We recognize that the Internal Revenue Service (IRS) is vested with significant authority which, if improperly exercised, can result in treatment that is unreasonable or unfair to particular taxpayers. We also recognize that, in an agency as large as IRS, mistakes inevitably occur.

Because mistakes inevitably occur, even statutory changes will not prevent instances in which taxpayers with sympathetic circumstances are treated inappropriately. It is important to bear in mind that in the vast majority of cases, IRS employees administer the tax laws fairly. We must guard against developing excessive bureaucratic layers of procedural requirements that will substantially increase administrative costs and processing delays, yet still prove ineffective in preventing isolated cases where mistakes are made.

We must strike a balance between taxpayer protections and the public's right to be assured that all taxpayers pay their fair share. If the imposition of additional administrative requirements on the IRS hinders its ability to collect taxes from those who rightfully owe them, the taxpayers who comply will eventually be forced to make up the difference. It is also important to bear in mind that increasing governmental costs, without commensurately increasing benefits to taxpayers, violates each taxpayer's right to a government that does not unnecessarily spend the taxpayers' dollars.

We all agree that under our system of voluntary compliance it is extremely important for taxpayers to perceive the tax system as fair. The Administration believes the best way to foster confidence in the fairness and integrity of the tax system is through the simplification of our tax laws. When laws are simple and easy to understand, compliance improves and unnecessary disputes are avoided. By better assuring the uniform interpretation and administration of our tax laws, simplification improves taxpayer morale.

IRS modernization is an equally important way to improve the tax system. The current modernization initiative will enable the IRS to eliminate sources of frustration taxpayers encounter in dealing with the IRS.

The Administration supports proposals for procedural changes that are well-defined and that demonstrably improve the tax system. In my capacity as Commissioner of the IRS, I presented six such proposals in my September 25, 1991 testimony before the House Subcommittee on Oversight. The Administration continues to support those proposals and is pleased to see them reflected in this Subcommittee's current proposals. We also believe a number of other provisions under consideration by this Subcommittee would demonstrably improve the tax system. The Administration is prepared to support those provisions as well, subject to further refinement in some cases.

However, we believe that some of the proposed provisions strike the wrong balance, and would adversely affect the administration of the tax laws without demonstrably improving the

tax system. Moreover, some of the provisions would reward non-compliant taxpayers at the expense of those taxpayers that do comply. Our reasons for opposing those provisions are set forth below. There are also a number of proposals that would only serve to codify current IRS procedures. Codification of procedural rules is undesirable because it hampers the ability of the IRS to respond to taxpayers' changed circumstances. Moreover, in general we believe it is undesirable to codify procedural rules because doing so provides little or no tangible benefit to the majority of taxpayers, but at the same time encourages litigation by a minority of taxpayers as a delaying tactic. The costs of the delays as well as the litigation expenses the government incurs must be borne generally by all taxpayers. We also caution that, however worthwhile particular proposals may be, the pay-as-you-go provisions of the budget agreement must be satisfied by the package of proposals ultimately adopted.

The remainder of this testimony comments on the specific provisions of the Senate Bill. We have not commented on the effective dates of particular provisions because we believe it more useful for the IRS to comment on those items. We note, however, that because of the limitations of the existing computer systems, the IRS would require a significant amount of time to implement the proposed changes. Our comments below follow the order of the provisions contained in the Bill.

Title I - Taxpayer Advocate

1. Section 101 - Establishment of Position of Taxpayer Advocate Within Internal Revenue Service

Current law. The Ombudsman is appointed by and reports to the IRS Commissioner. In situations in which a taxpayer otherwise will suffer significant hardship as a result of the manner in which the IRS is administering the tax laws, the Ombudsman is authorized to issue a Taxpayer Assistance Order that requires the IRS to release property of the taxpayer levied upon by the IRS or that requires the IRS to cease action or refrain from taking action against the taxpayer. The Ombudsman is also responsible for recommending IRS systems changes that will improve the administration of the tax laws.

Proposal. The Ombudsman would be replaced by the Taxpayer Advocate, who would head a new office within the IRS that reports directly to the Commissioner. The Taxpayer Advocate would be appointed by the President, subject to Senate confirmation, and would assume responsibility for issuing Taxpayer Assistance Orders. The Taxpayer Advocate would be required to report to Congress annually with full and substantive analysis, on a number of different matters, including initiatives the Taxpayer Advocate has taken on improving taxpayer services and IRS responsiveness, on recommendations of Problem Resolution Officers flowing from the field, and on at least 20 problems encountered by taxpayers. The Taxpayer Advocate would also be required to report on how each of these items was handled. As part of the proposal, the IRS would be obligated to establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate.

Administration position. The Administration opposes this provision as counterproductive. The Office of the Ombudsman functions smoothly within the IRS and has been very successful in carrying out the directives of the Taxpayer Bill of Rights. We are unaware of any criticisms stemming from the current method of appointing the Ombudsman. Requiring Presidential appointment and

Senate confirmation of the Ombudsman would unnecessarily politicize the Ombudsman function and serve to isolate the Office of the Ombudsman from the Agency it is supposed to monitor. This would diminish the Ombudsman's effectiveness in discharging his responsibilities, because the Ombudsman has to work within and understand the IRS in order to make effective recommendations concerning system changes.

The Administration also fails to see what purpose would be furthered by passing legislation to require annual reports to the Congress or the institution of a tracking system by the IRS. The Ombudsman already reports to Congress on the quality of services to taxpayers. In addition, the IRS already has begun to institute a tracking system to assure that the agency responds to the Ombudsman's recommendations.

2. Section 102 - Expansion of Authority to Issue Taxpayer Assistance Orders

Current law. Taxpayer Assistance Orders include the power to release taxpayer property levied upon by the IRS and to require the IRS "to cease any action, or refrain from taking any action" against a taxpayer that will otherwise suffer "significant hardship" as a result of the manner in which the IRS is administering the tax laws. A Taxpayer Assistance Order may be modified or rescinded by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals or any of their superiors.

Proposal. Taxpayer Assistance Orders would be available to assist taxpayers that otherwise would suffer "hardship," without regard to whether the hardship was significant. In addition, Taxpayer Assistance Orders would be expanded to include the power to require IRS to affirmatively "take any action" with respect to taxpayers who would otherwise suffer a hardship as a result of the manner in which the IRS is administering the tax laws. Finally, only the Taxpayer Advocate and the Commissioner of the IRS would have the authority to modify or rescind Taxpayer Assistance Orders.

Administration position. The Administration opposes this proposal. Eliminating the requirement that the taxpayer's hardship be significant would make the special relief provided by Taxpayer Assistance Orders effectively available to all taxpayers -- other than the very small group of taxpayers to whom the timely payment of tax liabilities does not pose any hardship. Such broad relief could also have adverse revenue consequences. The expansion of Taxpayer Assistance Orders to require the IRS to affirmatively "take any action" is unnecessary. The Ombudsman's internal procedures already allow him to initiate on behalf of taxpayers those affirmative actions that we understand to be of concern to Congress, including abating assessments, expediting refunds, and staying collection activity. Therefore, the proposed amendment is unnecessary. Further, the proposed delegation of authority to "take any action" is unduly broad and could lead to the inappropriate use of Taxpayer Assistance Orders. For example, it could be construed to require the IRS to retract a notice of deficiency based on the Ombudsman's interpretation of the underlying law.

Finally, we see no reason to further limit the IRS officials who may rescind or modify Taxpayer Assistance Orders. We are not aware of any circumstances in which an IRS official authorized to review Taxpayer Assistance Orders has inappropriately modified or rescinded a Taxpayer Assistance Order. Moreover, under existing law, Taxpayer Assistance Orders are reviewed by IRS officials charged with the responsibility for supervising IRS actions with

respect to the taxpayer. By rescinding the authority of these officials, the proposed provision would necessitate the establishment of a new bureaucracy within the Commissioner's office, which would ultimately delay the processing of requests for Taxpayer Assistance Orders. The taxpaying public would be saddled with the government's costs for the new bureaucracy.

Title II - Modifications to Installment Agreement Provisions

3. Section 201 - Taxpayer's Right to Installment Agreement

Current law. The IRS is authorized to enter into installment agreements with taxpayers under certain circumstances. The IRS routinely enters into an installment agreement with individual taxpayers who are unable to pay the full amount of tax due.

Proposal. An individual taxpayer with a tax liability of less than $10,000 would be entitled to an installment agreement if the taxpayer had not been delinquent in paying its income taxes for the preceding three years.

Administration position. The Administration opposes this provision. While the Administration recognizes that installment agreements may be warranted in cases in which a taxpayer is unable to pay a tax liability in full, we oppose any requirement that installment payments be permitted as a matter of right regardless of a taxpayer's ability to pay. Taxpayers able to satisfy their full tax liability should not be entitled to enter into installment agreements as a matter of right. Under the Bill, wealthy taxpayers with liquid assets well in excess of $10,000 would be entitled to pay their tax in installments if they owed less than $10,000 at the time payment was due and had not entered into an installment obligation in the preceding three years.

Providing installment agreements as a matter of right would violate a fundamental principle of our system of tax administration: taxpayers should arrange their affairs so that they can pay their taxes when due. Any deviation from this notion would cause inequity and erode voluntary compliance. The IRS accounts receivable inventory would balloon from its current -- unacceptable -- level of more than $100 billion to many times that amount. The need for intrusive, after-the-fact enforcement efforts by the IRS would increase dramatically, at substantial cost to affected taxpayers and the public at large.

The IRS is currently reforming its installment procedures to assure that they are administered fairly and responsively in light of taxpayer needs and expectations. These changes are important and, we believe, are overdue. But they are the right way to go. We urge the subcommittee to use the oversight process to assure that they are properly implemented and achieve their intended objectives.

In contrast, the proposal the subcommittee is contemplating would undermine the fabric of our system and cause substantial revenue loss. To put this in perspective, if only 10 percent of all taxpayers took advantage of this "right" each year, and deferred an average of only $2,000, delayed collections to the government would be $20 billion dollars per year, or close to $60 billion over three years. If only five percent of that amount became uncollectible, the permanent loss of revenue to the government would average $1 billion a year.

4. Section 202 - Notification of Reasons for Termination of Installment Agreements

Current law. The IRS is authorized to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement.

Proposal. The 30-day notification and explanation requirement would be extended to all cases in which the IRS may alter, modify or terminate an installment agreement, other than cases in which the IRS believes the collection of the tax to which the installment agreement relates is in jeopardy.

Administration position. The IRS has adopted, and is in the process of fully implementing, procedures requiring it to notify taxpayers 30 days prior to terminating an installment agreement for any reason, unless doing so would jeopardize collection. Accordingly, the Administration opposes this provision as unnecessary. The Administration is also concerned that adoption of this proposal would increase the potential for controversy over whether the IRS was justified in its belief that collection would be jeopardized.

5. Section 203 - Administrative Review of Denial of Request for, or Termination of, Installment Agreement

Current law. Under current IRS practice, a taxpayer whose request for an installment agreement is denied, or whose installment agreement is terminated, has the right to appeal to successively higher levels of management, including the District Director. The IRS is in the process of implementing a one-year pilot appellate process program that uses Appeals personnel for deciding appeals of many collection procedures, including installment agreements.

Proposal. The IRS would be required to establish an administrative review procedure with respect to requests for installment agreements that are denied and for installment agreements that are terminated.

Administration position. The Administration opposes this provision. The IRS is currently examining the feasibility of expanding the availability of appellate review for installment agreements. In light of this study, legislatively mandating an administrative review procedure would be undesirable because it would create additional administrative costs and burdens with no evidence of a corresponding benefit to taxpayers. A statutory administrative review procedure would encourage taxpayers to appeal the denial or termination of installment agreements as a matter of course, thereby delaying and potentially jeopardizing the collection of tax to the detriment of taxpayers who pay their taxes on time. In addition, to the extent the proposed statutory

expansion of the appellate procedure increases the amount of tax deferred pursuant to installment agreements, it will result in a revenue loss for purposes of the budget agreement.

The IRS is presently engaged in a substantial revision of its internal guidelines for granting and terminating installment payments and would welcome any suggestions the Subcommittee might make to assist in this endeavor. An appellate review process, whether adopted administratively or legislatively, will not result in fair and consistent treatment of taxpayers unless appropriate guidelines are developed.

6. Section 204 - Running of Failure to Pay Penalty Suspended During Period Installment Agreement in Effect

Current law. A taxpayer is liable for a penalty (an "addition to tax") on late payments of tax. The addition to tax is imposed on the unpaid tax at the rate of .5 percent per month (up to a maximum of 25 percent). The penalty applies to unpaid amounts without regard to whether the taxpayer is making payments pursuant to an installment agreement.

Proposal. No monthly penalty would be imposed for periods during which an installment agreement is in effect.

Administration position. We agree that it is desirable to provide an incentive to taxpayers who promptly enter into an installment agreement and comply with its terms. However, we are concerned that the proposed provision would also encourage taxpayers who could otherwise pay their taxes on time to seek installment payment arrangements. For many taxpayers, the statutory interest rate on unpaid tax liabilities is much lower than the rate they would be required to pay if they obtained a commercial loan in order to pay their taxes. Perhaps a balance between the interests of taxpayers who pay on time and those who cannot pay could be achieved by providing a lower cap -- perhaps 10 percent -- for taxpayers who promptly enter into and comply with the terms of an installment agreement. Although we oppose this provision as drafted, we would be interested in exploring an intermediate approach with the Subcommittee, provided appropriate revenue offsets could be found.

Title III - Interest

7. Section 301 - Expansion of Authority to Abate Interest

Current law. The IRS has the authority to abate interest assessed with respect to a deficiency or payment that is attributable to the error or delay of an IRS employee in performing a ministerial act.

Proposal. The IRS would be required to refund or abate interest attributable to all unreasonable IRS errors and delays.

Administration position. The Administration opposes this provision. We believe the proposed provision is unduly broad, and thus would have substantial revenue consequences. We are concerned that this standard would prompt taxpayers, particularly large taxpayers with large amounts of interest at stake, to seek relief from interest assessments as a matter of course, thereby imposing significant administrative costs, as well as controversy related costs, on the IRS which would ultimately be borne by all taxpayers. It is important to bear in mind that, even during periods of delay attributable to IRS error, taxpayers have the use of government money. Since interest (unlike a penalty) is simply compensation for the use of money, the proposed abatement

of interest would in many cases represent a windfall to large taxpayers. We are also concerned that, due to the vagueness of the proposed standard for relief, similarly situated taxpayers would inevitably receive inconsistent treatment, which would undermine taxpayer confidence in the fairness of the tax system.

8. Section 302 - Extension of Interest-Free Period for Payment of Tax After Notice and Demand

Current law. In general, a taxpayer must pay interest on late payments of tax. However, a 10-day "interest-free period" is provided to taxpayers who pay the tax due within 10 days of notice and demand.

Proposal. The 10-day interest-free period would be extended to 21 days for tax liabilities (including interest and penalties) of less than $100,000. The shorter 10-day period would continue to apply to amounts of $100,000 or more.

Administration position. The Administration supports this provision. It would alleviate the frustration of many taxpayers who find themselves unable to comply with an unrealistically short deadline. It would also allow better use of taxpayer dollars by avoiding the administrative costs associated with recomputing interest for taxpayers who fail to meet the deadline and responding to taxpayer complaints about the impracticality of the deadline.

9. Section 303 - Equalization of Interest Rates

Current law. In general, the government charges taxpayers interest on underpayments of tax at a rate that is one percentage point higher than the rate at which the government pays interest on overpayments of tax.

Proposal. The interest rate paid by the government on overpayments of tax would be increased by one percentage point to the same rate the government charges on underpayments of tax.

Administration position. The Administration opposes this provision. Increasing the interest rate on overpayments will decrease revenues. We also note that the current one percent interest differential is not inherently unfair. The government is not a voluntary creditor, and is therefore forced to lend the funds of the American public without having the opportunity to first evaluate the credit-worthiness of the debtor.

Title IV - Joint Returns

10. Section 401 - Requirement of Separate Deficiency Notices in Certain Cases

Current law. Under current law, the IRS may send a single notice of deficiency with respect to a joint return unless a spouse has notified the IRS that separate residences have been established, in which case the IRS must send a copy of the notice to each spouse at his or her last known address.

Proposal. The IRS would also be required to send each spouse a copy of the notice of deficiency if the spouses have not filed a joint return for the most recent taxable year for which the IRS's master files have been updated.

Administration position. We oppose this provision. The IRS is already required to send a copy of a deficiency notice to a separated or divorced spouse when notified of the separation or

divorce by the taxpayer. However, given the capabilities of the existing computer system, it would impose substantial costs on the IRS to require it to search its files each time a notice of deficiency is issued to spouses who have filed a joint return to determine whether the spouses have subsequently filed under separate addresses. These costs would be borne by all taxpayers. Further, if such notification is mandated by statute, it would provide a basis for invalidating deficiency notices, to the potential detriment of the spouse who receives notice and would consequently become the sole source of payment. Because it is in the interest of IRS to notify both parties to a joint return of a deficiency notice wherever feasible, the IRS will begin providing notice to both parties as soon as modernization of its computer system makes it feasible to do so.

11. Section 402 - Disclosure of Collection Activities

Current law. Under sections 6103(e)(1)(B) and (e)(7), IRS may disclose "return information" to either spouse that has joined in filing a joint return, even if the spouses are divorced or separated at the time of disclosure. Return information includes information concerning collection of tax liabilities.

Proposal. If IRS has assessed a deficiency for a joint return, the IRS would have the discretionary authority, upon the written request of one of the spouses (or former spouses), to disclose whether the IRS had attempted to collect the assessed deficiency from the other spouse (or former spouse), the general nature of any such collection activities and the amount of the deficiency collected from the other spouse (or former spouse).

Administration position. The Administration supports this provision. Although we believe such disclosure already is authorized under current law, this proposal will make explicit the IRS's disclosure authority in cases relating to separated or divorced spouses. We also are in the process of reviewing our procedures with respect to such disclosure to ensure that the procedures are adequate and are being followed correctly.

12. Section 403 - Joint Return May Be Made After Separate Returns Without Full Payment of Tax

Current Law. Married taxpayers who file separate returns for a taxable year in which they are entitled to file a joint return may elect to file a joint return after the time for filing the original return has expired. The election to refile on a joint basis may be made only if the entire amount of tax shown as due on the joint return is paid in full by the time the joint return is filed.

Proposal. The requirement that the tax be paid in full by the time the subsequent joint return is filed would be repealed.

Administration position. The Administration supports this provision. Not all taxpayers are able to pay the full amount owed on their returns by the filing deadline. In such circumstances, the IRS encourages the taxpayer to pay the tax as soon as possible or enter into an installment agreement with the Collection Division. However, taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability. This restriction is unfair to taxpayers experiencing financial difficulties, particularly because there generally is a 10-year

period for the collection of taxes, while the election to file an amended return must be made within three years of the due date for filing the original tax return.

13. Section 404 - Representation of Absent, Divorced or Separated Spouse by Other Spouse

Current law. A taxpayer that has joined in the filing of a joint return may represent the taxpayer's spouse with respect to a deficiency assessed for the taxable year to which the return applies. Nonetheless, current IRS procedures allow each spouse to separately appeal the statutory notice of deficiency.

Proposal. A taxpayer would not be able to represent a separated or former spouse in an audit of a joint tax return without first obtaining the written authorization of the separated or divorced spouse.

Administration position. The Administration does not oppose this provision, subject to modification. The provision would need to provide appropriate safeguards, including for example a requirement that the IRS be notified in writing that the spouses have separated or divorced. The provision also should preclude a spouse from delaying or obstructing an audit by withholding consent and should provide that a lack of consent would not invalidate a deficiency notice.

Title V - Collection Activities

14. Section 501 - Notice of Proposed Deficiency

Current law. The IRS generally issues a notice of proposed deficiency prior to issuing a notice of deficiency. The notice of proposed deficiency, commonly referred to as the "30-day letter," offers a taxpayer the opportunity for review of the case by the IRS Appeals Office. The IRS is not required to issue a 30-day letter, but generally does unless the statute of limitations on assessment will expire within six months. If a 30-day letter is not issued and the taxpayer files a petition in the Tax Court, the taxpayer is permitted to have the case reviewed by Appeals after it is docketed.

Proposal. The IRS would be required to issue a notice of proposed deficiency in every case (other than jeopardy assessment cases) unless the statute of limitations on assessment would expire within six months. If the statute of limitation would expire within six months, the IRS would not be required to issue a notice of proposed deficiency unless the taxpayer extends the statute of limitations.

Administration position. We oppose this provision. We believe that the current system offers taxpayers ample opportunity for administrative and judicial review of a tax case. Although the proposal would generally reflect current IRS policy, codifying this policy would allow taxpayers to challenge -- and potentially invalidate -- otherwise valid deficiency notices, and the general taxpaying public would bear the resulting burden. We do not believe that the validity of a deficiency notice should depend on the issuance of a 30-day letter.

15. Section 502 - Modifications to Lien and Levy Provisions

Current law. To protect the priority of a tax lien, the IRS must file a notice of lien in the public record. The IRS has discretion in filing such a notice, but may withdraw a filed

notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded or become unenforceable. The IRS is authorized to return levied-upon property to a taxpayer only when the taxpayer has overpaid its liability for tax, interest and penalty. In any event, certain property of a taxpayer is exempt from levy. The exempted property includes personal property with a value of up to $1,650 and books and tools necessary for the taxpayer's trade, business or profession with a value of up to $1,100.

Proposal. The IRS would have the authority to withdraw a notice of federal tax lien if (1) the filing of the notice was premature or was not in accordance with the administrative procedures of the IRS; (2) the taxpayer has entered into an installment agreement for the payment of tax liability with respect to the tax on which the underlying lien is imposed; (3) the withdrawal of the notice will facilitate the collection of the tax liability; or (4) the withdrawal of the notice would be in the best interest of the government and the taxpayer. If the taxpayer so requests in writing, the IRS would be required to notify credit reporting bureaus and financial institutions that the notice has been withdrawn. In addition, the IRS would be required to return levied-upon property to the taxpayer in the same four circumstances. Finally the exemption amounts under the levy rules would be increased to $1,700 for personal property and $1,200 for books and tools. Both these amounts would be indexed for inflation commencing with calendar year 1994.

Administration position. The Administration supports this provision, with certain modifications. First, the proposal should be modified to require only that the IRS provide the taxpayer with a notice of withdrawal in a form suitable for the taxpayer to provide to credit reporting bureaus and other financial institutions. It would unnecessarily increase administrative costs if the IRS were required to send the notice to multiple creditors. Second, the IRS should not be required to determine independently whether providing the notice of withdrawal is "in the best interest of the taxpayer and the United States." Because the notice would only be provided at the request of the taxpayer, the request should suffice to establish that provision of the notice is in the taxpayer's interest. Moreover, in many instances withdrawal of a notice will not be in the best interest of the government; it simply will be fair to taxpayers and consistent with good tax policy.

With respect to the proposed expansion of the IRS's ability to return levied-upon property to the taxpayer, we believe the proposed expansion should be limited to the three situations most troublesome to taxpayers so as to provide a more administrable standard and to reduce the adverse revenue consequences. One situation is a bank's surrender of levied-upon funds to the IRS prior to the expiration of a mandatory 21-day waiting period after the issuance of an IRS levy. In cases in which the 21-day period has not expired or the taxpayer has initiated a proceeding to stay the levy, the IRS should be able to return the funds to the bank. A second situation is an erroneous jeopardy levy. The third situation is a payment received pursuant to a levy that is issued in violation of an installment agreement. Although levied-upon property should in all fairness be returned in these situations, the IRS is statutorily precluded from doing so in the absence of an overpayment because the IRS immediately applies funds received pursuant to a levy to the outstanding liabilities of the taxpayer. The IRS immediately applies these funds for both policy (principally cash management) and practical reasons (the impracticality of immediately matching payments received with specific levies made).

Finally, subject to revenue constraints, the Administration supports the proposed increase in the amount of personal and business property exempt from levy. The intent of these provisions is to enable a taxpayer to retain personal and business essentials so as to avoid becoming destitute. It is important to protect the value of these exemptions from being eroded by inflation.

16. Section 503 - Offers-in-Compromise

Current law. The IRS can compromise any assessed tax that is due and owing, but if the unpaid amount of tax pursuant to the compromise is $500 or more, a written opinion of the Chief Counsel is required. In addition, return information relating to accepted offers is available to the general public.

Proposal. The IRS would be authorized to compromise an assessed tax that is due and owing if doing so would be in the best interest of the government. A written supporting opinion of the Chief Counsel and public disclosure would be required only if the unpaid amount were $50,000 or more. The IRS would be required to subject these offers-in-compromise to continuing IRS quality review.

Administration position. The Administration supports this provision, with a modification. The IRS has begun simplifying the offers-in-compromise process to make it more accessible and comprehensible. An expanded offers-in-compromise program benefits taxpayers by making it possible to liquidate a debt that otherwise could never be repaid. Eliminating the requirement for an opinion of the Chief Counsel and for public disclosure of return information relating to a compromise will eliminate the two significant impediments under current law to the use of compromises by taxpayers. However, we believe the provision also should specify that it may be in the best interest of the government to compromise a tax when there is doubt as to the liability or its collectibility.

17. Section 504 - Notification of Examination

Current law. In general, the IRS notifies taxpayers in writing prior to commencing an examination and encloses a copy of Publication 1, "Your Rights as a Taxpayer," with the notice.

Proposal. The IRS would be required to notify a taxpayer in writing prior to commencing an examination and would be required to provide the taxpayer with an explanation of the examination process.

Administration position. The Administration generally does not oppose this provision. However, an exception should be provided for criminal investigations and the provision should specify that failure to comply with the provision does not provide a basis for invalidating a deficiency notice.

18. Section 505 - Removal of Certain Limits on Recovery of Civil Damages for Unauthorized Collection Activities

Current law. A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or the Treasury regulations promulgated thereunder.

Proposal. The threshold for recovery by a taxpayer would be lowered to a negligence standard and the $100,000 "cap" would be eliminated.

Administration position. The Administration opposes this provision. Lowering the existing standard to a negligence standard would encourage taxpayers -- particularly tax protesters -- to routinely press claims against the United States, which could result in adverse revenue consequences and which in any event would require the IRS to devote significant monetary and personnel resources to defending itself against a flood of claims. In addition, we believe the existing $100,000 cap should be retained for revenue reasons and so the provision does not disproportionately benefit large taxpayers.

19. Section 506 - Safeguards Relating to Designated Summons

Current law. In general, if the IRS issues a "designated summons" to a corporation at least 60 days prior to the expiration of the statute of limitations for the assessment of tax, the statute of limitations is suspended either until a court determines that compliance is not required or until 120 days after the corporation complies with the summons pursuant to a court's determination.

Proposal. A designated summons could only be issued in situations in which the determination of tax could not be made accurately before the expiration of the statute of limitations for the assessment of tax (determined with regard to extensions) as a result of the delay or other action by the taxpayer. Furthermore, the statute of limitations would be extended by a designated summons only (a) if the IRS has not had at least three years to complete the audit; (b) if the taxpayer has refused to extend the statute of limitations for at least two years; or (c) with respect to information for which the IRS previously made a written request the person to be summoned (i) had sufficient time to respond to the written request for information before the issuance of the designated summons; and (ii) failed substantially to comply with the information request. In addition, a taxpayer that receives a notice of a designated summons would be entitled to a conference with the IRS within 15 days of receiving the notice, and to file a petition in the District Court within 10 days of receiving the designated summons, to quash or modify the summons or seek a court determination that the statute of limitations would not be suspended. Before issuing a designated summons, the IRS would be required to notify the taxpayer in writing and explain in the notice why the taxpayer's prior responses to information requests were unsatisfactory, as well as the taxpayer's right to a conference with the IRS within 15 days.

Administration position. We oppose this provision. It would unduly hinder examinations of both U.S. and foreign multinational corporations suspected of shifting income to low-tax jurisdictions through manipulation of their transfer prices in violation of section 482. Congress created the designated summons mechanism in 1990 to enable the IRS to obtain adequate information during its examinations of large multinational corporations that are dilatory in responding to informal written document requests, particularly in connection with intercompany pricing disputes under section 482. Congress was concerned that such corporations could obstruct examinations by declining to respond to the IRS's informal document requests. The IRS's administrative practice is to employ the designated summons mechanism only after informal written document requests have proven unsuccessful because the corporate taxpayer has been uncooperative in the hope that the statute of limitations will expire before the corporation is obliged to turn over the requested documents.

There already are extensive safeguards that address the concerns underlying the proposal. The IRS's internal guidelines provide that the use of designated summons is to be confined to examinations in the Large Case Program and (subject to the approval of the IRS's National Office) certain other large cases, must be reviewed by District Counsel and Deputy Regional Counsel (General Litigation) prior to issuance, and must be referred to the Justice Department for enforcement. Thus, a designated summons generally is issued only to sophisticated, uncooperative taxpayers after extensive review within the IRS, and does not operate to suspend the statute of limitations unless the Justice Department brings an enforcement action following its review of the matter. In addition, the summoned party is entitled to resist enforcement of summons in District Court. Therefore, the proposed provisions are not needed to protect taxpayers against potential abuses of the designated summons. On the other hand, by affording large multinational corporations the right to a hearing and requiring the IRS to justify its use of the designated summons procedure, the proposal would enable such corporations to further delay, or even evade, legitimate document production requests.

In addition, the proposal could have unintended adverse consequences. In some cases and subject to the safeguards described above, a designated summons may be issued to any person in connection with the examination of a corporate taxpayer, such as a third-party recordkeeper or a person designated as a foreign corporation's agent under section 6038A. The proposal as drafted would appear to permit the taxpayer to dispute a designated summons issued to those parties and to demand a hearing with respect to the summons. However, in many cases the corporate taxpayer will not be in a position to dispute the summons, since it may not know what information the third party possesses, and it may not know why the third party did not comply with previous informal requests. Thus, in these instances the provision would serve only to delay the taxpayer's document production.

Title VI - Information Returns

20. Section 601 - Phone Number of Person Providing Payee Statements Required to be Shown on Such Statement

Current law. Information returns issued to recipients of payments must contain the name and address of the payor.

Proposal. Information returns would also be required to contain the payor's phone number.

Administration position. We do not oppose this provision.

21. Section 602 - Civil Damages for Fraudulent Filing of Information Returns

Current law. There is no cause of action under federal law if a taxpayer suffers damages because a false or fraudulent information return filed with the IRS asserts that payments have been made to the taxpayer. State law may provide a cause of action for damages suffered by reason of a false or fraudulent information return.

Proposal. If any person willfully files a false or fraudulent return with respect to payments purported to have been made to another person, the other person would be entitled to recover damages from the person who filed the return. Recoverable damages are the greater of $5,000 or the amount of actual damages. A six year statute of limitations would apply to the proposed cause of action.

Administration Position. The Administration opposes this provision. We do not believe it is appropriate to create a private federal cause of action for damages resulting from the filing of false or fraudulent returns when section 7206(1) makes the willful filing of false or fraudulent information returns a felony punishable by fines of up to $100,000 and imprisonment of up to five years. Moreover, some remedies already exist under state law. We are also concerned that a private cause of action for persons who are the subject of false information returns could lead to the harassment of payors, particularly in view of the proposed $5,000 "floor" on damages.

22. Section 603 - Requirement to Conduct Reasonable Investigation of Information Returns

Current law. Deficiencies determined by the IRS are generally afforded a presumption of correctness. In *Portillo v. Commissioner*, 932 F. 2d 1128 (5th Cir. 1991), the Court of Appeals for the Fifth Circuit held that a deficiency had been arbitrarily determined and was invalid because it was based solely upon an information return reporting a payment to the taxpayer in excess of the amount he included on his income tax return. In that case, the information return was received by the taxpayer after his return had been filed, and the taxpayer disputed the accuracy of the information return. The IRS contacted the payor, who claimed that the payments were in cash but did not have records substantiating the payments. The IRS issued a notice of deficiency, relying on the presumption of correctness. The taxpayer presented evidence that the information return was incorrect. The court held that "the presumption of correctness does not apply when the government's assessment falls within a narrow but important category of a 'naked' assessment without any foundation whatsoever."

Proposal. If a taxpayer asserted a reasonable dispute with respect to any item of income reported to the IRS on an information return, the IRS, and not the taxpayer, would bear the burden of proof with respect to the item of income, unless the IRS established that it had conducted a reasonable investigation to corroborate the accuracy of the information return. In order to establish a reasonable investigation, the IRS would be required to have physically examined the underlying tax return. Otherwise, it would not be entitled to a presumption of correctness.

Administration position. We oppose this provision. The proposed provision would eviscerate the IRS's matching program by eliminating the IRS presumption of correctness if the IRS failed to physically examine the underlying return. Under the present computerized matching program, the IRS matches information returns against return information contained in the IRS data base. After receiving a notice of deficiency, the taxpayer is required to present credible evidence that the information return is inaccurate. In the absence of the IRS presumption of correctness, the taxpayer could simply dispute an information return and without presenting any supporting evidence whatsoever, obligate the IRS to investigate further. In effect, the IRS would have to conduct an investigation before generating a notice of deficiency pursuant to its matching program because taxpayers would quickly learn that they have only to dispute an information return in order to place this investigation burden on the IRS. This burden would force the IRS to substantially curtail its existing matching program.

The proposed provision would invalidate a deficiency notice based on an information return, regardless of the accuracy of the information, if the IRS's investigation of an inaccuracy asserted

by the taxpayer is subsequently determined to be inadequate. Accordingly, it would create an incentive for taxpayers to challenge and litigate the adequacy of the IRS's investigation as a matter of course, and thereby would increase the IRS's controversy costs and create yet another litigation hazard that would force the IRS to settle for reduced amounts of taxes. The resulting loss in tax revenues would be borne by all other taxpayers and would undermine the integrity of the tax system.

The Administration agrees that IRS should investigate the accuracy of information returns that are disputed by taxpayers, and IRS is in the process of strengthening its procedures for investigating taxpayer claims that information returns received by them are inaccurate. However, we believe that the proper balance is achieved under existing law standards. The IRS's presumption of correctness does not outweigh credible evidence presented by the taxpayer. To prevail, the IRS must counter the taxpayer's evidence with credible evidence establishing the accuracy of the return.

We have strong reservations about any statutory change that deters IRS from asserting deficiencies on the basis of information returns. The biggest component of the tax gap is unreported income. The only practicable way to reduce that component is through computerized matching of information returns. Legislation of this nature would undermine that process and result in substantial revenue loss.

Title VII - Modifications to Penalty for Failure to Collect and Pay Over Tax

23. Section 701 - Trust Fund Taxes

Current law. A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Proposal. The IRS would be required to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. After exhausting the administrative remedies available within the IRS, the recipient would be entitled to seek a declaratory judgment from the Tax Court prior to assessment. Under the proposed provision, the statute of limitations for the collection of the penalty would be suspended during periods that these rules precluded the IRS from collecting the penalty. In addition the proposed rules would not apply to jeopardy collections.

Administration position. It is current IRS practice to provide advance written notice to responsible persons, and we would not oppose codifying this requirement. However, we oppose providing the Tax Court with jurisdiction to issue declaratory judgments concerning trust fund taxes. If an action is brought in District Court, the IRS is able to join all potentially responsible parties together in one proceeding, thus allowing a more efficient and fair exposition and resolution of the relevant issues. (Under existing IRS practice, a responsible person may bring an action in the District Court by paying a modest jurisdictional amount -- the trust fund liability for one individual for the quarter -- and the policy of the IRS is to forebear collection during the pendency of such litigation absent jeopardy.) The Tax Court does not currently have the requisite jurisdiction to permit the joining of all potential responsible persons without their consent. In addition, discovery is more

limited in the Tax Court than in District Court, which would hinder the IRS's ability to determine the appropriate responsible person since trust fund cases are fact-intensive. Finally, a declaratory judgment action is not appropriate in a responsible person case. The purpose of a declaratory judgment action is to decide questions of law, not of fact, and the question of whether someone is a responsible person is predominantly a question of fact.

24. Section 702 - Disclosure of Certain Information Where More Than One Person Subject to Penalty

Current law. The IRS is precluded from disclosing to a responsible person the IRS's efforts to collect unpaid taxes from other responsible persons.

Proposal. If requested in writing by a responsible person, the IRS would be authorized to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax in question. The IRS would also be authorized to disclose in writing the general nature of those collection activities.

Administration position. The Administration does not oppose this provision. In situations where more than one person is liable for the same tax, confidence in the fairness of the tax system can be undermined if a taxpayer is not informed of the efforts IRS has made to collect the tax in question from the other responsible parties. In light of the IRS's need to preserve confidentiality in some contexts, however, disclosure should be limited to the status of collection efforts and the person to whom the information is provided should be precluded from disseminating the information. In addition, the provision should more explicitly provide that the disclosure of any information about other responsible persons is entirely within the discretion of the IRS.

25. Section 703 - No Penalty if Prompt Notification of the Secretary

Current law. A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis.

Proposal. A responsible person (other than a 5-percent owner) would not be liable for this penalty if the person notifies the IRS within ten days of the failure to pay the tax liability. This exception would not apply if the IRS had previously notified any person of the failure to pay the tax.

Administration position. While we believe this proposal may, with certain modifications, have merit and are prepared to explore it further, we are concerned that the revenue costs could be substantial. In any event, the exception for 5-percent owners should be expanded to include highly-compensated employees.

26. Section 704 - Penalties Under Section 6672

Current law. A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis.

Proposal. The IRS would be required to take appropriate action to ensure that employees are made aware of their responsibilities with respect to trust fund taxes, the

circumstances under which they may be liable for the responsible person penalty, and the responsibility to promptly report failures in payments to the IRS. The provision also would provide that the penalty would not be imposed on unpaid volunteer Board members of charitable organizations to the extent the members do not participate in the day-to-day or financial operations of the organization. Finally, the provision would require the IRS to develop and disseminate educational materials relating to the responsibilities charitable organizations have with respect to trust fund taxes.

Administration position. We do not oppose this provision, subject to modification. We would add as requirements for relief under the proposed provision that the Board member serve solely in an honorary capacity and neither be involved in the administrative operations of the organization, nor have benefitted from, nor participated in, the decision to not make the tax payment. Also, we recommend that any such provision require that there be at least one responsible person in all cases. As for the provisions relating to the development and dissemination of related educational materials, we believe it more useful for the IRS to comment.

Title VIII - Awarding of Costs and Certain Fees

27. Section 801 - Definition of Prevailing Party

Current law. A taxpayer that successfully challenges a determination of deficiency by the IRS may recover attorneys' fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it (i) establishes that the position of the United States was not substantially justified; (ii) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (iii) meets certain net worth and (if the taxpayer is a business) size requirements.

Proposal. As we understand the proposal, it would shift the burden of proof as to whether the government's position was substantially justified. Thus, a prevailing party would be entitled to recovery from the United States, unless the government established that the position of the United States was substantially justified.

Administration position. The Administration opposes this provision. We believe the taxpayer should properly bear the burden of establishing that the government's position was not substantially justified. This proposal would encourage taxpayers to pursue the recovery of attorneys' fees and other costs in essentially all instances in which they prevailed against the IRS. This would increase the costs of tax administration borne by all taxpayers, and would deter the IRS from pursuing meritorious cases against taxpayers.

28. Section 802 - Commencement Date of Reasonable Administrative Costs

Current law. A taxpayer that successfully challenges a determination of deficiency by the IRS may recover attorneys' fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." These costs are recoverable to the extent incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of decision of the IRS Office of Appeals, or (ii) the date of the notice of deficiency.

Proposal. Attorneys' fees and other administrative costs also would be recoverable to the extent incurred after the date of the notice of proposed deficiency.

Administration position. The Administration opposes this provision. The appeals process presently resolves through a relatively informal process many of the issues raised by IRS field agents. The provision would encourage taxpayers whose issues were satisfactorily resolved in appeals to routinely seek recovery of attorneys' fees and other administrative costs. Accordingly, the proposal would undermine the effectiveness of the appeals process by making IRS appeals officers reluctant to settle cases. Furthermore, since one of the functions of the appeals function is to provide taxpayers with an informal forum for resolving issues of questionable merit raised by field examiners, the provision would have adverse revenue consequences.

29. Section 803 - Increased Limit on Attorney Fees

Current law. Attorneys' fees recoverable by prevailing parties as litigation or administrative costs are limited to a maximum of $75 per hour.

Proposal. The maximum recoverable rate for attorneys' fees would be increased to $150 per hour and would be indexed for inflation commencing in 1994.

Administration position. Consistent with the Administration's position with respect to the Access to Justice Act of 1992, we oppose increasing the maximum recoverable rate for attorneys' fees to $150 per hour, but do not oppose indexing the current $75 rate for inflation.

30. Section 804 - Failure to Agree to Extension Not Taken Into Account

Current law. To qualify for an award of attorneys' fees and other administrative and litigation costs, a taxpayer that is a "prevailing party" with respect to a determination of deficiency by the IRS must have exhausted the administrative remedies available to the taxpayer within the IRS. Treasury regulations provide that a taxpayer who does not consent to an extension of the statute of limitations on assessment may be treated as failing to exhaust the appropriate administrative remedies. In Minahan v. Commissioner, 88 T.C. 492 (1987), the Tax Court held the regulation invalid insofar as it provides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer. A concurring opinion reasoned that in circumstances in which the IRS has a reasonable need to request an extension of the statute of limitations, a taxpayer's refusal to consent to the extension should constitute a failure to exhaust administrative remedies. 88 T.C. at 509, (Simpson, J., concurring).

Proposal. A taxpayer that qualifies as a prevailing party would not be required to consent to extend the statute of limitations in order to exhaust the taxpayer's administrative remedies for purposes of recovering attorneys' fees and other administrative and litigation costs.

Administration position. We do not oppose a codification of the Minahan decision, and intend to implement it by regulation. However, as presently drafted, the provision is unduly broad. Consistent with the Minahan decision, the provision should not apply to taxpayers who fail to fully respond to IRS requests for

information on a timely basis, or in circumstances in which it is reasonable for the IRS to request that a taxpayer consent to extend the statute of limitations. One example of a reasonable circumstance for requesting an extension would be a complex case involving numerous legal or factual issues.

Title IX - Other Provisions

31. Section 901 - Required Content of Certain Notices

Current law. Tax deficiency and similar notices are required to "describe the basis for and identify" the amounts of tax, interest, additions to tax and penalties. An inadequate description does not invalidate the notice.

Proposal. Tax deficiency and similar notices would be required instead to "set forth the adjustments which are the basis for, and identify" the amounts of tax, interest, additions to tax and penalties. As is the case presently, an inadequate description would not invalidate the notice.

Administration position. The Administration opposes this provision on the ground that it is unnecessary. The IRS has a significant effort underway to clarify its notices to taxpayers. To the extent the Subcommittee is aware of problems with existing deficiency notices, it would be productive for the Subcommittee to alert the IRS as to those problems and to thereby assist the IRS in its continuing effort to clarify its notices.

32. Sections 902 and 903 - Protection for Taxpayers Who Rely on Certain Guidance of the Internal Revenue Service and Relief From Retroactive Application of Treasury Department Regulations

Current law. A taxpayer may rely on Treasury regulations and revenue rulings that accord with the taxpayer's particular facts. In addition, penalties are abated for taxpayers who rely on other written guidance of the IRS. Treasury regulations and revenue rulings may be issued with retroactive effect, but in practice, prospective mandatory effective dates are provided.

Proposal. If a taxpayer takes any position in reasonable reliance on guidance published by the IRS in the form of a press release, information release or revenue ruling, any later guidance by the IRS which is inconsistent with the earlier guidance would not apply to the detriment of the taxpayer prior to the date the subsequent guidance is published. Final, temporary and proposed regulations would generally be required to have an effective date no earlier than the date of publication in the Federal Register.

Administration position. The Administration opposes this provision on revenue and policy grounds. The decision whether to apply rules retroactively is perhaps the most difficult issue confronting us in administering the tax laws. The decision is never an easy one.

We all agree that rules should not be applied retroactively in a way that disrupts taxpayers' justified expectations or that disrupts the filing process for large numbers of small, unsophisticated taxpayers. However, in some cases it becomes apparent during the rule-making process that it is necessary to make certain rules retroactive to implement the intent of Congress. Sometimes taxpayers seek retroactive application of favorable new rules. In other cases, certain classes of taxpayers would benefit by the retroactive application of new rules and

others would be disadvantaged. In these cases, we are often called upon to make new rules retroactive electively. Therefore, to provide relief to taxpayers in appropriate circumstances, it is desirable for the IRS to be able to issue rules with retroactive effect.

Allowing taxpayers to rely on IRS press releases and information releases is undesirable. The IRS issues press releases and information releases to provide informal guidance to taxpayers on issues for which immediate guidance is needed. The press releases and information releases are general in nature. They are not used to provide comprehensive rules and are not subjected to full IRS and Treasury review. Allowing taxpayers to rely on these materials in the proposed manner would necessitate a more deliberate and comprehensive review of these items by the IRS and Treasury prior to issuance. This would delay their issuance and inevitably subject taxpayers to inconsistent treatment because of the absence of standards for examiners to apply in auditing returns.

We also oppose the adoption of the "reasonable reliance" standard, because it would erode voluntary compliance and increase the potential for litigation. Some sophisticated taxpayers take reporting positions based on formalistic readings of published guidance when they are well aware that the substance of their transactions is inconsistent with the purpose of the underlying ruling or other guidance. The reporting position may be supported by an opinion of counsel that states only that the position has a "reasonable basis," "substantial authority," or a "realistic possibility of being sustained on the merits." These taxpayers may argue that they are entitled to "reasonably" rely on the published guidance, as interpreted in the opinion of counsel. However, such opinions do not counsel the taxpayer that the reporting position is "more likely than not" to succeed on the merits if the position is challenged on audit. Accordingly, the IRS should not be foreclosed from asserting a position and litigating the merits of the position to determine whether tax is rightfully owed.

If the IRS is precluded from asserting positions retroactively in cases where taxpayers have taken questionable positions, the tax system will lose an implicit restraint. As a consequence, sophisticated taxpayers will tend to take more aggressive positions and revenue will be lost. This revenue ultimately may have to be made up by wage-earning taxpayers whose income and deductions are reported on information returns and who have little opportunity to play the audit lottery by asserting questionable positions.

The IRS refrains from making regulations retroactive where retroactive application would upset the justified expectations of taxpayers. Where it has made mistakes in this regard, the IRS has corrected them. However, the government should not be foreclosed from issuing retroactive regulations in situations in which sophisticated taxpayers have engaged in questionable transactions with the knowledge that they are subverting the Congressional purpose in enacting a statutory provision.

Eliminating the long-held authority of the IRS to issue retroactive regulations represents a fundamental change in our tax system. We believe it will be detrimental to the equitable administration of the tax system if IRS's authority to issue rules retroactively is restrained or removed.

33. Section 904 - Required Notice of Certain Payments

Current law. The IRS deposits taxpayer payments within 24 hours of receipt and credits the payments to the taxpayer's account.

Proposal. The IRS would be required to make reasonable efforts to notify a taxpayer within 60 days of the IRS's receipt of a payment from the taxpayer that the IRS cannot associate with an outstanding tax liability of the taxpayer.

Administration position. We oppose this provision as unnecessary. When the IRS receives a payment from a taxpayer that cannot be properly credited, the IRS attempts to contact the taxpayer by telephone. If unable to reach the taxpayer by telephone, the IRS sends the taxpayer a notice requesting further information. These contacts occur within 60 days of the IRS's receipt of the payment, unless the IRS is unable to determine the telephone number or address of the taxpayer making the payment.

34. Section 905 - Certain Costs of Preparing Tax Returns Fully Deductible

Current law. Miscellaneous itemized deductions are allowed only to the extent they exceed two percent of a taxpayer's adjusted gross income.

Proposal. Fees incurred by sole proprietors and farmers for the preparation of Schedules C, E or F would not be subject to the two percent floor.

Administration position. The Administration does not oppose this provision. We believe tax return preparation fees incurred by unincorporated businesses and farms should be deductible. We are pursuing administrative clarification of this point.

This concludes my prepared remarks. I would now be glad to answer any questions you may have.

PREPARED STATEMENT OF BENSON S. GOLDSTEIN

I am Benson S. Goldstein, Manager of the Tax Policy Center for the U.S. Chamber of Commerce. We appreciate this opportunity to present the Chamber's views on the Taxpayer's Bill of Rights II and on ways to improve the sometimes troubled relationship between the Internal Revenue Service and the American taxpayer.

The first Taxpayer's Bill of Rights was landmark legislation. It was the first legislation to strengthen the fundamental due process rights accorded to the American taxpayer. The American taxpayer is deeply in your debt, Mr. Chairman, for your tireless work to overcome a combination of indifference and hostility. Your efforts ultimately resulted in the first Taxpayer's Bill of Rights Act becoming law by its inclusion in the Technical and Miscellaneous Revenue Act of 1988.

Untold numbers of taxpayers have been helped by the legislation. But complaints about inequities in the system are still common and the system remains highly burdensome to taxpayers. In this regard, Chairman Pryor and Subcommittee members should again be commended for addressing the issue of fair tax administration as represented by Taxpayer's Bill of Rights II.

THE IMPACT OF THE FIRST TAXPAYER'S BILL OF RIGHTS

Although more needs to be done to assure fair administration of the law by the IRS, the first Taxpayer's Bill of Rights has had a clear and positive impact on the relationship between taxpayers and the Service.

While the U.S. Chamber of Commerce still gets plenty of telephone calls complaining about compliance burdens, complexity, and substantive tax provisions, telephone calls from Chamber small business members facing immediate and unwarranted

54-659 - 92 - 5

levy on their house or business, or similar serious problems, have declined noticeably. While it is impossible to be certain the first taxpayer rights bill is the cause of this decline, it seems likely that it is.

The first taxpayer rights act has helped in a number of ways. First, as a result of more aggressive congressional oversight, IRS management has been forced to confront and correct some of the more egregious abuses in the system. Second, the first bill prohibits use of the quota system for levies and seizures. Thus, collection officers are less likely to feel pressure to make inappropriate or unjustified seizures. Third and most importantly, the authority of the Problem Resolution Officers (PRO) under the Office of Ombudsman was enhanced.

The first Taxpayer's Bill of Rights has strengthened the procedural safeguards for taxpayers faced with a dispute with the IRS in a number of other ways. Some of the major provisions of the legislation include a requirement that the Service provide a written statement to taxpayers about their rights when subject to an IRS audit or collection matter. The IRS has complied with this requirement. The legislation enhanced taxpayer rights during an audit or examination interview, mandated that IRS deficiency notices have more clarity, and gave taxpayers the right to sue the federal government for damages sustained because of unauthorized actions of an IRS employee.

Mr. Chairman, your first taxpayer rights bill has accomplished much in a short time. The legislation has started the IRS down the right road and in the direction of more efficient tax administration and greater respect for American taxpayers. Even so, the need for further administrative reforms at the Service remains. In this regard, the Chamber strongly supports Chairman Pryor in his efforts to draft a Taxpayer's Bill of Rights II.

OBTAINING REVIEW OF TAXPAYER DISPUTES

The media and public most often focus on the amount of tax liability due from individuals and corporations. Unfortunately, this focus does not take into account the hidden costs associated with the tax laws—that is, the costs of complying with the law. This includes the money spent on tax professionals and their staffs, the computer time needed to complete the tax return, and all those costs involved with proper tax planning. Persons who cannot afford to hire a tax professional are the first to exhibit frustration and anger about the current tax administrative process.

The first Taxpayer's Bill of Rights attempted to reduce, both from a financial and psychological perspective, many of these actual burdens placed on taxpayers. The second bill of rights will further reduce these burdens. First, the new bill will create an independent administrative appeals process within Treasury on certain issues. Under the legislation, review officers will have specific authority to review taxpayer disputes involving recovery of out-of-pocket costs, release of incorrect liens, installment agreement disputes, and Taxpayer Assistance Orders. The Chamber strongly supports this proposal to expand a taxpayer's options in 'resolving administrative disputes with the IRS.

Taxpayer rights will also be greatly improved by the new legislation through the creation of an independent Ombudsman. The current Ombudsman cannot effectively help taxpayers resolve problems with other IRS personnel to the extent he or she still reports to the Commissioner. The new taxpayer rights bill will provide that the IRS Ombudsman be appointed by the President and confirmed by the Senate, and that local Problem Resolution Officers report directly to the Ombudsman. An independent Ombudsman and strengthened Problem Resolution Offices on the local level will contribute to an improved climate to assure a fair hearing on taxpayer problems. It will give taxpayers a sense that they have a better chance of getting a satisfactory answer on such issues. The Ombudsman will have new authority to abate assessments, grant refund requests, and stay collection procedures.

Moreover, the Ombudsman will be required to file quarterly reports on the operations of his initiatives to improve taxpayer services and IRS responsiveness. This and the other measures designed to enhance the office of IRS Ombudsman should contribute greatly to an improvement in taxpayer relations with the Service. These quarterly reports should serve to enhance the accountability of the Ombudsman and IRS efforts to resolve those problems.

A key feature of the first taxpayer rights legislation is the Taxpayer Assistance Order (TAO) Program. A taxpayer should consider filing an application for a TAO with the IRS when he faces serious financial hardship in paying his taxes and other critical expenses. It is the responsibility of the Problem Resolution Officer to review the taxpayer's case of "significant hardship" and, if appropriate, to help find alternatives to relieve the hardship. The TAO serves to suspend IRS enforcement actions temporarily while the Problem Resolution Officer reviews the taxpayer's case. Under

the new bill, TAOs will be expanded to force action by the IRS, and the new legislation will provide a judicial remedy for failure to honor TAOs. The Chamber views these measures to expand the scope of TAOs as a very significant pro-taxpayer initiative.

ELIMINATION OF INTEREST DIFFERENTIAL

Section 6621 of the Tax Code is a classic example of a measure which can easily be labeled as anti-taxpayer. This Code provision sets the interest rate the IRS charges taxpayers on tax deficiencies in the matter of a tax overpayment, what the IRS pays taxpayers in interest on tax overpayments. The interest rate for tax overpayments is based on the Federal short-term rate plus 2 percent. On the other hand, the interest rate for tax underpayments is the Federal short-term rate plus 3 percent—1 percent higher than the rate for tax overpayments. Based on this formula, the IRS has currently set the underpayment interest rate at 10 percent and the overpayment rate at 9 percent.

The second Taxpayer's Bill of Rights will eliminate the current interest rate differential between interest the taxpayer pays the IRS on underpayments and interest the IRS pays the taxpayer on overpayments. The Chamber applauds the Subcommittee's consideration of this particular proposal. By eliminating the interest differential, the new legislation will help restore a sense of equity to the Tax Code and to the tax administration process.

RECOVERY OF ADMINISTRATIVE COSTS

The second taxpayer rights bill makes a number of important changes in the area of professional fees, in terms of recovery of administrative costs. The Chamber applauds this effort and is very interested in working closely with the Subcommittee on the administrative costs issue.

Tax Code Section 7430(c) limits the recovery of professional fees in most cases to $75 per hour. Like it or not, most private attorneys in the U.S. charge rates in excess of $75 per hour. Thus, a taxpayer is prevented by this provision from being adequately reimbursed for his actual out-of-pocket expenses to defend himself against a proceeding that was, by definition, not substantially justified. The Chamber supports the proposal by Subcommittee Chairman Pryor to increase the amount defined as reasonable fees to a maximum of $150 per hour from the current $75 limit, including the laudatory proposal of indexing this amount to inflation.

The issue of who bears the burden of proof is another key factor in tax proceedings. Under current law, even if the taxpayer substantially prevails with respect to the amount in controversy or the most significant issue presented, the taxpayer has to prove that the IRS's position was "not substantially justified." The IRS, and the federal government generally, has a duty to the public to bring only litigation that is warranted. If the government loses a case, that means the courts have determined that the government wrongly caused a taxpayer to undertake untold heartache and expense. In some cases, the amount expended may almost ruin a taxpayer. In contrast, the government's litigation resources are, for all practical purposes, virtually unlimited. The government does not have, at present, sufficient restraint on its ability to litigate unwarranted cases. Requiring the government to establish that its case was substantially justified if it did not prevail would serve as a salutary check on its willingness to proceed with marginal cases and would establish a certain parity between the taxpayer and the government with respect to the financial costs of doubtful litigation.

Under the new legislation, the burden of proof in tax proceedings will be shifted to the IRS. The new bill will permit the recovery of administrative costs if the government cannot show that its position was substantially justified. The Chamber supports this approach and is very interested in working closely with the Subcommittee on the scope of legislative language to implement the measure.

DESIGNATED SUMMONS

Chairman Pryor should be commended for recognizing that the designated summons powers of the Tax Code grant the IRS an extraordinary compliance tool. Under Tax Code Section 6503(k), the IRS has the authority to issue a designated summons for the production of documents or other information in connection with the audit of a corporate taxpayer. Current law permits the IRS to issue a designated summons with just 60 days remaining on the statute of limitations. If the taxpayer under such circumstances does not fully comply in a short period of time, the IRS can suspend the statute of limitations by initiating judicial enforcement of the summons.

In his summary of the Taxpayer's Bill of Rights II, Chairman Pryor accurately describes the immense powers granted to the IRS under the designated summons authority. Senator Pryor comments that "While there may be situations where the use of a designated summons late in the audit process may be appropriate, nonetheless the IRS should not be allowed to surprise taxpayers who reasonably and in good faith believed that the statue of limitations was going to expire."

The Chamber believes that these designated summons powers will do nothing significant to address the so-called tax gap or tax compliance problems that the IRS must address. More likely, a suspension of the statute of limitations (particularly at a point in time very close to the end of the limitations period) will merely provide the IRS with the ability to postpone making critical decisions about pending tax cases. To the extent there is a backlog of tax cases that must be reviewed by the Service, there is a high probability that the backlog of tax cases would grow and not decline. For taxpayers, there is the cost associated with keeping books and records for longer periods of time, the loss of key personnel familiar with the underlying transaction, the significant loss of personal rights, and the uncertainty associated with a potential significant increase in the number of open audit years.

Absent outright repeal of these onerous powers, the Chamber has a number of recommendations to "even the playing field" for corporate taxpayers faced with a designated summons. These recommendations would help ensure that the IRS uses its designated summons authority for legitimate purposes. First, this authority should be limited to the issuance of designated summonses for needed information from uncooperative taxpayers during an audit. The current provisions do not contain any meaningful limitations to prevent the Service from issuing a designated summons to a taxpayer who has acted in good faith and has fully cooperated with IRS auditors.

Second, the Chamber recommends that the taxpayer be allowed to obtain a court determination that the statute of limitations should not be suspended when the Service has abused its designated summons authority. Third, the effect of the designated summons should be limited to specific issues identified by the Service. Finally, the Chamber recommends that new limits be placed on the IRS as to when the agency may issue a designated summons.

PROSPECTIVE EFFECTIVE DATE FOR TREASURY REGULATIONS

The new bill will generally require that all regulations issued by the Treasury Department to implement broad legislative guidelines be effective prospectively from the date of issuance in final, temporary, or proposed form. In the absence of regulatory guidance, taxpayers would be required to make a good-faith effort to utilize a reasonable interpretation of the statute. The general requirement that regulations be prospective could be superseded by a specific legislative grant of authority to Treasury. The Chamber strongly supports the concept of this measure, and is interested in working with the Subcommittee on appropriate legislative language for implementing the provision. The measure should contribute to improvement in tax compliance by taxpayers.

OTHER ISSUES

The second bill of rights includes a number of other highly positive pro-taxpayer measures. These positive measures include (among others) an expansion of the Secretary's authority to issue a certificate of release for liens, a removal of the limits on recovery for civil damages, further requirements to clarity IRS notices, and improvements in the collection of Payroll taxes. The Chamber supports these initiatives.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman, I want to commend you for, once again, taking the lead in promoting further taxpayer protections against internal revenue service abuse. the two of us, along with others, have worked very well together in the past on this issue, and I know we can continue working together successfully.

For me, the long process of trying to ensure taxpayer protections began in the early 1980's, when I was a member and then chairman of the Finance Subcommittee on IRS Oversight, which is now part of this subcommittee.

Mr. Chairman, you are to be commended for pushing the issue further when you succeeded me as chairman in 1987. At that time, you took the initiative and asked me to work with you in pushing for a taxpayer bill of rights by expanding legislation

I and others had introduced. It took nearly two years, but we ultimately succeeded in achieving this goal.

We now have a three year record of implementation regarding the taxpayer bill of rights. Great strides towards taxpayer protection were achieved through this legislation. However, the Taxpayer Bill of Rights of 1988 was never expected to be the final chapter of the book on taxpayer protection. It was a major step in the continuing process of stamping out taxpayer abuse. And that process continues today, as we look into ways to improve the current law.

In reviewing the record, it's clear that much more needs to be done. There's no question that breakdowns in implementation have occurred, and there are gaps in the law that need to be filled. Chairman Pryor has outlined a number of proposals in an attempt to address problems that continue to exist. I, along with my staff, will be working with Chairman Pryor and his staff in the coming weeks as we put together a new bill to help further protect taxpayers' rights.

With the house side pursuing a similar package, I'm very encouraged that we can see results before the end of 1992. Again, I thank you, Mr. Chairman, for your leadership, and I look forward to the testimony of today's witnesses.

Prepared Statement of Charlie Jones

Thank you for inviting us to testify at this extremely important hearing. My name is Charlie Jones and I am currently employed by TAX I in Atlanta, Georgia. We represent taxpayers be fore the Internal Revenue Service in almost all administrative matters and our staff is made up of enrolled agents who formerly worked for IRS. I am retired from the Internal Revenue Service after 33 very fulfilling years. Twenty eight of those years were devoted to the collection function. The last ten years I served as an Assistant Regional Commissioner in the Central Region, Cincinnati, Ohio. Since my Internal Revenue Service career was devoted to collection and collection is the focus of my current employment I will, generally, limit my remarks to the collection function.

At the outset I am not here to criticize the Internal Revenue Service as an institution. I believed when I worked there and I still believe, it is a well managed agency and the commissioners policies are fair and equitable. Yet there are some things that can be done to improve the execution of those policies. My recommendation for such improvements follow:

Organizational Culture

For lack of a more descriptive term the "organization culture" is in dire need of modification. In the days when revenue officers were evaluated by the number of seizures and levies they made, the collection function assumed a macho characteristic. The one with the most distraint activity became the best of the lot, and if you didn't take aggressive distraint actions you could not survive or progress.

When the Commissioner approved Policy Statement P–1–20 the service decreed that enforcement officials could not be evaluated on the basis of enforcement actions. P–1–20 was codified by the Taxpayer Bill of Rights. The policy statement and the law are still in place . . . so is the macho belief that if you make seizures you are good, if you do not you are a wimp. My point is that the informal evaluation system is alive and well and to some extent it drives the promotion system, and some taxpayers suffer as a result.

IRC Section 6020(b)

Returns prepared for taxpayers by the Internal Revenue Service based on information available to the Internal Revenue Service are not always correct nor do they provide for all legitimate exemptions and deductions available to the taxpayer. While these "substitute for return" procedures yield significant dollars to the Treasury the Internal Revenue Service is not always willing to listen to the taxpayers and make legitimate adjustments. In many instances taxpayers do not receive statutory notices of the proposed assessment and only learn of the assessment when they are located through the collection process. I recommend that the service include a statement in the notice of tax due on all assessments derived under 6020(b) that informs the taxpayer how the assessments were made and administrative remedies that they can use if they determine the assessments to be excessive.

Automated Collection System

The service could do a better job of insuring that wage and bank levies are appropriate. While practices probably vary from call site to call site, I believe the service

of wage and bank levies is virtually a clerical process without appropriate management review.

When levies are served and the service determines the taxpayer's account should be placed in "currently not collectible" status or, in "installment agreement" status the automated collection system employees frequently insist that the service should receive the amount(s) seized. This in spite of their determination that undue hardship exists. Since levies are served without judicial review I believe the Internal Revenue Service could exercise more care in issuing them and more management review should be exercised.

BY-PASSING POWER OF ATTORNEY

The service should require, in spite of statutory permission1 the same procedures in the collection function as in the Examination function for by-passing a power of attorney because of unreasonable delay or hindrance of an investigation. In the Examination Division the revenue agent notifies the representative in writing that the investigation is being hindered or delayed and gives him/her an opportunity to make amends by providing specific information. If the information is not forthcoming, a request is made to the Division Chief for permission to by-pass. If approved the representative is notified in writing from the Division Chief's office. In the Collection Division that decision rests with the employee's manager and no prior notice is required.

RESPECT FOR POWER OF ATTORNEY

The service could do a better job of instructing collection division employees in regard to respect for representatives who have the taxpayer's power of attorney. The problem is limited to a few revenue officers, but we have experienced managers who were not aware that IRC Section 7521(c) provides that representatives are authorized to stand in the taxpayers shoes and that no employee of the service can require the taxpayer to accompany the representative in the absence of an administrative summons.

Infrequently service employees will threaten to serve a summons to have the taxpayer appear or the group manager will suggest that he/she will approve a by-pass to achieve the desired appearance. In some instances the power of attorney is simply ignored.

THE 100% PENALTY ASSESSMENT, IRC SECTION 6672

IRC Section 6672 is a protection for the government against those who would hide behind the corporate shield. It also provides a forum for the cavalier enforcement of the tax laws. The elements for proving responsibility are often too simplistic. For example, I see cases where the only proof of responsibility is a name on a signature card at a bank with no examples of checks signed to the detriment of the tax obligations. There are also examples of one employee or officer being held responsible when the facts point to others who are equally responsible who have not been assessed or considered. I believe the service should be required to develop evidence of responsibility that would be logical and would withstand the test of judicial inquiry. It is not enough to require the taxpayer to prove a negative that he or she was not responsible within the meaning of IRC Section 6672. Clearly the Internal Revenue Service should prove responsibility.

WAIVER OF THE COLLECTION STATUTE

We see examples of Revenue Officers "requesting" (actually requiring under the threat of bank or wage levy) that taxpayers sign waivers extending the 10 year collection statute by an additional 10 5-35 years! This usually happens when the taxpayer shows some ability to make monthly payments but the monthly payment is small in relation to the balance due. Signing such a waiver can become a form of debtor's prison for the taxpayer. We would like to see the request for waiver limited to a reasonable amount of time beyond the 10 year statute.

CURRENTLY NOT COLLECTIBLE—HARDSHIP

When the Internal Revenue Service caseworker determines that a tax amount is currently not collectible due to the taxpayer's financial situation, he/she selects a computer code which represents the tax return Adjusted Gross Income amount at which the computer will reissue the accounts for review. The current range of Average Gross Income from which the Revenue Officer can choose is $6,000–$30,000. We believe that this range is entirely too narrow and that the upper limit of the range should be significantly above $30,000.

TAXPAYER SERVICE

I believe the service should make a greater effort to provide service to all taxpayers regardless of their need. I know the service is currently moving toward a "one stop service concept," and I applaud that effort. On the other hand, we talk with taxpayers constantly who just want to sit down with Internal Revenue Service and explain their circumstances and reach a suitable plan that will resolve their situation; however they are unable to arrange such a conference.

THE FEAR FACTOR

Having been in the representation business for about 18 months now, I find that a large number of our clients come to us merely because they are afraid to go the Internal Revenue Service. Many of them come to us with unopened mail from the Internal Revenue Service. They are afraid to open it. Their responses are usually formed from prior unsatisfactory contacts with the employees of the agency. It saddens me to know that the agency whose last name is Service continues to reinforce the fear factor. I hasten to add, that in my current job I only see the exceptional cases. I do recognize that the majority of the organization is professional and sensitive to the needs of the taxpayer.

A PHILOSOPHICAL NOTE

I now contend as I have contended all my adult life that the word "delinquent taxpayer" is not a synonym for "deadbeat." In most cases, except for the grace of God and the family inheritance there go us all. Most taxpayers who owe taxes did not plan to wind up that way. Most have encountered a serious problem, such as death, lingering serious illness, economic reversals and the like. Most want to pay their just debts and given an opportunity and a little sensitivity to their circumstances, they will.

Prepared Statement of S. Stewart Joslin, III

Good morning, Senator Pryor and Members of the Subcommittee. My name is Stewart Joslin; I'm from Kenner, LA. Thank you for this opportunity to tell you about my problems with the IRS, and for this chance to ask for your help.

My problem, in a nutshell, is that the IRS is holding me liable for back taxes owed by my former employer. They're doing this to me despite the fact that my former boss, the CEO of the company, told the IRS that I was in no way responsible for the tax liability. They're doing this to me despite the fact that it was I who initiated all the actions that led to the IRS getting any of the tax money owed by my former employer.

But, maybe I should tell you exactly what happened, and when, so you'll understand my situation.

In January, 1987, I separated from the U.S. Army as a senior captain after more than 14 years of service. The separation was due to a Congressionally-mandated reduction in officer strength. I found a job with a small computer company in New Orleans. I was operations manager for the company, which involved, among other things, assisting the CEO and company president in many projects. The president who was responsible for dealing with vendors and for payroll gave me a list of selected vendors I was supposed to "take care of".

In order to help the company president with vendors, I was authorized to sign checks for the company. I was one of three people authorized to sign checks. The other two were the company president and the company vice president. The true power of the company, and the real owner, was the CEO, who was NOT among those people authorized to sign company checks. I should point out that I had authority to pay funds to specific vendors. I did not have the power to decide which checks to write other than those. I had no involvement of any kind with payroll.

At first, I only signed payroll checks if the company president and vice president were not available. However, by the fall of 1987, I started signing payroll checks on a routine basis. At that time, the company's bookkeeper told me that the company was way behind on paying its withholding tax liability.

I was concerned that the company was not paying the taxes. I talked to the CEO about it. He told me a big contract was expected. He said that the proceeds of that contract would cover the liability by the end of the year. He and I had become friends, and so I trusted him, and believed him. This was in October, 1987.

By year's end there had still been no payment of the withholding tax liability. The contract was completed but the profits never materialized.

In January, 1988, I convinced the CEO that we needed to have what I call an "organizational effectiveness meeting." At this meeting, I informed all the company's supervisory personnel about the tax problem. All those present understood the need to pay those taxes. They were visibly upset to hear about the problem.

Together, we convinced the CEO that the taxes had to be paid. He said that the entire amount due would be available by May 1988. But, May came and went, and the taxes still weren't paid.

Finally, I got so concerned that I asked our CPA in the first week of June 1988 to contact the IRS. When I informed the CEO that we had requested a meeting with the IRS, he said he understood that we had a problem, and that we needed to talk to the IRS about solving it.

In July, 1988, I met with an IRS investigator, who threatened to hold me responsible for failure to pay the delinquent taxes. The investigator then asked to talk to all the principals of the company. I arranged for a meeting in August, 1988. The CEO, president, vice president and I attended the meeting. The other 3 were principals of the company. Even though I was not a principal, I attended the meeting as a potentially responsible party.

At that meeting, the CEO took full responsibility for the tax debt. He told the IRS investigator that neither the president nor the vice president were responsible, and that I only sent checks to where I was told to send them. He laid out a schedule for the payment of the liability, and told the IRS investigator that the company would be sold. The IRS investigator accepted the CEO's statements, including his claim that the president and the vice president were not involved. However, for some reason, I was still on the hook, even though from that point on all communications on the tax liability were between the CEO and the IRS investigator.

At this point, the CEO arranged for some funds to be paid to the IRS. In the presence of the IRS investigator, he directed me to prepare the checks since I was on the signature card and he was not. I did so. He gave them directly to the IRS investigator.

In November, 1988, the IRS sent me a bill for $120,000 worth of my employer's tax liability. I guess the IRS investigator's threats to hold me liable were to be taken seriously.

In November 1988, the CEO got $30,000 to pay to the IRS. I called the IRS investigator, who told me to send the $30,000 to the IRS' Dallas office. I did so. The Dallas office applied the funds to other taxes owed by the company which I was not aware of, and no amount of arguing has convinced them to apply that money to the delinquent withholding account.

In December of 1988, negotiations began for the sale of the company. Part of the agreement was that the buyer would assume responsibility for part of the tax debt, about $35,000. The buyer of the company would pay the $35,000 directly to the IRS. However, the sale of the company never occurred.

Also in December, 1988, I heard the CEO inform the IRS that the proceeds from the company's new computer installation contract with a bank would be used to retire the tax debt. The computer installation job was scheduled to be completed in March, 1989. The IRS investigator accepted that.

However, by February, 1989, the bank changed the completion date for the computer installation job--first to June of 1989, and then to December of 1989. In the meantime, the IRS put a lien on my home because of the unpaid tax bill, and in June of 1989, the company was purchased.

Once the company was sold, responsibility for completion of the computer installation project was transferred to the new company. The CEO told me that the profits from that contract would be used to pay the tax debt owed by the old company. Both the CEO and I went to work for the company that took over the computer installation project.

In June, 1989, after the sale of the company, the CEO showed me a cashier's check for $10,000, and told me that he was on his way to the IRS to make a payment. In August of 1989, I found out from the CEO that he instead had the bank remake the check and used the money to pay the debts of another of his companies. He said the IRS could wait for its money.

At this point, I retained a lawyer.

In November, 1989, the CEO was fired by our new employer. I was not. In fact, our new employer temporarily placed me in the position the CEO had held. I held that position until the company found a replacement. The CEO blamed me for his firing.

You can guess why I'm now at my wit's end.

Senator Pryor, I have tried to get those taxes paid since the fall of 1987. I informed the whole company of the problem in February of 1988. I brought in the IRS in August of 1988. My persistence did get the IRS some money.

I did what I thought a reasonable man would do.

In June, 1990, my lawyer and I met with a new IRS agent. I gave him all this information. Almost a year later, in May, 1991, he called my lawyer to say that we had 10 days to provide any additional information, but that he thought the IRS would probably hold me liable for the company's tax debt, including for one year, 1986, when I was still in the Army and had not yet even started working for the company.

My lawyer asked the agent if he had spoken with the first IRS investigator. He said no, but that speaking with her would probably not change anything anyway. Even if the first IRS investigator confirmed the CEO's admission of sole responsibility for the tax liability, the second IRS agent thought the CEO statement was probably "simple boastfulness" anyway.

The CEO, president, vice president and bookkeeper are all either related, or best friends from childhood. However, I provided a statement from the only impartial person in the whole scenario -- the president of the old company's bank who said that in his opinion I was an advisor to the CEO, and that in fact, all decision-making was done by the CEO.

To add salt to the wound, the IRS' investigation of the CEO is now "on hold" for some reason I do not know. And to my knowledge, the company president and vice president are not even being investigated by the IRS. Can you imagine that? The CEO's remarks in that interview with the first IRS investigator allowed the company president and vice president to walk away, but that statement was considered a "boastful comment" as it applied to me.

Sen. Pryor, I need your help. I was in the Army for 14 years. I'm in the Reserves now. I helped plan Desert Shield and Desert Storm. I helped plan the redeployment of our reserves to the U.S. after Desert Storm ended. But I've never been subjected to anything like this.

I've asked my Congressman, Rep. Livingston, for help. He has helped all he could, and I thank him for that. He brought me here to you. We've answered every question asked by the IRS. We've provided every document they requested. No matter what we do, my lawyer and I seem to have no effect on the IRS. It seems that nothing we can do, short of going to court, will move the IRS.

Sir, this is not right. I can't afford the legal expense of going to court. My legal expenses are already more than $10,000. I'm not responsible for this debt. I had no control over my employer's decisions not to pay the taxes. I tried everything I could to get the company to pay its tax debt, and because of me, the IRS got at least some money. I've done my best.

Please help me and my family in this matter.

Thank you.

Prepared Statement of Bob Kamman

My name is Bob Kamman. I am a lawyer, and my address is 8611 N. Black Canyon, Phoenix, Arizona 85021.

I represented Carol Rutledge (whose name was then Carol Bettencourt) in 1990, when the Internal Revenue Service seized her tax refund of $614 for 1989 and told her that she still owed another $3,600.

Carol and I are here today to tell two stories. The first story is Carol's. What her case shows is that, with the help of a newspaper columnist and an attorney, someone might eventually win a tax dispute with IRS.

The other story is that perhaps thousands of other taxpayers, with a tax problem like Carol's, have not been as successful.

I learned of Carol's case through a column by E.J. Montini in the Arizona Republic, the state's largest newspaper. Because I was familiar with similar cases in which taxpayers had succeeded, I volunteered to help Carol for no fee.

Generally, there are two actions that can be taken when one ex-spouse learns that an audit assessment has been proposed, or completed, involving unreported income or overstated deductions on a joint return filed with the other ex-spouse.

One is the "innocent spouse" rule. But it gives IRS considerable discretion in deciding whether abatement of tax is "equitable."

So, since the 1988 Tax Court decision in the *Abeles* case, the first alternative to consider is whether IRS mailed the "Notice of Deficiency" to the last known address of the ex-spouse from whom it attempts to collect the tax.

I interviewed Carol and determined that, by the time the audit assessment on the 1983 joint return was made, she would have filed two returns showing a new address. She did not recall receiving any certified mail from IRS at this new address. And in my experience, IRS at that time usually sent only one Notice of Deficiency, and it went to the ex-husband.

Because there was substantial evidence that the 1983 tax was not collectible from Carol, I filed an "Application for Taxpayer Assistance Order," on IRS Form 911, with the Phoenix District Problem Resolution Office.

I asked that Carol be sent her 1989 refund, and that no further efforts be made to collect the balance due from her.

In order to receive relief in the form of a Taxpayer Assistance Order from the Problem Resolution Office, a taxpayer must show "significant hardship." In the Form 911, I pointed out that Carol was a single, divorced mother of three who was going to college and working full time at a low hourly wage, while not collecting any child support from the children's father. She needed the money to pay the family's bills. The Problem Resolution Officer wrote back that this was not a hardship.

In the Form 911, I also quoted IRS Policy Statement P-4-7, which states that "an exaction by the United States Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution."

I argued that violation of Carol's Constitutional rights qualified as a hardship.

The Problem Resolution Officer disagreed.

When it is important to IRS, the agency can retrieve a tax return and related case file from a Federal Records Center in a matter of days. In Carol's case, they took several weeks.

Once it was established that the Notice of Deficiency had not been mailed to Carol's address, the Problem Resolution Office caseworker told me that they would "probably" abate the tax and issue a refund.

Although the Problem Resolution Office is supposed to be independent, it relies for much of its work on liaison personnel from other IRS divisions. The caseworker initially assigned to Carol's case was a Collection Division employee. She had to

send the case to an Examination Division employee, to make what she called the "final determination."

After another two and a half weeks, the Examination Division had completed its look at Carol's case. They found that indeed, she did not owe the tax.

Another Problem Resolution caseworker informed me that it could take up the three months to correct the IRS records, but that the refund itself might take less time. It was five weeks later that Carol received her refund. It had been seized by IRS on April 23. The check finally arrived on August 1. Because IRS saw no hardship, Carol waited for more than three months. Carol's victory was reported by E. J. Montini, the newspaper columnist. And then, the phone calls to my office began.

I received more than 30 calls from women—and a couple men—with similar stories. They were divorced, they had filed joint returns when they were married, and now IRS said they owed money. Often, the first they knew about it was when a refund check was kept, or a final notice before seizure was received.

I wrote a four-page fact sheet, advising these callers on how to determine if they had received a Notice of Deficiency at their last known address; when to claim the "innocent spouse" rule; how to determine if the time limit for IRS collection actions had expired; and whether, as a last resort, the taxes were dischargeable in bankruptcy. Some of them called back to report that mentioning Carol's name helped them get the attention of IRS, and their problem was solved. Others were not as successful, and I took on several of these cases. My usual fee would be the interest paid by IRS, when it refunded the taxes that were wrongfully collected.

I still receive a call every month or so, from a taxpayer or tax practitioner with a "Carol Bettencourt Case." If a column in one daily newspaper in one city can alert so many people that they may be paying taxes they don't owe, I wonder how many thousands of Americans have not yet heard of Carol, but should have.

Unfortunately, not everyone at IRS reads the newspaper. Six months after Carol won, another client had her wages levied because a collection representative ignored a letter from me in which I cited the same law as had helped Carol.

I am sometimes reluctant to seek the help of the Problem Resolution Office, because they have not reacted kindly to my criticism of its program. In December 1989, I wrote an article for the op-ed page of the Wall Street Journal, describing how the local Problem Resolution Office had botched a case, and the IRS Ombudsman here in Washington had refused to get involved.

The next time I filed a Form 911, the Problem Resolution Officer took it upon herself to audit, rather than assist, my client. IRS Taxpayer Service personnel were assigned to investigate the case, and the Problem Resolution Office assessed $137 in FICA Social Security tax which my client's employer had failed to withhold from his wages, four years earlier.

When this happened, I asked an assistant to the IRS Ombudsman here in Washington whether it was common for Problem Resolution Officers to audit returns. "I can't say that I haven't seen it happen before," she told me.

So in offering to help Carol, I had to warn her that she might suffer the same consequences. Nevertheless, I do not want to speak here today without giving a balanced evaluation of the Internal Revenue Service. The IRS is one of the better-managed federal agencies, and it has many dedicated and hard-working employees who do their best to give the taxpayer an even break. I know—I used to be one of them. I worked in the IRS Taxpayer Service division for five years, during the 1970s.

It is not enough, however, for the IRS to do the right thing most of the time. It should try to act correctly in every case. A good place to start would be to train IRS personnel in how to recognize cases in which tax on a joint return may not be collectible from a divorced taxpayer.

This information should also be made available in taxpayer publications.

Finally, procedures should be changed so that, when tax is owed by both ex-spouses, collection action can proceed against both of them even when they live in different Service Center areas. In several cases, I have represented a client in Arizona, whose case is assigned to the Ogden Service Center, when the ex-spouse lives in California, which is handled by the Fresno Service Center. have been told that there is no way for the case to be assigned to IRS filed offices in both states, at the same time.

In conclusion, I would like to thank the Committee for the opportunity to make these remarks. And, I especially thank Carol, for having the courage to discuss in this public forum, many of the private aspects of her family and financial situation, so that others with the same problem might find out how to solve it.

Prepared Statement of David Keating

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on reforms to improve taxpayer rights. I represent the 200,000 members of the National Taxpayers Union who strongly support providing taxpayers with additional rights and protections during the tax audit and collection process.

We commend the Chairman for his proposal and for his outstanding work on behalf of taxpayers' rights. The IRS touches the lives of more American citizens than any other government agency. Because the IRS has more power than any other agency, it is especially important that Congress establish safeguards to protect the rights of taxpayers and to regularly maintain oversight of the tax collection power.

The National Taxpayers Union fully supports the proposed reforms Chairman Pryor has outlined in a summary of his proposed Taxpayers' Bill of Rights II (T2). It is a worthy sequel.

Taxpayers Can Still Lose Even When They Win.

Although the Taxpayers' Bill of Rights passed in 1988 offers important new protections for taxpayers, the job of protecting innocent taxpayers from ruin is far from complete. For example, I have serious doubts that it would have prevented the well-documented Council family tragedy.

The original Taxpayers' Bill of Rights would have allowed taxpayers to sue for damages if "any officer or employee of the Internal Revenue Service carelessly, recklessly or intentionally disregards any provision" of the tax laws. As the bill progressed through the Congress, the word "carelessly" was dropped from what became Section 7433 of the tax code.

Was the IRS treatment of the Council family careless and negligent? Absolutely. The Court's decision was clear on this point. Was it reckless or intentional? It might have been, but that is a very difficult standard to prove.

In the 1986 Tax Reform Act, Congress substantially liberalized the definition of negligent actions by individual taxpayers. During the 1980s, tax preparers have also been subject to increasing penalties for not exercising due diligence. Yet incredibly, Congress refuses to require the IRS to exercise reasonable caution in using its vast array of enforcement powers.

Taxpayers who have been financially harmed or devastated by IRS carelessness also should have the right to sue and recover damages. We strongly support the proposal in T2 to allow taxpayers to recover damages for negligent action by the IRS. We also strongly support support eliminating the cap for damages.

If a U.S. corporation makes a product that injures a consumer, consumers don't have to prove that the corporation recklessly or intentionally harmed the consumer in order for the consumer to win an award. Neither should a taxpayer who falls victim to the negligence of the all-powerful Internal Revenue Service.

I would also like to note a flaw in Section 7432 of the tax law. While it appears to allow a lawsuit for damages for failure to release a lien, it only applies for a failure to release a lien under Section 6325, not the imposition of the lien under Section 6321 in the first place. We are pleased that T2 proposes to correct this flaw.

Attorney Fee Awards Are Woefully Inadequate.

As Kay Council's case showed, taxpayers can suffer enormous financial damages even when they win. Kay was fortunate to receive an award of attorneys' fees for her case. But the fee award didn't come close to paying her total costs. She still owed tens of thousands of dollars.

While her attorneys billed her at $135 per hour and $90 per hour, depending on the respective seniority of the attorney, the judge was restricted by the outdated $75 per hour cap in the current law. He therefore only allowed reimbursement at a rate of $75 per hour and $49 per hour, leaving Kay to pay the difference. Does Congress want to say to future Kay Councils that they'll have to pay through the nose for legal help to fight a careless, incompetent or abusive IRS?

It's very difficult to win attorneys' fees. Also, the courts are extraordinarily reluctant to award attorneys' fees in excess of the $75 per hour cap in the current law. Proving special factors is almost impossible.

Unlike the standard for award of attorneys' fees in the Equal Access to Justice Act, plaintiffs in tax cases must prove that the IRS "was not substantially justified," in pursuing the case. It would be much fairer to require that the government prove it was acting reasonably in order to prevent an award of attorneys' fees.

To protect taxpayers from enormous financial losses incurred while fighting the IRS, we strongly support the proposal in T2 to raise the outdated $75 per hour cap to $150 per hour, then index it to inflation. The court would still be limited to awarding only "reasonable fees," preventing excessive awards. The proposed change that would allow taxpayers to collect costs from the earlier of the date of the first notice of proposed deficiency or the date of the statutory notice of deficiency is also very important.

Taxpayers' Rights Review.

The proposal in T2 to create "an independent administrative appeal [procedure] for a binding determination on certain issues unrelated to the determination of tax liability" is an excellent ideal. Had this proposal been in effect years ago, it may have prevented the Council family tragedy. It will certainly help ensure fair treatment during the tax collection process.

Taxpayers who are being treated unfairly by the IRS often don't have financial means to mount an expensive court fight. This new administrative appeal procedure can help ensure fair treatment for taxpayers of modest means.

The Berlin Wall Stopping Taxpayers' Rights.

In the rare cases when the IRS goes out of control, federal law largely prevents the courts from allowing taxpayers to enforce their rights. The Federal Tort Claims Act allows the government to be sued in certain instances but specifically excludes "any claim arising in respect of the assessment or collection of any tax or custom duty." Of course, the new Taxpayers' Bill of Rights granted two very limited exceptions to that rule.

Another unnecessarily restrictive law is the Anti-Injunction Act, the law that we call the Berlin Wall against taxpayers' rights. Mr. Chairman, it's past time to tear down this wall.

Under Section 7421 of the Internal Revenue Code, no lawsuit can be brought by any person in any court for the purpose of restraining the assessment or collection of any tax, except in limited circumstances.

The case law around the Anti-Injunction Act indicates many problems in obtaining injunctions to restrain the collection of the tax. It is clear that injunctions will be granted where the failure to grant relief would result in irreparable damage to the taxpayer. But an injunction will only be allowed where it is clear that under no circumstances would the government prevail (or the taxpayer would not owe the tax). Otherwise only two remedies are available to the taxpayer: 1) pay the tax, file a claim for refund, and sue for recovery if the claim is rejected; 2) file a petition in Tax Court before assessment and within the short period of time allowed for filing such a petition.

We think that the Anti-Injunction Act should be amended to give taxpayers the ability to enforce their rights if necessary. Taxpayers should be allowed to file suit in a federal district court to enjoin the IRS from enforcement

action because: the deficiency assessment was made without knowledge of the taxpayer and without benefit of the appeal procedures provided by law; there has been an improper or illegal assessment; there has been an action in violation of the law or tax laws or regulations providing for procedural safeguards for taxpayers; the IRS has made an unlawful determination that collection of the tax was in jeopardy; the value of seized property is out of proportion to the amount of the liability if other collection remedies are available; or the IRS will not release the seized property upon an offer of payment of the U.S. interest in the property.

Then, there's also the Declaratory Relief Act. This law says that citizens can file suit to get a court to declare their rights "except with respect to federal taxes."

In author David Burnham's excellent book, A Law Unto Itself, he quotes California tax attorney Montie Day and his views on these laws that prevent taxpayers from enforcing their rights. He says that allowing such limited lawsuits would make "the IRS more accountable... and make the agency more likely to operate in a lawful fashion."

As long as taxpayers are largely banned from suing to enforce their rights, taxpayers will continue to be at risk of financial ruin and emotional devastation from the IRS. It is completely unfair for the IRS to have all the powers and for taxpayers to have few rights that can only be enforced with great legal difficulty. We must ensure fair treatment of innocent taxpayers to continue respect for our Constitutional system of government.

Congress Should Safeguard the Right to be Self-Supporting.

The Taxpayers' Bill of Rights made the very necessary improvement of exempting a larger amount of a taxpayer's weekly salary from levy. But it made little change in the amount of property exempt from seizure.

The law lifted the amounts from a paltry $1,500 for personal property to $1,650 and from $1,000 for equipment and property for a trade, business or profession to $1,100. That's hardly any change, and it is far from sufficient to allow a taxpayer to be self-supporting.

What self-employed plumber could maintain his self-employment with just $1,100 in tools, equipment and a truck? What computer programmer or author could do so? Very few, if any.

Who can provide the basic essentials of clothing and furnishings for a family with only a $1,600 exemption?

The bankruptcy laws provide far more protection than this.

We would like to see the exemption amounts lifted to $10,000. The current levels are ridiculously low.

Installment Agreements.

An early version of Senator Pryor's Taxpayers' Bill of Rights contained an important provision for individual taxpayers -- the right to an installment agreement if the taxpayer had not been delinquent in the previous three years and the liability was under $20,000. The provision was dropped because of concern about the $20,000 liability. We are pleased to see this provision in T2.

We think the concept was a good one, especially if it is limited to individual Form 1040 taxes after an unexpected audit. More taxpayers would be willing to concede if they knew they would have time to pay this unexpected bill. Currently, taxpayers have an incentive to stall if they can't pay. A liability cap of a smaller amount, say $10,000, might also make the concept more acceptable. Of course, any interest in penalties that would normally be owed would still continue to accrue.

Marriage, Divorce, and the IRS.

One of the most common complaints I hear comes from taxpayers who have divorced and one spouse has disappeared. Perhaps following a tendency in human nature, the IRS often goes after the spouse it finds first, whose name and address the IRS readily has on its computer, even though that spouse may be innocent.

Of course, in some cases, taxpayers can be relieved of the tax liability on a joint return under the so-called "innocent spouse" rule. However, its provisions are so complicated that it should be known as the "lucky spouse" rule for the few people who can meet all of its tests.

Much more needs to be done to protect divorced spouses.

Administration of the Federal Tax Deposit System.

If an employer does not report and deposit withheld income and Social Security taxes, then certain responsible officers can be held personally responsible for the taxes plus a one hundred percent penalty. This is an area ripe for reform.

The reforms proposed in Taxpayer's Bill of Rights II would certainly help improve the chances of fair enforcement.

When the IRS seeks to collect these trust fund taxes, it often assesses liabilities on everyone in sight (including bookkeepers, accountants, bank officers, inactive directors, inactive or resigned corporate officers and family members), whether they are truly a responsible officer or not. Inside the agency, this is called the shotgun penalty approach. A lot of innocent people get hurt.

Unfortunately, the burden of proof is on the taxpayer to prove that he or she was not responsible for the lack of payment. You might as well ask the taxpayer "When did you stop beating your spouse?" Proving a negative is a difficult proposition at best.

The burden should be on the IRS to prove the taxpayer was responsible.

Why can't the tax laws define the responsible parties as the chief executive officer, the chief and senior financial officers, those who serve on the board of directors and own a significant stake in a privately held corporation, and other responsible parties designated on a schedule that could be attached to the corporation's last quarterly 941 tax return of each year? The attached schedule would clearly state the serious responsibilities to remit trust fund taxes and require the signature of each named responsible person to indicate their knowledge of and consent to these rules.

If the IRS had the names and addresses of such persons in its computer, then these responsible persons could be immediately notified when a payment has been missed. It would allow these officers and other responsible persons to immediately investigate why these taxes have not been remitted on time, protecting the Treasury and innocent taxpayers.

Taxpayer Assistance Orders and the Problem Resolution Program.

While the Problem Resolution Program has undoubtedly achieved a great deal of success in helping taxpayers, we think there is still room for improvement. Reports have surfaced about problem resolution officers (PROs) who have not been helping taxpayers even though the circumstances appear to warrant intervention. Bob Kamman, an attorney in Phoenix, who is a contributing writer to our Tax Savings Report newsletter, has written that after a form 911 is filed with a PRO, "that person refers it to the branch of the agency where the difficulty originated. The response quite often is made by the person who caused the problem in the first place. It's not easy to tell co-workers down the hall, who may eat at the same cafeteria table, ride in the same carpool and bowl in the same league, that they screwed up. Sometimes the PRO does it, but often he won't. That's what happened to my client ..."

I have heard some complaints that some PROs feel that they are not technically qualified to pass judgment on a particular taxpayer's complaint and temporarily overrule the IRS action. If this is indeed a problem, it would account for the dearth of Taxpayer Assistance Orders (TAOs) that have been granted.

The IRS will undoubtedly say that the reason for the dearth of TAOs is that the mere threat of a TAO often will accomplish the task. Mr. Kamman makes the excellent point that "we don't evaluate the effectiveness of police carrying guns by the number of times they shoot them." But the TAO is hardly the equivalent of a bullet, and I'm concerned about why so few have been issued.

The Standard of Hardship is Unnecessarily High for a TAO.

One other potential explanation is that the IRS is using a standard of hardship that is too high. We strongly support the T2 provision to reduce the hardship requirement.

If the IRS is violating its internal policies or procedures or the tax code and regulations, the Ombudsman should have the power to issue a TAO. This is altogether reasonable. After all, why should the taxpayer have to bear significant hardships in order to qualify for a TAO?

It's Time to Make the Ombudsman More Independent.

Under T2, the Ombudsman would be a political appointee and not a career IRS employee. As a political appointee the Ombudsman would be free to be a true taxpayer advocate without worry for his career aspirations within the IRS. He would not have to worry about how other IRS managers feel about his input into their areas of responsibility. Also, a political appointee would come to the job independent of the restrictive mission-oriented mentality that besets many career agency executives. He would be more perceptive to the needs of taxpayers and more receptive to changing the old ways of doing things. Instead of going under the bureaucratic name of Ombudsman, let's rename the office "Taxpayers' Advocate." A four-year term would enable each new administration to replace the Ombudsman.

Notice of Deficiency Safeguard.

We strongly support the provision in T2 to "amend section 6212(a) to provide that a 'determination' must be 'a thoughtful and considerate determination that the United States is entitled to an amount not yet paid.'" This standard was used in the case of Portillo v. Commissioner, and is worth putting in the tax code. The IRS should not be permitted to rely on information returns that have been seriously challenged. It is only reasonable that the IRS investigate an information return to ensure its accuracy before relying on such an information return before issuing a Notice of Deficiency.

Deductibility of Tax Preparation Fees.

We also strongly support allowing a deduction on Schedule C or Schedule F for the cost of preparing these tax schedules as an ordinary and necessary business expense. It is only fair that self-employed or unincorporated taxpayers are subject to the same tax rules that apply to corporations.

Congress Should Require Equitable Use of the Levy Power.

Burnham's book presents an impressive array of statistics that the levy power is not applied equally across the United States. Burnham reports that in 1988 "for every 1,000 tax delinquent accounts, 892 levies [occurred] in the Western Region; 860 in the Mid-Atlantic; 735 in the Southwest; 714 in the North Atlantic and the Central; 708 in the Mid-West; and 532 for the Southeast.

There's even more variation in the seizure rate. Burnham reports that in 1988 "the seizure rates in the most active districts were 30 to 40 times higher than the rates in the districts with the least. The IRS has no explanation for the variations."

This is nothing new. As far back as 1976, the Administrative Conference of the United States issued a report titled "Collection of Delinquent Taxes" that said the IRS had no clear guidelines specifying when levy action was to be taken. The report said "lacking guidance, revenue officers vary in their criteria for seizure of assets of individual taxpayers... So long as the Internal Revenue Service fails to delineate clear purposes for the use of summary powers, we believe that these divergent criteria will continue to exist. The variations in practice may lead to the appearance of arbitrariness and caprice in some actions, thus undermining the taxpaying public's confidence in (and compliance with) the taxing system."

These random variations have continued year after year. The guidelines that exist only in Internal Revenue Manuals are not enforceable. Therefore, Congress should require that the IRS issue regulations specifying the circumstances, conditions and situations under which a levy will be made.

Conclusion.

Mr. Chairman, the job of protecting taxpayer rights will never end. Much progress has been made, but more legal protections are necessary. We thank the Chairman and the members of this committee for their diligent efforts on behalf of taxpayer rights.

Prepared Statement of David Leeper

SALUTATION

It is a great honor to be invited to testify before this prestigious subcommittee. I thank you for the opportunity and for your efforts to improve our system of federal taxation.

IDENTIFICATION

My name is David Leeper. I am a Texas attorney specializing in litigation against the Internal Revenue Service. I have a LIM in taxation from New York University and have been in private practice for approximately 14 years.

Typically, my work involves reading and interpreting laws that you write. It is a unique experience for me to be involved in the formative stages of the law, and I feel very fortunate to be asked to testify before this prestigious committee today. I feel particularly fortunate because I have the opportunity to tell you of Mr. Portillo's plight and to tell you that this is the type of case that I see all too often.

FACTS

In 1987, Mr. Portillo was audited by the Internal Revenue Service for his 1984 Form 1040. The information on Mr. Portillo's return did not match a Form 1099 filed with the IRS by general contractor named Mike Navarro. The contractor claimed he paid Mr. Portillo $35,305 which he had deducted from his own tax return. Mr. Portillo claimed that he only received $13,925.

The auditor interviewed the general contractor and discovered he had no checks that would confirm the payments, nor did he have any receipts from Mr. Portillo. Instead, the general contractor, who was 71 years old, claimed he paid Mr. Portillo *in cash*, and that he was able to recall from memory the exact weekly payment amounts one year after the fact. Evidence that the auditor disbelieved Mr. Navarro is contained in the following from the Service's file:

> "third party contact with Mike Navarro appears to indicate the taxpayer was paid less than the amount per 1099 . . . " IRS Revenue Agent Workpapers dated February 17, 1987.

In spite of this, the auditor then attempted to prove Mr. Portillo received the money by application of an indirect method of reconstructing Mr. Portillo's income. However, that also indicated Mr. Portillo did *not* receive the income as evidenced by the following statement also from the Service's file:

> " . . . the indirect method does not support the adjustment . . . " IRS District Review- Form 3990, dated July, 30, 1987.

Having no credible evidence supporting the claim Mr. Portillo received this money, the auditor nevertheless proposed the full liability against Mr. Portillo. At conference with the auditor and her group manager, that position was formally upheld:

> "The 1099 is correct unless the taxpayer can prove otherwise with proper documentation" IRS Group Manager's Notes, Form 4700-A, dated April 27, 1987.

The District Reviewer felt there were several ways of *determining* whether Mr. Portillo had in fact received that income:

> "appears to be several ways to follow up to check if taxpayer could have possible received the cash. It appears it's taxpayer's word against contractors. Contractor has not proved he gave taxpayer the $35,305 on 1099. He only verified $13,926 in checks." IRS District Reviewer's Notes-Form 886-A, dated July 30, 1987.

Rather than undertake this investigation, the group manager chose to rely solely upon the legal theory that the taxpayer had the burden of proof of not receiving additional income:

> "The information would tie up loose ends, but not change the tax liability, and would take more time to develop than is possible in an OA [Office Audit]. The IRS does not have to prove to the taxpayer that 1099s filed by third parties are correct. IRS Group Manager's Notes—Form 886-A, dated October 27, 1987.

The Service then issued a notice of deficiency. On behalf of Mr. Portillo, I filed suit in the U.S. Tax Court here in Washington for a redetermination.

The Internal Revenue Service attorneys (District Counsel) refused to meet and discuss settlement, claiming "there are no hazards of litigation" which to the layman, Mr. Portillo meant the IRS felt it could not lose this case.

On brief, the I.R.S. attorney admitted:

> "Although the facts, documents, and testimony presented to the court present no direct evidence of cash payments paid by Mr. Navarro to Mr. Portillo.. .Mr.Portillo.. .clearly has not overcome such presumption." Government's Brief to U.S. Tax Court, page 20.

The Tax Court did hold for the government, claiming the taxpayer had not met his burden of proof.

On appeal before the 5th Circuit, an attorney from the Department of Justice, Tax Division, represented the Internal Revenue Service. She advised me privately and candidly that no competent tax attorney would have represented the taxpayer in this case, and that her office had voted this case the least likely to succeed in 1990.

In stark contrast, the 5th Circuit, both at oral hearing and in its opinion, was outraged. The court reversed the Tax Court and found for Mr. Portillo, ruling:

> "In this case we find the notice of deficiency lacks any 'ligaments of facts'."

And, later:

> "The deficiency determination is *clearly* arbitrary and erroneous."

These are, of course, punitive words in tax law.

In September of 1991 Mr. Portillo and I filed a motion for attorney fees with the Tax Court. The Internal Revenue Service has opposed that motion, arguing the Service was "substantially justified" in its reliance on the legal fiction that it is presumed correct.

IN SUMMARY

In 1987, the Internal Revenue Service forced Mr. Portillo, an elderly and impoverished grandfather, into litigation in the U.S. Tax Court based upon the *mere suspicion* that he may have underpaid his taxes. At trial, the Service relied *solely* upon its presumption of correctness to sustain its position. Mr. Portillo could not prove he never received the money.

Two years later, in 1991, the U.S. Court of Appeals for the 5th Circuit ruled the Service's naked reliance on the presumption of correctness, was "clearly arbitrary and erroneous."

Later in 1991, in a hearing before the Tax Court on attorney fees in this case, the I.R.S. attorney continued to argue the Service's position was substantially justified.

The Point is:

No matter how offensive the facts
No matter how strongly worded the court opinion
No matter how offended the country becomes
No matter how damaged the individual taxpayer.

We have a formidable and unyielding adversary in the Internal Revenue Service whose powers have long gone unchecked and unchallenged. This calls for strong legislation.

IN LOOKING TO THE FUTURE

In my opinion there are three things you might consider to alleviate future Portillo situations:

1. Codify *Portillo* relief provisions in T2. The poor and others the Service pursues on mere suspicion must have some measure of protection under the law.
2. Not all taxpayers are lucky enough to hire an attorney willing to aggressively pursue a matter to an appeals court. T2 will remover the obstacles for obtaining attorney fees by increasing recoverable fees to market rates, expanding the time period for which fees may be recovered, and by shifting the burden of proof to the IRS when a taxpayer substantially prevails. Nothing creates careful consideration by an auditor and government attorney as surely as the possibility he or she may be accountable for his or her work or lack thereof.
3. Redevelop Internal Revenue Service training procedures and increase its pay scales. The Service should not be seen as a training ground for apprentices. While there are some good people in the Service far too many leave after the training process. Many of those who remain often suffer from a "bunker" mentality, becoming entrenched and inflexible in their thinking. Agents need to learn the taxpayer is not an adversary or potential victim, or springboard for personal advance within the Service, but a human being with rights and responsibilities just like Mr. Portillo.

PREPARED STATEMENT OF REPRESENTATIVE BOB LIVINGSTON

Thank you Chairman Pryor and Senator Grassley for allowing me to testify early today. I would have liked to testify along side a constituent of mine, Stewart Joslin, who you will here from later. Unfortunately, I have a scheduling conflict. The House Appropriations Subcommittee on which I serve is holding hearings today at 10:00 on the Israeli request for $10 billion in Loan Guarantees. I have been working with Mr. Joslin on his tax problem since July, and I am confident he will relay his story capably, and it will both amaze and anger you.

I am here today to express my strong support for the Title VII provisions of the Taxpayer Bill of Rights II AND to relay the details of a absolutely, unbelievable tax fiasco experienced by another constituent of mine, Patricia Ehret. If Title VII of the Taxpayer Bill of Rights II were already law, Mr. Joslin and Mrs. Ehret would have escaped liability.

Title VII ameliorates the unduly harsh and unforgiving provisions presently found in Section 6672 of our tax code dealing with the non-payment of social security withholding taxes by employers. Specifically, Section 6672 imposes *personal* liability on "RESPONSIBLE PARTIES" for the unpaid taxes plus a penalty of up to 100% of the unpaid taxes. "Responsible parties" are those persons within a company who have the authority to direct the disbursement of company funds. Broadly defined, "Responsible Party" includes, and thus exposes to liability, such people as corporate officers, shareholders, directors, accountants, bookkeepers, and even more people depending on the circumstances of each case.

PRESENT LAW

—The liability under Section 6672 is absolute and imposed without benefit of an administrative review.
—There is often more than one person who meets the definition of "responsible party" and since each is joint and severally liable, *the IRS can collect from any "responsible party" regardless of individual culpability for the non-payment of taxes.*
—"Responsible parties" are not allowed to know details about the collection efforts of the IRS against other "responsible parties."
—And as Mr. Joslin will tell you, notifying the IRS of your companies non-payment of social Security withholding taxes will NOT protect you from liability if you meet the definition of a "responsible party."

—Title VII of The Taxpayer Bill of Rights II changes onerous provisions in existing law which can expose innocent parties to unreasonable liability.
—First, Title VII requires the IRS to issue a preliminary notice of liability to all "responsible parties" and give them a right to an administrative appeal.
—It will require the IRS upon written request of a "responsible party" to disclose any other liable party and provide the nature of their collection activities.
—The Bill also excuses from liability any person who notifies the IRS of their company's failure to pay taxes within 30 days of the date on which the taxes were due.
—Finally, the Bill limits those people who can be deemed a "responsible party" and allows a trip to tax court prior to assessment of a penalty.

Mr. Chairman, Patricia Ehret's story is one of a family utterly destroyed by the misguided collection efforts of the IRS.

—Patricia Ehret was a $7.50/hour employee for a small company in LA called *Monitoring Technology*.
—She had check signing privileges and sometimes ran the office when the two owners were working in the field.
—One month in 1987 her boss directed her NOT to send in the Social Security withholding for that month because business was bad and the company needed the money.
—A month later she was laid off.
—The company went defunct and one of the owners moved to California, the other stayed in LA.
—In 1989 the IRS contacted Patricia Ehret as a "responsible party" and demanded payment of the unpaid Social Security taxes with penalties.
—Her wages were garnished to the tune of $500 month.
—The IRS would not give her any details about their collection efforts against the former owners of Monitoring Technology.
—The IRS was unhappy with the $500 month they were garnishing from her wages and stepped up collection efforts by continually harassing Patricia by phone at work and home.
—An IRS agent demanded that the Ehret's take their daughter out of the private Catholic school she was attending and earning a 4.0 average so that more money would be available to pay the IRS.
—The stress of this harassment aggravated a pre-existing stomach problem (Patricia had 12 feet of her small intestine removed in 1975) and she lost 35 pounds going from 125 pounds to 90 pounds even though she was regularly seeing a gastrologist.
—The IRS agent threatened to take the family home unless the debt was promptly paid.
—She and her husband decided to refinance the family home and raised $40,000 to pay the remaining debt.
—The IRS then approached her self-employed husband who was having difficulty finding work and demanded payment of his quarterly income tax. He explained that he was not working and would pay his tax at the end of the year along with the corresponding penalty.
—The IRS agent threatened to cancel a settlement agreement made the prior day unless Frank Ehret immediately paid $1800 in quarterly taxes.
—Soon thereafter Patricia's husband Frank was committed to a mental institution. The realization that he was 49 years old, penniless, and carrying a new mortgage on his home was too much for him.
—Patricia and her husband are now separated.

Mr. Chairman, when an agency of the U.S. government inflicts this kind of pain and anguish on a innocent, albeit naive, clerical worker, something is terribly wrong with the system. Patricia Ehret followed a direct order of her boss when she failed to send in one month of her company's social security withholding tax. She is not a sophisticated accountant. She was making $7.50 an hour for Gods sake. She did not know that one day she might be held personally accountable for the unpaid tax.

—The law that allowed the IRS to devastate her life MUST be changed.
—Thank you again for allowing me to testify.

FRANK J. EHRET, JR.
5048 EHRET ROAD
MARRERO, LA. 70072

November 6, 1991

Hon. Robert Livingston, M.C. La.
U.S. Capitol
Rayburn Building
Washington, D.C. 20515

Dear Bob:

I am writing to you about the most unfair law Congress has ever passed giving I.R.S. the unlimited authority to collect I.R.S. withholdings from innocent clerical workers instead of the shrewd thieving company owners.

The same gory situation that happened to Stewart Joslin from Kenner, La. (Times-Picayune News article attached) happened to my daughter-in-law, Patricia. In 1987 she worked for a firm on Harvey Canal that did business with oil companies called "Monitoring Technology" owned by Monty Boyd and managed by Tony Guerrara. She was in charge of the personnel department making $7.50 an hour with promises of a better salary. Business began dropping off and lay-offs began. Since Pat had check signing privleges she ran the office while they were in the field.

She notified Tony Guerrara that she was sending I.R.S. the withholding money that was owed. He ordered her not to mail it because the company needed it and would pay it later. A month later she was terminated and at the end of 1987 the company folded up.

Meanwhile I.R.S. went after the owner and he claimed he did not have any money nor any real property. Boyd moved to California and Guerrara stayed in the area. I.R.S. then went after my daughter-in-law who was working for a similar company in Westwego. Later on Guerrara was also hired as manager of this company.

In latter part of 1989 I.R.S. notified her that she had to pay. My son Frank III got a lawyer and later he referred them to a tax attorney who took the case. Meanwhile in January, 1991 I.R.S. began garnishing her wages $500 a month. Making just $7.50 an hour left her very little take-home pay. She has a very sensitive digestive system since she had serious abdominal surgery in 1975 when their daughter was born and had to remove over 12 feet of her small intestines. The trauma of all of this was more than she could take especially since one of the agents of the New Orleans I.R.S. office "Judith Gomez" began with harassing Gestapo phone calls telling her I.R.S. wanted full payment. She told her she should have known better then sign these papers to sign checkss and told her she should take her daughter out of Catholic School and send her to public school in order to pay the I.R.S. My grandaughter, Paige, has a 4.1 average, is 16 years old, and a junior at Immaculata High School. My grandson, Lance is 21 years old and a U.S. Marine stationed at Camp Pendleton San Diego. This Judith Gomez, not only continued to harass Pat with phone calls at the office and in the evenings at home, but even came to their home demanding she pay the $40,000 to I.R.S. that the company owed with fines and penalties or else she would take their home. This traumatic experience made Pat seriously ill. As a result of this serious digestive problems caused Pat to go from 125 pounds to 90 pounds in a few months even though she was regularly going to a gastrologist.

In April, 1991 my daughter Mary talked with Robert Collins in Bennett Johnston's office in New Orleans. Later my daughter-in-law was assured by Johnston's office that the Director of the New Orleans office notified Judith Gomez to cease her practice of harassment.

In June, my son was notified that if the $40,000 was not paid they were going to seize their home and property. My son Frank who is 49 years old, is self-employed, is a multi-craftsman. For years he has worked in oil fields, built some of the largest rigs in the world, superintendent of a shipyard, built tugs, crew boats, etc. Now he is presently doing industrial refrigeration work and with this recession has done very little work this year. His last big job

was in Corpus Christi, Texas in a shrimp processing plant in the latter part of 1990. Their home is next to mine and in the rear has a 25' x 40' industrial building as his shop.

In July with a lot of difficulty they refinanced their home, met with the I.R.S. and gave them the $40,000 that the company "Monitoring Technology" owed them and was assured it was over.

The very next day, my son answered the doorbell and there was Miss Gestapo herself, Judith Gomez from I.R.S. She told him that she checked his personal income tax file and he failed to file his quarterly income tax for the first two quarters of 1991. He told her he had not had any contracts yet this year and had no income and would take the penalty at the end of the year. She laughed at him and told him if he did not give her $1,800 immediately she would see to it that the settlement made the day before would be cancelled and he would be fined more. He was furious and told her his savings and all of his assets already went to I.R.S. and that in all he had to borrow $60,000 to refinance the house, pay $3,000 to a lawyer, and $5,000 to the doctor for his wife's illness caused by her constant harassment, and he was penniless. When she started telling him that his wife signed papers, etc. and about his daughter being taken out of Catholic school and sent to public school he would have strangled her had not my grandson calmed him down. My grandson gave her the $1,800.

Since then my son and his wife are having problems. He realized at the age of 49 he would have just about 5 years to pay off the loan on his house. And now through no fault of their own they have a house note more than double of what they had previously. He knows that at near 50 he can not do the heavy work he does for more than 5 or 6 years much less than when he is 70 years old as it will be now.

At present he and his wife have separated after 23 years of marriage and last week my wife and I had the heart-breaking task of having to go to the coroner and having our son committed to psychiatric ward at West Jefferson Medical Center because of a nervous breakdown and attempted suicide. Now he has a long and expensive ordeal of treatment.

Bob, at 74, I have spent my whole adult life in the school system teaching children to be good Americans, spent four years in the service in World War II for my country, raised my children under the ideals of Americanism and worked hard in civic ventures and have been proud of my country and then this happens.

You read the papers today and see how these low-life scheming politicians like Fort Worthless Jim Wright and those like Keating and others who are ripping us off in the billions with the S & L scandals and they are getting a slap on the wrist. Others beat I.R.S. out of millions in income tax and Congress authorizes by law for the I.R.S. to go after hard-working contributing citizens like my son to pay for debts incurred by sleazy businessmen and ruin his life while they gloat with wealth.

No, this can't be my America. I am appealing to you for help.

You can tell Sandra Freeland, Chief of the I.R.S. appeals office she is wrong--the Joslin case is not the only one in the New Orleans office.

After charging $3,000 for legal fees the tax lawyer told my son and his wife they had to pay I.R.S. and then take them to court to try to get it back. It would cost $10,000 up front to handle this suit against I.R.S. with no guarantees.

A similar letter has been sent to Sen. Bennett Johnston.

Help

Frank

Frank J. Ehret, Jr.

June 10, 1991

20 Cocodrie Court
Kenner, LA 70065

Congressman Robert L. Livingston
111 Veterans Memorial Boulevard
Metairie, Louisiana

Dear Congressman Livingston:

I know you get letters all day telling you how the government has somehow wronged members of your constituency. I do not want this letter to be just another one of those.

My problem is with the Internal Revenue Service. I do not know your feelings about their authority but I would like to tell you what they have meant to me and my family in the last three years. And, I suppose the best thing to do is tell you the story right from the beginning.

In January, 1987, I separated from the U.S. Army as a senior captain after fourteen-plus years. The congressionally mandated reduction in officer strength sent me to the job market.

I applied for and got a job as the operations manager for a small computer company in New Orleans -- Management Innovative Systems, Inc. To say I was relieved to have a job would be an understatement. I did not look forward to being a forty-year old ex-soldier looking for work.

Initially, business was looking very good. My responsibility was to reorganize our J.T.P.A. (Joint Training Partnership Act) program, streamline operations including the service department, assist the owner and CEO in many projects and the company president, who was responsible for purchasing, vendor relations and payroll gave me a list of vendors he wanted me to deal with.

To do this he had me added to the signature cards for the company accounts. I thought nothing of it. The CEO (real power in the company, the "true" owner) was not authorized to sign checks.

We all worked very hard, and as I became more and more accepted, my responsibility and trustworthiness grew with the other members of the company. I was one of three people who signed checks, including payroll checks. The other two were the company president and vice president. I only signed payroll checks if the other two were not available.

It was not until late in the fall of 1987 that I started signing the payroll checks on a routine basis -- at this point, I am sure you can see where this is going.

It was also at this same time the bookkeeper told me the withholding taxes were way behind. As you might expect, I was very concerned and addressed this with the CEO and he told me we were about to get a big contract that would cover all those problems. He and I had become fast friends and I had no hesitation in believing him. That was October, 1987.

By December nothing had happened. He still told me the deals were about to happen. Again, I did nothing but try to get him to release me to pay those taxes that continued to mount.

At the end of January, 1988, I convinced the CEO that things were not going well in the company and we needed to call a meeting of all the supervisory personnel. We had (what in the Army we called) an organizational effectiveness meeting. It was in that forum I surfaced the tax problem. All the people at the meeting were upset, visibly. They all understood the need to pay the taxes.

With the tax situation in the open, we prevailed upon the CEO to allocate funds for the taxes. He said that by May the entire amount would be available. I asked if I could start paying the current taxes. Instead of allowing me to do that we developed plans to prevent the burden from becoming any larger.

May came and went.

Finally, I got so concerned that I asked our CPA to contact the I.R.S. I felt, and still do, that something had to be done. He requested an interview with the I.R.S. I told the CEO what I had done. He understood that there was a problem we needed help in solving before the I.R.S. closed the doors.

An investigator with the I.R.S., met with me in our CPA's office one afternoon and proceeded to threaten me with responsibility for the failure to pay the delinquent taxes. The CPA had to caution her about threatening me.

She asked to talk with all the parties so I arranged for a meeting -- mid-summer 1988 -- with the principals of Management Innovative Systems. The CEO, president, vice president and me. Although I was not a principal I was an interested party.

Although the president and vice president were aware of the problem and were owners of the business with the CEO, he asked me to let him take the full responsibility upon himself and not mention their activities in the business. He said he would own up to the responsibility for them and me to the I.R.S. investigator. I agreed. This was my best friend.

At this meeting, the CEO told the investigator that he had day-to-day control over the operation of the business and I paid vendors as he directed. Therefore, he alone should bear the responsibility for the delinquency. He said he was the only one. That neither the president, vice president nor "Mr. Joslin" were responsible.

Finally, the CEO said, "I guess you can see who really is the guy you're after. It's me. I'm the guy responsible for the tax delinquency. It's not those fellows and it's not Mr. Joslin. He sent checks where I told him to."

Right there in my presence, he told the investigator he was the only person who held the cards. He laid out a time schedule for pay off. It included sale of the company.

She accepted the fact that the president and vice president were not responsible but for some reason I was still on the hook; eventhough, from that point on all communication with the I.R.S. was between the CEO and the investigator. I was only contacted when the CEO was not available to take a call, then I would get the message.

At this time the CEO did arrange for some substantial funds to be paid to the I.R.S. He paid them directly to the I.R.S. investigator. In her presence he directed me to make the checks. At which time, I did and he handed them over to her.

We were in serious negotiation with another company for the sale of Management Innovative Systems. The investigator verified that. Part of that negotiation was that the new organization agreed to pay the tax debt directly. In the meantime, The CEO got the funds to make a payment to the I.R.S. -- $30,000 -- in November, 1988.

He instructed me to make payment. I contacted the agent and she told me to send the check to the Dallas. I did so identifying the payment for "taxes in arrears". The funds were misapplied to other than "Trust Fund" taxes. Although Trust Fund taxes are a priority to the I.R.S., no amount of arguing has motivated the I.R.S. to apply the funds where they were intended.

We were now into December of 1988. The CEO told the I.R.S. proceeds from a computer installation for a large bank here in Louisiana, in March 1989, were earmarked for the balance of the tax delinquency. She accepted the terms and continued to wait.

By, February 1989, the bank installation completion date was pushed from March to June and then to December, Management Innovative Systems went out of business, the contract for completion was transferred to another company and at the direction of the CEO, "for my protection", I resigned from all association with Management Innovative Systems.

At that time, I was the operations manager, the registered agent and treasurer, an advisory position. I was not elected treasurer by any board meeting. It was only to identify me as the financial advisor. When I contacted the Secretary of State to remove myself as registered agent, I discovered somebody had me named as the Corporate Secretary. I had no knowledge of that and immediately resigned that also.

Because the completion dates for this computer installation were extended unilaterally by the bank, a large interim payment was made by the bank to the owners of Management Innovative Systems. The CEO assured me this was to go to the I.R.S. and would pay the balance.

With great relief, The CEO and I went to work with another company. (Our new employer was the company that assumed responsibility for completion of the bank contract. The profit was still to be paid to Management Innovative System's tax debt.)

In June of 1989, the CEO showed me a cashier's check for $10,000 made payable to the I.R.S. He told me he was on his way to make the payment. Later I found out he went back to the bank and re-made the check to pay debts for another one of his companies.

When I confronted him with this, the CEO said he had to forestall closing of his other business. The I.R.S. would wait a little longer.

I got a lawyer. The CEO still assured me he would sign any statement necessary to convince the I.R.S. I was not a responsible party to the tax debt.

It was August 1989.

In November 1989, the CEO was fired from his job. I was not. In fact, I was temporarily placed in the position he held until a replacement could be found. He blamed me for his being fired.

You can guess now why I am at my wits end. There is no statement from him. Nor, are there any statements from the others involved. The CEO and vice president are brothers. The CEO and president have been friends for 25 years. They rode motor cycles together in New Orleans as teenagers; and the president and the bookkeeper are cousins.

All these people are related except me.

What are my chances, sir?

I have tried to get these taxes paid since the fall of 1987. I opened the whole mess up to the whole company in February 1988. I contacted the I.R.S. in June 1989 and had the investigator at a meeting with all principals in August 1989. My persistance got the I.R.S. some of the money.

I did what I thought a reasonable man would do.

My lawyer won me an appeal with an appeals agent in the I.R.S. I presented him with all this information. He said he would look into the matter and impartially evaluate the case and tell me what the outcome would be. We met with the agent and submitted our appeal in June 1990.

In May 1991 -- almost a full year later , he called my lawyer and told him that we had ten days to submit other matters that might help the case but it looked like I was going to be held for the whole mess (they are even holding me for taxes owed while I was still in the Army -- a year before I even knew I was getting out).

My attorney asked if the agent had spoken with the first investigator to see about the CEO's admission to sole responsibility. The agent said he had not had time but expected that admission was simply boastfulness anyway. Truly impartial.

This agent has taken a full year to do absolutely nothing. The interview with the CEO shows he is fully responsible. The agent asked me to prove I was still in the Army during the period of 1986 and I provided military documentation. "Very interesting", he said.

I provided a statement from the only person knowing what was going on who was not a member of sombody's family. He was the company's banker, President of First City Bank in New Orleans, Fred Morgan. He is about as impartial as a person can be. Mr. Morgan said I was an advisor to the CEO. That all financial matters were handled by the CEO. He said my purpose was to provide information when requested.

Everything that agent has asked me to provide in the way of supporting documentation, I have. He has asked for a statement from the CEO, but I do not think he would take it seriously, now, even if it were forthcoming -- "boastful", he said. Besides, the statement is available in the original interview of the CEO.

If I press the CEO or other members of the original gang, I do not know what they might do to worsen my situation. If I request the company records which will provide supporting documentation, they might get lost or destroyed. If the others even suspect that I might take this thing as far as District Court, I have a strong misgiving the records would disappear.

To add salt to the wound, the CEO's investigation is "on hold" for some reason and the other two people are not even considered. Can you imagine that? The CEO's remarks in that first interview allowed them to walk but that same statement was not applicable to me other than as a boastful comment.

One of the interesting things I have found out is that this CEO had exactly the same tax problem in Boston before he came to New Orleans. Congressman Livingston, not only had this guy been responsible for a significant withholding tax debacle once before, but this company was doing it again even before I got there in January 1987.

If I am found responsible, I might make numerous contributions reducing the obligation even before anyone else is considered. They all might even escape altogether.

I have a close friend (from the Army Reserves) who works for the I.R.S. He told me last week that normally all investigations for responsible parties are conducted together so that no one individual, especially one who is not really responsible, bears the brunt of the obligation. That is not the case here.

He also told me that eventhough I was probably not responsible, the I.R.S. would hold me that way until they got someone else on the hook. Of course they are not looking at anyone else. He said, "Right now you're the only game in town."

I need your help, sir. I served more than fourteen years in the Army. I am currently a major in the Army Reserves here in New Orleans. I participated in the planning for Desert Shield and Desert Storm and was with Fifth Army in February planning the re-deployment of our reserves to the U.S. and I have never been subjected to anything like this.

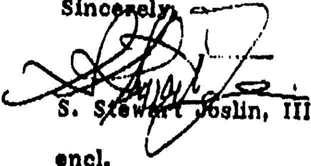
No matter what my lawyer and I do, we have no effect on the situation. The side comments of our agent indicate we will not have any effect short of going to court. Sir, this is not right. I cannot afford the legal expenses I already have.

My fees have already reached more than $5,000. We have answered every question and provided all documentation requested. Everything we have provided supports my position. There is other supporting material in the company records but I have told you about that.

I am not responsible for this debt. I get mad at myself every time I think how I trusted that CEO, how he used me and mis-led me. The way things are going, it almost looks like he planned it.

Please help my family and me in this matter.

Sincerely,



S. Stewart Joslin, III

encl.

The time line looks like this:

January 1987	Started work
October 1987	Started routinely signing payroll checks Confronted CEO with tax problem
December 1987	Got promise of contract sales funds for taxes
January 1988	Convinced CEO to hold O.E. meeting to solve problems
February 1988	Held EO meeting Revealed tax problem to all supervisors Got promise of funds for payment in May
May 1988	No funds
June 1988	Told CPA to contact I.R.S.
July 1988	Solo interview with I.R.S.
August 1988	Initial interview with company Principals Insistence of I.R.S. resulted in some payments Continued communication between I.R.S. and CEO resulted in promises to pay.
November 1988	$30,000 payment to I.R.S. although mis-applied
December 1988	CEO promised payment by March
March/April 1989	Negotiated sale of company
June 1989	Company closed ~~Check to I.R.S. re-made to some other~~ company's vendors

Everything that has happened to positively effect the tax situation with the I.R.S. was initiated by me. The current agent even acknowledges that. I do not know what else to do but ask for your intercession.

Prepared Statement of John Lovelady

Mr. Chairman and Members of the Subcommittee: We are pleased to be here today to discuss IRS' implementation of the Taxpayer Bill of Rights.[1] Congress passed the Taxpayer Bill of Rights as part of the Technical and Miscellaneous Revenue Act of 1988.

We are issuing today a report1 done at your request that assesses IRS' implementation of the Bill of Rights. In the report we conclude that IRS' implementation was generally successful and that taxpayers have benefited from the act. The most visible example is the Taxpayer Assistance Order Program through which IRS helped about 32,500 taxpayers in fiscal years 1990 and 1991.

My testimony today focuses on opportunities identified in the course of our review that could improve IRS' administration of the act.

IRS NEEDS TO ENSURE THAT EMPLOYEES ARE ABLE TO IDENTIFY HARDSHIP CASES

Section 6230 of the act authorizes IRS' Taxpayer Ombudsman to issue Taxpayer Assistance Orders to rescind or change an IRS action if IRS' administration of the tax laws causes significant taxpayer hardships. IRS decided to broaden its efforts to assist taxpayers by (1) expanding the hardship definition to include all hardships that it could resolve, (2) helping as many applicants as it reasonably could, even if they did not meet the hardship criteria, and (3) making IRS employees responsible for recognizing hardship situations and helping taxpayers apply for assistance.

During fiscal years 1990 and 1991, IRS reported that it closed about 46,000 hardship applications and provided some form of assistance under the Taxpayer Assistance Order program to 32,500, or about 70 percent, of the applicants. For the remaining 14,000, or 30 percent, IRS determined that taxpayers either did not qualify for assistance, or IRS was unable to provide it. Also during fiscal years 1990 and 1991, IRS reported that its employees initiated 27 and 22 percent, respectively, of the hardship applications. Taxpayers or their representatives initiated the rest.

In a 1989 test, IRS' Internal Audit found that IRS employees who assist taxpayers over toll-free telephone lines failed to recognize about 79 percent of the test calls that met IRS' hardship criteria. In its May 1990 report, Internal Audit recommended that (1) IRS expand its test call program to include procedures that isolate call site weaknesses and provide immediate feedback to correct problem areas and (2) consider establishing a similar test call program at its Automated Collection System sites, which contact taxpayers about outstanding tax liabilities. IRS revised training materials to improve employees' performance but, as of September 1991, had not developed a reliable test to determine whether performance had improved. IRS agreed with our recommendation to develop a reliable test and, if necessary, take additional corrective action to help employees recognize hardship situations.

IRS IS REQUESTING LEGISLATIVE AUTHORITY TO WITHDRAW NOTICE OF LIENS

During the course of our work, IRS officials said that they were sometimes prevented from helping taxpayers with hardships even though it would be in the best interests of the government and the taxpayer. They referred specifically to instances where they believed the internal Revenue Code prevented them from withdrawing notice of a tax lien until the taxpayer's obligations have been satisfied. Often, said these officials, the public filing of a notice of lien adversely affects a taxpayer's ability to borrow funds or enter into other financial relationships with suppliers and other creditors because credit bureaus routinely search lien records. As such, it may impose an unintended and counterproductive result that causes a hardship for the taxpayer and/or undermines a taxpayer's ability to pay taxes.

In October 1991, IRS decided that current law permits notice withdrawals in certain instances—when lien notices were not filed according to IRS guidelines or did not follow good business practice. Newly-issued procedures, IRS officials said, should help alleviate the problem discussed above, but they believe that clarifying legislation is still needed to assure creditors that IRS' lien no longer has priority in financial dealings with the taxpayer. Consequently, Congress may wish to consider amending the tax code to clarify IRS' authority to withdraw notices of liens when it is in the best interests of the government and taxpayers.

IRS SHOULD DO MORE TO ENSURE THAT TAXPAYERS READ PUBLICATION 1

Section 6227 of the act requires IRS to provide any taxpayer it contacts about a collection or determination of tax liability with a clear statement of their rights. To

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[1] *TAX ADMINISTRATION: IRS' Implementation of the 1988 Taxpayer Bill of Rights,* GAO/GGD-92-23; December 10, 1991.

provide a statement of rights, IRS sends taxpayers Publication 1, *Your Rights as a Taxpayer.* To schedule audit interviews, IRS examiners send taxpayers a notification letter with Publication 1 enclosed and when necessary, confirm the interview arrangements by telephone. At the interview or before, IRS examiners are required to (1) confirm the taxpayer's receipt of Publication 1, (2) briefly explain the audit process and appeal rights, and (3) ask if the taxpayer has any questions.

In our interviews of 25 revenue agents from 2 regions, we learned that most of them found out if taxpayers received Publication 1 and explained taxpayer rights at the beginning of the audit interview. However, none of them explained taxpayer rights during the initial telephone contact. It is important that taxpayers understand the rights spelled out in Publication 1 before they attend the interview, because, for example, these rights offer taxpayers some flexibility in setting the time and place of the interview, and in sending a representative to the interview in lieu of attending themselves. Therefore, we recommended, and IRS agreed, to emphasize the importance of reading Publication 1 when contacting taxpayers by telephone or correspondence before an audit interview.

IRS NEEDS TO STANDARDIZE NOTIFICATION OF DEFAULTED INSTALLMENT AGREEMENTS

Section 6234 of the act establishes criteria under which IRS may cancel, or default, an installment agreement for paying taxes. We looked at the procedures IRS follows in defaulting installment agreements and whether the procedures result in unfair taxpayer treatment. We learned that IRS procedures for notifying taxpayers about defaulted agreements depend on whether the agreement is monitored by an IRS service center or a district office. Service centers, which monitor most agreements by computer, notify taxpayers by letter about 5 weeks before defaulting an agreement. District offices, which monitor agreements with a balance due of more than $1 million or those that cannot be monitored by computer, do not have formal procedures for notifying taxpayers and, according to district office officials, normally notify taxpayers by telephone if an agreement is in danger of default. District office officials acknowledged that some taxpayers might not be notified about a defaulted agreement and the amount of advance notice might vary for those who are notified. The different procedures followed by service centers and district offices raise the issue of inconsistent treatment of taxpayers. To avoid this possibility, we recommended and IRS agreed to develop standard procedures for notifying taxpayers that their installment agreements are about to be canceled.

CONGRESS MAY WISH TO CLARIFY HOW MUCH TIME TAXPAYERS HAVE TO CORRECT LEVIED ACCOUNTS

The act requires banks and financial institutions to hold levied funds for 21 days before forwarding the funds to IRS. Congress created the holding period to allow taxpayers an opportunity to notify the IRS of errors with respect to levied accounts. The provision was inserted following a number of publicized incidents involving banks forwarding funds belonging to children of taxpayers owing taxes—the so-called "kiddie levy."

Following passage of the act, we found that erroneous levies numbered about 12,400 in fiscal year 1986 or less than 3 percent of all levies that year. But we also found that taxpayers do not have the full 21 days to correct an erroneous levy. This occurs because IRS sends taxpayers a notice concerning a bank levy about a week after mailing the notice to the bank, leaving taxpayers with about 14 days to correct errors. The purpose of this procedure, according to IRS officials, is to reduce the possibility that taxpayers can withdraw funds before the bank has the opportunity to freeze the taxpayers' account. IRS officials said the statutory requirement is only intended to ensure that banks hold funds for 21 days after they receive a levy notification and does not require IRS to allow 21 days for taxpayers to resolve any questions about the levy.

Congress' intent for the amount of time to be allotted taxpayers is not explicitly laid out in the act or the committee reports. We do not know if 14 days is enough time for taxpayers to straighten out any errors regarding their accounts, and we understand IRS' reasons for wanting to send a notice levy to the bank before sending it to the taxpayer. However, if Congress' intent was for taxpayers to have a full 21 days, it may wish to clarify the current provision.

CONCLUSIONS

It is obviously important that all citizens pay their fair share of taxes. It is equally important for IRS to treat taxpayers fairly. We are generally satisfied with IRS' implementation of the Taxpayer Bill of Rights. We believe that most IRS employees work diligently to treat taxpayers fairly and equitably. But it is likely in an organi-

zation of 120,000 employees at over 700 locations tasked with administering a complex set of tax laws that some taxpayers will not be accorded the treatment to which they are entitled. For this reason, IRS will need to continually emphasize the act's requirements and measure performance in meeting its intent. We also support your efforts and the efforts of others to further enhance the protection of taxpayer rights. In this light, we will be glad to assist you as you consider additional taxpayer rights legislation.

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-246746

December 10, 1991

The Honorable David Pryor
Chairman, Subcommittee on Private
Retirement Plans and Oversight
of the Internal Revenue Service
Committee on Finance
United States Senate

Dear Mr. Chairman:

As you requested, we assessed the Internal Revenue Service's (IRS) implementation of the 1988 Taxpayer Bill of Rights.[1] As agreed, we focused on 7 of the act's 21 provisions. Our report addresses IRS' implementation of these seven provisions and discusses opportunities to further enhance IRS' administration of the act.

BACKGROUND

The 1988 Taxpayer Bill of Rights caused IRS to make positive changes in the way it relates to taxpayers. The act reaffirms that taxpayers are IRS' customers and establishes a set of rules and procedures to resolve problems that result from IRS' interpretation and administration of the tax laws. Additionally, the act restates fundamental principles that should underlie any tax system such as fairness, consistent application of the laws and regulations, and the right of taxpayers to receive clear explanations of their tax situation.

To implement the Taxpayer Bill of Rights, IRS prepared and followed a plan that addressed all the act's provisions. The plan laid out specific actions and milestones, identified those responsible for carrying out the actions, and included a program to monitor progress toward completing the actions.

We focused on seven provisions in the act that (1) give IRS' Taxpayer Ombudsman authority to issue Taxpayer Assistance Orders if a taxpayer is suffering or about to suffer a significant hardship because of IRS' administration of the tax laws, (2) require IRS to prepare a statement explaining taxpayer rights and IRS obligations, (3) set out rules for conducting taxpayer audit interviews, (4) authorize IRS to enter into installment payment agreements with taxpayers and set criteria for terminating an agreement, (5) prohibit the use of tax enforcement results to evaluate Collection employees or impose production quotas or goals, (6) require banks and financial institutions to hold accounts garnished by IRS for 21 days after receiving the notice of levy, and (7) allow taxpayers to recover costs and fees incurred in administrative and court proceedings.

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[1]The Omnibus Taxpayer Bill of Rights was contained in Subtitle J of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647).

RESULTS IN BRIEF

IRS has implemented all 21 provisions of the 1988 Taxpayer Bill of Rights, including the provisions on which we focused. We believe that IRS' implementation of the seven provisions has been generally successful. For example, IRS statistics show that it aided about 32,500 taxpayers in fiscal years 1990 and 1991 through the Taxpayer Assistance Order Program. IRS has also put procedures in place to inform taxpayers of their rights and guard against the use of enforcement results to evaluate employees or impose production quotas.

Despite IRS' general success, we believe there are some shortcomings in IRS' implementation of the Taxpayer Bill of Rights.

-- Some taxpayers with hardships may be unaware that assistance is available under the Taxpayer Assistance Order Program, although IRS appears to be doing an effective job of helping taxpayers who do apply for assistance.

-- IRS sends taxpayers copies of a taxpayer's rights guide known as Publication 1. However, IRS does not emphasize to taxpayers the importance of reading this publication when contacting them before conducting an audit interview.

-- IRS reported in March 1991 that denials of taxpayer requests to pay taxes in installments may reduce tax collections. We also learned that IRS employs inconsistent methods of notifying taxpayers when it cancels installment agreements, depending on whether the agreements are monitored by one of IRS' 10 service centers or one of its 63 district offices.

Additionally, we believe the Internal Revenue Code may need to be clarified to facilitate IRS' implementation of the act.

-- In October 1991, IRS changed its procedures to allow the withdrawal of tax lien notices that were not filed according to IRS guidelines or did not follow good business practices. While IRS stated that the change will benefit taxpayers, it also believed that clarifying legislation is needed to assure creditors that IRS' liens no longer have priority in financial dealings with taxpayers.

-- Section 6332(c) of the Code provides for a 21-day holding period on levied bank deposits so that taxpayers have time to resolve levy errors. IRS interprets the holding period as applying to the amount of time that banks hold levied funds. Therefore, it does not immediately notify taxpayers about a levy. As a result, taxpayers generally have about 14 days to resolve errors. Neither the legislative history nor the act specifically addresses the time to be allotted to taxpayers.

OBJECTIVES, SCOPE, AND METHODOLOGY

As agreed with the Subcommittee, we focused on 7 of the Taxpayer Bill of Rights' 21 provisions. Our objectives in examining these provisions were to assess IRS' implementation of the seven provisions and to identify opportunities for improvement. Appendix I summarizes the act's 21 provisions.

We did our work at IRS' National Office in Washington, D.C., and the regional, district, and service center offices in Atlanta, Georgia, and Cincinnati, Ohio. We selected these sites to provide some perspective on IRS' implementation of the act at the field level. To obtain this perspective, we took several samples to pinpoint issues to discuss with IRS National Office managers.

These samples are not projectable to IRS as a whole. Our methodology in reviewing the seven provisions is detailed in appendix II.

We did our work between July 1990 and September 1991 in accordance with generally accepted government auditing standards.

IRS HAS RELIEVED HARDSHIPS UNDER THE TAXPAYER ASSISTANCE ORDER PROGRAM

One of the more important provisions of the Taxpayer Bill of Rights is the Taxpayer Assistance Order Program. The act authorizes an Ombudsman to issue Taxpayer Assistance Orders to rescind or change an IRS action if IRS' administration of the tax laws causes or is about to cause a significant hardship for a taxpayer. Taxpayers can apply directly to IRS for assistance orders, or IRS staff can apply on behalf of taxpayers. Acting on behalf of the Ombudsman, Problem Resolution Officers and their staffs in IRS district offices and service centers process the applications and work with other IRS functions to provide assistance. Examples of hardships include situations in which taxpayers need their refunds faster to avert an impending crisis or when the monthly payment on an installment agreement is too high for the taxpayer to afford food or medical care.

In implementing the Taxpayer Assistance Order Program, IRS undertook three actions that were not specifically required by the Taxpayer Bill of Rights but that we believe were positive steps in keeping with the spirit of the act.

-- IRS expanded the definition of "hardship" to relieve not only hardships caused by IRS' administration of the tax laws but all hardships that could be reasonably mitigated by IRS. For example, under the expanded definition, IRS might expedite a tax refund to allow a taxpayer to meet an impending crisis, even though the refund would have otherwise been issued within IRS' normal processing time.

-- IRS decided to provide assistance, when reasonable, to hardship applicants who did not meet IRS' hardship criteria but who could still be helped, either through IRS' Problem Resolution Program or by another IRS function.

-- IRS instructed its employees to initiate hardship applications on behalf of taxpayers when employees encountered situations that might warrant assistance.

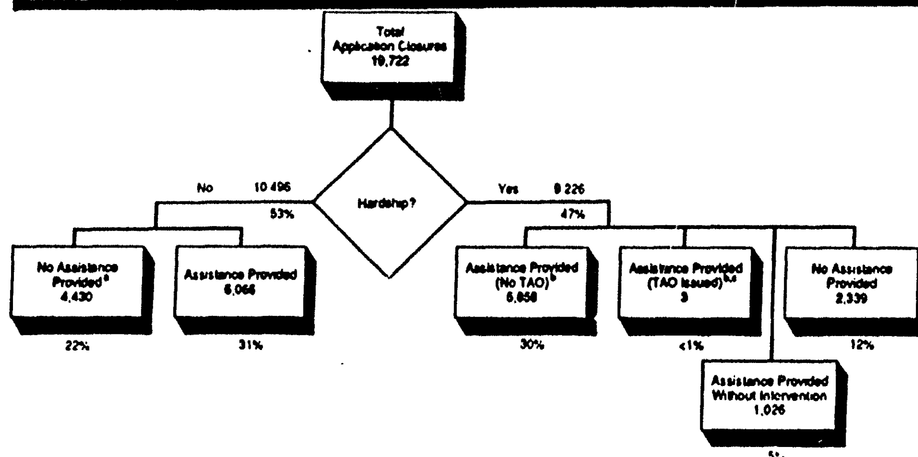
During fiscal year 1990, IRS reported that it closed 19,722 hardship applications from taxpayers, including those prepared by IRS employees on behalf of taxpayers, and provided some form of assistance to 12,953--or 66 percent--of the applicants. For the remaining 6,769, or 34 percent, IRS determined that taxpayers either did not qualify for assistance or qualified for assistance but IRS was unable to provide assistance because of other reasons, such as legal constraints. During fiscal year 1991, IRS reported that it closed 26,687 hardship applications and provided some form of assistance to about 19,523 people, or 73 percent of the applicants.

Figure 1 illustrates the two-step decisionmaking process IRS follows when it processes hardship applications. IRS first decides whether the taxpayer's case meets the hardship criteria. During fiscal year 1990, IRS determined that 9;226, or 47 percent, of the hardship applications met these criteria. Second, IRS decides whether it can provide some form of assistance, regardless of whether the taxpayer meets the hardship

criteria. The sum of taxpayers with or without hardships to whom IRS provided assistance is the basis for IRS' claim that it assisted 66 percent of the hardship applicants in fiscal year 1990. Figure 2 shows IRS' disposition of hardship applications during fiscal year 1991.

Figure 1:

GAO Disposition of Applications for Taxpayer Assistance Orders, FY '90



[a]These figures include 2,049 applications proposed by IRS employees on behalf of taxpayers that were later determined to not meet IRS' hardship criteria or warrant assistance. IRS does not include these figures when it reports hardship dispositions.

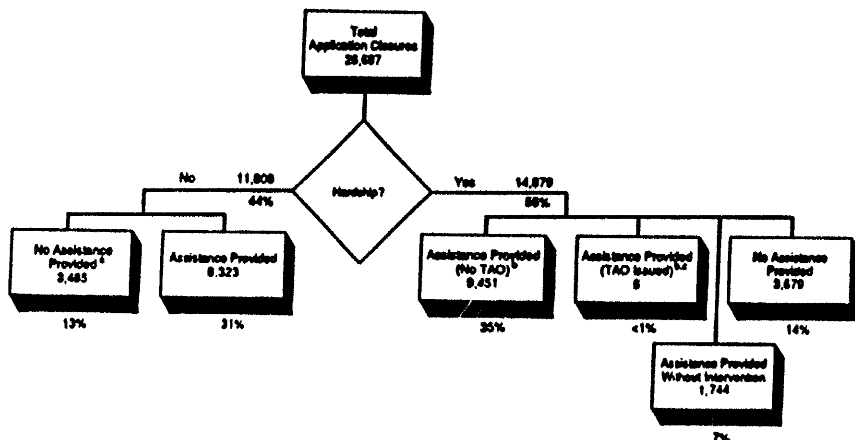
[b]TAO denotes Taxpayer Assistance Order.

[c]After review by IRS Directors, two Taxpayer Assistance Orders were rescinded with no assistance provided to the taxpayers.

Source: IRS Problem Resolution Office Management Information System (PROMIS) Report 7, fiscal year 1990.

Figure 2:

GAO Disposition of Applications for Taxpayer Assistance Orders, FY '91



[a]These figures include 2,075 applications proposed by IRS employees on behalf of taxpayers that were later determined to not meet IRS' hardship criteria or warrant assistance. IRS does not include these figures when it reports hardship dispositions.

[b]TAO denotes Taxpayer Assistance Order.

[c]After review by IRS Directors, three Taxpayer Assistance Orders were rescinded with no assistance provided to the taxpayers.

Source: IRS PROMIS Report 7, fiscal year 1991.

Figures 1 and 2 also show that IRS has provided virtually all of its assistance without the use of formal assistance orders. Out of 24,105 applications that met IRS' hardship criteria, the Ombudsman's representatives issued 8 orders, 5 of which were rescinded by IRS Directors. The procedures IRS follows for resolving hardships require the Ombudsman's representative to request that officials in the appropriate function review the application and related case information, and reconsider IRS' course of action. According to the Ombudsman, the low number of assistance orders indicated that representatives were able to work out solutions with the functions before a stalemate occurred and an order needed to be issued.

To determine whether taxpayers in fact received assistance in the absence of a formal Taxpayer Assistance Order, we reviewed 146 randomly selected applications processed in fiscal year 1990 from 4 IRS offices in which IRS said it had provided some form of assistance. Included in the applications were 51 that IRS judged to be hardship situations and 95 that IRS judged were not hardships. We tracked IRS' processing of the applications through the taxpayers' accounts and determined that IRS assisted the taxpayers, as claimed, on all of the applications.

In analyzing our sample, we identified the type of assistance taxpayers sought and the amount of time IRS took to provide assistance. The five most frequently requested types of assistance were (1) expediting a refund or locating a lost refund (27 percent of the applications), (2) granting an installment agreement or delaying an installment agreement payment (14 percent), (3) releasing a levy (14 percent), (4) canceling a tax liability or abating a penalty or interest (12 percent), and (5) deferring a tax payment (9 percent). The average time IRS took to assist taxpayers was about 10 days, ranging from the same day of the request to 82 days.

Using IRS statistics, we also looked at whether IRS' seven regional offices were consistently administering the Taxpayer Assistance Order Program. We measured consistency by comparing among the regions (1) the percent of hardship applications in which IRS provided assistance and (2) the percent of hardship cases that were closed within 7 days of receipt--the latter being a measure that IRS monitors. We chose these measures because we reasoned that they would be primary taxpayer concerns.

On the basis of these two indicators, the regions were generally consistent. During fiscal year 1990, the percent of applications in which the regions provided assistance in hardship cases ranged from a high of 70 percent in IRS' Mid-Atlantic and Southeast Regions to a low of 58 percent in the Central Region. We believe the Central Region's results would have been higher if not for an initial misunderstanding of the reporting system.

The regions were also relatively consistent in the percent of hardship case applications they closed within 7 days. On the low end, the Southeast Region closed 57 percent of its applications within 7 days, while on the high end the Western Region closed 69 percent of its applications within 7 days.

<u>IRS NEEDS TO ENSURE THAT EMPLOYEES ARE ABLE TO IDENTIFY HARDSHIP CASES</u>

According to IRS procedures, its employees are responsible for recognizing hardship situations and helping taxpayers apply for Taxpayer Assistance Orders. During fiscal year 1990, IRS reported that its employees initiated 5,471, or 27 percent, of the total requests for hardship relief, while taxpayers or their representatives initiated the remaining 14,455, or 73 percent.

During fiscal year 1991, IRS reported that its employees initiated 5,571, or 22 percent, of 25,374 requests.

The responsibility to help taxpayers identify hardships falls primarily on those IRS employees that deal directly with the public, such as the Taxpayer Services employees who handle account inquiries and answer taxpayer questions at 32 telephone call sites across the country. During fiscal year 1990, IRS answered 33.9 million taxpayer calls through this telephone program.

In a test conducted between August 7 and September 29, 1989, IRS' Internal Audit determined that telephone assistors failed to recognize about 79 percent of the test calls that met IRS' hardship criteria. In its May 1990 report, Internal Audit recommended that IRS expand its test call program to include procedures that isolate call site weaknesses and provide immediate feedback to correct problem areas. It also recommended that IRS consider establishing a similar test call program at its Automated Collection System sites, a system of 23 call sites that are responsible for contacting taxpayers about outstanding tax liabilities. IRS managers in the Taxpayer Services and Collection functions agreed with the Internal Audit recommendations.

However, as of September 1991, IRS had not yet implemented the Internal Audit recommendations. Taxpayer Services officials told us that they had revised training materials for employees at the 32 call sites but that subsequent attempts by the Taxpayer Ombudsman's office and several regional offices to test whether employee performance had improved were inconclusive because of problems with the testing methodology. An official in the Ombudsman's office said that Collection officials also had not been able to successfully implement a testing program for the Automated Collection sites.

IRS IS REQUESTING LEGISLATIVE AUTHORITY TO RELEASE NOTICES OF LIENS

During the course of our work, IRS officials in the Taxpayer Ombudsman's office and the Central Region said that they are sometimes prevented from helping taxpayers with hardships even though such aid would be in the best interests of the government and the taxpayer. They referred specifically to instances in which the Internal Revenue Code prevents Collection and Problem Resolution Officers from withdrawing notice of a tax lien until the taxpayer's tax obligations have been satisfied. IRS officials said that this restriction prevents them from providing relief to taxpayers who might otherwise have qualified for hardship relief under the Taxpayer Assistance Order Program. The Commissioner of Internal Revenue requested authority to withdraw notices of tax liens in September 25, 1991, testimony before the House Subcommittee on Oversight of the Committee on Ways and Means.

A general tax lien arises when a tax assessment has been made and the taxpayer has been given notice and has failed to pay. A notice of tax lien provides public notice that a taxpayer owes the government money. Once a lien arises, however, it cannot be removed until a taxpayer's full debt is settled or the statute of limitations on collections has expired. Often, the public filing of a notice of tax lien adversely affects a taxpayer's ability to borrow funds or enter into other financial relationships with suppliers and other creditors, because credit bureaus routinely search lien records. As such, the notice of tax lien may impose an unintended and counterproductive hardship for the taxpayer and/or undermine the taxpayer's ability to pay taxes.

After reviewing actual cases, IRS' Collection and Problem Resolution functions suggested that it might be appropriate for IRS to withdraw a notice of lien in certain circumstances. For example, a notice of lien might have been recorded as a result of an administrative error during the processing of an installment agreement, although both IRS and the taxpayer had agreed that no notice would be filed. The potential creditors who check whether a tax lien is on file might not deal with the taxpayer if a notice of lien has been filed. Consequently, the taxpayer might be deprived of an opportunity to obtain funds to pay the tax. The withdrawal of the notice of lien would not affect the validity of a taxpayer's underlying tax liability.

In October 1991, IRS decided that current law permits notice withdrawals in certain instances--when lien notices were not filed according to IRS guidelines or did not follow good business practice. Newly issued procedures, IRS officials said, should help alleviate the problem discussed above, but they believe that clarifying legislation is still needed to assure creditors that IRS' liens no longer have priority in financial dealings with taxpayers.

IRS SHOULD DO MORE TO ENSURE THAT TAXPAYERS READ PUBLICATION 1

Section 6227 of the act requires IRS to provide any taxpayers it contacts about a collection or determination of tax liability with a clear statement of their rights. To provide a statement of rights, IRS sends taxpayers Publication 1, Your Rights as a Taxpayer. To schedule audit interviews, IRS examiners send taxpayers a notification letter with Publication 1 enclosed and, when necessary, confirm the interview arrangements by telephone. At the interview or before, IRS examiners are required to (1) confirm the taxpayer's receipt of Publication 1, (2) briefly explain the audit process and appeal rights, and (3) ask if the taxpayer has any questions.

We spoke with 25 revenue agents from 2 IRS regions to determine how they inform taxpayers of their rights and ensure that taxpayers are aware of these rights. All but one of the agents said they check to see whether taxpayers have received Publication 1. In addition, all but one of the agents told us they explain taxpayers' rights to them at the beginning of the audit interview. The one revenue agent who said she does not initiate this explanation told us she responds when taxpayers have questions about their rights. The fact that 24 of 25 agents were providing explanations of taxpayer rights at the beginning of audit interviews is a positive sign. However, IRS does not emphasize to taxpayers the importance of understanding their rights before the interview.

It is important that taxpayers understand the rights spelled out in Publication 1 before they attend the interview. For example, these rights offer taxpayers some flexibility in setting the time and place of the interview and in sending a representative to the interview instead of attending themselves. An opportunity to help taxpayers understand their rights before an interview occurs when IRS sends taxpayers a letter to arrange the interview and when agents telephone taxpayers to confirm the interview arrangement.

Currently, the letter IRS mails to taxpayers lists Publication 1 as an enclosure but does not emphasize the importance of reading it. Moreover, the 25 agents we spoke with said that they did not explain taxpayers' rights during the initial phone contact unless taxpayers asked them questions. We believe the letters (and other IRS notices and correspondence that include the

publication) and phone contacts provide IRS with an opportunity to enhance taxpayers' understanding of their rights by emphasizing the importance of reading Publication 1. IRS Examination officials said they could easily do so.

IRS PLANS TO ENSURE THAT NOTICES SETTING THE TIME AND PLACE OF EXAMINATION COMPLY WITH THE TAXPAYER BILL OF RIGHTS

The Taxpayer Bill of Rights permits any person authorized to represent taxpayers before IRS to represent a taxpayer in any collection or audit interview. Taxpayers need not accompany their representative unless IRS has issued a summons for their presence.

At one IRS district office we visited, however, we found four letters sent to arrange taxpayer interviews that advised taxpayers to attend the audit interviews. The district office looked into the matter and found that one revenue agent had used old computer software to generate the letters. The difficulty, an official explained, is that IRS issues an individual set of computer disks to each revenue agent, and the agents sometimes fail to replace the old disks with revised disks as required by changes occasioned by the 1988 Taxpayer Bill of Rights. After we brought this matter to his attention, the manager in the district office promptly directed the employees to stop using the old version of the letter.

We were not able to determine the extent to which outdated appointment letters are being used nationwide, although members of the American Institute of Certified Public Accountants told us that such use often occurs. Following an earlier occurrence in another district office, IRS' National Office sent a directive in November 1989 cautioning district offices about this problem. In light of the letters we found, the last of which was sent in March 1991, IRS said that it would reemphasize to field staff the importance of using the correct letters.

IRS IS STUDYING WAYS TO INCREASE ITS USE OF INSTALLMENT AGREEMENTS

The Taxpayer Bill of Rights authorizes IRS to enter into an installment agreement with a taxpayer if it determines that the agreement will facilitate the collection of taxes. IRS' use of installment agreements has increased in recent years. IRS' inventory of installment agreements increased from 1.1 million agreements in fiscal year 1988 to 1.6 million agreements in fiscal year 1990, a 45-percent rise. Over the same period, the dollar amount of the agreements increased from $1.9 billion to $3.3 billion, a 74-percent rise.

It is difficult to determine the extent to which the Taxpayer Bill of Rights may have influenced these trends, because IRS' overall accounts receivable balance increased 28 percent (from $75.5 billion to $96.3 billion) over the same period. The figures seem to indicate, however, that IRS has not restricted its use of installment agreements as a collection tool. There are indications that IRS may be able to use these installment agreements to a greater extent than it does now.

In making a decision on whether to approve an agreement to pay taxes in installments, IRS generally analyzes a financial statement that the taxpayer prepares. This financial statement lists the taxpayer's assets and liabilities. When a taxpayer's liabilities are too great to permit payments, IRS often does not authorize an installment agreement even though the taxpayer has requested it. Instead, IRS classifies the account as not currently collectible.

A March 1991 IRS task group report indicated that granting a taxpayer's request for an installment agreement, even after IRS determines that a taxpayer does not have the ability to pay, might result in additional tax collections. The task force proposed that IRS should take the position that most taxpayers have an ability to pay a minimal amount, thereby recovering some of the taxes owed, rather than denying a taxpayer's request for an installment agreement on the basis of IRS' analysis of the taxpayer's financial condition and then classifying the account as not currently collectible. We are reviewing this proposal in more detail as part of our ongoing evaluation of IRS' accounts receivable balances.

IRS NEEDS TO STANDARDIZE NOTIFICATION OF DEFAULTED INSTALLMENT AGREEMENTS

Included in the provision authorizing IRS to enter into installment agreements are criteria for when IRS may cancel, or default, an agreement. When IRS and taxpayers enter into an installment agreement, the taxpayers agree to certain conditions such as making timely payments, paying all future tax liabilities, and providing financial information when requested. When taxpayers fail to meet one of the preconditions, their agreements are subject to default. IRS is not required to notify taxpayers in advance when defaulting an agreement, except when an agreement is defaulted because of a change in the taxpayer's financial condition.

Installment agreements are monitored by IRS' 10 service centers and 63 district offices. IRS uses service center computers to monitor most agreements. However, IRS relies on district offices to monitor those agreements with a balance due greater than $1 million or those that cannot be monitored by computer. The latter include, for example, agreements with irregular payment periods or amounts.

IRS procedures for notifying taxpayers about defaulted agreements differ depending on whether the agreement is monitored by a service center or a district office. For example, IRS notifies taxpayers by letter about 5 weeks before defaulting a service center-monitored agreement but does not use letters to notify taxpayers with district office-monitored agreements. District office Collection officials explained that IRS does not have formal procedures for notifying taxpayers with district office-monitored agreements and that their staffs individually monitor installment agreements. They normally notify taxpayers by phone if an agreement is in danger of default.

In our work at two district offices we did not find any situations in which taxpayers had complained about abrupt or unwarranted cancellations of agreements. However, the different procedures followed by service centers and district offices raises the issue of inconsistent treatment of taxpayers. District office officials acknowledged that for those agreements they monitor, some taxpayers might not be notified about a defaulted agreement and the amount of advance notice might vary for those who are notified.

IRS HAS CONTROLS TO GUARD AGAINST THE USE OF COLLECTION STATISTICS TO EVALUATE EMPLOYEES

The Taxpayer Bill of Rights prohibits the use of enforcement results to evaluate Collection employees or impose production quotas or goals. It also requires that IRS' 63 district directors certify quarterly to the IRS Commissioner that tax enforcement results are not being used for prohibited purposes.

We reviewed the quarterly certifications for calendar year 1990 and found that 10 of the 63 Directors had reported a total of 33 cases in which collection statistics had been misused or could have been perceived to be misused. These collection statistics could have been misused on performance evaluations of IRS revenue officers, of which IRS employed about 8,000 at the beginning of 1990. The 33 cases included incidents in which collection results were discussed in employee evaluations and incidents in which employee collection statistics were discussed in meetings or contained in employee files. To prevent further occurrences, IRS District Directors reported to the IRS Commissioner that managers involved in the 33 cases had been counseled about the proper uses of collection statistics.

Thirteen of the 33 cases came from one district office where IRS' Internal Audit found that employee files contained collection statistics. The District Director's certification letter stated that the data were in the files because of an incorrect interpretation of earlier guidance, which stated ". . .there will be instances when it will be beneficial or necessary to refer to an enforcement result regarding the case being reviewed." Although the guidance was later clarified, the collection statistics that pre-dated the clarification remained in the files. The Director explained that because the collection statistics had not been included in employee evaluations, he thought the district office had complied with policies prohibiting the use of collection data. The Director stated that the problem was corrected by purging employee files of collection data and reemphasizing the policies prohibiting the use of such data.

In an October 1987 letter to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance, we commented on various proposals to prohibit the use of collection statistics in performance evaluations. Our position then and now is that collection statistics should not be the only indicator of performance but, along with other factors, could very well be a useful tool in evaluating employees. We pointed out that relying on a single factor can place more emphasis on that factor than on overall performance. We said that it is not totally inappropriate to generally consider the amount of revenues collected as part of an employee's evaluation if that consideration is only one of several factors under review. We added that setting arbitrary quotas for amounts collected, property seized, or cases closed cannot be justified in evaluating performance, particularly because of the negative impact that trying to achieve those quotas can have on taxpayers.

Managers from IRS' National Office and the Central and Southeast Regions told us that the prohibition against the use of collection statistics does not constrain their efforts to evaluate their employees. In place of collection statistics, IRS uses seven elements to measure the performance of Collection employees. The elements measure whether information was secured and verified, delinquency causes were identified, workload was properly managed, communications were courteous, and other duties and assignments were effectively carried out.

In light of IRS' satisfaction with its evaluation procedures, the relatively low number of reported cases involving the use of collection statistics, and IRS' actions to counsel staff involved in those incidents, we believe IRS has established adequate controls to meet the requirements of the act.

CONGRESS MAY WISH TO CLARIFY HOW MUCH TIME TAXPAYERS HAVE TO CORRECT LEVY ERRORS

Section 6236 of the Taxpayer Bill of Rights requires banks and financial institutions to hold levied funds for 21 days before the funds are forwarded to IRS. Congress created the holding period to give taxpayers an opportunity to notify IRS of errors with respect to levied accounts. The provision was inserted following a number of publicized incidents in which banks improperly forwarded funds to IRS that belonged to children of the taxpayers who owed taxes--the so-called "kiddie levy."

At that time, no statistics existed on how frequently IRS levied funds in error. We recently reported that IRS erroneously levied assets in 12,400, or 2.8 percent, of 448,200 levies it issued during fiscal year 1986. We recommended processing changes to reduce the error rate further.[2]

In May 1990, IRS' Internal Audit reported that many banks and financial institutions were not observing the 21-day holding period and were forwarding levied funds to IRS soon after receiving the notice of levy. Its review of 1,782 levies received at 3 IRS service centers in August and September 1989 showed that 350, or 20 percent, were remitted before 21 days. IRS and the banking community subsequently mounted a publicity campaign to alert financial institutions to the 21-day requirement.

Our sample of 224 levy cases at 2 service centers (one of which, Atlanta, was included in the Internal Audit sample) indicates that the publicity campaign helped. Of the 224 levy cases we reviewed, we identified only 5 instances, or 2 percent, in which banks had not held levied funds for 21 days. The predominant reason given by the banks for premature release of the levies was that bank personnel were not aware of the 21-day holding requirement.

We also determined that taxpayers did not have the full 21 days to correct an erroneous levy. This problem occurred because, under IRS processing procedures, IRS sends taxpayers a notice concerning a bank levy about a week after mailing the notice to the bank, leaving the taxpayer with about 14 days to correct errors. The purpose of this procedure is to reduce the possibility that taxpayers might withdraw funds before the bank has the opportunity to freeze the taxpayers' accounts, according to IRS officials. IRS officials said that the statutory requirement is only intended to ensure that banks hold funds for 21 days after they receive a levy notification and does not require IRS to allow 21 days for taxpayers to resolve any questions about the levy.

Congress' intent concerning the amount of time to be allotted to taxpayers for resolving levy questions is not explicitly stated in the act or the legislative history. We do not know if 14 days is enough time for taxpayers to correct any errors regarding their accounts, and we understand why IRS would want to send a levy notice to the bank before sending it to taxpayers. However, if Congress' intent was for taxpayers to have a full 21 days, the current provision does not clearly indicate that objective.

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[2]Tax Administration: Extent and Causes of Erroneous Levies (GAO/GGD-91-9), Dec. 21, 1990).

IRS TOOK LONGER THAN EXPECTED TO BEGIN FULL IMPLEMENTATION OF THE PROVISION FOR RECOVERY OF ADMINISTRATIVE COSTS

Section 6239 of the act states that a taxpayer may be awarded a settlement for reasonable administrative costs in connection with an administrative proceeding with IRS and for reasonable litigation costs in connection with a court proceeding involving the determination, collection, or refund of any tax, interest, or penalty.

Provisions for recovery of litigation costs have been in effect for several years; however, procedures needed to be developed to process claims for administrative costs. IRS began full implementation of the provision to award administrative costs in January 1991. Until that time taxpayers were encouraged to wait until regulations were published before submitting their claims for administrative costs. For those instances in which taxpayers refused to wait, claims were processed by IRS using proposed procedures. IRS completed the interim procedures and began using them to process all claims in January 1991, about 15 months later than IRS' initial September 1989 target for issuing the regulations. IRS expects to issue the final regulations in the near future.

IRS does not know either how many settlements were made or how many taxpayers would have filed claims to recover costs if regulations had been in place before March. An IRS official in the appeals function told us they had received inquiries regarding at least 10 potential claims.

IRS officials gave four reasons for missing the September 1989 target:

-- IRS required more time than expected to resolve policy issues involving the definition of "recoverable costs."

-- Three different project coordinators were responsible for developing the regulations.

-- IRS did not have a statutory time limit to complete the regulations and gave higher priority to completing other regulations that affected a larger number of taxpayers.

-- Coordination among the different IRS functions in charge of implementing the provision caused the latest delay.

CONCLUSIONS

IRS faces a continual challenge in implementing the Taxpayer Bill of Rights. We believe that most IRS employees work diligently to treat taxpayers fairly and equitably. However, in an organization of 120,000 employees at over 700 locations tasked with administering a complex set of tax laws, it is likely that some taxpayers will not be accorded the treatment to which they are entitled. For this reason, IRS needs to continually emphasize the act's requirements and measure performance in meeting its intent.

Generally, we believe IRS has made a reasonable effort to implement the Taxpayer Bill of Rights. For example, IRS has helped many people who applied for relief under the Taxpayer Assistance Order Program and has designed controls to guard against the use of collection statistics to evaluate employees. We also identified several areas that IRS is pursuing, namely (1) ensuring that tax examiners use current software when generating taxpayer letters, (2) examining the opportunity for more

taxpayers to enter into installment agreements, and (3) issuing final regulations to allow taxpayers to recover costs in administrative proceedings.

At the same time, we believe that there are shortcomings in IRS' implementation of the Taxpayer Bill of Rights. First, IRS does not know whether its employees are identifying taxpayers who need relief under the Taxpayer Assistance Order Program. Second, it does not emphasize to taxpayers the importance of reading Publication 1 before they attend audit interviews and, as a result, may not be doing all it can to help taxpayers understand their rights. Finally, the lack of procedures for canceling district office-monitored installment agreements creates opportunities for inconsistent treatment of taxpayers.

We also identified two instances in which the Internal Revenue Code, or IRS' interpretation of the Code, may prevent full implementation of the Taxpayer Bill of Rights. First, IRS officials believe that they need clarifying legislation to assist them in withdrawing notice of a tax lien before a tax obligation has been satisfied. Second, our work showed that taxpayers do not have 21 days to correct errors on levies, because IRS interprets the 21-day holding period to apply to banks, not taxpayers. Neither the legislative history nor the act specifically addresses whether taxpayers should have 21 days to resolve levy errors.

RECOMMENDATIONS TO THE COMMISSIONER OF INTERNAL REVENUE

To improve implementation of the 1988 Taxpayer Bill of Rights, we recommend that the Commissioner of the Internal Revenue Service take the following actions:

- -- Develop testing procedures to determine whether IRS employees successfully recognize taxpayer hardship situations and, when hardships exist, initiate applications for assistance on the taxpayer's behalf. If the tests show that employees are having difficulty accomplishing this task, IRS should provide corrective training and/or additional aids. Finally, employee testing should be continuous in order to pinpoint future problem areas and to provide a baseline against which to measure progress.
- -- Emphasize the importance of reading Publication 1 when contacting taxpayers by telephone or through correspondence before taxpayers have an audit interview.
- -- Develop standard procedures for district offices to use when advising taxpayers that their installment agreements are subject to cancellation. This action should help resolve the problem of inconsistent treatment of taxpayers when their installment agreements are monitored by service centers or by district offices.

MATTERS FOR CONGRESSIONAL CONSIDERATION

Congress may wish to clarify the Internal Revenue Code to specifically provide IRS authority to withdraw a notice of a lien when it is in the best interests of the taxpayer and the government.

In addition, in light of the uncertainty over whether taxpayers should be given 21 days to correct an erroneous levy under section 6332(c) of the Internal Revenue Code, Congress may wish to clarify this issue.

AGENCY COMMENTS

The IRS Commissioner provided written comments on a draft of this report. The Commissioner agreed with our recommendations to him and outlined steps that would be taken to implement them. (See appendix III.)

The Commissioner's response to our draft report provided updated information about IRS' authority to release notices of liens on taxpayers' property and on the current procedures for allowing taxpayers to recover administrative costs--information we incorporated into this final report.

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We are sending copies of this report to various congressional Committees, the Secretary of the Treasury, the Commissioner of IRS, the Director of the Office of Management and Budget, and other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in appendix IV. Please contact me on (202) 275-6407 if your or your staff have any questions.

Sincerely yours,

Jennie S. Stathis
Director, Tax Policy and
Administration Issues

SUMMARY OF PROVISIONS IN THE 1988 TAXPAYER BILL OF RIGHTS

Provision	Act section[a]	Required implementation date
Disclosure of Taxpayers' Rights Requires Internal Revenue Service (IRS) to prepare a simple statement of taxpayer rights. Must be provided to all taxpayers contacted regarding the determination and collection of taxes.	6227	May 9, 1989
Procedures Involving Taxpayer Interviews Defines taxpayer and IRS responsibilities regarding interviewing and audio recordings of in-person interviews.	6228	Feb. 8, 1989
Taxpayers' Reliance on IRS Written Advice Requires IRS to abate penalty or additional tax attributable to erroneous written advice of IRS if the advice was requested in writing, was relied upon by the taxpayer, and the taxpayer provided adequate information.	6229	Jan. 1, 1989
Taxpayer Assistance Orders Grants a Taxpayer Ombudsman authority to issue assistance orders when taxpayers suffer or are about to suffer significant hardship as a result of the manner in which IRS laws are administered.	6230	Jan. 1, 1989
Basis for Evaluation of IRS Employees Prohibits IRS from using records of tax enforcement results to evaluate employees or to impose production quotas.	6231	Jan. 1, 1989
Procedures Relating to IRS Regulations Requires that temporary regulations be issued as proposed regulations and expire within 3 years after they are issued. It also requires that regulations be submitted to the Small Business Administration for comment before promulgation.	6232	Nov. 20, 1988
Content of Tax Due, Deficiency, and Other Notices Requires that certain notices to taxpayers describe the basis for and identify the amounts of taxes due as well as interest and penalties.	6233	Jan. 1, 1990
Installment Payment of Tax Liability Provides statutory authority for installment agreements and specifies reasons to amend or revoke such agreements.	6234	Nov. 10, 1988
Assistant Commissioner for Taxpayer Services Establishes an Assistant Commissioner for Taxpayer Services and requires a joint annual report with the Taxpayer Ombudsman to Congress on the quality of services provided.	6235	May 9, 1989
Levy and Distraint Revises the tax laws relating to notice of intent to levy, exemptions from levy, limitations on levy, and release of levy. Extends the period during which a levy may not be made following notice from 10 to 30 days. It also requires banks to hold levied funds 21 days before remitting them to IRS.	6236	July 1, 1989 (levies) Jan. 1, 1989 (sales)

[a]Refers to sections of the Technical and Miscellaneous Revenue Act of 1988, which contained the Omnibus Taxpayer Bill of Rights as Subtitle J (P.L. 100-647).

Review of Jeopardy Levy and Assessment Procedures Grants concurrent jurisdiction to the Tax and U.S. District Courts to determine whether a jeopardy assessment was reasonable.	6237	July 1, 1989
Administrative Appeal of Liens Requires IRS to provide an administrative appeal procedure for liens. If the notice of lien was erroneous, a certificate of release must be issued.	6238	July 12, 1989
Awarding of Costs and Certain Fees in Administrative and Court Proceedings Authorizes the recovery of costs incurred on or after the receipt of an appeals decision or the date of the statutory notice of deficiency, whichever is earlier.	6239	Nov. 10, 1988
Civil Cause of Action for Damages Sustained Due to Failure to Release Lien Allows taxpayers to sue in District Court for damages resulting when IRS fails to release a lien.	6240	Jan. 1, 1989
Civil Cause of Action for Damages Due to Unauthorized IRS Actions Permits taxpayers to sue if IRS recklessly or intentionally violates the law.	6241	Nov. 10, 1988
Assessable Penalty for Improper Disclosure or Use of Information by Preparers Provides for a civil penalty of $250 for each unauthorized disclosure or use of taxpayer information by preparers.	6242	Dec. 31, 1988
Jurisdiction to Restrain Certain Premature Assessments Grants the Tax Court concurrent jurisdiction to restrain assessments and collections for some cases pending before the court.	6243	Nov. 10, 1988
Jurisdiction to Enforce Overpayment Determination Grants the Tax Court jurisdiction to order the refund, with interest, of any overpayment if IRS fails to refund within 120 days an overpayment determined by the court.	6244	Feb. 8, 1989
Jurisdiction to Review Sale of Seized Property Grants the Tax Court jurisdiction during the pendency of proceedings before it is to review an IRS determination to sell seized property.	6245	Feb. 8, 1989
Jurisdiction to Redetermine Interest on Deficiencies Authorizes taxpayers to request the Tax Court to reopen proceedings to redetermine the interest charged by IRS on a deficiency.	6246	Nov. 10, 1988
Jurisdiction to Modify Decisions in Estate Tax Cases Gives the Tax Court authority to reopen an estate tax proceeding in order to modify decisions regarding deductions for interest.	6247	Nov. 10, 1988

METHODOLOGY USED IN REVIEWING IRS' IMPLEMENTATION OF THE TAXPAYER BILL OF RIGHTS

For this report, we examined Taxpayer Bill of Rights provisions involving (1) the Taxpayer Assistance Order Program, (2) disclosure of taxpayer rights, (3) procedures involving taxpayer interviews during audits, (4) installment payment of tax liabilities, (5) the basis for evaluating IRS Collection employees, (6) the 21-day holding period for levied funds, and (7) the recovery of costs and fees from administrative and court proceedings.

TAXPAYER ASSISTANCE ORDERS

We randomly selected and reviewed a sample of 146 applications for Taxpayer Assistance Orders from 4 locations to determine whether IRS had provided taxpayers with hardship relief. The sample applications were drawn from 1,194 applications processed during fiscal year 1990 at the Cincinnati and Atlanta district offices and service centers. In reviewing our sample, we determined the reason for the application (expedited refund, release of levy or lien, etc.) and IRS' response to the application. We also obtained IRS statistics on closed application cases for fiscal years 1990 and 1991 to determine which IRS function resolved the cases, how long it took, and whether assistance rates varied by IRS region. Finally, we spoke with IRS managers in the Taxpayer Services and Ombudsman offices to determine the status of efforts to improve the rate of hardship identifications by IRS assistors at toll-free telephone call sites. We also followed up on a recommendation contained in an IRS Internal Audit report, Implementation of the Taxpayer Bill of Rights, dated May 1, 1990.

DISCLOSURE OF TAXPAYER RIGHTS

We discussed IRS' method of informing taxpayers of their rights with IRS National Office managers in the Taxpayer Services, Collection, and Examination functions. We also discussed this issue with members of the Association of Enrolled Agents and the American Institute of Certified Public Accountants.

PROCEDURES INVOLVING TAXPAYER INTERVIEWS

We interviewed a judgmental sample of 25 revenue agents from IRS' Atlanta and Cincinnati district offices to determine if, when, and how they notify taxpayers of their rights during the audit process. We focused on IRS practices in allowing taxpayers to be

represented at interviews instead of attending themselves. We also discussed this issue with the Association of Enrolled Agents and the American Institute of Certified Public Accountants.

INSTALLMENT PAYMENT OF TAX LIABILITIES

We obtained IRS data on installment agreement inventories for fiscal years 1986 through 1990, examined IRS procedures for granting and terminating installment agreements, and discussed these procedures with IRS National Office, district office, and service center managers.

BASIS FOR EVALUATING IRS COLLECTION EMPLOYEES

We discussed with IRS National and district office managers the procedures for evaluating employees and preventing the use of prohibited data. We also reviewed the quarterly certifications for fiscal year 1990 to determine the type and volume of events reported as violations of the provision.

HOLDING PERIOD (21 DAYS) FOR LEVIED FUNDS

We reviewed a sample of 224 levy cases from the Cincinnati and Atlanta service centers to determine the number of days that the banks held levied funds after receiving a levy notice from IRS. We also followed up on a recommendation contained in an IRS Internal Audit report, Implementation of the Taxpayer Bill of Rights, dated May 1, 1990. Our sample was judgmental and selected from 1 day's levy receipts processed at the Cincinnati service center in February 1991 and the Atlanta service center in March 1991. We also examined IRS' legal position concerning how much time the act intended to allow for a taxpayer to correct any errors.

RECOVERY OF COSTS AND FEES

We discussed the development of procedures for recovering fees and costs with IRS National Office managers in the Appeals Office and the Office of the Chief Counsel. We also determined from IRS sources if any claims for fees and costs had been processed.

COMMENTS FROM THE INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Ms. Jennie S. Stathis
Director
Tax Policy and Administration Issues
General Government Division
United States General Accounting Office
Washington, DC 20548

Dear Ms. Stathis:

We have reviewed your recent draft report entitled, "IRS' Implementation of the 1988 Taxpayer Bill of Rights".

Generally, we are pleased with the report's findings concerning our efforts to implement the Taxpayer Bill of Rights. We also agree with the report's recommendations to enhance our implementation of the Act by 1) determining the extent to which IRS employees are identifying taxpayers who need relief under the Application for Taxpayer Assistance Order Program, 2) further emphasizing to taxpayers the importance of reading Publication 1 before attending audit interviews, and 3) developing uniform procedures to advise taxpayers that their installment agreements are subject to cancellation.

Our detailed comments on the specific report recommendations are enclosed. These comments also include some general comments regarding the report text. If possible, we would encourage you to use the FY 91 statistical data on the Application for Taxpayer Assistance Order program which have been provided to your staff informally along with technical comments.

Best regards.

Sincerely,

Fred T. Goldberg, Jr.

Enclosure

IRS COMMENTS ON RECOMMENDATIONS
CONTAINED IN GAO DRAFT REPORT ENTITLED
"IRS' IMPLEMENTATION OF THE
1988 TAXPAYER BILL OF RIGHTS"

Recommendation: Develop testing procedures to determine whether IRS employees successfully recognize taxpayer hardship situations and, when hardships exist, initiate applications for assistance on the taxpayer's behalf. If the tests show that employees are having difficulty accomplishing this task, corrective training and/or additional aids need to be provided to them. Finally, the testing should be continuous in order to pinpoint future problem areas and to provide a baseline against which to measure progress.

Comment:

We agree with the recommendation. Our Taxpayer Service Division and the Problem Resolution Program office have been working together to develop test questions for Taxpayer Assistance Orders (TAOs). This effort is in the planning stages and full implementation in Taxpayer Service is expected in 1992.

We should note, however, that major problems in testing procedural issues such as TAOs involve the validity of the test questions; the difficulty of testing issues requiring research of the taxpayer's account (e.g. for refund inquiries); and the sample size necessary for valid testing and evaluation. Taxpayer inquiries which might involve hardship issues are a relatively small segment of the procedural and technical areas which can be tested.

Since TAOs may also be submitted by IRS employees in other areas such as Collection, Examination and Returns Processing, coordination is necessary with all organizations where contacts with taxpayers may bring to light hardship situations. Monitoring and follow-up actions relating to TAOs should ensure consistent Servicewide treatment.

We would like to clarify the report discussion (page 13) regarding the Collection function implementation of a testing program for the Automated Collection Sites (ACS). Although Collection can implement a testing program, it will not use live taxpayer cases to monitor ATAO test calls because the Service employee receiving the test call will not know that the caller is not the actual taxpayer and could, as a result, take action on that account. The action could result in inappropriate enforcement, e.g., filing a lien, serving a levy, etc. Therefore, dummy data will be used for test call purposes. However, such a complex computerized program could not be obtained for at least two years, and would need to compete with other enhancement proposals for limited implementation resources.

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Recommendation: Emphasize the importance of reading Publication 1 when contacting taxpayers by telephone or correspondence prior to an audit interview.

Comment:

We agree with the recommendation and, while we already include a copy of Publication 1 with each examination notice, will revise the audit notification letters to include (possibly in bold type): "Enclosed please find Publication 1, Your Rights as a Taxpayer. This publication advises you of your rights under the examination process. Please read this publication. Address any questions you may have to the examining officer at or before the audit interview."

Recommendation: Develop standard procedures for district offices to use when advising taxpayers that their installment agreements are subject to cancellation. This will address the opportunities for inconsistent treatment of taxpayers depending on whether they have installment agreements monitored by service centers or district offices.

Comment:

While each installment agreement form currently provides that the agreement may be cancelled for failure to comply with the terms of the agreement, we do not object to the recommendation to develop standard procedures for district offices to use when advising taxpayers that their installment agreements are being cancelled. Procedures for all district employees who monitor installment agreements will be written and incorporated into the Internal Revenue Manual (IRM). The implementation of these procedures will ensure consistent treatment of taxpayers regardless of whether installment agreements are monitored by our district offices or by our service centers.

GENERAL COMMENTS

-- In the report narrative regarding Section 6322, concerning when a lien arises, (page 5) GAO discusses our inability to withdraw a Notice of Federal Tax Lien. There have been some recent administrative changes that should be noted. We have worked closely with our Chief Counsel's office to determine whether this could be accomplished under current law. On October 22, 1991, we issued new procedures which now allow for withdrawing Notices of Federal Tax Liens in certain instances. However, we believe we still need clarifying legislation so that creditors will know that IRS' lien no longer has priority in any financial dealings with the taxpayer.

-- In issuing guidance we gave priority to regulations implementing sections of the Taxpayer Bill of Rights that would affect the largest number of taxpayers. Regarding the report's comments on the regulations under Section 7430, concerning the awarding of attorneys fees, we publicized, early on, administrative procedures that could be used in making claims under this section until formal guidance is published. Also, formal interim procedures in the form of amendments to the Internal Revenue Manual were made to give guidance to IRS employees handling these claims. While we had hoped to publish the section 7430 regulations earlier, we believe taxpayers did have helpful guidance on a timely basis.

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PREPARED STATEMENT OF TIMOTHY J. MCCORMALLY

Tax Executives Institute is pleased to submit the following comments on Senator David Pryor's proposed Taxpayer Bill of Rights II.

I. SCOPE OF COMMENTS

In announcing his intention to introduce a second Taxpayer Bill of Rights, Senator Pryor referred to the initial Taxpayer Bill of Rights as a "good first step" in the process of safeguarding taxpayer rights.[1] He pointed out that the second Taxpayer Bill of Rights (T2) is intended to reflect Congress's "growing understanding of taxpayer needs" and will help the Internal Revenue Service "achieve higher standards of accuracy, timeliness and fair play in providing taxpayer service."

Tax Executives Institute commends Senator Pryor for developing T2 and the Subcommittee for scheduling this hearing and for its continuing oversight of the critical issue of taxpayer rights. As the principal organization of corporate tax professionals in North America, the Institute has long been an advocate for the rational and evenhanded administration of tax laws. We agree with Senator Pryor that "[s]afeguards must be built into the law to protect the taxpayer against the potentially devastating effect of [IRS] mistakes and actions." We also believe that the Internal Revenue Code itself is in need of amendment to restore a sense of balance between taxpayers and the government in several important areas.

TEI's approximately 4,600 members represent more than 2,000 of the leading corporations in the United States and Canada. TEI represents a cross-section of the business community, and is dedicated to the development and effective implementation of sound tax policy, to promoting the uniform and equitable enforcement of the tax laws, and to reducing the cost and burden of administration and compliance to the benefit of taxpayers and government alike. TEI is firmly committed to maintaining a tax system that works—one that is consistent with sound tax policy, one that taxpayers can comply with, and one in which the IRS can effectively perform its audit function.

There is a growing consensus about the need to establish and safeguard taxpayer rights. As Commissioner Goldberg recognized in his September 25, 1991, testimony before the Oversight Subcommittee of the House Ways and Means Committee, "[s]afeguarding taxpayer rights means making [the tax] system work as well as we can for all Americans." Through its effective oversight of the IRS, Congress has made the tax agency sensitive to the need for quality, fairness, and evenhandedness in tax administration. We believe this sensitivity is demonstrated by, among other

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[1] We note that Representative Pickle has introduced related legislation (H.R. 3838) in the House of Representatives.

things, the IRS's response to the first Taxpayer Bill of Rights, by its support of penalty reform,[2] and by its revitalized commitment to quality and service through programs such as Compliance 2000.

There is much more, however, that can be done. Thus, although progress has been made, systemic and "cultural" barriers remain to taxpayers' regarding the tax system as fair and equitable. We believe that this hearing underscores Congress's recognition that the process will be an incremental one, and we believe that the development of T2 stands as an important "next step" in requiring (or permitting) the IRS to operate in an even more quality-oriented, more service-oriented manner.

Tax Executives Institute pledges its continuing support of Congress's efforts to remedy certain systemic impediments to the equitable treatment of taxpayers. In the comments that follow, we focus on the specific provisions set forth in Senator Pryor's summary of T2 that will bring a fuller measure of equity and fairness to the business taxpayers who comprise the Institute's membership. Specifically, we address proposals relating to (1) the equalization of interest rates charged on tax deficiencies and paid on overdue tax refunds; (2) the expansion of the IRS's authority to abate interest in certain circumstances; (3) the use of the designated summons; and (4) the prospective date of Treasury regulations. We also discuss other proposals that merit careful consideration as the legislative process moves forward.

II. EQUALIZATION OF INTEREST RATES ON DEFICIENCIES AND REFUNDS

Under section 6621(a) of the Code, a taxpayer is charged interest on underpayments of tax at a rate equal to the federal short-term rate plus three percentage points. In contrast, a taxpayer receives interest on an overpayment of tax at a rate equal to the federal short-term rate plus two percentage points. T2 would eliminate the one percentage point differential between the interest a taxpayer pays the IRS on underpayments and the interest the IRS pays a taxpayer on overpayments. TEI wholeheartedly supports the proposal.

The interest-rate differential was enacted in 1986 as a result of Congress's concern that the interest rate prescribed in the Internal Revenue Code may have caused taxpayers "either to delay paying taxes as long as possible to take advantage of an excessively low rate or to overpay to take advantage of an excessively high rate." In addition, Congress pointed out that financial institutions and other commercial entities do not ordinarily borrow and lend money at the same rate. See Staff of the Joint Committee on Taxation, 99th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1986, at 1279 (1987).*

TEI believes the concept underlying the interest rate differential was seriously flawed when the provision was enacted and remains flawed today. When the interest rate was determined every two years (as it was before enactment of the Economic Recovery Tax Act of 1981), the spread between the section 6621 rate and the market rate may have become substantial and therefore arguably encouraged taxpayer "gaming." With the changes adopted in 1981 and 1982 (requiring frequent adjustments of the rate and the daily compounding of interest), however, the potential for any significant differential was eliminated. Moreover, the Tax Equity and Fiscal Responsibility Act of 1982 changed the time period when interest on refunds would commence running, thereby eliminating the limited ability of taxpayers to "overpay to take advantage of an excessively high rate."

Quite candidly, the notion that an interest rate differential is justified because "financial institutions" borrow and lend money at different rates is without merit. The government should never view itself (or strive to be viewed by taxpayers) as a lending institution. Taxpayers have no freedom to negotiate interest rates and terms with the government, as they might with a commercial establishment.

What is more, since many tax adjustments result in deductions or other items simply "rolling over" from one year to another, thereby producing an underpayment in the first year and an overpayment in the subsequent year, the differential operates to penalize taxpayers. For example, assume that a taxpayer underpaid its tax liability for 1988 by $100 and overpaid its liability for 1989 by the same amount because of its erroneous decision to deduct an item in the earlier, rather than the later, year. Assume further that the error was discovered in 1991. Finally, for illustration purposes, assume that the interest rate on tax deficiencies during all periods is 11 percent, that the interest rate on tax overpayments is 10 percent, and that interest is not compounded. In this situation, the taxpayer would owe interest of $33

[2] The Institute commends Senator Pryor for the leadership role he took in 1989 with respect to penalty reform. We must express our disappointment, however, with subsequently enacted provisions (such as the transfer pricing penalty under section 6662(e)(3) that contradict the principles that underlie the 1989 changes.

in respect of its 1988 underpayment ($11 in each of 1989, 1990, and 1991), and the taxpayer would be entitled to interest of $20 on its 1989 overpayment ($10 in each of 1990 and 1991). Thus, the IRS would receive a net benefit of $13, even though the underpayment existed for only one year (thus entitling the IRS to $11 of interest). In other words, even assuming that the one-percent differential were justifiable, the IRS would realize an undeserved windfall of $2.[3]

Finally, TEI believes that the interest rate differential is not only unnecessary, but also undermines one of the basic goals of tax reform: to restore faith in the fairness of the tax system. Other provisions of the Code provide adequate safeguards against any taxpayer manipulation of interest rates.

For the foregoing reasons, we endorse the elimination of the interest-rate differential. Further, we recommend that Congress also repeal the ill-conceived "hot interest" provision of section 6621(c), which provides a further two-percent increase in the interest rate on large corporate underpayments (an underpayment of more than $100,000) 30 days following the issuance of a notice of proposed adjustment (a "30-day letter") or a notice of deficiency (a "90-day letter").[4]

III. ABATEMENT OF INTEREST

Currently, section 6404(e) authorizes the IRS to abate the assessment of any or all interest for any period where the interest is attributable to an error or delay by an officer or employee of the IRS in performing a "ministerial act." T2 would repeal the "ministerial act" requirement and provide for a mandatory abatement of interest for unreasonable IRS errors and delays. TEI wholeheartedly endorses the proposal to expand the abatement-of-interest provision.

As Senator Pryor's summary of the provisions of T2 acknowledges, the IRS's current regulations under section 6404(e) narrowly defines "ministerial act," as follows:

> a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.[5]

Under the foregoing definition, a taxpayer filing an administrative appeal of a proposed adjustment that languishes in the IRS Appeals Office for six months (e.g., because of the Appeals Officer's workload) will not be entitled to abatement of the interest accruing during the period of delay because the delay is not the result of a "ministerial act." Similarly, if the Appeals Officer requests additional information from the Examination Division and the examiner is unable to respond for several months because he is involved in another case, the interest will continue to accrue during the delay. Delays may also be caused by an IRS decision to reexamine an issue or to consolidate the case with a later year that may not have yet been audited. Finally, delays may be caused by administrative foul-ups in reviewing and approving the appeal settlement. In this regard, we understand that a recent IRS "peer review" analysis of the Coordinated Examination Program revealed that more than half of the delays in the examination of large companies are attributable to the IRS.

TEI submits that the taxpayer in such situations should not be penalized for the IRS's failure to act. We therefore endorse the proposed amendment of section 6404(e) with respect to the mandatory abatement of interest during the period at-

[3] Section 6402 authorizes the IRS to "net" the interest amounts in such situations, thereby ameliorating the harsh effects of the interest-rate differential. The goal of netting would be to put the parties (the government and the taxpayer) in the same economic position they would have been in had the overpayment been immediately applied to pay (or pay down) the underpayment. Under a fair netting regime, the IRS in the example would be entitled to only $11 of interest—the $2 windfall would be eliminated. Notwithstanding the statutory provision and the mandates contained in the legislative histories of both the 1986 and 1990 Acts that the IRS develop comprehensive crediting procedures," no such procedures have yet been developed. See H.R. Rep. No. 99–841, 99th Cong., 2d Sess. II–785 (1986) (Conference Report); H.R. Rep. No. 101–964, 101st Cong., 2d Sess. 1101 (1990) (Conference Report). Although the need for netting will be minimized by the elimination of the interest-rate differential, we recommend that Congress renew its mandate to the IRS that comprehensive netting rules be developed.

[4] Such "hot interest" is to be assessed without regard to whether any delay in the payment of the underlying tax liability is attributable to the taxpayer or the IRS. Under current law, in situations where the "hot interest" provision comes into play, the difference between the rate charged on large corporate underpayments and the rate paid on tax overpayments becomes three percentage points.

[5] Temp. Reg. §1.6404–2T(b)(1). at least one court has held that the IRS's refusal to abate interest under section 6404(e) is not reviewable by the courts. *Horton Homes, Inc.* v. *United States*, No. 90–8225 (11th Cir. July 23, 1991).

tributable to an unreasonable delay by the IRS. In addition, we recommend that the committee report include examples of what constitutes an unreasonable delay during the taxpayer's administrative appeal of proposed adjustments. For example, the abatement of interest on a deficiency could commence 180 days after the taxpayer files its administrative appeal and end on the date of a "final determination"—*i.e.*, the issuance of a statutory notice of deficiency when the case is unagreed, or a Form 870 or Form 870-AD when the case is agreed. To impose a cost on the taxpayer for the IRS's delays is, quite simply, unfair and at odds with the Congress's commitment during the 1989 penalty reform process to impose penalties only on culpable taxpayer behavior. The situation is especially egregious with respect to the assessment of "hot interest" under section 6621(c) of the Code which increases the interest rate by two percentage points on large corporate underpayments where the underpayment remains outstanding more than 30 days following the issuance of either a 30-day or a 90-day letter.

III. DESIGNATED SUMMONS

Enacted as part of the Omnibus Budget Reconciliation Act of 1990, section 6503(k) of the Code grants the IRS authority to issue a "designated summons" directing the production of documents or other information in connection with the audit of a return. The term "designated summons" is defined as any summons issued for purposes of determining any tax if such summons is issued at least 60 days before the expiration of the period for assessment and clearly states it is a designated summons. The issuance of such a summons suspends the statute of limitations for assessment of tax until after a final resolution of the court proceeding to enforce or quash the summons. At present, the statute does not require the IRS to notify the taxpayer that a designated summons is about to be issued. As the summary of T2 acknowledges, "[w]hile there may be situations where the use of a designated summons late in the audit process may be appropriate, nonetheless the IRS should not be allowed to surprise taxpayers who reasonably and in good faith believed that the statute of limitations was soon going to expire."

T2 would require the IRS to first seek the requested documents or other information informally. In addition, the IRS would be required to notify the taxpayer in writing that the issuance of a designated summons was imminent and the reason any response previously received was insufficient. The taxpayer would also have the right to a conference within 15 business days of the notice.

We applaud Senator Pryor for recognizing the need to strike a balance between the IRS's legitimate right to information with the taxpayer's right to receive timely notice of the IRS's intent. The designated summons procedure is an exceedingly powerful tool that was intended to be used against uncooperative taxpayers. We believe that the proposed notice requirement, coupled with well-developed internal clearance procedures, will go far in ensuring that the designated summons is not used to routinely extend the statute of limitations even where the taxpayer is cooperative.

V. PROSPECTIVE DATE FOR TREASURY REGULATIONS

T2 would generally require all regulations issued by the Treasury Department implementing broad legislative guidelines to be effective prospectively from the date of issuance in final, temporary, or proposed form. In addition, taxpayers would be deemed to have satisfied the necessary requirements of the statute in the absence of such guidance if they made a good faith effort to utilize a reasonable interpretation of the statute that resulted in substantial compliance.

TEI wholeheartedly agrees that prospectivity must play an essential role in the implementation of simpler and more administrable tax rules. Retroactive application of adverse rules and regulations can undermine the integrity of the tax system and taxpayer confidence in the fairness of the system. We question, however, whether the issuance of proposed regulations should ever trigger a statute's effective date.[6] Since proposed regulations are not technically binding on the taxpayer and may be changed substantially or withdrawn completely before being issued in final form, we believe it would be more equitable to require prospectivity from the issuance of final regulations.

Moreover, as T2 inherently acknowledges, a rational and fair tax system must recognize that taxpayers who endeavor in good faith to comply with our amorphous body of tax law should not be subject to costs and burdens of *ex post facto* changes

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[6] At the same time, whether or not a taxpayer complied with proposed regulations would clearly be relevant in determining whether a taxpayer made a good faith effort to comply with the statute.

in the rules, including the cost of preparing and filing amended returns. The Institute has long believed that taxpayers should only be held accountable for clearly defined standards of conduct that are timely established and promulgated by Congress, the Department of Treasury, or the IRS. Therefore, we endorse the provision in T2 to permit taxpayers to utilize a reasonable interpretation of the statute in the interregnum between enactment of the statute and the issuance of final regulations.

VI. Other Issues

Finally, there are several provisions of T2 potentially affecting business taxpayers that TEI believes merit further consideration as the legislative process moves forward. Specifically, we believe the ramifications of the following proposals need to be carefully considered:

The Ombudsman and Problem Resolution Officers. T2 would provide that the Ombudsman is to be appointed by the President and confirmed by the Senate and that Problem Resolution Officers (PROs) are to report directly to the Ombudsman rather than to the local District Director (as under current law). TEI members report that their experience with the Ombudsman and PROs has generally been excellent. Although some changes may be desirable to enhance the visibility of the PRO (especially with respect to individual taxpayers), care must be exercised to ensure that the level of service currently provided is not compromised.

Attorney-Client Privilege. T2 would amend the Federal Rules of Evidence to provide that disclosure of information to outside independent accountants will not destroy the attorney-client privilege. TEI believes that materials transmitted to certified public accountants in order to satisfy their need for documentation of the company's tax liability should be protected from disclosure. Because T2 would enhance the protection provided in respect of such materials, it cannot help but further the public policy underlying the securities law. Consequently, the Institute encourages Congress to give the proposal special consideration.

Secretary's Power to Suspend Rules. T2 would grant the Secretary broad powers to suspend rules that, because of changed circumstances since the enactment of a provision, would cause a hardship to a group of taxpayers. TEI agrees that the Secretary should be given authority to temper the unintended and unforeseen results of legislation. Moreover, we recommend that the statute clarify whether the Secretary's refusal to exercise the authority to provide relief would be subject to taxpayer challenge.

VII. CONCLUSION

Tax Executives Institute appreciates this opportunity to present its views on reforms to establish taxpayer safeguards and protections and would be pleased to answer any questions you may have about its positions. In this regard, please do not hesitate to call the undersigned at (416) 866-6095, or Timothy J. McCormally of the Institute's professional staff at (202) 638-5601.

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December 20, 1991

The Honorable David Pryor
United States Senate
267 Russell Senate Office Building
Washington, D.C. 20510

Re: *Taxpayer Bill of Rights II*

Dear Senator Pryor:

Tax Executives Institute thanks you for the opportunity to testify on the Taxpayer Bill of Rights II (T2) before the Senate Finance Committee's Subcommittee on Private Pension Plans and Oversight of the Internal Revenue Service. As we stated at the December 10 hearing, the Institute is pleased that several provisions of T2 address the rights of corporate taxpayers and will restore a better sense of balance to the taxpayer-IRS relationship. We agree that Congress, the IRS, and taxpayers must move forward to strengthen taxpayer rights and protections. T2 is a logical and necessary "next step" in that process.

We wish to take this opportunity to supplement our written testimony on one subject addressed by T2 – the use of the designated summons under section 6503(k) of the Internal Revenue Code. As you know, such a summons suspends the statute of limitations on assessment if it is issued at least 60 days prior to the expiration of the period for assessment and clearly states it is a designated summons. Many taxpayers are concerned about the scope of the designated summons and about its potential use (or abuse) by the IRS to improperly extend the statute. Thus, we are pleased that T2 will address the designated summons.

The designated summons procedure was enacted last year as part of the 1990 budget accord. The legislative history of section 6503(k) states that the designated summons was enacted because "the IRS frequently requests informally that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment,

The Honorable David Pryor
December 20, 1991
Page 2

if any adjustment is warranted." Not all taxpayers, however, cooperate by providing the requested information on a timely basis, according to the Conference Report. H.R. Rep. No. 101-964, 101st Cong., 1st Sess. 64 (1990). Thus, the intent of the statute was to provide the IRS with a powerful enforcement tool against uncooperative taxpayers.

Quite candidly, the designated summons stands as a good example of why legislation should not be developed without public hearings and oversight. The provision is flawed for several reasons:

- The statute is completely one-sided. The purpose of the statute of limitations is to let the parties know that at some point the tax year under audit will be closed and that they can move on to new matters. The basic statute of limitations is evenhanded: the IRS has three years to audit the taxpayer and assess additional tax liability, and the taxpayer has three years to file an amended return and seek a refund of overpaid taxes. The designated summons, however, skews that balance between taxpayers and the IRS. It permits the IRS -- perhaps arbitrarily -- to render the statute of limitations irrelevant in respect of corporate taxpayers. Moreover, although the designated summons gives the IRS additional time to assess deficiencies, it does not confer on taxpayers a correlative right to seek a refund.

- The provision can be invoked in spite of the taxpayer's overall cooperative response to previous requests for documents. Thus, even if the taxpayer has acted in a totally reasonable manner, the IRS can issue a designated summons and extend the statute. Moreover, there is no requirement that a taxpayer even be given notice that a designated summons is about to be issued.

- The extension of the statute of limitations under section 6503(k) is not limited in scope to issues relating to the summoned documents. Thus, the IRS could issue a summons for certain documents and then proceed with its audit for weeks, possibly months, as the propriety of the summons is considered by the courts. Although a court may eventually stay the enforcement of the designated summons, the IRS is free to develop further issues during the pendency of the judicial proceeding.

- There is no requirement that a designated summons be issued to the taxpayer; it can be issued to a third party. Thus, the failure of an unrelated third party to respond to the summons could have the effect of suspending the taxpayer's right to a timely adjudication of his tax liability.

- Finally, the taxpayer does not have any means to directly contest the summons. To obtain judicial review of the propriety of the summons, the taxpayer must refuse to comply and then wait for the IRS to seek enforcement in court. Not only does this place the taxpayer in the untenable position of

The Honorable David Pryor
December 20, 1991
Page 3

defying the summons in order to challenge its validity, but, again, it extends the statute of limitations during the period the summons is being challenged.

Even without the designated summons, the IRS has a broad range of weapons in its arsenal to use against recalcitrant taxpayers. For example, if the statute of limitations is about the expire, the IRS can issue a statutory notice of deficiency that disallows all deductions and credits claimed. In such a case, the burden of challenging such a disallowance is on the taxpayer. There is no general need for an open-ended statute that strips taxpayers of their right for a final, timely resolution of issues.

In conjunction with its review of taxpayer rights and safeguards, the Subcommittee is studying the use of the designated summons by the IRS. TEI is pleased that the initial proposals set forth in T2 would remedy some of the problems associated with the designated summons. T2 would require that the IRS first seek the requested information informally (presumably by issuing a formal Information Document Request) before issuing a designated summons and provide written notice of why the taxpayer's response to such a request is not sufficient. T2 would also provide a right to a conference concerning the written notice. These requirements will help ensure that the designated summons will not be used routinely against cooperative taxpayers.

In addition to the T2 restrictions, the Subcommittee should consider other safeguards for taxpayers with respect to the designated summons, including (1) the right to challenge the summons directly in court, (2) a requirement for IRS National Office approval before issuance of the summons, and (3) a limitation on the issuance of the designated summons to unrelated third parties. In addition, to ensure that the IRS does not abuse its designated summons power, consideration should be given to providing that if a court refuses to enforce the summons, the statute of limitations will expire as if no summons had been issued. The Institute would be pleased to work with your office and the Subcommittee staff to develop appropriate restrictions on the unwarranted use of the designated summons procedure.

Tax Executives Institute appreciates this opportunity to supplement our views on the Taxpayer Bill of Rights II. If you have any questions, please do not hesitate to call Linda B. Burke, chair of the Institute's IRS Administrative Affairs Committee, at (412) 553-4153 or Timothy J. McCormally of the Institute's professional staff at (202) 638-5601.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

By:
Reginald W. Kowalchuk
International President

Prepared Statement of Shirley D. Peterson

I. OPENING

Mr. Chairman, I am pleased to be here today in my first public testimony as Commissioner to address this most important subject—taxpayer rights. With me today are Deputy Commissioner Mike Dolan and our Chief Operations Officer, Dave Blattner. I would also like to acknowledge the man sitting beside me: Fred Goldberg, who served with great distinction as Commissioner. The dynamic changes taking place in the IRS today are a legacy of Fred Goldberg's outstanding service. I hope to build on that legacy.

We applaud your continuing interest in protecting taxpayer rights. You have provided the oversight that is so important in ensuring that IRS has the equipment, the procedures, the resources, and the attitudes that are appropriate to meet the needs of taxpayers throughout the country.

Although I have been IRS Commissioner only a few short weeks, I have had long experience in the tax field, first, in private practice, and more recently as the Assistant Attorney General in charge of the Tax Division at the Department of Justice. I know from my own experience that the two most important factors in protecting taxpayers' rights are: (1) simplification of the laws and (2) a good tax administration system. Simplification should be our number-one legislative priority. Beyond that, we must work together to ensure that the Internal Revenue Service administers the law properly. Mr. Chairman, we cannot legislate judgment, but we can insist on it. We cannot legislate good taxpayer service, but we can put in place equipment and systems that will make good service possible. We should not legislate changes in basic procedural rules, many of which have been in place for a half a century or longer, without knowing the full impact of those changes. But we can and should continually review our administrative procedures to determine whether they are fair, whether they are uniformly applied, and whether they can be improved. Our mutual goal is to reduce unnecessary burdens on taxpayers who are trying to comply with our tax laws. I look forward to working with you and this Subcommittee in achieving that goal.

Mr. Chairman, the Internal Revenue Service is at a crossroads in its history. The IRS has embarked on a program of radical change that will fundamentally alter the way we do business. Working in concert with various outside stakeholders, we within the Internal Revenue Service hope to transform tax administration in this decade. We have three simple objectives: first, increase voluntary compliance; second, reduce the burden on taxpayers; and, third, increase quality-driven productivity and customer satisfaction. In the brief time that I have with you today, I cannot describe the full range of strategies that we will employ to accomplish these goals. However, two of our strategies bear emphasis. Tax Systems Modernization is a ten-year initiative to update the Service's computer and information systems. TSM is absolutely crucial to accomplishing the changes we envision, because it will give us the technological capability to do business in new ways. We have also adopted a new philosophy of tax administration called Compliance 2000. Through this new approach to compliance, we intend to focus much of our effort on taxpayer assistance and education. An essential goal of both of these long-term efforts is to reduce taxpayer burden. In sum, we want to make it easier for our citizens to comply with the tax laws.

II. IRS SHORT AND LONG TERM GOALS

A. *Strategic Business Plan.* Our Strategic Business Plan is the blueprint that describes our three objectives, defines the strategies for achieving those objectives, and establishes milestones to assess our progress. The Plan specifically incorporates and highlights five areas of emphasis that will permit us to enhance the rights of taxpayers as we transform tax administration. These five areas are: Compliance 2000, Quality, Tax Systems Modernization, Ethics, and Diversity. If we deliver on these five initiatives, we will indeed transform tax administration to meet the expectations of the citizens we serve. In so doing we will also safeguard the fundamental rights of all taxpayers.

Our Annual Business Plan is the means of assuring accountability. We conduct annual Business Reviews of each of our seven regions and measure accomplishments against the milestones identified for each objective in the Strategic Business Plan. During this same review process, we address budget formulation and execution issues, succession planning for IRS executives, and executive performance appraisals.

We invite you and our other outside stakeholders to use our Strategic Business Plan as a frame of reference for assessing our progress. Many of our outside stakeholders already participate in developing the Plan, by helping us set our objectives

and define our strategies and milestones. I am particularly pleased with the wide range of groups involved in various aspects of these efforts: the National Treasury Employees Union; the Commissioner's Advisory Group (including representatives from a number of large private sector concerns with challenges similar to our own); the National Academy of Sciences; various practitioner groups (the Tax Section of the American Bar Association, the American Institute of Certified Public Accountants, the National Association of Enrolled Agents, the National Society of Public Accountants, and the Tax Executives Institute); the Federation of Tax Administrators (representing our colleagues in state tax administration); the Office of Management and Budget, the Treasury Department's Assistant Secretary (Management); and the General Accounting Office. We have also invited comments on our plan from your Committee and other Congressional Oversight Committees.

The Strategic Business Plan is the key to our progress. It is the single most important means of assuring that we meet our goal of reducing taxpayer burden and protecting taxpayer rights.

B. *The Definition of Taxpayer Rights.* Mr. Chairman, we believe the first and foremost right of all taxpayers is to a tax system that meets their expectations regarding the conduct of government. They have a right to expect a system that treats them fairly and that enables them to meet their tax obligations without unnecessary burden.

In this regard, it is important to bear in mind that taxpayers view the system from two perspectives:

1. In their individual dealings with the IRS, taxpayers have the right to expect:

—An organization that strives to continually reduce the burden of complying with the tax law;
—IRS employees who are fair, courteous, respectful, professional, and honest; and
—IRS actions that are timely, accurate and complete.

2. In their capacity as "owners of the enterprise" (i.e., as citizens who finance the Government), they have the right to expect that we will:

—Meet the same standards in dealing with all taxpayers;
—Assure that all taxpayers pay their fair share; and
—Make the best use of our resources and their tax dollars.

I believe we have the Plan and the review mechanisms in place that will allow us to meet these expectations. I expect significant progress toward these goals during my tenure as Commissioner.

C. *Reducing the Burden on Taxpayers.* Our efforts to reduce burden include both long-term and short-term efforts. As a preliminary matter, we have defined taxpayer burden to provide a focus for our efforts:

> **Taxpayer burden consists of the time, expense and dissatisfaction experienced by taxpayers, practitioners, and others in filing returns and paying taxes.**

As I have already mentioned, reducing taxpayer burden is one of the Internal Revenue Service's three major strategic objectives. We have made burden reduction a free-standing objective for one very good reason. It serves as a constant reminder that, in a democratic society, the government should serve the public, not the other way around. Our citizens' time and money are not free goods that the government can consume at will. We must always assess the impact of our policies, programs and actions in terms of the costs they impose on those we deal with and the public at large.

In the National Office, beginning this year, each Assistant Commissioner, Assistant to the Commissioner, and Associate Chief Counsel will identify at least one measurable area for burden reduction or burden reduction support. In addition, district office and service center executives will share responsibility for carrying out the National Office directed initiatives by reducing elapsed time in work processes, increasing currency of inventories, maintaining and improving quality, and identifying areas or projects for potential burden reduction within their functional area or office. At the close of the fiscal year, these officials report on their progress via the Annual Business Review process and in their individual Senior Executive Service (SES) statement of accomplishments. This will provide the necessary accountability for our burden reduction efforts.

We have already initiated a number of cross-functional projects designed to reduce burden. These include: (1) *One-Stop Service:* This is an initiative that will allow IRS employees to resolve 95 percent of taxpayer inquiries as a result of the initial contact. This long-term goal is being implemented incrementally as new features of Tax

Systems Modernization become available. In the past, for example, only about 56 percent of taxpayers who contacted Taxpayer Service about their accounts resolved the issue as a result of a single contact. Taxpayers were usually required to use written correspondence to resolve issues. To date, our efforts have increased the percentage of taxpayer account calls we are able to resolve based on a single contact (one-stop service) to 77 percent.

This effort is being implemented through the nationwide installation of over 800 additional computer terminals and through computer enhancements that increase our capability to address taxpayer problems. An example is newly installed computer software named R-T-VUE. This allows IRS employees to view data transcribed from the returns of the taxpayers they are trying to help. previously, if this information was needed to resolve a problem, the taxpayer would have been told to write the service center so we could manually retrieve their return from our files. This new software now allows us an on-line capability to review data from the return and to close the issue while the taxpayer is on the telephone.

(2) *Correspondence:* This initiative establishes a system to ensure that all incoming correspondence to service centers and district offices is answered in a timely manner. This will eliminate the misrouted or lost correspondence that necessitates multiple inquiries from taxpayers or their representatives. previously, our systems did not log in or control all incoming correspondence. As a result we have received complaints on our failure to respond in a timely manner.

So far, this effort has increased our timely response rate and when the recommendations of this study are fully implemented, taxpayers will no longer have to write to IRS more than once on the same issue because we will respond to most letters within 30 days. This, in turn, should reduce the number of Problem Resolution Program (PRP) and Congressional cases we are required to handle.

(3) *Alternatives to Traditional Tax Return Filing:* We have initiated a number of tests and options that allow taxpayers to file tax returns electronically or to file only the information needed by IRS to compute tax liabilities. Each method makes filing easier and reduces the chance of errors. Already this filing season 6.3 million of our citizens have opted to use one of these alternatives for filing their returns.

One new test underway is *"TeleFile."* This allows taxpayers in one state to file simple tax returns by touch-tone telephone. This test will explore the technical feasibility, public acceptance and the benefits and costs of filing simple returns using touch-tone telephones. TeleFile should result in fewer taxpayer errors, faster refunds, and reduced filing burden because taxpayers will not have to prepare a lengthy paper return and the IRS computes their tax. We have already received over 90,000 completed TeleFile calls in the first five weeks of the filing season.

(4) *Forms Simplification:* This initiative is utilizing the experience of employees who work directly with taxpayers to help develop simpler forms and instructions. Clearer forms require less time to complete and result in fewer errors. Also, more taxpayers can complete these returns without incurring the expense of outside preparation. An example is IRS Form 990EZ, *Short Form Return of Organizations Exempt from Income Tax,* which was introduced for 1990. It reduced taxpayer burden hours by over 3 million hours for smaller organizations and reduced the possible entries from 380 to 74. Another example is the elimination of the requirement for over one million taxpayers to file a depreciation schedule (Form 4562). A third example is the revision of the Form 1040A which enables most retirees to file their income tax using this tax form. As a result, 4.5 million additional taxpayers were eligible to use this form last year.

(5) *Collection Appeals Program:* We will begin a test in March, 1992, that will determine the feasibility of permitting taxpayers to appeal collection actions, including the denial of installment agreements, to the Appeals function. A critical part of the test will be to determine the potential effect on receipts from delaying collection action pending appeal. In light of our large accounts receivable inventory, we want to test carefully the potential effect of any program that could be used to stay collection action or to delay payment. We do, however, believe that all taxpayers have a right to understand why they have a tax liability, to appeal that determination at the appropriate point in the assessment process, and to ask for a review of any enforcement action they believe is improper. While current procedures protect those rights, we are testing new ways to enhance that protection and to make taxpayers aware that the appeals process is available.

(6) *Federal/State Cooperation:* This initiative covers a number of cooperative efforts between the IRS and state tax authorities to avoid duplication and to provide joint services to taxpayers. Increased federal/state cooperation will reduce the need for employers and taxpayers to provide the same information to both federal and state tax authorities and will reduce the cost of overall tax administration. An example is a current test with seven states that allows taxpayers to *file electronically*

both federal and state income tax returns with the IRS. In South Carolina, one of the test states, we have already received 110,000 electronically filed state returns this filing season. Once filed, state information is given to the state tax agency and federal tax information is processed by IRS. We are working with the states and the Social Security Administration to develop a *Single Wage Reporting Program* under which employers would file just one annual wage document for both Federal and state tax purposes. To expand these and other joint projects, we urge Congress to enact the enabling provision currently in the Simplification bill (S. 1394) which would permit the IRS and the states to enter into reimbursable agreements to further joint tax administration.

(7) *Tax Systems Modernization:* One of our most comprehensive burden reduction efforts involves the complete redesign of our tax administration systems. This effort puts particular emphasis on providing more timely information and services for taxpayers while providing greater protections for privacy and security. Once fully implemented, the modernized systems will reduce errors in case processing, reduce multiple contacts to resolve issues, and increase the IRS' ability to offer one-stop service. We expect that over the next 15 years, Tax Systems Modernization will save taxpayers more than 1.1 billion hours and $5.9 billion in out-of-pocket expenses that they would otherwise spend in meeting their tax obligations.

One example of a Tax Systems Modernization project that we have implemented is Corporate Files On-Line (CFOL). This project provides faster and easier verification of taxpayer identity information and permits immediate correction of name and address errors. This improves our service to taxpayers by reducing follow-up contacts, additional taxpayer inquiries, and notices issued.

(8) *Information Returns:* A senior executive has been appointed to oversee and coordinate IRS's multi-functional Information Returns Program. This provides a focal point within IRS for improving the quality of the information gathered, notices issued, and assistance provided in the matching of information documents with tax returns. Present efforts have resulted in the establishment of a new centralized call site at our Martinsburg Computing Center dedicated to providing assistance to financial institutions and other filers of information returns. In addition, an Advisory Committee of external stakeholders has been formed to offer constructive observations on IRS' Information Returns Program.

(9) *Collection Initiatives:* The Collection function has a number of burden reduction initiatives underway. One example is the *Installment Agreement* program which is being changed to make it more accessible to taxpayers who indicate to us that they are unable to pay their taxes on time. Revised procedures allow several functions to immediately grant requests for installment agreements. Moreover, as soon as we have an indication that a taxpayer's estimated tax payments may be falling behind, we have a system that reminds them to file and, if they are unable to make full payment, to pay the liability through an installment agreement. Procedures are also being revised to permit reinstatement of installment agreements in certain circumstances to ensure the consistent treatment of taxpayers.

Another example is the *Offer-in-Compromise* program which is being revised to make it a more useful tool for collecting delinquent taxes and placing taxpayers on the road to voluntary compliance. Forms are being simplified or eliminated, procedures streamlined, investigations simplified, and reporting requirements reduced. We anticipate that offers-in-compromise will become a more effective and widely used collection tool, allowing taxpayers to resolve their tax difficulties more reasonably and quickly.

(10) *Taxpayer Service:* In addition to the one-stop service initiative previously mentioned, for the past several years, IRS has devoted additional resources and management attention to providing improved service to taxpayers. The accuracy rate of our telephone assistors has been raised to 85 percent and we are working to improve upon that rate. Each correct response provided to taxpayers serves to reduce their frustration and, to the extent that these correct answers are reflected on their returns, to reduce the burden of additional contacts with the IRS.

(11) *Ethics:* We have been engaged in an effort to enhance and renew ethical awareness among our employees and in our relationships with taxpayers, practitioners, and other customers. This effort began with the adoption of a set of ethical principles as baseline expectations and values of the IRS. These principles were incorporated into a managerial training program which was given to all managers during 1991. Beginning this year, the training program will be provided to all employees utilizing job-specific case studies. Specific discussions will identify issues of fairness and honesty in the day to day operations of revenue agents, revenue officers, and other public contact personnel, and will focus on how we treat taxpayers as an ethical issue. While the emphasis of the training is on individual ethics, we believe it

will also increase our overall sensitivity to organization-wide ethical issues we face as an agency.

(12) *Diversity:* As the first woman Commissioner of Internal Revenue, I bring a personal perspective and commitment to our goal of creating an environment in which the IRS is strengthened by a diverse workforce—a workforce that is sensitive to procedures and policies that may create burdens for particular taxpayer groups. For example, multilingual employees may be more sensitive to the needs of non-English speaking communities; handicapped employees may find better ways we can help handicapped people deal with the tax administration system; employees who grew up in areas where their parents worked from "sun up to sun down" understand the difficulties of coming in for an audit. I believe our emphasis on recruiting and retaining a highly qualified, diverse workforce is one of the best ways we can assure that the needs and rights of all our customers are met.

III. TAXPAYER RIGHTS LEGISLATION

A. *1988 Taxpayer Bill of Rights.* Turning to tax legislation, it is appropriate to determine first whether the previous Taxpayer Bill of Rights legislation was properly implemented. As you know, Mr. Chairman, the GAO issued a report in December, 1991, entitled "IRS' Implementation of the 1988 Taxpayer Bill of Rights." We are pleased with the report's very positive findings concerning our efforts. GAO found that our implementation of all twenty-one provisions had been completed and was successful. GAO also made a few recommendations for improving aspects of our current programs that we fully agree with and are adopting. We appreciate GAO's work in reviewing our efforts to implement this legislation.

B. *Simplification Legislation.* This brings us to the subject of currently proposed legislation. Mr. Chairman, I am convinced that, for most taxpayers, tax simplification is the number one legislative priority. If we really want to protect the rights of our taxpayers, we will simplify our tax rules. Literally millions of small businesses and tens of millions of individuals would benefit from tax simplification legislation introduced last Spring. I am convinced that these efforts would also improve voluntary compliance with our tax laws. In my opinion, and in the opinion of other tax professionals, the single best legislation that could be passed to protect the rights of taxpayers is the Simplification bill now under consideration by the Congress. Taxpayers are pleading for simpler rules. Many of these taxpayers would never be faced with the problems we are discussing today if they had fully understood the tax laws when they filed their returns. The most important thing you and your colleagues could do to protect the rights of taxpayers is to push for the prompt enactment of the tax simplification proposals now under consideration by Congress.

IV. LEGISLATIVE MANDATES MAY BE COUNTERPRODUCTIVE

Mr. Chairman, I am encouraged by the many initiatives that the IRS already has underway to reduce burden on taxpayers and to ensure that the laws are administered fairly. I am not convinced that some of the legislation under consideration here today would help taxpayers. Although some provisions included in this bill would be helpful, there are other provisions that would undermine our tax administration system. Still other provisions would not achieve their intended purpose. In particular, I refer to the provision that would make the Taxpayer Ombudsman position a political appointee. There is no evidence that a political appointee would be more effective, and there is substantial reason to doubt the wisdom of politicizing this function. Almost all of the testimony heard by this Committee and others has attested to the fact that the Office of the Taxpayer Ombudsman is effective as it is currently structured. There is substantial reason, confirmed by those schooled in organizational theory, to believe that the new rules mandated by the proposed legislation could decrease the effectiveness of the Taxpayer Ombudsman's office. We believe most of the Committee's objectives for reporting by the Taxpayer Ombudsman could be met through oversight.

The statutory fixes we are considering today are, almost without exception, designed to help taxpayers who have not paid the correct amount of tax when they filed their returns. A quick review shows that we are talking about installment agreements, liens, abating interest, and other provisions designed to help taxpayers who have not or cannot pay their liabilities when due. In saying this, I do not want to discount the importance of laws which help taxpayers meet their tax obligations and which assure that they pay only the correct amount due. Such rules are essential, and it is absolutely imperative that we correctly administer those laws.

However, we would urge the -Subcommittee to exercise caution in statutorily mandating procedural rules. Such legislation may encourage increased litigation, increase our administrative costs, and increase accounts receivable by delaying re-

ceipts, and otherwise lose revenue. These increased costs are ultimately borne by all taxpayers. For this reason, we urge the Subcommittee to assess the impact on all taxpayers before enacting any statutory remedies to problems encountered by a few taxpayers.

Two other examples that are of particular concern are the proposed changes to the rules governing the collection of trust fund taxes and the proposal that would shift the burden of proof in civil tax matters. We have to be very careful when changing rules that govern responsibility for withholding and paying over trust fund taxes to the government. These taxes account for about $800 billion of the $1.1 trillion collected each year. At least 40 percent of our accounts receivable inventory stems from failures by responsible officers to meet these obligations.

Similarly, I am very concerned that civil tax enforcement would come to a screeching halt if we shift the burden of proof to the government. IRS research indicates that about $61 billion of the $94 billion individual income tax gap is from understated and unreported income. The Information Returns Program which matches information from third party payers with information reported by taxpayers on their returns is the primary means we have of discovering unreported income. Last year this program uncovered more than $20 billion in unreported income. We believe that the statutory changes under Consideration here would jeopardize the matching program and very soon erode the entire system of voluntary compliance.

It is also essential to keep in mind the size and scope of IRS' workload. Statutorily mandated procedures must be appropriate for across-the-board application, as IRS processes 200 million tax returns, one billion information returns, and collects a trillion dollars each year. This country cannot afford to tinker with long-standing procedural rules governing these processes without knowing the impact on tax administration as a whole. In this regard, we are seriously concerned about several of the provisions under consideration today. Some of the provisions may help a few taxpayers but could generate millions of dollars in costs for all other taxpayers. For this reason, I would urge the Subcommittee to work closely with IRS and the Department to draft provisions that promote the long-term well being of tax administration for all taxpayers.

Other than complexity, with some notable exceptions, most of the problems faced by taxpayers are not statutory in nature. Our efforts to reduce taxpayer burden indicate that most of the impediments to reducing burden are procedural or systemic. The most effective way Congress can assure that these procedures are changed and that improved systems are installed is through continued support and oversight. The review IRS conducted of its policies and procedures as a result of consideration of new Taxpayer Bill of Rights legislation was very beneficial and exposed procedural weaknesses that we will correct.

V. LEGISLATIVE PROPOSALS TO REDUCE BURDEN

In reviewing procedures and problems faced by taxpayers, we identified a few changes that require legislation. These statutory changes are needed to implement new procedures, including several recommended by the Taxpayer Ombudsman, and have been concurred in by the Administration. Many are included in the bill under discussion today. Most of these proposals amend statutory rules that are procedural in nature. Some of these procedures are long-standing provisions that work well in the main, but need small exceptions to permit discretionary actions that would help taxpayers. Others are changes that will go a long way in increasing fairness and reducing taxpayer frustration. These proposals are as follows:

- *Extend the Interest-Free Period*

Currently, when the IRS sends a first notice to a taxpayer asking for payment. the statute provides a 10-day interest-free period. If a taxpayer needs to consult his tax preparer or accountant, it is virtually impossible to remit timely payment within the 10-day period. As a result IRS must recompute interest and send taxpayers another notice which requires another response from the taxpayer. This needlessly leaves taxpayers frustrated and angry with the tax system and the Government. We therefore recommend extending this 10-day period to 21 days for taxpayers with a total Federal tax liability on the first notice of $100,000 or less.

- *Permit Change in Filing Status Without Full Payment*

There is a quirk in current law that precludes married taxpayers who initially file separate returns from amending their tax returns to file jointly unless they fully pay the amount of tax due on the joint return. The current law is unfair to those who could get a lower tax by filing jointly when they have not been able to pay the full amount owed on their separate returns by the filing deadline. In such cir-

cumstances, IRS encourages taxpayers to file a return by the due date and either pay the tax as soon as possible or enter into an installment agreement.

However, married taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded from reducing their tax liability if they are unable to pay the entire amount before the expiration of the three-year period for making the election to change their filing status. These taxpayers are stuck with paying the higher amount over the next seven years. Our proposal will eliminate this situation by allowing taxpayers to change their filing status without the requirement for full payment.

- *Withdrawal of Notice of Tax Lien*

A notice of tax lien provides public notice that a taxpayer owes the Government money. However, once filed, existing law provides that it cannot be released until a taxpayer's full debt is settled. Often, the public filing of a notice of lien adversely affects a taxpayer'S ability to borrow funds or enter into other financial relationships with suppliers and other creditors because credit bureaus routinely search lien records. As such, it may impose an unintended and counterproductive result that undermines the taxpayer's ability to pay. Accordingly, we proposed that IRS be given the discretionary authority to withdraw a notice of lien before a debt is fully paid if it is determined that withdrawal of the notice will serve the best interests of tax administration.

- *Return of Levied-Upon Proceeds*

Under current law, there are situations when we cannot return levied-upon amounts even when we believe it i9 equitable and in the best interest of the Government to do so. We have recommended that the statute be amended to make it clear that IRS has the authority to return these amounts.

- *Offers-In-Compromise*

This program should give taxpayers with severe financial hardships the ability to compromise their liabilities and get on with their affairs. At the same time, it should help the IRS maximize the collection of revenue. As part of this effort, we believe the current law governing offers-in-compromise should be amended. At present, the names of taxpayers whose tax debts are compromised as well as the amount of tax owed and the amount accepted by the Government are subject to public disclosure. In addition, an offer-in-compromise involving liabilities of over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the Chief Counsel. We believe that these provisions have a chilling effect on the use of offers-in-compromise and that they should be repealed.

- *Extend the 45-Day Interest-Free Period to Other Types of Taxes*

When a taxpayer applies for a refund of income tax previously paid on an original income tax return, the Government is permitted 45-days to process the return and send a refund check without paying interest. However, there is no similar interest-free period for other types of taxes. This treatment results in taxpayers receiving interest on some overpayments of tax, but not others. This proposal would provide a 45-day interest-free period for processing all types of tax returns.

I should note that three of these six proposals were recommended by the Taxpayer Ombudsman. The Treasury's Office of Tax Analysis estimates that, in the aggregate, these proposals will raise about $12.3 million over a five-year period. As such, they are consistent with the Budget Summit Agreement and the Administration'S policy regarding revenue neutrality. We believe that the modest net revenue gain should be used to fund the simplification proposals included in 5.1394 now under consideration by the full Committee.

V. CONCLUSION

Mr. Chairman, I have not commented on each of the provisions in your bill in my oral statement today because we received the statutory language less than forty-eight hours ago. We have attached comments to my written testimony that indicates our position on each of your proposals. Based on the information currently available to us, we support some of the provisions and oppose others. Most of our opposition stems from an analysis of similar provisions which we have determined would be very costly to all taxpayers if enacted. These costs are incurred whenever incentives to current payment are removed, when procedural rules encourage unnecessary litigation, and when the Government is required by statute to incur needless administrative costs. If we are not careful, the Taxpayer Bill of Rights will be just one more bill that taxpayers have to pay. I hope that ye can work together to find workable solutions to any taxpayer problems you have identified. In the long run, we believe

that support for, and oversight of, our efforts to modernize the tax system, improve compliance, and reduce taxpayer burden will transform tax administration for all taxpayers over the next decade. The best way we can protect taxpayer rights is to deliver on this promise.

Congress is essential to the success of these efforts. In terms of priorities:

- Keep us focused; provide vigorous and ongoing oversight of our progress in the five initiatives.
- Provide adequate funding for Tax Systems Modernization.
- From the standpoint of tax administration and taxpayer rights, tax simplification must be the number one legislative priority.

We must be realistic, pragmatic and focused in our efforts. If we concentrate our time, energy, and resources on what matters most, we will deliver on our promise to the American public.

Mr. Chairman, we invite you and the American people to give us your ideas on Compliance 2000 projects to help taxpayers comply with our tax laws. Join with us in a new partnership dedicated to proceeding in a spirit of cooperation to make the system work better for all of our citizens. Together we have the opportunity to transform the system. Let us seize that opportunity.

Attachment.

IRS COMMENTS

TAXPAYER BILL OF RIGHTS II

SENATOR PRYOR'S BILL (UNNUMBERED)

ESTABLISHMENT OF TAXPAYER ADVOCATE (IRC 7802)
(Bill Section 101)

Provision Summary

1. Establishes the position of Taxpayer Advocate, to be appointed by the President and confirmed by the U.S. Senate.

2. Requires several annual reports by the Advocate to the tax writing committees, including 20 taxpayer problems.

3. Requires the IRS to establish procedures to provide a formal response to all recommendations submitted by the Taxpayer Advocate.

IRS Procedure

1. The Taxpayer Ombudsman is a career civil service executive recommended by the Executive Resources Board of the IRS and selected by the Commissioner. The incumbent is subject to the Hatch Act and the IRS Rules of Conduct. The incumbent is an Assistant to the Commissioner and reports directly to the Deputy Commissioner and the Commissioner.

2. An annual report to the Congress on taxpayer services is required by section 6235 of P.L. 100-647 (TAMRA). The report is prepared jointly by the Taxpayer Ombudsman and the Assistant Commissioner (Taxpayer Services).

3. A tracking system to ensure format responses to recommendations made by the Taxpayer Ombudsman is being instituted. The Taxpayer Ombudsman would be happy to report such recommendations and the Agency's responses to the Congress.

IRS Position

1. Recent congressional testimony, comments from practitioners and taxpayers and GAO reports indicate that the Taxpayer Ombudsman and Problem Resolution function are working well. A primary reason for this success is that the IRS organization supports both the office and the role of the Ombudsman as currently structured. To be successful, the Ombudsman must understand how the organization works and how to deal within the organization to overcome problems and correct errors. The IRS has been able to select individuals who have the talent and interest necessary to help taxpayers deal with the difficult tax rules and procedures and who also have the knowledge and skills required to competitively advance within the organization. A political appointee, who lacks an IRS background, is unfamiliar with IRS operations, and has no day-to-day working relationship with IRS officials may be <u>less effective</u> in getting results for taxpayers.

The Taxpayer Ombudsman must, when necessary, become personally involved in individual taxpayer cases and has statutory authority to order operating officials to cease an action that directly impacts on the administration of the tax laws. This bill would enlarge these authorities and would offer many opportunities to a political appointee to take actions that could be perceived as being politically motivated or favoring certain taxpayers. This could be damaging to tax administration and is a primary reason that the Congress, in the early 1950s, limited the number of Presidential appointees in the IRS to one - the Commissioner.

2. As noted, the statute already requires the Taxpayer Ombudsman and the Assistant Commissioner Taxpayer Services to report annually to the Congress on the quality of services to taxpayers, on problems faced by taxpayers, and on the IRS' accomplishments in improving services to taxpayers.

3. We do not believe that legislation is required to institute a procedure for responses to the Ombudsman's recommendations. The Ombudsman has been asked by the Commissioner to track actions on such proposals and report the progress on them to the Commissioner. A copy of this report can be provided to the Committee.

EXPAND TAXPAYER ASSISTANCE ORDER (TAO) AUTHORITY (IRC 7811)
(Bill Section 102)

Provision Summary

The qualifier "significant" is removed from the phrase "significant hardship." TAO authority is expanded to allow for the taking of affirmative actions, i.e., requiring something to be done, as well as the current authority to stop any IRS action. A TAO may be modified or rescinded only by the Taxpayer Advocate or the Commissioner.

IRS Procedure

IRS procedures implementing the authority to issue Taxpayer Assistance Orders currently give the Ombudsman authority to expedite refunds, to effect audit reconsiderations and to expedite determinations in areas of hardships.

Also, relief from IRS actions is often granted even when taxpayers have not indicated a hardship has or will occur as a consequence of the action(s) taken.

Current law provides that a TAO may be modified or rescinded by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or any superior of such person.

IRS Position

The summary of this provision provides that the word 'significant' is to be removed as a qualifier of 'hardship' because the present law permits the Ombudsman to correct situations but not to prevent harm. The premise of the change is incorrect. The current law provides that a TAO can be issued where the taxpayer "is suffering or about to suffer significant hardship" [emphasis added]. We believe that it is appropriate to retain the standard of significant hardship in order to provide both taxpayers and the IRS some means of distinguishing the critical cases.

It is true that current law does not specifically permit proactive steps to relieve hardships. However, these actions to help taxpayers are permitted administratively. Procedures also provide for relief in emergency refund cases, as well as faster than routine decisions that are needed to avoid a serious economic hardship, e.g., tax exemption applications, accounting period changes, etc.

The proposal would also limit the authority to modify or rescind Taxpayer Assistance Orders to the Taxpayer Advocate or the IRS Commissioner. Because of our decentralized organization, we believe the current delegation of authority works better than that proposed by the bill. Currently, if a district or service center director does not agree with the local Problem Resolution Office on the issuance of a Taxpayer Assistance Order, that disagreement is referred to the Taxpayer Ombudsman who, in turn, could only be overturned by the Commissioner. To date, there has been no such disagreement or need for referral. In addition, in most cases where taxpayers have received the relief they requested, a TAO was not required. If this proposal is enacted, employees in 63 IRS districts and 11 service and compliance centers would have to request reviews of TAOs by the Taxpayer Advocate or the Commissioner. This could place a major time burden on the Taxpayer Advocate and could considerably slow down the process of helping taxpayers, since it would take longer to gather the information needed to make such decisions and ship it to the National Office for the Taxpayer Advocate's review.

It is unclear what is intended by granting the Taxpayer Advocate authority to "abate assessments" and "grant refund requests." While Problem Resolution Officers currently have the authority to abate certain penalties and to authorize manual refunds, it appears this proposal may include abating the underlying tax liability and granting refunds not allowed by statute. Under this provision, the Taxpayer Advocate would apparently have expanded authority to require any action. We would oppose such authority.

TAXPAYER'S RIGHT TO INSTALLMENT AGREEMENT (IRC 6159)
(Bill Section 201)

Provision Summary

An individual taxpayer has the right to an installment agreement if the taxpayer has not been delinquent in the past three years and the liability is under $10,000. The provision is limited to Form 1040 taxes.

IRS Position

In FY 1991, the IRS entered into installment agreements with 1.1 million taxpayers. Generally, IRS will grant an installment agreement if it is determined that the taxpayer cannot immediately pay the liability. Under the proposal, nonpayment of taxes is permitted even if the taxpayer has the ability to pay. This statute, coupled with the proposal to suspend any failure-to-pay penalty would encourage taxpayers to make business decisions to defer paying their taxes in order to use the money for purchases, investments, etc. If interest is the only cost of late payment, taxpayers will eventually adjust their withholding and estimated tax payments thereby using the government as a lender of first resort.

NOTIFICATION OF REASONS FOR TERMINATION (IRC 6159)
(Bill Section 202)

Provision Summary

Requires the IRS to notify taxpayers 30 days before canceling installment agreements, except in jeopardy situations, and to include an explanation as to why such action is being taken.

IRS Procedure

A recent GAO report (IRS' Implementation of the 1988 Taxpayer Bill of Rights, 12-91) reviewed the IRS' procedures for administering installment agreements. The Report included the following findings and recommendations:

1. All current installment agreements signed by taxpayers put them on notice that these agreements will be canceled if they fail to make timely payment or if their check is dishonored, or if they incur a new tax liability.

2. IRS service center procedures call for notifying taxpayers that their installment agreement is being canceled. Such notice gives the reason for cancellation. However IRS district offices do not give taxpayers notice prior to cancellation of installment agreements.

3. GAO recommends that all IRS offices should provide notice prior to cancellation.

The IRS agreed with GAO that we should uniformly provide notice to taxpayers prior to cancellation of installment agreements except in cases of jeopardy. We also agreed to revise the installment agreement default notice to specify the reason for the default. We are in the process of fully implementing these changes.

IRS Position

We believe the statutory provision is unnecessary in view of the procedures that will soon be implemented in all offices.

As stated above, we have revised the default notice to state the particular reason for cancellation before canceling an installment agreement. There are three specific reasons for canceling an agreement: dishonored checks, insufficient payment and failure to timely pay a new tax liability. All offices will mail notices to the taxpayer at least 30 days before an agreement is canceled, except in jeopardy situations.

ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR, OR TERMINATION OF, INSTALLMENT AGREEMENT (IRC 6159)
(Bill Section 203)

Provision Summary

IRS must establish procedures for an administrative review of terminations or denials of requests for installment agreements.

IRS Procedure

Taxpayers currently have the right to appeal the denial of their request for an installment agreement to the group manager and higher level managers, including the district director. During 1992, we are testing an appeal process for various

collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals personnel.

If the taxpayer does not want to discuss this with the group manager, or higher level manager, or, having had the discussion still disagrees, the taxpayer has the right to discuss the matter with a member of the Ombudsman's staff.

IRS Position

We are in the process of implementing a one-year test program that will allow us to determine the feasibility and cost of an appeals process for all Collection enforcement actions. The costs measured will include the effect on accounts receivable and revenue from delayed payments as well as the costs of administering the program. In view of this test program, we urge the Congress to delay enactment of a statutory provision until we can analyze the results of the program. A statutory provision which requires a stay in collection pending appeals could cause the government to incur increased costs and result in substantial delays in revenue receipts. In light of the current $100 billion accounts receivable inventory, we want to fully test any program that may substantially delay or otherwise negatively affect revenue receipts in any way.

FAILURE TO PAY PENALTY SUSPENDED (IRC 6651)
(Bill Section 204)

Provision Summary

Prevents the IRS from imposing the "failure to pay" penalty on taxpayers during the period in which an installment agreement is in effect.

IRS Procedure

The failure to pay penalty is currently 0.5 percent per month of the amount of tax, up to a maximum of 25 percent. The penalty increases to one percent after final notice unless the taxpayer has negotiated an installment agreement prior to final notice. In such case, the penalty continues at 0.5 percent until the cap of 25 percent is reached.

IRS Position

We know that taxpayers are often offended at having to pay a penalty even though they are complying with all the terms of an installment agreement. At the same time, we do not want to change the statute to eliminate the incentive to pay timely. For this reason, while it may be appropriate to suspend the failure to pay penalty during the period a taxpayer is making timely installment payments, we are concerned that some taxpayers may consider it advantageous to file returns without payment since the only cost would be an interest charge. There may be some way to cap the failure to pay penalty or to otherwise revise this proposal to encourage taxpayers who cannot pay when they file their returns to promptly enter into installment agreements without encouraging those who are able to pay to take advantage of the provision.

EXPANSION OF AUTHORITY TO ABATE INTEREST (IRC 6404)
(Bill Section 301)

Provision Summary

The IRS must abate or refund interest for unreasonable IRS errors and delays.

IRS Procedure

IRC 6404(e)(1) provides the IRS with the authority to abate interest on any deficiency in cases where the interest is "attributable in whole or in part to an error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act."

A ministerial act is defined as a procedural or mechanical act that does not involve the exercise of judgement or discretion and occurs during the processing of a taxpayer's case. During FY 1991, about 20 percent of the 5,000 requests for abatement qualified in whole, or in part, for abatement.

IRS Position

Expansion of this provision seriously erodes the long-standing principle that interest is a charge for the use of money. Further, the term unreasonable delay is so imprecise as to leave open to question almost all IRS action. By providing for the justiciability of abatement of interest claims, taxpayers would routinely challenge interest assessments. Representatives and taxpayers would have an obligation to their clients to routinely request such abatements thereby substantially increasing the costs of the government.

We believe, however, that the IRS should strengthen its procedures to timely close examinations, once initiated, and to take every appropriate action to expedite case processing. We believe our new emphasis on reducing taxpayer burden by increasing the currency of all cases will ultimately be more effective and less costly to the government than a statutory change to abate interest. These objectives are incorporated in our strategic plan and our annual business plan. Each office is measured on their progress toward achieving these objectives.

EXTENSION OF INTEREST-FREE PERIOD FOR REMITTING TAX (IRC 6601)
(Bill Section 302)

Provision Summary

This proposal would extend the interest-free period for payment of tax liability from the current 10 days to 21 days after the first notice for total tax liabilities less than $100,000.

IRS Procedure

The IRS makes every attempt to maximize the number of days a taxpayer has to respond to these notices by mailing the notices as early as possible and by allowing a grace period for timely receipt. Even so, taxpayers are frustrated by these notices because they do not receive the notice in time to find and review their records, consult with their accountant and make timely payment within the statutory 10 day period specified on the notice. If the payment is not received and credited within a specified number of days, another notice is sent requesting an additional payment of penalty and interest. This results in more processing time and costs, additional taxpayer contact, and more handling of manually processed cases. Additionally, collection costs increase as a result of taxpayers who dispute the assessment for additional interest because they feel it is unfair. Extending the time period for payment would eliminate these costs for taxpayers who are trying to comply, by allowing them sufficient time to respond to the notice.

IRS Position

The IRS supports extending the interest-free period from 10 days to 21 days.

EQUALIZATION OF INTEREST RATES (IRC 6621)
(Bill Section 303)

Provision Summary

The government and taxpayers would pay the same interest rate. Both rates would be the Federal short-term interest rate plus three percentage points.

IRS Procedure

IRS procedures reflect the current statute, i.e., the government pays the Federal short-term rate plus two percentage points on overpayments and the government charges the Federal short-term rate plus three percentage points on underpayments.

IRS Position

While variable rates increase the complexity of computations, the current statute reflects the business standard of charging a higher rate for customer borrowing.

SEPARATE DEFICIENCY NOTICES IN CERTAIN CASES (IRC 6212)
(Bill Section 401)

Provision Summary

This provision would require the IRS to send duplicate notices of deficiency to the address of the most recent taxable year for which the IRS has data on such spouses who do not file jointly.

IRS Procedure

IRS procedures reflect the current statute, IRC 6212(b)(2), which states that when the IRS has been notified that separate residences have been established, then a duplicate of the joint notice of deficiency shall be sent by certified or registered mail to each spouse at such spouse's last known address.

IRS Position

The current statute already requires duplicate notices when the IRS is notified of separate addresses. However, we do not believe it is currently possible for IRS to search its files each time it issues a deficiency notice for a joint return to determine whether each spouse has subsequently filed a separate return with a new address but we will study the matter further. We agree that the IRS should take measures to assure that current procedures are being followed. We believe that our notification procedures will be more effective once our tax systems are fully modernized to permit automatic tracking of master file changes in address of both the primary and secondary accounts.

DISCLOSURE OF COLLECTION ACTIVITIES (IRC 6103)
(Bill Section 402)

Provision Summary

Upon written request by one spouse, the IRS must inform such spouse as to whether the IRS is making any attempt to collect the tax liability from the other spouse; the general nature of such collection activity; and, the amount collected.

IRS Procedure

The IRS currently has the authority to disclose return information to either spouse under IRC 6103(e)(1)(B) and 6103(e)(7). Under IRC 6103(e)(7), the IRS may withhold such information if it determines that disclosure would seriously impair Federal tax administration.

IRS Position

Although we believe such disclosure is already authorized under current law, this change will clarify that such authority is specifically permitted in cases relating to divorced spouses. We have also asked Internal Audit to review our procedures and practices to assure that they are adequate and are being followed appropriately.

FILING JOINT RETURN WITHOUT MAKING FULL PAYMENT
(IRC 6013)
(Bill Section 403)

Provision Summary

Repeals the provision that requires full payment of tax liabilities as a precondition to taxpayers switching from married-filing-separate status to married-filing-joint status.

IRS Procedure

IRS procedures reflect the current statute. IRC 6013 requires that when taxpayers file amended returns to change the filing status to joint from separate, any balance due on the amended joint return must be paid in full before the jointly filed return is accepted.

IRS Position

This is an IRS proposal. It will permit the IRS to assess married taxpayers the lower joint tax liability.

REPRESENTATION OF ABSENT SPOUSE
(Bill Section 404)

Provision Summary

In the case of divorced or separated spouses, the absent spouse's signature is required to acknowledge whether the other spouse may or may not represent the other spouse in an audit.

IRS Procedure

Currently, there is no procedure to require the IRS to request authorization from an absent spouse allowing the other spouse to represent them in an audit situation. However, current procedures do allow each spouse an opportunity for a separate appeal of the Statutory Notice of Deficiency.

IRS Position

We are unable to determine the intent of the provision from the draft language of the bill. However, we do not believe the provision, as drafted, would provide any protection for either spouse since IRS would be compelled to issue a Statutory Notice of Deficiency without the benefit of a face-to-face examination conference with either spouse. It would not be possible to defer assessment until we achieved agreement from both spouses.

NOTICE OF PROPOSED DEFICIENCY (NEW IRC 6211A)
(Bill Section 501)

Provision Summary

This provision will require the IRS to issue a notice of proposed deficiency (30-Day Letter), thereby permitting administrative appeal rights. If there are less than six-months left on the statute of limitations, then the taxpayer shall have the option to extend the statute of limitation so the IRS can issue a notice of proposed deficiency. The notice requirement will not apply in jeopardy assessment situations.

IRS Procedure

Once a Statutory Notice of Deficiency (90 day letter) has been issued, taxpayers can petition to the tax court or pay the deficiency and petition to the District Court. These cases are generally also routed through Appeals before they are docketed unless taxpayers choose not to.

IRS Position

The IRS normally uses a 30-day notice of proposed deficiency to help the taxpayer and the IRS work out any misunderstandings before a formal Statutory Notice of Deficiency (90-day letter) is issued. Taxpayers can use this 30-day letter to agree and pay the liability, or to appeal the proposed deficiency. The 30-day notice is not normally provided when the statute of limitations would expire before we could issue a Statutory Notice. Current procedures are effective because the requirement is informal. The statute mandates all of the statutory protections that are currently accorded Statutory Notices of Deficiency, i.e. the requirement to send notices by certified mail, etc. This would substantially add to the cost of our examinations. It would greatly add to the cost of the document - matching program. A process that now works well on an informal basis would encumber the system were it made mandatory.

MODIFICATIONS TO LIEN AND LEVY PROVISIONS (IRC 6323)
(Bill Section 502)

Provision Summary

1. Allows IRS to withdraw liens when:
   a. the filing of the notice was premature or not in accordance with procedures;
   b. the taxpayer had entered into an installment agreement;
   c. withdrawal of the lien would facilitate collection; or
   d. withdrawal would be in the best interest of the taxpayer and the government.

2. Requires the IRS to notify credit reporting agencies that the notice of lien has been withdrawn.

3. IRS must return levied upon property in the above four situations.

4. This provision increases the levy exemption amounts of $1,500 for personal property and of $1,100 for equipment and property for a trade, business, or profession to the present indexed amounts.

IRS Position

1. As proposed in our testimony, IRS believes the statute should be amended to give us the statutory authority to withdraw a notice of federal lien in certain circumstances. For example, if we agree with the taxpayer not to file notice of such lien as long as he is making timely payment, we believe we should be able to withdraw notice if, as a result of administrative error, the notice is inadvertently filed. Just as a financial institution assures their loans by putting a lien on property, the government must be able to protect its rights to other assets of the taxpayer in cases of default.

2. We oppose the provision that requires IRS to contact credit bureaus. Instead, we recommend that the IRS, upon written request by a taxpayer, provide the taxpayer with copies of the withdrawal notice for forwarding to any credit bureau the taxpayer deems appropriate. This is the procedure currently followed when releasing an erroneously filed lien.

3. We have proposed that IRS be given the authority to return levied upon property in three situations: first, where a financial institution does not hold levied upon money for 21-days after being served with a levy; second, where a jeopardy levy is made and it is subsequently determined that there was no jeopardy situation; third, if an installment agreement is entered into and, in violation of the agreement, a levy is made. We suggest the provision be limited to these situations.

4. The current exemption amounts are $1,650 for personal property and $1,100 for equipment and property for a trade, business, or profession (IRC section 6334). Increasing these amounts is a revenue issue. Therefore, IRS has no position.

OFFERS-IN-COMPROMISE (IRC 7122)
(Bill Section 503)

Provision Summary

If an assessment is less than $50,000, an opinion of the Chief Counsel is not needed. However, IRS would be requested to quality review these offers. Also, accepted offers of less than $50,000 would not be subject to public disclosure.

IRS Procedure

Current procedures require a General Counsel opinion to be filed in the Office of the Secretary of the Treasury before acceptance of an offer in compromise if the balance of the unpaid amount of tax assessed is greater than $500. This opinion must include the amount of tax assessed; the amount of interest, additional amount, addition to the tax, or assessable penalty imposed by law on the person against whom the tax is assessed; and the amount actually paid in accordance with the terms of the compromise.

IRS Position

We support this provision, which is based on an IRS proposal. The Committee may want to note that a record of accepted offers-in-compromise be created. Although it should not be publically disclosable, it would continue to be available, upon request, to GAO or the tax writing committees of Congress for oversight purposes.

NOTICE OF EXAMINATION (IRC 7605)
(Bill Section 504)

Provision Summary

This provision would require a written initial notice of an examination.

IRS Procedure

The initial notice of an examination is always made by written notice in the service centers in the form of an inquiry letter or a notice of proposed deficiency. However, some districts have preferred to make the initial contact by telephone in order to work out the time and place of the examination.

IRS Position

We do not oppose this provision. However, we suggest that this notification requirement be limited to civil tax examinations. Criminal tax investigations, also covered by IRC 7605, currently must be conducted in accordance with specific, carefully developed procedures which assure their effectiveness while preserving a taxpayer's rights.

RECOVERY OF CIVIL DAMAGES (IRC 7433)
(Bill Section 505)

Position Summary

The $100,000 cap for civil damage awards under IRC 7433 is removed. Also, damages may be awarded for negligent as well as reckless and intentional actions.

IRS Position

We oppose substituting a simple negligence statute for the current reckless or intentional disregard standard. Legislation authorizing civil actions based on simple negligence will cause the government, and all taxpayers, to incur substantial additional cost. Such legislation will encourage taxpayers to file actions for even the slightest, inadvertent error by an IRS employee. The sheer number of additional actions will require the IRS to divert staff and resources to respond to taxpayers' claims. This, in turn, will hamper the IRS's ability to administer the tax laws efficiently and expeditiously. In addition, removing the cap on awards and authorizing actions for simple negligence will increase both the amount and the number of awards. The provision invites litigation. In fact, it could create an obligation for taxpayers' representatives to routinely ask for damages.

DESIGNATED SUMMONS (IRC SEC. 6503(k))
(Bill Section 506)

Position summary

1. A designated summons, which could result in extending the statute of limitations, can be issued only if the IRS has not had at least three years to complete the audit or if the taxpayer has refused to extend the statute for at least two years.

2. A designated summons cannot be issued unless a "delay or other action of the taxpayer" prevented the accurate determination of tax before the end of the limitations period.

3. A designated summons could not be issued unless the taxpayer had been given "sufficient time to respond to a written request for documents" _and_ had "failed substantially to comply" with the request.

4. IRS must give written notice of intent to issue a designated summons, indicate reasons why the person failed to substantially comply with a previous written request, and offer a right to an interview within 15 days of the notice.

5. Within ten days of the day the summons was issued, the person to whom the summons was issued would have the ability to bring suit in district court to terminate the suspension of the statute by challenging the Service's determination of whether the taxpayer had sufficient time to respond and had substantially complied, or to quash or modify the summons.

IRS Position

We oppose the proposal to amend section 6503(k) because it could once again give an undue advantage to large U.S. and foreign owned multinational corporations against the Service in significant and complex examinations, such as those involving section 482.

We believe, as did Congress in 1990, that the rules of section 6503(k) are necessary, and that the Code currently provides appropriate safeguards for the large corporations that potentially could be affected by designated summonses. The proposal, by affording corporations with the right to an advance hearing, and requiring the Service to justify its entitlement to use the designated summons procedure, would effectively restore to uncooperative taxpayers the ability they had before 1990 to delay or even evade legitimate document production requests, and to thereby use the statute of limitations as a weapon against the Service.

Section 6503(k) can be applied only against corporations. It was enacted after extensive hearings in 1990 because of Congress' concern that foreign and U.S. controlled corporations could easily obstruct IRS examinations by declining to respond voluntarily to IRS attempts to obtain information. Congress believed this technique to be particularly damaging to the Service in complex, factual cases such as those involving potentially significant intercompany transfer pricing disputes under section 482. Under prior law, a corporation could deny the Service the ability to make an accurate evaluation of its tax return by refusing to voluntarily provide information and by allowing the statute of limitations to expire.

Concerns about unfair surprise against corporate taxpayers and abusive use of designated summonses have no basis in the Service's application of section 6503(k). The Service's voluntary administrative practice is designed to limit the use of designated summonses to large, sophisticated corporate taxpayers, and only after attempts to obtain information voluntarily have proven unsuccessful. The Service's internal guidelines require this tool to be employed with restraint, generally only with respect to examinations in the Large Case Program, and only after informal written document requests have proven unsuccessful.

In addition, the Service's internal guidelines require any decision to issue a designated summons to be referred to District Counsel and then to the Deputy Regional Counsel (General Litigation) prior to issuance, and designated summonses can be enforced only after review by Chief Counsel functions in the National Office and by the Department of Justice.

PHONE NUMBERS ON INFORMATION RETURNS (IRC 6041, 6042, 6044, 6045, AND 6050)
(Bill Section 601)

Provision Summary

This proposal would require that information returns contain the payer's name, address, and telephone number.

IRS Procedure

There is currently a requirement for payers to include their name and address on information returns (Forms W-2 and 1099) furnished to taxpayers. There is, however, no requirement for the payer to include a telephone number although many do.

IRS Position

We do not oppose this provision. Taxpayers often need to contact payers regarding information shown on their information returns in order to resolve questions about the accuracy of such information provided to the IRS.

CIVIL DAMAGES FOR FRAUDULENT INFORMATION RETURNS (IRC 7434)
(Bill Section 602)

Provision Summary

If any person files a false or fraudulent information return with respect to payments made to another person, the other person may bring a civil action for damages against the person filing such return. Damage awards shall be at least $5,000 and damage actions must be brought within six years from the time the information return was filed with IRS.

IRS Procedure

The service center document matching program identifies inconsistencies between the payer's information return and the payee's tax return. These discrepancies can only be discovered by contacting taxpayers and payers.

IRS Position

Occasionally, persons intentionally file false information returns with the IRS. Since the IRS has no way of knowing if the information is incorrect until it contacts the payee/taxpayer, these information returns cause substantial problems for both the IRS and the taxpayer. There are currently criminal sanctions that apply to the intentional filing of false information returns, (IRC 7204 - 06). In addition, state laws may already provide adequate remedies that can be pursued by payees against payers who intentionally file fraudulent information returns. We oppose this proposal because it would create an unnecessary federal cause of action.

REASONABLE INVESTIGATIONS OF INFORMATION RETURNS (IRC 6212)
(Bill Section 603)

Provision Summary

Where a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return, the IRS would have to bear the burden of proof in any deficiency or refund proceeding absent a showing that IRS conducted a reasonable investigation of the facts and physically examined the taxpayer's return.

IRS Procedure

When there is a discrepancy between an information return and a tax return, the IRS first contacts the taxpayer. If the taxpayer disputes the correctness of the information provided by a third party to the IRS, the IRS must issue a Statutory Notice of Deficiency in order to assess any tax. This notice gives the taxpayer the right to formally appeal the finding of deficiency. Generally, in disputed cases, the IRS will contact the third party payer to determine the correctness of the information provided before issuing a Statutory Notice of Deficiency.

Internal procedures are in place which provide specific instructions for determining the accuracy of Forms 1099 or W-2 in administering the service center matching program.

IRS Position

Currently, we examine less than one-percent of all tax returns. However, because of the high cost of complete audits and the limitation in resources, we have extended our resources through the use of an information document matching program. This program uses a computer to match items reported by third parties, such as banks, with items reported by taxpayers on their returns. When there are discrepancies, we normally look at the underlying return, or a computerized record of that return, before notifying taxpayers that there is a discrepancy. Taxpayers are given full opportunity to challenge these proposed deficiencies by providing information to indicate that the notice is incorrect. It is not clear that this provision would do anything to help specific taxpayers, but it would cause an extraordinary and wasteful use of resources to document the time spent in proving that we made a reasonable determination. None of these actions would provide protections for taxpayers, but their attorneys could routinely challenge each proposed deficiency to assure that we had met these tests.

Of greatest concern, however, is the statutory shifting of the burden of proof. If a taxpayer is unwilling to respond to our notices of proposed deficiency or to produce books and records that can be examined, the IRS is unable to prove whether the taxpayer did or did not receive income or incur deductible costs other than through reliance on information provided by third parties or through very labor intensive criminal investigations. For this reason, the IRS has been required to carry the burden of proof only in investigating tax evasion or other crimes, not in civil tax assessments. The U.S. tax system relies on the voluntary compliance of its citizens. However to maintain this system, certain rules and procedures are necessary. The requirement to maintain, and to produce for examination, such books and records as are necessary to substantiate the proper assessment of tax is at the very core of our voluntary tax assessment system. The IRS does not have access to books and records in the taxpayer's possession. For this reason, the burden of proof must rest with the party who controls access to the needed information. If we remove these incentives to properly report by shifting the burden of proof, the entire tax system will eventually crumble.

TRUST FUND TAXES (IRC 6672)
(Bill Section 701)

Provision Summary

IRS must issue a preliminary notice which would give the taxpayer the right to an administrative appeal hearing. Also, taxpayers may go to Tax Court prior to assessment via a declaratory judgment procedure similar to IRC 7476.

IRS Procedure

(1) Under current procedures, taxpayers are notified of their right to protest the proposed assertion of the 100% penalty to the Appeals function.

(2) While current law does not allow the taxpayer to go to Tax Court, IRC 6672(b) allows the taxpayer to bring a refund suit in the appropriate United States District Court, or in the Court of Claims, before paying the full liability. If the taxpayer meets the following requirements, collection is withheld:

(a) pays an amount which is generally equal to the tax withheld from one employee for one quarter;

(b) In some instances, taxpayers are also requested to furnish a bond in an amount equal to 1 and 1/2 times the amount of the tax due; and

(c) within 30 days after the claim for refund is denied, files a refund suit.

IRS Position

It is important to recognize that the so-called "100 percent penalty" is a means of collecting the taxes due when an employer fails to collect and/or remit to the government amounts which he has withheld from his employees to pay their social security taxes or their withheld income taxes. The government collects the "100 percent penalty" in lieu of the tax due. Most of the court cases involving trust fund issues are brought to determine who had the responsibility for paying these taxes,i.e., who was the person responsible for withholding and paying these taxes.

IRS agrees that nonpayment of employment taxes is one of the biggest problems facing the government. About $800 billion of the trillion dollars collected annually is remitted through the payroll tax deposit system. If the rules governing these payments don't work, the government doesn't work. We have testified that the current deposit rules are unacceptably complex. Enactment of the simplification proposals under consideration in S. 1394 would go a long way toward helping taxpayers know when their payments are due. These new rules would also help IRS know immediately when taxpayers miss payments so that we could collect any taxes due while the business entity is still viable.

In the long run, these and other initiatives we are beginning under our Compliance 2000 approach will help taxpayers avoid penalty situations. We are taking other educational actions to teach new employers, from the beginning, about their responsibilities to withhold and remit to the government their employees' payments for trust fund and income taxes.

We would like to work with this Subcommittee on an alternative proposal that would achieve the intent of this provision without endangering the system. For example, under our current rules, most taxpayers are given notice of their liability for the tax and are notified of their right to an administrative appeal. This occurs routinely unless such notice is preempted by the running of the statute of limitations or unless responsibility for the tax is being addressed through litigation in another proceeding. If this provision were made mandatory, the statute period for assessment should be extended by 60 days.

We would not recommend that these suits be brought in the Tax Court, but we would agree to stay collection without bond if we could require that the court cases of all parties to the

proceedings be heard at one time by one court. We would not recommend that a declaratory judgment procedure be used because it is not appropriate in determinations of fact. These cases are, by nature, fact intensive, and there is often a dispute among parties regarding who is liable. The current proposal would not permit resolution of this issue in one proceeding and could jeopardize collection of the tax because the government could be easily "whip-sawed." In addition, because of the limited nature of discovery in the Tax Court, judicial review of this type of issue should remain in the District Court where discovery is broader.

(2) We oppose allowing parties to challenge the liability in Tax Court prior to assessment because it would harm the government's ability to collect the amount due. Our experience is that the longer the delay between the failure to pay over the tax and the assessment of the penalty, the less likely we can collect the amount due. Failure to pay over withheld taxes usually occurs when the business begins to fail. Although we may find a way to make statutory improvements, we believe the current rule provides the responsible person with the right to have a court determination while, at the same time, protects the government's revenue.

DISCLOSURE OF "RESPONSIBLE OFFICER" PENALTY ACTIONS (IRC 6103)
(Bill Section 702)

Provision Summary

Permits the IRS to provide, upon written request, to a "responsible officer" being penalized for failure to properly collect and pay over taxes, the name of any other responsible officer against whom the IRS is asserting the penalty along with the general nature of IRS' collection activities.

IRS Procedure

IRC 6103 prohibits the disclosure of this information. Therefore a taxpayer assessed the penalty for failure to pay over tax cannot find out what action is being taken against other responsible taxpayers.

IRS Position

We do not oppose this proposal. However, we suggest that the statute or legislative history define the "general nature" of collection activities to be disclosed to ensure consistency. Also, the provision should specifically provide that any disclosure is within the discretion of the IRS.

NO PENALTY IF PROMPT NOTIFICATION (IRC 6672)
(Bill Section 703)

Provision Summary

A responsible person who notifies the IRS within 10 days of the failure to pay over trust fund taxes to the government shall not be liable for the penalty for failure to pay over tax so long as the notification is prior to the IRS' contacting the business about the failure to pay over the taxes, and that the person is not a "significant owner" (more than a five-percent interest) or a "highly compensated employee" (compensation in excess of $75,000).

IRS Procedure

IRC 6672 describes persons who are responsible officers. Generally, any person required to collect, truthfully account for, and pay over any tax imposed and who willfully fails to collect such tax, or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of tax evaded, or not collected, or not accounted for and paid over.

IRS Position

We believe a variation of this proposal may have merit. One change should be to ensure that the person reporting the failure does not otherwise benefit from this occurrence. The Subcommittee may also want to consider limiting the number of occurrences for which an otherwise responsible person could be exempted and to prevent situations where there is no responsible person.

PENALTIES UNDER IRC SECTION 6672
(Bill Section 704)

Provision Summary

1. Requires the IRS to educate employers on their FTD system responsibilities, and their potential liability for the penalty for failure to pay over tax, by printing warnings on coupon books and appropriate tax returns. A special information packet would also be developed.

2. Provides that volunteer board members shall not be liable for the penalty for failure to pay over tax to the extent they serve only in an honorary capacity. Requires the IRS to develop materials to better inform tax-exempt organizations of the conditions under which volunteer or honorary board members and others lending their name to a tax-exempt organization will be treated as responsible persons. Requires the IRS to clarify its instructions to IRS employees on application of the penalty for failure to pay over tax with regard to honorary or volunteer members on boards of directors of such organizations.

3. Requires employers to list, on their annual tax return, the names of employees responsible for collecting and paying over withheld taxes to the IRS.

IRS Procedure

Publication 594, The Collection Process (Employment Tax Accounts), includes a list of who can be assessed the penalty for failure to pay over tax (including a volunteer member of a board of trustees of a nonprofit organization). The publication is also available in Spanish.

Circular E, Employer's Tax Guide, has a brief explanation of the penalty for failure to pay over tax and states that employees and officers of a corporation may be assessed the penalty.

Publication 557, Tax-Exempt Status for Your Organization, refers to Circular E for information about responsibilities of an employer for employment taxes.

The January 1992 revisions of Forms 941, 941E and 941SS will include a statement that employees and officers of a corporation

may be assessed the penalty. Also, Notice 784, developed as a stuffer, describes potential liability for the penalty for failure to pay over tax and could be included in the Form 941 mailout.

IRS Position

The IRS should continue to publicize and work with taxable businesses and exempt organizations to advise appropriate officials of their employment tax responsibilities. We also agree to revise our procedures for contacting honorary officers if it appears that they have no fiduciary responsibility for these taxes.

Our Compliance 2000 initiative, which addresses potential compliance problems before, rather than after, they have developed, is focusing on how we can better educate taxpayers as to their federal tax responsibilities. As part of the warning on the deposit coupons and forms instructions, a reference could be made to Publication 594, which describes the penalty for failure to pay over tax. In addition to the information included in Publication 594, we agree that Publication 557 should be revised to include information about potential liability of officers in tax-exempt organizations. However, we do not believe a statutory change is necessary to accomplish these changes and may be counterproductive. We could find ourselves in a position of having to seek a statutory change to revise a form.

Lastly, requiring all employers to list the names of responsible employees could be confusing to employees of these businesses since they may not list all officers considered liable under the statute.

RECOVERY OF ADMINISTRATIVE COSTS (IRC 7430)
(Bill Sections 801 - 803)

Provision Summary

1. Any person who substantially prevails in an administrative proceeding could recover costs incurred after the earlier of the date of the first notice of proposed deficiency that allows a taxpayer to go to Appeals, or the date of the statutory notice of deficiency.

2. The burden of proof is on the government to show that its position was substantially justified.

3. The maximum fee amount is raised from $75 to $150 per hour.

IRS Position

1. This part of the provision allows for the recovery of administrative costs at the earlier of the date of the first notice of proposed deficiency (30 days letter) that allows the taxpayer an opportunity for administrative review in Appeals or the date of the statutory notice of deficiency (90 day letter). This position was rejected during consideration of the original taxpayer bill of rights in TAMRA. We still oppose it because examining agents are required to pursue fact-finding investigations and have no discretion to consider the hazards of litigation.

Thus, allowing costs from the 30 day letter (i.e., reviewing the position in the 30 day letter for substantial justification) places the IRS in an awkward situation, since the position in the 30 day letter reflects Examination's mandate to exclude any

consideration of hazards and instead to consider only the facts. It is in Appeals that evaluation and settlement of cases occur based on a consideration of the hazards of litigation. When Appeals has made a determination which considers both facts and hazards, it is reasonable to review this position of the government for substantial justification.

2. This provision would shift the burden to proof to the government to show that its position was substantially justified when taken. The shifting of the burden of proof has been rejected in the past, and we continue to oppose any change.

The Joint Committee's General Explanation of the Tax Reform Act of 1986 explains the rationale of the decision that the burden of proof should remain on the taxpayer in the following terms (p. 1229):

> Congress, however, did not deem it appropriate to alter the burden of proof in tax cases; under the Act, the burden of proof is on the taxpayer to prove that the Government's position is not substantially justified before an award can be made. Thus, the burden of proof necessary for an award of attorney's fees in tax cases is on the party upon whom the burden of proof rests generally in tax cases. Congress believed that it was important to place the burden of proof on the same party in all aspects of tax litigation generally.

3. The IRS takes no position on the increase in the hourly cap for attorney's fees from the current law of $75 to $150, indexed for inflation. However, we would like to point out that IRC 7430 was modeled on the attorney fee award provision of the Equal Access to Justice Act and that the cap remains $75 there. We suggest that there should be equity in the compensation of attorneys under all federal statutes providing for such awards.

FAILURE TO AGREE TO EXTENSION (IRC 7430)
(Bill Section 804)

Provision Summary

Paragraph (1) of IRC 7430(b) limits awards of reasonable litigation costs to those proceedings in which the court determines that the prevailing party has exhausted the available administrative remedies. This amendment provides that any failure to agree to an extension of the time for the assessment of any tax will not be taken into account in determining whether the administrative remedies were exhausted.

IRS Procedure

A Tax Court decision, *Minahan v. Commissioner*, 88 T.C. 492 (1987), invalidated Treasury Regulations that required taxpayers to agree under IRC 6501(c)(4) to extend the time for an assessment of tax, if necessary to provide the Appeals Office with a reasonable time period to consider the tax matter, or if necessary to allow for the issuance of a preliminary notice of proposed deficiency. As a result of this case, the IRS is revising its regulations to remove the invalidated language.

IRS Position

The IRS is incorporating the *Minahan* decision in its regulations. Once the revised regulation is issued, this issue should be moot. However, if the provision is to be enacted, it is too broad as currently drafted. Consistent with the *Minahan* case, the provision should not apply to taxpayers who fail to

fully respond to IRS requests for information on a timely basis, or in circumstances in which it is reasonable for the IRS to request that a taxpayer consent to extend the statute.

REQUIRED CONTENT OF NOTICES (IRC 7522)
(Bill Section 901)

Provision Summary

Notices of deficiency and notices and demand must set forth the components and explanation for each specific adjustment which is the basis for the total tax deficiency.

IRS Procedure

Notices of deficiency are issued by Examination and Appeals. Adjustments must be identified and explained. However, because the explanations on notices of deficiency are usually computer-generated, they may not describe the circumstances of the particular case in a way taxpayers understand.

Collection notices demanding payment generally do not contain explanations for the adjustments that are the basis for the amount of tax due because such explanation has already been provided in an assessment notice or the taxpayer knows the reason because he has not fully paid the tax due on his return. Any problems usually occur when these assessment notices do not reach the taxpayer prior to the collection notice because a taxpayer has moved or the address in our files is not correct.

We are trying to improve, in general, the clarity of all standard formatted correspondence as well as other notices and letters. In addition, new laser printers will be installed in all service centers during 1993 which should improve the physical appearance of notices. Other programming and computer changes to provide further detail about adjustments will depend on adequate funding.

IRS Position

We are attempting to make the explanations on notices more descriptive. However, we cannot currently formulate customized explanations for each notice. This would require substantial staff and equipment expenditures.

The proposed statutory requirement that IRS set forth the components and explanation for each specific adjustment for collection notices, would be costly and redundant. Before taxpayers receive a collection notice, thay have already been informed of the reasons for any adjustment. Expanding collection notices would be costly and redundant. We believe it is preferable to provide assistance to those few taxpayers who request help in understanding these notices. If taxpayers have not received such an explanation, we agree that they are entitled to know the basis for any collection action. The IRS makes every attempt to provide such an explanation at the taxpayer's request.

PROTECTION FOR TAXPAYERS WHO RELY ON IRS GUIDANCE (IRC 7805)
(Bill Section 902)

Provision Summary

If a taxpayer takes any position or other action in reasonable reliance on initial guidance published by the IRS in the form of press releases, information releases, or revenue rulings, any later position by the IRS which is inconsistent with the earlier guidance would not apply to the detriment of the taxpayer.

IRS Procedure

The IRS currently has the authority to "prescribe the extent, if any, to which any ruling or regulation, relative to the internal revenue laws, shall be applied without retroactive effect." (IRC 7805(b)). This authority is used in appropriate cases to prevent hardship and inequity in which the taxpayer has demonstrated its reliance on published guidance. Furthermore, case law has placed limitations, under an abuse of discretion standard, on the retroactive application of regulations. The IRS also takes into account good faith reliance on guidance published by the IRS in its determination of whether to assert penalties.

IRS Position

We oppose the extension of this provision to press releases and information releases which are necessarily general in nature. However, in IRC 7805(b) Congress has already permitted the Commissioner to provide relief to taxpayers who can demonstrate that they relied on our Internal Revenue ruling. When we have the flat-out reversal of a position stated in the previous revenue ruling, we should be bound by our prior ruling for those taxpayers who relied on it. We do not believe that further statutory changes are needed or appropriate. A statutory requirement to provide this relief would engender unnecessary litigation. We will review our internal procedures to ensure that we are appropriately providing relief to taxpayers who relied on a published ruling that was later changed.

Taxpayers need to get early information on tax law changes even though this information may not include all of the legal interpretation necessary to explain all applications. More sophisticated taxpayers recognize these limitations and know they need to get further guidance when executing complex financial transactions. We currently do not assess penalties against taxpayers who rely on erroneous written advice issued by the IRS, but these taxpayers like all other taxpayers still owe the tax.

This rule provides fairness by precluding any intentional or unintentional benefit from misconstruing guidance. The proposed statutory change could delay the issuance of needed early guidance to the public in the form of informational releases, revenue procedures, etc.

RELIEF FROM RETROACTIVE APPLICATION OF REGULATIONS (IRC 7805)
(Bill Section 903)

Provision Summary

This provision will generally require that all regulations issued by the Treasury Department to implement broad legislative guidelines be effective prospectively from the date of final, temporary, or proposed form.

IRS Procedures

IRC 7805(b) provides the authority for the IRS to "prescribe the extent, if any, to which any ruling or regulation, relative to the internal revenue laws, shall be applied without retroactive effect." This authority is appropriately used to prevent hardship and inequity where taxpayers can show that they relied on IRS guidance.

IRS Position

We oppose this provision. We believe current procedures already address this concern. Also, the provision would deny IRS the ability to address attempted abuses of the statutory provision by sophisticated taxpayers.

REQUIRED NOTICE OF CERTAIN PAYMENTS
(Bill Section 904)

Provision Summary

Requires the IRS to make a reasonable attempt to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with any tax return or outstanding tax liability.

IRS Procedure

If a payment is received without sufficient information to properly credit it to a taxpayer's account, the IRS attempts to contact the taxpayer by telephone. If contact cannot be made, the IRS lists the payment in the Unidentified Remittance File, and if an address is available, simultaneously sends a notice to the taxpayer requesting further information. Notification of the taxpayer, if it can be accomplished, takes place in less than 60 days.

If, after a year, no further information is received to enable application of the payment to a taxpayer's account, the payment is transferred to the government's excess collection account. However, the payment remains available for proper application.

IRS Position

The IRS believes this proposal is unnecessary because IRS policy and procedures already accomplish the aims of the proposal. If the requirement is imposed by statute, it should be contingent on the availability of a current taxpayer address and a response from the taxpayer to correspondence asking for information.

COSTS OF PREPARING CERTAIN RETURNS DEDUCTIBLE (IRC 67)
(Bill Section 905)

Provision Summary

This provision will provide that fees incurred with respect to the preparation of "Schedule C" (Unincorporated Trade or Business), or "Schedule F" (Farm Income and Expenses) will be allowed as an ordinary and necessary business expense. Thus, such fees will not be subject to the two percent floor applicable to miscellaneous itemized deductions. As a result, incorporated taxpayers or farmers will not be at a disadvantage compared to incorporated businesses that incur tax preparation fees. The IRS has taken the position that such expenses are subject to the two-percent floor.

IRS Procedure

Fees incurred with respect to the preparation of Schedules C and F are currently deductible as miscellaneous deductions on Schedule A.

IRS Position

We do not oppose the provision. However, we believe that the intent of this provision could better be achieved by permitting tax preparation fees as a trade or business expense, thereby making these fees deductible on the appropriate schedules.

PREPARED STATEMENT OF LEONARD PODOLIN

INTRODUCTION

Thank you, Mr. Chairman, for the opportunity to testify today on the Taxpayer Bill of Rights Legislation (T2) proposed November 6, 1991. I am Leonard Podolin, Chairman of the Tax Executive Committee of the American Institute of Certified Public Accountants (AICPA). The AICPA is the national professional organization of CPAs, with over 300,000 members. We are very interested in maintaining the protection of the interests and rights of the taxpayer so that our tax system will be perceived as fair and equitable, and voluntary compliance will improve. We support any legislation that enhances the public interest. Our Tax Practice and Procedures Committee maintains a liaison with the Treasury Department and the Internal Revenue Service to offer recommendations for the improvement of the federal tax process. We want to thank you for providing the opportunity to comment on your proposal and offer recommendations to your Subcommittee.

Our comments and recommendations are based on the summary of T2 released November 6, 1991. We would welcome the opportunity to work with you on developing the legislation. When final legislative language and related committee reports are available on the proposals reported in T2, our comments and recommendations could change.

As T2 is currently presented, we support without further comment the following proposals:

5. Expansion of Secretary's Authority To Issue Certificate of Release Liens.

6. Removal of Limits on Recovery of Civil Damages.

10. Taxpayer Assistance Orders.

12. Attorney-Client Privilege.

13. Notice of Deficiency.

14. Procedural Safeguard Where IRS Determines a Tax Deficiency Based on Information Return Reporting.

17. Increase Levy Exemption Amount.

18. Taxpayer's Right to an Installment Agreement.

22. Notice of Examination by Written Notice.

23. Hardship.

24. Notice of Proposed Deficiency.

We support with comments as indicated, all of the remaining proposals except proposal number two, the Ombudsman and Problem Resolution Offices, about which we express significant concerns. We also urge the Subcommittee to consider four additional proposals:

- Disclosure Changes,
- Rounding,
- Pre-Conference Meeting of Appeals with Examination, and
- Taxpayer Interviews and Place of Examination.

1. **Taxpayer Rights Review.**

At the time of the preparation of this written testimony on T2, we could not determine the organizational placement of this "Review" function. If the proposal "to create an independent administrative appeal, outside the IRS, but within the Treasury Department" to resolve issues on matters not related to the determination of tax is to add this function to the Appeals Division, we would support that change. If, however, this would create another function and bureaucracy within the Treasury, we would recommend adoption of the appeals process contained in H.R. 3838, eliminating the pilot provisions of that legislation and enhancement of the scope to conform to your legislative proposal.

We could not support this proposal if it would preclude the taxpayer from judicial review of any adverse determination. We believe this should be a binding administrative process only.

2. **The Ombudsman and Problem Resolution Offices.**

We share your concern about the need for improvement in the IRS's full utilization of the Problem Resolution Office and the effectiveness of the Ombudsman in achieving action on important matters which are referred to the Commissioner's subordinates. We do not support your proposal to achieve improvement by making the Ombudsman a presidential appointee.

The Commissioner and the IRS Chief Counsel are currently presidential appointees. With proper direction in the oversight process, we believe they can achieve the results desired by your subcommittee and the Subcommittee on Oversight of the House of Representatives without the addition of another presidential appointee. We do believe the Ombudsman position should be elevated within the IRS organization. In order to accomplish this, we believe the Ombudsman must be a peer of the Deputy Commissioner and so compensated.

The Problem Resolution Offices within the IRS have done an outstanding job since their inception. We see no need to disturb their reporting structure and risk hindering their ability to function effectively within their District by placing them in a position as "outsiders" to other District personnel. The office of the Ombudsman has brought to the Commissioner's attention identified problems and the legislative corrections needed. We believe the lack of response within the IRS and Treasury can be corrected by:

- Requiring the reporting specified in your summary of T2,
- Adequate funding of the Internal Revenue Service,
- Statutory protection of training funds within the IRS,
- Statutory provision for an administrative appeal of Collection Division's actions within the IRS, and
- The other provisions of your proposed legislation.

The changes proposed in the Ombudsman position and Problem Resolution Offices would not resolve certain problems. Many of the current problems stem first from an excessive workload in the Collection Division and insufficient business training of personnel. Additionally, the difficulties in maintaining a current workload in the Examination Division have resulted in hardships on those taxpayers who disagree with the IRS on positions taken on their tax returns.

We have consistently emphasized in our prior testimony to the Congress the need for improvement in the personnel recruiting and training programs of the IRS. IRS training

programs are often inadequately funded. It is our belief, based on considerable experience, that many of the problems brought to the Problem Resolution Offices, find their roots in inadequate training.

In summary, we support the creation of an administrative appeal of collection actions within the Appeals Division, maintaining the current relationship of that function within the IRS, elevating the position of the Ombudsman within the IRS, and the requirement that the Ombudsman report to the Congress as specified in T2. We urge you to avoid the opportunity for an Administration to become involved through the Ombudsman in specific matters within our system of tax administration.

3. Elimination of Interest Differential.

We fully support elimination of the differential which exists between interest the Treasury pays taxpayers on overpayments and that which it charges taxpayers on underpayments. The current system is especially inequitable where the IRS merely moves an item of income to an earlier year or deduction to a later year with respect to the year under examination. In the same context of equity and fairness, the Congress should consider suspension of the running of interest on delinquent accounts in view of the new ten-year statute of limitations on collection from the time the IRS places an account in "Form 53 status" to the time that, on the taxpayer's initiative, an account is reactivated. In addition, the statute of limitations on refunds should be harmonized with the collection statute.

We also believe the Subcommittee should consider changes to the current provision in Revenue Procedure 84-58 that precludes payment of interest to a taxpayer who makes a deposit to cutoff interest on a potential examination adjustment. Legislation should provide that to the extent the deposit is excessive and thereafter refunded to the taxpayer, the refund will carry interest.

4. Recovery of Administrative Costs.

We believe the changes proposed in T2 are desirable and recommend the statute specify that the first notice of proposed deficiency includes the assertion of an additional tax liability arising from the IRS document-matching program and the first notice to a responsible person of the 100% penalty. The Subcommittee should consider making this section of the law cover costs applicable to taxpayer requests under the Freedom of Information and the Right to Privacy Acts. Use of these procedures is becoming important to taxpayers given the existence of incomplete examiner's reports and the increased complexity of IRS procedural requirements.

7. Content of Notices.

Provided the legislative language, committee reports, and regulations adequately clarify "inadequate descriptions", the AICPA supports any action by Congress to clarify notices.

8. Abatement of Interest for Unreasonable IRS Delays.

We agree the "ministerial act" requirement of section 6404(e)(1) is subject to such a narrow interpretation as to frustrate legitimate requests for abatement. We believe many of the delays and the possible budgetary costs of this provision could be avoided if the IRS becomes more current.

Perhaps one of the most important expectations of a taxpayer is that if errors are made in the preparation of a tax return or there is a difference in the interpretation of the statute, proposals for correction will be prompt. The IRS has been reminded frequently over the

years, by the Congress and others, of the need to stay current. Internal Revenue Manual Chapter 4100 specifies the Examination Division of the IRS will adhere to a cycle of 26 months for individuals and 27 months for corporations. The cycle is measured from the due date or filing date of the return. Our review of the data underlying this directive reveals there are too many exceptions, and the practice is to work toward the back end of the cycle rather than emphasizing working on returns as soon as they become available. If the IRS examines the return selected and subsequent years' returns, the opportunity to include other taxpayers whose returns may also indicate a need for IRS examination would increase, as would the IRS' impact from the application of its resources in achieving its very limited examination coverage.

The availability of provisions in the statute which permit extension of the statute discourages currency and eliminates the date certain for completion of IRS examinations which would exist if there were no extensions possible. Taxpayers and their representatives may fear the consequences of not acceding to an IRS request for an extension. The result is taxpayers unnecessarily pay interest because there is too little pressure on the Service to keep current.

We believe the Congress should consider eliminating extensions of the statute. To the extent such a change forces the Service to become current, it benefits the IRS and should be more efficient. It is a well recognized principle that records, memories, and witnesses are harder and more difficult to access as time passes. Generally the passage of time works against the tax collector in determining fact and in correctly assessing taxes.

If statute extensions are not eliminated, legislation should be enacted which would suspend the running of interest from the date on which the IRS solicits and accepts an extension of the statute until the Service issues a notice of proposed adjustment. It would be reasonable to exclude relief for taxpayers who have not cooperated. This change is consistent with the concept that a taxpayer should not be penalized as a result of lack of currency in the IRS examination programs.

9. Secretary's Power to Suspend Rules.

Assuming the Secretary's power to suspend rules means regulatory and other administrative rules, we support the concept of this provision. We would like more detailed information on this item.

11. Damages for Wrongful Liens.

We support the provision for a cause of action against the IRS for wrongful liens; however, we would like to have included a similar cause of action on liens in violation of the automatic stay provisions in bankruptcy proceedings.

15. Tax Preparation Fees.

We agree the choice of the business entity should not disadvantage a taxpayer. Not only should tax preparation fees associated with the preparation of "Schedule C" (Unincorporated Trade or Business) and "Schedule F" (Farm Income and Expenses) be allowed as an ordinary and necessary business expense, but the allowance of the expense for tax preparation fees associated with the preparation of "Schedule E" (Supplemental Income and Loss) activities should also be included in this provision of T2.

16. Designated Summons.

We support this proposal and also recommend the legislation be strengthened to require that any summons issued under section 6503(k) be limited to seeking information the IRS

can demonstrate has been requested in writing 90 days before the expiration of the normal statute for assessment.

19. Prospective Effective Dates for Treasury Regulations.

We commend the Subcommittee for its consideration of a reform that would provide protection for taxpayers who make "good faith" efforts to comply with the tax laws during the period between enactment of the law and issuance of clear guidelines and final regulations. This is a very important issue which the AICPA strongly supports. Such a reform would recognize taxpayers' needs for early guidance in complex areas of the tax law, while at the same time stimulate the IRS and Treasury to accelerate issuance of such guidance.

20. Trust Fund Taxes.

We support the requirement that the IRS issue a preliminary notice which will give the taxpayer the right to an administrative appeals hearing. We support legislative efforts to prevent the IRS from collecting more than 100% of the trust fund taxes owed. We believe legislation should be enacted to prohibit the IRS from attempting to collect the 100% penalty from any alleged responsible persons during the pendency of any administrative proceeding or judicial action brought to contest the merits of a 100% penalty liability.

21. Safeguard for Divorced or Separated Spouses.

We support legislative changes that will require the absent spouse to acknowledge by signature whether the other spouse may, or may not, represent the absent spouse. We also believe additional reforms are needed to ensure the equal and fair treatment of spouses who are separated, divorced and/or have community property issues compounding their tax problems. We are especially concerned with the collection procedures that occur in these situations. Additional legislation may be required to ensure that disclosure laws are changed as needed to provide adequate information to the divorced spouse in community property states.

ADDITIONAL PROPOSALS

The AICPA would also like the Subcommittee to consider including the following recommendations in its legislative proposal:

Disclosure Changes.

IRS statistics indicate approximately half of all returns are prepared by paid preparers, largely because of the complex nature of the law. We believe taxpayers have a right to expect that the hiring of a preparer will avoid personal inconvenience and unnecessary loss of their own productive time in having their return accepted in the processing phases by the IRS. The processing of notices during the return perfection and processing phase is a significant workload factor. Many practitioners and taxpayers, unaware of the strict enforcement of the disclosure rules, attempt to resolve these notices by having the preparer "do what the preparer is being paid to do" - prepare the return, solve compliance problems, and appropriately interface with the Service.

We believe changes in the disclosure rules would reduce taxpayer burden, reduce IRS correspondence in dealing with abortive contacts by preparers without a power of attorney, and support the taxpayer's right to be represented. Specifically, we suggest section 6103 be

amended to allow for the taxpayer representatives to request and receive a taxpayer identification number on the telephone without a power of attorney being filed and to allow IRS personnel to contact a preparer who has signed the return, or accept contacts by such a preparer on behalf of the taxpayer who has received a notice from the IRS with respect to that return. This would reduce the cost of tax administration for the IRS, taxpayers, and preparers. Such communications would be allowed solely for the purpose of perfecting or processing the return for a limited period (e.g., nine months) after the due date of the return or the date the return is filed.

Rounding.

The AICPA supports the IRS in its belief that requiring the rounding of numbers on most tax returns would decrease the number of errors in tax return preparation and administration. It could greatly enhance efficiency in processing tax returns and does not affect the rights of individual taxpayers.

Pre-Conference Meeting of Appeals with Examination.

The AICPA is concerned about the meetings between appeals officers and examination agents before the conference with the taxpayer. There is no requirement the discussion that takes place at the meeting between the officer and agent be transcribed and made available to the taxpayer. The appeals officer's role in achieving settlements could be compromised because the officer could be biased before the initial meeting with the taxpayer. Misconceptions could affect the settlement process. The taxpayer, not knowing what has transpired, has no effective way to rebut any of the agent's statements. We believe the pre-conference procedure should be stopped, or if not discontinued it should be required that the discussion be included in the examination report and a copy be furnished to the taxpayer.

Taxpayer Interviews and Place of Examination.

The AICPA is aware of many instances where the IRS demanded that a taxpayer appear alone at the initial meeting of an examination, in effect denying that taxpayer the right to have a representative appear on his behalf. We support a valid request for a taxpayer interview if the representative cannot answer the examining agent's questions or complete the examination for the taxpayer. In most instances, however, an examination can be completely handled by a representative and we believe stronger legislation is needed to ensure the taxpayer is allowed his or her representation.

Likewise, a demand is often made that the examination take place at the taxpayer's place of business, rather than in the representative's office where the books and records can be gathered and the representative will be available to answer questions as they arise. We do not object to a tour of the place of business or a brief meeting at the business location. The taxpayer can save on the expense of the examination, the agent can be given adequate work space and be able to speak to the representative when necessary, and the taxpayer's business will not be disrupted if the examination is held at the representative's place of business. We believe the rights of a taxpayer to request that the examination take place in a place other than his business location should be upheld by statute.

CONCLUSION

In conclusion, the AICPA wants to again thank you for the opportunity to present our comments and recommendations for maintaining the protection of the interests and rights of the taxpayer. If you, or any of your staff, have questions that we could answer, we will be glad to do so.

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Prepared Statement of Ramon Portillo

My name is Ramon Portillo. I am 72 years old. I am married. My wife and I have five children and twelve grandchildren. For most of my lithe I have painted buildings.

I was born in Juarez, Mexico. I went to school in Mexico till 9th grade. I came to the United States in 1955. It was after I got my citizenship that I began to work as a painter. I worked for three years and saved my money so I could buy a small house. A few months later, I brought my family to El Paso. In 1960, I got my painting contractor's license from the state of Texas.

I have painted a lot of houses and buildings in El Paso and have worked for a lot of contractors. I put everything they pay in my papers and keep them in my truck. In 1984 I give all my papers to Irma Gonzales, my bookkeeper. She make my return and send it to I.R.S. In 1986, I got a letter from the I.R.S. They said that when I filed my return, I showed that Mr. Navarro paid me $13,000 for the work I had done for him. But he showed that he paid me $37,000. That was when the I.R.S. said I owed them $13,700.

I didn't know what to do, but since I had painted David Leeper's house and had done work for his brother who is a contractor, I went to see him. I explained everything to David, and he said he would take the case and help me.

The next year we went to court. This was in 1988. The judge from Washington, D.C. and two lawyers from Austin, Texas were there. The judge decided I owed the tax to the I.R.S. which was now $17,000 because of the interest and fines.

I remember that I was angry and embarrassed, but what could I do? I wanted to stop the interest and fines. The interest was growing every day. It would soon be $24,000 or $25,000 (dollars). I decided I would rather pay that to my family, so I went to my brother and my sister in Juarez. I asked if they could loan me some money. With everyone's help, I got enough together to pay the I.R.S.

Then David appealed the case. This took over a year. In 1990 he went to New Orleans, and in 1991 he won. So we waited. But nothing else happened until this year when David called me. He said the I.R.S. had a period of time to appeal the case which lasted until August 25 of this year. Then it was extended four more weeks. Finally, David told me they dropped the case. But I still don't have any money from them.

It has been five years since the trouble started. In all this time, it has been very hard on my wife. She became very nervous thinking about the debts. She has been sick a lot and spent many nights crying. I didn't get sick so much because I was working, but my wife has suffered a lot.

I am a man who has worked hard all my life, but I am not a rich man. I am 72 years old, and I go to work every day. We have money enough just to live and pay back all the loans. It is good that at least we can keep our house.

But we are still waiting for our money. And at my age, I fear we will die before we get it.

Prepared Statement of Senator David Pryor

Everyone here is keenly aware that Congress is holding hearings this month to discuss the fairness of our tax system to middle-income Americans. An issue inseparable from this debate is whether the tax collector—the IRS—is treating middle-income Americans fairly.

Today's hearing is about fairness, due process and respect. we look to our citizens to respect the system and the agency of government assigned the very difficult task of administering it. on the other hand, we also have a right to expect the men and women of the IRS to respect taxpayers, and to demonstrate that respect through courtesy, competence and cooperation.

The IRS is composed of over 120,000 employees who are in the business of collecting the proper amount of tax. In doing this, the IRS processes over 100 million tax returns and collects over a trillion dollars each year.

Let's face it—the IRS is going to make some mistakes, and a few IRS employees are going to overstep their bounds.

Our tax law should reflect this reality by providing safeguards to protect the taxpayer from the potentially devastating effect of such mistakes and misdeeds.

I submit that the cost of providing these safeguards is a normal cost of doing business . . . and the price of IRS mistakes and misdeeds should not be borne by the innocent taxpayer.

Almost 5 years ago I introduced the taxpayer bill of rights. That bill formed the basis of the *Omnibus* Taxpayer Bill of Rights which was enacted into law in 1988.

Many times since then, I have referred to that legislation as a "good first step," and I vowed "I'd be back."

Last month, I offered a list of proposals that will form the nucleus of the Taxpayer Bill of Rights 2 (T2). I believe these proposals are the logical "next step." They build upon the foundation provided by the original taxpayer bill of rights.

T2's goal is to help the IRS achieve higher standards of accuracy, timeliness, and due process in providing taxpayer service. We do not seek to diminish or increase the power of the IRS—T2 will simply make the IRS more accountable for its actions.

My purpose in introducing T2 in proposal form was to allow those persons interested in the administration of our tax laws the opportunity to study and comment on the proposals. . . . and also, to offer their suggestions for this legislation.

Today, as part of this continuing process, we will hear from persons representing the interests of a broad spectrum of American taxpayers. Also, we will hear the GAO report on its findings from a study I requested on the IRS' implementation of the original taxpayer bill of rights.

I would especially like to welcome Mr. Ramon Portillo, a house painter from El Paso, Texas. He is here with his lawyer, David Leeper. They will explain Mr. Portillo's experience with the IRS in dealing with a problem common to many, many taxpayers.

The problem arose when Mr. Portillo received a form 1099 which reported him receiving some $35,000 in income from a contractor. However, Mr. Portillo claimed and the contractor's records showed that Mr. Portillo had received only around $14,000. The IRS took the position that even though the information in the 1099 could not be substantiated, Mr. Portillo bore the burden of proving the 1099 was wrong.

The IRS pursued Mr. Portillo all the way to the 5th circuit court of appeals—where the court determined the IRS' position to be "clearly arbitrary and erroneous."

Mr. Portillo, welcome to Washington. . . .

Attachment.

TAXPAYER BILL OF RIGHTS 2 (T2)

TITLE I - TAXPAYER ADVOCATE

Sec. 101. Establishment of Position of Taxpayer Advocate within Internal Revenue Service. The Office of the Taxpayer Ombudsman was statutorily created in 1987 in the Omnibus Taxpayer Bill of Rights. The Ombudsman is presently hired by and reports directly to the IRS Commissioner.

T2 will replace the Ombudsman with the new Office of Taxpayer Advocate. The Taxpayer Advocate will be appointed by the President and confirmed by the Senate. This will allow the Taxpayer Advocate to play a more independent role in actively protecting taxpayer rights. The Taxpayer Advocate will also have expanded authority as provided in section 102 and 103 below.

T2 will require the Taxpayer Advocate to provide the Committee on Ways and Means of the U.S. House of Representatives and the Committee on Finance of the U.S. Senate the following annual reports:

1. Initiatives the Taxpayer Advocate has taken on improving taxpayer services and IRS responsiveness.

2. Problem Resolution Officers (PROs) recommendations flowing from the field.

3. A summary of at least 20 problems encountered by taxpayers, including a description of the nature of their problems.

4. Inventory of items in 1,2, and 3 for which action has been taken and completed and the result of the action.

5. Inventory of items in 1,2, and 3 for which action remains to be completed and the date each item was first identified.

6. Inventory of items in 1,2, and 3 for which no action has been taken along with the period each item has remained on the inventory, the reasons for no action, and the IRS official responsible for implementing action.

7. Identification of any Taxpayer Assistance Order which was not honored by the IRS within 3 days and the reason(s) for delay.

8. Any recommendations for administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers.

9. Any information the Taxpayer Advocate deems advisable.

In addition, the Taxpayer Advocate must furnish to the tax writing committees its annual objectives, not later than October 31 of each calendar year after 1991.

All reports should contain full and substantive analysis, in addition to statistical information.

Presently, the Office of the Taxpayer Ombudsman carries out its duties and responsibilities in the local field offices through the PRO. However, PROs are hired, supervised, reviewed, and promoted by the local IRS District Director, not the Ombudsman.

T2 will provide that the PRO will report directly to the Office of Taxpayer Advocate.

Sec. 102. Expansion of Authority of the Taxpayer Advocate to Issue Taxpayer Assistance Orders. Under current law, section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO) if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a "significant hardship" as a result of the manner in which the tax laws are being administered by the Secretary.

T2 eliminates the qualifier of "significant" from section 7811 to allow PROs to assist taxpayers in avoiding hardship before it occurs because the standard of "significant hardship" presupposes that a taxpayer must bear some degree of hardship before any relief can be afforded.

Currently under section 7811(b), a TAO allows a PRO to "cease any [IRS] action" with respect to a taxpayer. However, section 7811(b) does not allow the terms of a TAO to authorize affirmative steps to help a taxpayer.

T2 will authorize the terms of a TAO to "cease any action, take any action" with respect to a taxpayer, and therefore, allow a TAO to both stop IRS action and to take affirmative steps with with respect to a taxpayer. For example, the Taxpayer Advocate's new scope of power will specifically include, but not be limited to, the authority to (1) abate assessments, (2) grant refund requests, and (3) stay collection activity. The Taxpayer Advocate will have the power to grant authority to his or her designees (i.e., the Problems Resolution Officers).

Current law provides that a TAO may be modified or rescinded by the Ombudsman, a district director , a service center director, a compliance center director, a regional director of appeals, or any superior of such person.

T2 provides that a TAO may be modified or rescinded only by the Taxpayer Advocate and/or the IRS Commissioner.

TITLE II -MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

Sec. 201. Taxpayer's Right to Installment Agreement. T2 will provide that an individual taxpayer has an automatic right to an installment agreement if the taxpayer has not been delinquent in the previous 3 years and the liability is under $10,000. This provision is limited to individual taxpayers.

Sec. 202. Notification of Reasons for Termination of Installment Agreements. Section 6159(b)(3) presently requires the IRS to give the taxpayer a 30-day notice before terminating an installment agreement, if it is determined that the financial condition of the taxpayer has significantly changed. However, no notice is required if the taxpayer defaults for any other reason. In these cases, the IRS may unilaterally terminate the installment agreement with no notice to the taxpayer.

T2 will require the IRS to provide a taxpayer with a 30-day notice before terminating an installment agreement for any reason except when the collection of the tax is determined to be in jeopardy. In addition, T2 will require the notice to include the reason(s) why the IRS considers the installment agreement to be in default.

Sec. 203. Administrative Review of Termination or Denial of Request for Installment Agreement. Under present law, a taxpayer has no right to an independent review of a termination or denial of his request for an installment agreement.

T2 will require the IRS to establish procedures for an independent administrative review of a termination of or denial of a request, for an installment agreement. T2 will also require the IRS to provide a written response to a taxpayer who requested an installment agreement. The written response must state the decision of the IRS and the basis for such decision. Finally, T2 will require the IRS to include in the instructions for filing Federal income tax returns the rules and procedures for requesting installment agreements.

Sec. 204. Running of Failure to Pay Penalty Suspended During Period Installment Agreement in Effect. Under present law, a taxpayer is subject to "failure to pay" penalties even though he or she has agreed to pay his or her tax liability with interest by entering into an installment agreement.

T2 will amend section 6651 to prevent the IRS from imposing the "failure to pay" penalty on taxpayers during the period in which the installment agreement is in effect.

TITLE III - INTEREST

Sec. 301. Expansion of Authority to Abate Interest. Section 6404(e)(1) (Assessment of interest attributable to errors and delays by the IRS) provides "the Secretary may abate" interest on "any deficiency in whole or in part to [due to] any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act".

The ministerial act requirement too narrowly limits the possibility of relief to the taxpayer with the result that the IRS will not abate interest even if it is the IRS' fault. Further, IRS rejection of a taxpayer request to abate interest cannot be reviewed because section 6404(e)(1) provides no guidance for courts as to the appropriate judicial review standard.

T2 will provide that the Secretary must abate or refund interest attributable to unreasonable IRS errors and delays. The ministerial act limitation will be deleted from the statute, and courts will use "unreasonable error or delay" as the appropriate standard of review.

Sec. 302. Extension of Interest-Free Period for Payment of Tax After Notice and Demand. When the IRS sends a first notice requesting payment to a taxpayer, section 6601(e) provides a 10-day interest-free period from the date of the notice. The 10-day requirement is virtually impossible to meet given delivery time to and from the taxpayer who is attempting to timely remit payment.

T2 will extend taxpayers' interest-free period for payment of the tax liability reflected in the first notice from 10 days to 21 days, when the total tax liability on the notice of deficiency is less than $100,000.

Sec. 303. Equalization of Interest Rates. Section 6621 provides that the government pays to the taxpayer interest on overpayments at the rate of 2 percentage points over the Federal short-term rate. However, the taxpayer pays to the government interest on

underpayments at the rate of 3 percentage points over the Federal short-term rate.

T2 will eliminate the interest differential between the interest rate the taxpayer pays the government on underpayments and the interest rate the IRS pays the taxpayer on overpayments. This is done by increasing the interest rate the government pays on overpayments.

TITLE IV - JOINT RETURNS

Sec. 401. Requirement of Separate Deficiency Notices in Certain Cases. Section 6212 requires that, in the case of a joint tax return, a notice of deficiency may be a single joint notice except if the IRS has been notified that separate residences have been established. Many taxpayers are not aware of the need to notify the IRS of a change in residence. As a result, many taxpayers receive no notice of a possible tax deficiency until the case has been sent to the Collection Division for enforcement action and the opportunity for administrative appeal has expired.

T2 will require the IRS to send a duplicate original of the joint notice by certified mail or registered mail to the address of the most recent taxable year for which the IRS has data on such spouses who do not file a joint return.

Sec. 402. Disclosure of Collection Activities. Present law does not allow the IRS to inform either spouse as to the efforts of the IRS to collect the tax liability from the other spouse.

T2 will require that, if either spouse or former spouse makes a written request, the IRS must disclose in writing whether the IRS has attempted to collect the deficiency from his or her spouse or former spouse, the general nature of such collection activities, and the amount collected.

Sec. 403. Joint Return May Be Made After Separate Returns Without Full Payment of Tax. Under section 6013(b)(2), taxpayers, who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return, may not reduce their tax liability by filing jointly unless they are able to pay the entire amount of the joint return liability before the expiration of the 3-year period for making the election.

T2 will repeal the provision requiring full payment of the tax liability as a precondition to taxpayers switching from married filing separately status to married filing jointly status.

Sec. 404. Acknowledgment of Absent Divorced or Separated Spouse to be Represented by Other Spouse. In the case of divorced or separated spouses, T2 will require the absent spouse's signature to acknowledge whether the other spouse, may or may not, represent the absent spouse in an audit situation. No such acknowledgment is required under current law.

TITLE V - COLLECTION ACTIVITIES

Sec. 501. Notice of Proposed Deficiency. Current law does not provide for any notice of proposed deficency, however, the IRS does issue these type notices on its own initiative (e.g. a 30-day letter).

T2 will require that the IRS issue a notice of proposed deficiency at least 60-days before any final notice of deficiency under section 6212, thereby permitting administrative appeal rights. If there are less than six months left on the statute of limitations, then the taxpayer shall have the option to extend the statute of limitations so that the IRS can issue a notice of proposed deficiency. The notice requirement will not apply in jeopardy assessment situations.

Sec. 502. Modifications to Lien and Levy Provisions. A Notice of tax lien provides public notice that a taxpayer owes the government money. Section 6326(b) requires the IRS to issue a Certificate of Release for such notices for erroneous liens only. This extremely narrow language prevents the IRS from issuing the Release on premature or incorrectly filed liens.

T2 will give discretion to the IRS to remove such liens without prejudice when (1) the filing of the notice was premature or not in accordance with administrative procedures of the IRS; (2) the taxpayer has entered into an installment agreement for the payment of the tax liability with respect to the tax on which the lien is imposed; (3) the withdrawal of the lien will facilitate the collection of the tax liability; or (4) the withdrawal of the lien would be in the best interest of the taxpayer and the United States (with the best interests of the taxpayer to be determined by the Taxpayer Advocate).

T2 will require that, upon written request by the taxpayer in the 4 cases cited above, the IRS shall make prompt efforts to notify the credit reporting agencies specified that the notice has been withdrawn. T2 will also require the IRS to return levied-upon-property to the taxpayer in the 4 above cited cases.

T2 will raise the levy exemption amounts of $1500 for personal property and of $1100 for equipment and property for a trade, business, or profession, which were set in 1990, to the present indexed amounts.

Sec. 503. Offers-in-Compromise. Section 7122 provides that the IRS may settle a tax debt pursuant to an offer-in-compromise. Amounts over $500 can be accepted only if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel. Further, section 6103(k) requires public disclosure of the names of taxpayers whose tax debts are compromised, as well as the amount owed and the amount accepted by the Government. These burdensome requirements result in the IRS not pursuing the offer-in-compromise route in settling even small tax disputes.

T2 will provide that, in cases where the unpaid tax assessment is less than $50,000, the opinion of the IRS Chief Counsel is not required. However, the IRS shall subject these offers-in-compromise to an IRS quality review. Further, T2 will amend 6103(k) to provide that in cases where the unpaid tax assessment is less than $50,000, the offer-in-compromise will not be subject to public disclosure.

Sec. 504. Notification of Examination. Presently, in many cases, the IRS is approaching taxpayers, requesting books and records, but not notifying taxpayers of examination. If the taxpayer is contacted and the agent requests to review the taxpayer's books and records, a written notice, followed by an examination report, should be required.

T2 will amend section 7605 to require that the IRS give the taxpayer written notice that the taxpayer is under examination. The notice will be required for examinations under all sub-titles of the Code. Such notice will include an explanation of the process as described in section 7521 (explanation of examination process, right to be represented by an attorney, certified public accountant, etc.).

Sec. 505. Removal of Limits on Recovery of Civil Damage. Section 7433 caps civil damage awards for unauthorized collections actions against the IRS at $100,000. Section 7433 also limits recovery to "reckless and intentional" actions of the IRS.

T2 will remove the $100,000 cap and include recovery for "negligent" action by the IRS.

Sec. 506. Designated Summons. Section 6503(k) permits the IRS to issue a "designated summons" directing the production of documents or other information in connection with the audit of a corporate taxpayer. There is no requirement that the IRS notify the taxpayer that a designated summons is about to be issued. Under present law, the IRS may issue a designated summons with just 60 days remaining on the statute of limitations, and if the taxpayer does not comply fully with the summons in a relatively short period of time, then the IRS can suspend the statute of limitations by seeking judicial enforcement of that summons.

While there may be situations where the use of a designated summons late in the audit process may be appropriate, nonetheless the IRS should not be allowed to surprise taxpayers who reasonably and in good faith believed that the statute of limitations was soon going to expire. Section 6503(k) provides the IRS with an extraordinary compliance tool, and fairness requires that taxpayers be warned when IRS intends to utilize it.

T2 will provide a standard of review for issuance of a designated summons such that the designated summons may only be used where the deficiency cannot be assessed accurately before the expiration of the otherwise applicable statute of limitations period, because of delay or other actions by the taxpayer.

Specifically, T2 will provide that the statute of limitations will be extended by a designated summons only (a) if the IRS has not had at least three years to complete the audit; (b) if the taxpayer has refused to extend the statute for at least 2 years; or with respect to information for which (i) the IRS had previously made a written request; (ii) the person to be summoned had sufficient time to respond to the previous written information request before the date on which the designated summons was issued; and (iii) the person to be summoned failed substantially to comply with the information request.

T2 will require the IRS to give written notice of intent to issue a designated summons. Such notice must include the reasons why prior responses were inadequate and allow the taxpayer the right to conference with the Secretary's designee within 15 days of such notice.

T2 will provide that, within 10 days of receiving the designated summons, the taxpayer may file a petition in the District Court seeking to quash or modify the summons, or seeking a court determination that the statute of limitations shall not be suspended.

TITLE VI - INFORMATION RETURNS

Sec. 601. Phone Number of Person Providing Payee Statements Required to be Shown on Such Statement. Taxpayers frequently need to contact payors issuing information returns in order to resolve disputes. Presently, information returns (e.g. W-2s, 1099s, etc.) require only the name and address of the payor.

T2 will require the payor to also provide the phone number of the payor's information contact.

Sec. 602. Civil Damages for Fraudulent Filing of Information Returns. Some taxpayers have suffered significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns. These false returns have been filed by payors whose intent is to defraud the IRS or to harass taxpayers.

T2 will provide that, if any person files a false or fraudulent information return with respect to payments made to another person, such person may bring a civil action for damages against the person filing such return. Further, T2 will provide that damage awards in such cases be at least $5000, and that the plaintiff must bring action within 6 years from the time the fraudulent return was filed with the IRS.

Sec. 603. Requirement to Conduct a Reasonable Investigation of Information Returns. Section 6212(a) authorizes the IRS to determine tax deficiencies. The term "determine" is not defined in the Code, and until recently, courts have declined to inquire whether or not, and how, the IRS made its determination. Further, courts have begun to chip away at the long-standing presumption of correctness afforded deficiency notices.

T2 will amend section 6212(a) to provide that a "determination" must be "a thoughtful and considered determination that the United States is entitled to an amount not yet paid." Portillo v. Commissioner, 832 F.2d 1128 (5th Circuit 1991). If the IRS fails to make a thoughtful and considered determination, then the notice of deficiency will be invalid.

T2 will provide that where the taxpayer asserts a reasonable dispute with respect to any item of income reported to the IRS on an information return, the IRS, not the taxpayer, will bear the burden of proof in any deficiency or refund proceeding absent a showing that the IRS conducted a reasonable investigation of the facts surrounding the taxpayer's return.

TITLE VII - MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

Sec. 701. Trust Fund Taxes. Section 6672 imposes personal liability on those persons who are required to collect employment taxes ("responsible officers") and who willfully fail to pay over these taxes to the IRS. The Code additionally provides for a 100% penalty on responsible officers failing to pay over such

taxes. Taxpayers who may be responsible persons are assessed the taxes owed and the penalty without the right to an administrative review.

T2 will require the IRS to issue a preliminary notice which will give the taxpayer the right to an administrative appeals hearing. In addition, T2 would provide taxpayers the right to go to Tax Court prior to assessment (via a declaratory judgment procedure similar to section 7476).

Sec. 702. Disclosure of Certain Information Where More Than One Person Subject to Penalty. The IRS may recover more than the amount owed under section 6672 (since each responsible person is jointly and severally liable). There is no procedure to ensure that the IRS does not collect more than 100% of what is owed.

T2 will require that a person liable for a section 6672 penalty may request, in writing, that the IRS disclose any other person who is liable for such penalty along with general nature of the IRS' collection activities.

Sec. 703. No Penalty if Prompt Notification of the Secretary. T2 will excuse from the 100% penalty any person who, notifies the IRS of a failure of a business to pay over taxes within thirty days of the date on which the taxes were due. This relief will not be available to individuals who are significant owners of the business or persons directly responsible for the decision not to pay over the taxes due.

Sec. 704. Penalties Under Section 6672. Under current law, unpaid, volunteers, who serve on boards of tax-exempt organizations, may be held liable for the 100% penalty depending on the duties and roles of the individual involved.

T2 provides that the 100% penalty will not be imposed on unpaid, volunteer members of any board of trustees or directors of a tax exempt organization.

T2 will also require the IRS to develop materials to better inform employees and volunteers of their responsibilities under the law.

TITLE VIII - AWARDING OF COSTS AND CERTAIN FEES

Sec. 801 through 803. Recovery of Administrative Costs. IRC section 7430 presently provides for the recovery of administrative costs incurred on or after the earlier of the receipt of the final decision of Appeals or the statutory notice of deficiency. Because, generally, no administrative costs are incurred after this period (except where the taxpayer pays the full amount of tax and files a claim for refund), the statutory provision is ineffective. In addition, the burden is on the taxpayer to show that the position of the IRS was not "substantially justified".

T2 will amend section 7430 to provide that any person who substantially prevails in an administrative proceeding can recover reasonable administrative costs, but only if such costs were incurred after the earlier of: (1) the date of the first notice of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals, or (2) the date of the statutory notice of deficiency. In addition, if the notices above are not applicable (i.e., a non-deficiency proceeding, trust fund taxes, etc.), then costs

run from the first notice that notified the taxpayer of the assessment or the proposed assessment. No such costs will be recoverable if the government can show that its position was substantially justified.

T2 will also amend section 7430 to provide that reasonable fees incurred for the services of qualified taxpayer representatives shall not be in excess of $150 per hour (currently $75 per hour), and the amount shall be indexed to inflation.

TITLE IX - OTHER PROVISIONS

Sec. 901. Required Content of Notices. Section 7522 (Content of tax due, deficiency, and other notices.) requires the IRS to clarify certain notices by January 1, 1990, by identifying and describing the basis for any tax due, as well as any interest and penalties assessed. However, the IRS is not required to separately set forth, in the notice, the components and explanation for each adjustment.

T2 will amend section 7522 to require that the IRS set forth the components and explanation for each specific adjustment which is the basis for the total tax deficiency.

Sec. 902. Protection for Taxpayers Who Rely on Certain Guidance of the Internal Revenue Service. T2 will amend section 7805 to provide that if a taxpayer takes any position or other action in reasonable reliance on initial guidance published by the IRS (in the form of press releases, information releases, or revenue rulings), any later position by the IRS which is inconsistent with the earlier guidance would not apply to the detriment of the taxpayer.

Sec. 903. Relief from Retroactive Application of Treasury Department Regulations and Rulings. T2 will generally require that all regulations issued by the Treasury Department to implement broad legislative guidelines be effective prospectively from the date of issuance in final, temporary, or proposed form. To keep such a presumption from providing shelter for abusive transactions, and to provide for administration of tax laws in the interim between the effective date of a statute and the effective date of the associated regulations, taxpayers would be deemed to have satisfied the necessary requirements if they made a good-faith effort to utilize a reasonable interpretation of the statute that resulted in substantial compliance. This general rule requiring that regulations be prospective could be superseded by a specific legislative grant authorizing the Treasury Department to prescribe the effective date of regulations with respect to statutory provision.

Sec. 904. Required Notice of Certain Payments. T2 will provide that, if the IRS receives a payment from a taxpayer and cannot associate that payment with any outstanding tax liability, then the IRS must make reasonable efforts to notify the taxpayer of such inability within 60 days after receipt of such payment.

Sec. 905. <u>Certain Costs of Preparing Tax Returns Fully Deductible.</u> T2 will provide that fees incurred with respect to the preparation of "Schedule C" (Unincorporated Trade or Business), or "Schedule F" (Farm Income and Expenses) will be allowed as an ordinary and necessary business expense. Thus, such fees will not be subject to the two-percent floor applicable to miscellaneous itemized deductions. As a result, unincorporated taxpayers or farmers will not be at a disadvantage compared to incorporated businesses that incur tax preparation fees. The IRS has taken the position that such expenses are subject to the two-percent floor.

Subtitle J of Public Law 100-647 (Technical and Miscellaneous Revenue Act of 1988) is known as the "Taxpayer Bill of Rights."

Subtitle J—Taxpayer Rights and Procedures

SEC. 6226. SHORT TITLE.

This subtitle may be cited as the "Omnibus Taxpayer Bill of Rights".

PART I—TAXPAYER RIGHTS

SEC. 6227. DISCLOSURE OF RIGHTS OF TAXPAYERS.

(a) IN GENERAL.—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, prepare a statement which sets forth in simple and nontechnical terms—

(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the "Service") during an audit;

(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day.

(c) DISTRIBUTION.—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.

SEC. 6228. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

[illegible] PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

"(a) RECORDING OF INTERVIEWS.—

"(1) RECORDING BY TAXPAYER.—Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

"(2) RECORDING BY IRS OFFICER OR EMPLOYEE.—An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

"(A) informs the taxpayer of such recording prior to the interview, and

"(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

"(b) SAFEGUARDS.—

"(1) EXPLANATIONS OF PROCESSES.—An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

"(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or

"(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

"(2) RIGHT OF CONSULTATION.—If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

"(c) REPRESENTATIVES HOLDING POWER OF ATTORNEY.—Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

"(d) SECTION NOT TO APPLY TO CERTAIN INVESTIGATIONS.—This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service."

(b) REGULATIONS WITH RESPECT TO TIME AND PLACE OF EXAMINATION.—The Secretary of the Treasury or the Secretary's delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7520. Procedures involving taxpayer interviews."

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to interviews conducted on or after the date which is 90 days after the date of the enactment of this Act.

SEC. 6229. TAXPAYERS MAY RELY ON WRITTEN ADVICE OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 6404 of the 1986 Code (relating to abatements) is amended by adding at the end thereof the following new subsection:

"(f) ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE INTERNAL REVENUE SERVICE.—

"(1) IN GENERAL.—The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

"(2) LIMITATIONS.—Paragraph (1) shall apply only if—

"(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

"(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

"(3) INITIAL REGULATIONS.—Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to advice requested on or after January 1, 1989.

SEC. 6230. TAXPAYER ASSISTANCE ORDERS.

(a) IN GENERAL.—Subchapter A of chapter 80 of the 1986 Code (relating to general rules for application of the internal revenue laws) is amended by adding at the end thereof the following new section:

"SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

"(a) AUTHORITY TO ISSUE.—Upon application filed by a taxpayer with the Office of Ombudsman (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Ombudsman may issue a Taxpayer Assistance Order if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

"(b) TERMS OF A TAXPAYER ASSISTANCE ORDER.—The terms of a Taxpayer Assistance Order may require the Secretary—

"(1) to release property of the taxpayer levied upon, or

"(2) to cease any action, or refrain from taking any action, with respect to the taxpayer under—

"(A) chapter 64 (relating to collection),

"(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

"(C) chapter 78 (relating to discovery of liability and enforcement of title), or

"(D) any other provision of law which is specifically described by the Ombudsman in such order.

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, a

service center director, a compliance center director, a regional director of appeals, or any superior of any such person.

"(d) SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.—The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

"(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the Ombudsman's decision with respect to such application, and

"(2) any period specified by the Ombudsman in a Taxpayer Assistance Order issued pursuant to such application.

"(e) INDEPENDENT ACTION OF OMBUDSMAN.—Nothing in this section shall prevent the Ombudsman from taking any action in the absence of an application under subsection (a).

"(f) OMBUDSMAN.—For purposes of this section, the term 'Ombudsman' includes any designee of the Ombudsman."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7811. Taxpayer Assistance Orders."

(c) ISSUANCE OF REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

SEC. 6231. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate employees directly involved in collection activities and their immediate supervisors, or

(2) to impose or suggest production quotas or goals with respect to individuals described in clause (1).

(b) APPLICATION OF IRS POLICY STATEMENT.—The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act) in a manner which does not violate subsection (a).

(c) CERTIFICATION.—Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).

(d) EFFECTIVE DATE.—The provisions of this section shall apply to evaluations conducted on or after January 1, 1989.

SEC. 6232. PROCEDURES RELATING TO INTERNAL REVENUE SERVICE REGULATIONS.

(a) IN GENERAL.—Section 7805 of the 1986 Code (relating to rules and regulations) is amended by adding at the end thereof the following new subsections:

"(e) TEMPORARY REGULATIONS.—

"(1) ISSUANCE.—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

"(2) 3-YEAR DURATION.—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

"(f) IMPACT OF REGULATIONS ON SMALL BUSINESS REVIEWED.—After the publication of any proposed regulation by the Secretary and before the promulgation of any final regulation by the Secretary which does not supersede a proposed regulation, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any regulation issued after the date which is 10 days after the date of the enactment of this Act.

SEC. 6233. CONTENT OF TAX DUE, DEFICIENCY, AND OTHER NOTICES.

(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is further amended by adding at the end thereof the following new section:

"SEC. 7521. CONTENT OF TAX DUE, DEFICIENCY, AND OTHER NOTICES.

"(a) GENERAL RULE.—Any notice to which this section applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice.

"(b) NOTICES TO WHICH SECTION APPLIES.—This section shall apply to—

"(1) any tax due notice or deficiency notice described in section 6155, 6212, or 6303,

"(2) any notice generated out of any information return matching program, and

"(3) the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is further amended by adding at the end thereof the following new item:

"Sec. 7521. Content of tax due, deficiency, and other notices."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to mailings made on or after January 1, 1990.

(d) REPORT.—Not later than July 1, 1989, the Secretary of the Treasury or his delegate shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the steps taken to carry out the amendments made by this section.

SEC. 6234. INSTALLMENT PAYMENT OF TAX LIABILITY.

(a) IN GENERAL.—Subchapter A of chapter 62 of the 1986 Code (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of

any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

"(b) EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

"(2) INADEQUATE INFORMATION OR JEOPARDY.—The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if—

"(A) information which the taxpayer provided to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete, or

"(B) the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—

"(A) IN GENERAL.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

"(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

"(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

"(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.

"(4) FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION.—The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer—

"(A) to pay any installment at the time such installment payment is due under such agreement,

"(B) to pay any other tax liability at the time such liability is due, or

"(C) to provide a financial condition update as requested by the Secretary."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6601(b) of the 1986 Code (relating to last day prescribed for payment) is amended by inserting "or any installment agreement entered into under section 6159" after "time for payment".

(2) The table of sections for subchapter A of chapter 62 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6159. Agreements for payment of tax liability in installments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 6235. ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES.

(a) IN GENERAL.—Section 7802 of the 1986 Code (relating to Commissioner of Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations) is amended by adding at the end thereof the following new subsection:

"(c) ASSISTANT COMMISSIONER (TAXPAYER SERVICES).—There is established within the Internal Revenue Service an office to be known as the 'Office for Taxpayer Services' to be under the supervision and direction of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for taxpayer services such as telephone, walk-in, and taxpayer educational services, and the design and production of tax and informational forms."

(b) ANNUAL REPORTS TO CONGRESS.—The Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman for the Internal Revenue Service shall jointly make an annual report regarding the quality of taxpayer services provided. Such report shall be made to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date 180 days after the date of the enactment of this Act.

PART II—LEVY AND LIEN PROVISIONS

SEC. 6236. LEVY AND DISTRAINT.

(a) NOTICE.—Section 6331(d) of the 1986 Code (relating to levy and distraint) is amended—

(1) by striking out "10 days" in paragraph (2) and inserting in lieu thereof "30 days",

(2) by striking out "10-DAY REQUIREMENT" in the heading of paragraph (2) and inserting in lieu thereof "30-DAY REQUIREMENT", and

(3) by adding at the end thereof the following new paragraph:

"(4) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

"(A) the provisions of this title relating to levy and sale of property,

"(B) the procedures applicable to the levy and sale of property under this title,

"(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

"(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

"(E) the provisions of this title relating to redemption of property and release of liens on property, and

"(F) the procedures applicable to the redemption of property and the release of a lien on property under this title."

(b) EFFECT OF LEVY ON SALARY AND WAGES.—

(1) IN GENERAL.—Subsection (e) of section 6331 of the 1986 Code (relating to levy and distraint) is amended to read as follows:

"(e) CONTINUING LEVY ON SALARY AND WAGES.—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343."

(2) CROSS REFERENCE.—Section 6331(f) of the 1986 Code (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(3) For release and notice of release of levy, see section 6343."

(c) INCREASE IN AMOUNTS OF CERTAIN PROPERTY EXEMPT FROM LEVY.—

(1) FUEL, PROVISIONS, FURNITURE, PERSONAL EFFECTS.—Paragraph (2) of section 6334(a) of the 1986 Code (relating to property exempt from levy) is amended by striking out "$1,500" and inserting in lieu thereof "$1,650 ($1,550 in the case of levies issued during 1989)".

(2) BOOKS AND TOOLS.—Paragraph (3) of section 6334(a) of the 1986 Code is amended by striking out "$1,000" and inserting in lieu thereof "$1,100 ($1,050 in the case of levies issued during 1989)".

(3) WAGES, SALARY, AND OTHER INCOME.—

(A) INCREASE IN AMOUNT EXEMPT.—Paragraph (1) of section 6334(d) of the 1986 Code (relating to exempt amount of wages, salary, or other income) is amended to read as follows:

"(1) INDIVIDUALS ON WEEKLY BASIS.—In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount."

(B) EXEMPT AMOUNT DEFINED.—Subsection (d) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT AMOUNT.—For purposes of paragraph (1), the term 'exempt amount' means an amount equal to—

"(A) the sum of—

"(i) the standard deduction, and

"(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

"(B) 52.

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption."

(4) ADDITIONAL PROPERTY EXEMPT FROM LEVY.—

(A) IN GENERAL.—Subsection (a) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new paragraphs:

"(11) CERTAIN PUBLIC ASSISTANCE PAYMENTS.—Any amount payable to an individual as a recipient of public assistance under—

"(A) title IV (relating to aid to families with dependent children) or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

"(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

"(12) ASSISTANCE UNDER JOB TRAINING PARTNERSHIP ACT.—Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

"(13) PRINCIPAL RESIDENCE EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—Except to the extent provided in subsection (e), the principal residence of the taxpayer (within the meaning of section 1034)."

(B) LEVY PERMITTED ON PRINCIPAL RESIDENCE IN CASE OF JEOPARDY OR APPROVAL BY CERTAIN OFFICIALS.—Section 6334 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) LEVY ALLOWED ON PRINCIPAL RESIDENCE IN CASE OF JEOPARDY OR CERTAIN APPROVAL.—Property described in subsection (a)(13) shall not be exempt from levy if—

"(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(2) the Secretary finds that the collection of tax is in jeopardy."

(d) UNECONOMICAL LEVY; LEVY ON APPEARANCE DATE OF SUMMONS.—Section 6331 of the 1986 Code (relating to levy and distraint) is amended by redesignating subsection (f) as subsection (h) and by inserting after subsection (e) the following new subsections:

"(f) UNECONOMICAL LEVY.—No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

"(g) LEVY ON APPEARANCE DATE OF SUMMONS.—

"(1) IN GENERAL.—No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

"(2) NO APPLICATION IN CASE OF JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy."

(e) SURRENDER OF BANK ACCOUNTS SUBJECT TO LEVY ONLY AFTER 21 DAYS.—

(1) IN GENERAL.—Section 6332 of the 1986 Code (relating to surrender of property subject to levy), as amended by title I of this Act is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) SPECIAL RULE FOR BANKS.—Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under

judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 6332 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)".

(B) Subsection (e) of section 6332 of the 1986 Code, as redesignated by paragraph (1), is amended by striking out "subsection (c)(1)" and inserting in lieu thereof "subsection (d)(1)".

(f) RELEASE OF LEVY.—Subsection (a) of section 6343 of the 1986 Code (relating to release of levy) is amended to read as follows:

"(a) RELEASE OF LEVY AND NOTICE OF RELEASE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

"(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

"(B) release of such levy will facilitate the collection of such liability,

"(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

"(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

"(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

"(2) EXPEDITED DETERMINATION ON CERTAIN BUSINESS PROPERTY.—In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

"(3) SUBSEQUENT LEVY.—The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property."

(g) RIGHT OF TAXPAYER TO REQUEST THAT SEIZED PROPERTY BE SOLD WITHIN 60 DAYS.—Section 6335 of the 1986 Code (relating to sale of seized property) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) RIGHT TO REQUEST SALE OF SEIZED PROPERTY WITHIN 60 DAYS.—The owner of any property seized by levy may request that the Secretary sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The Secretary shall comply with such request unless the Secretary determines (and notifies the owner within such period) that such compliance would not be in the best interests of the United States."

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section (other than subsection (g)) shall apply to levies issued on or after July 1, 1989.

(2) SUBSECTION (g).—The amendment made by subsection (g) shall apply to requests made on or after January 1, 1989.

SEC. 6237. REVIEW OF JEOPARDY LEVY AND ASSESSMENT PROCEDURES.

(a) IN GENERAL.—Subsection (a)(1) of section 7429 of the 1986 Code (relating to review of jeopardy assessment procedures) is amended—

(1) by inserting "or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a)," after "6862,", and

(2) by inserting "or levy" after "such assessment".

(b) ADMINISTRATIVE DETERMINATIONS.—Paragraph (3) of section 7429(a) of the 1986 Code (relating to redetermination by the Secretary) is amended to read as follows:

"(3) REDETERMINATION BY SECRETARY.—After a request for review is made under paragraph (2), the Secretary shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances."

(c) TAX COURT REVIEW JURISDICTION.—Subsection (b) of section 7429 of the 1986 Code is amended to read as follows:

"(b) JUDICIAL REVIEW.—

"(1) PROCEEDINGS PERMITTED.—Within 90 days after the earlier of—

"(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

"(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

"(2) JURISDICTION FOR DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

"(B) TAX COURT.—If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

"(3) DETERMINATION BY COURT.—Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

"(A) whether or not—

"(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

"(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

"(4) ORDER OF COURT.—If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate."

(d) VENUE.—Section 7429(e) of the 1986 Code (relating to venue) is amended to read as follows:

"(e) VENUE.—

"(1) DISTRICT COURT.—A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a) (1) or (2) of title 28, United States Code.

"(2) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred."

(e) CONFORMING AMENDMENTS.—

(1) Section 7429(c) of the 1986 Code (relating to extension of 20-day period where taxpayer so requests) and section 7429(f) (relating to finality of determination) are amended by striking out "district" each place it appears.

(2) Section 7429(g) of the 1986 Code (relating to burden of proof) is amended—

(A) by inserting "the making of a levy described in subsection (a)(1) or" after "whether" in paragraph (1),

(B) by striking out "TERMINATION" in the heading of paragraph (1) and inserting in lieu thereof "LEVY, TERMINATION,", and

(C) by striking out "an action" and inserting in lieu thereof "a proceeding" in paragraphs (1) and (2).

(3) The heading of section 7429 of the 1986 Code is amended by inserting "LEVY OR" after "JEOPARDY".

(4) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by inserting "levy or" after "jeopardy" in the item relating to section 7429.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to jeopardy levies issued and assessments made on or after July 1, 1989.

SEC. 6238. ADMINISTRATIVE APPEAL OF LIENS.

(a) ESTABLISHMENT OF ADMINISTRATIVE APPEAL FOR DISPUTED LIENS.—Subchapter C of chapter 64 of the 1986 Code (relating to lien for taxes) is amended by redesignating section 6326 as section 6327 and inserting after section 6325 the following new section:

"SEC. 6326. ADMINISTRATIVE APPEAL OF LIENS.

"(a) IN GENERAL.—In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien.

"(b) CERTIFICATE OF RELEASE.—If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous."

(b) REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall prescribe the regulations necessary to implement the administrative appeal provided for in the amendment made by subsection (a) within 180 days after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 of the 1986 Code is amended by striking out the item relating to section 6326 and inserting in lieu thereof the following:

"Sec 6326 Administrative appeal of liens.
"Sec 6327 Cross references"

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 60 days after the date regulations are issued under subsection (b).

PART III—PROCEEDINGS BY TAXPAYERS

SEC. 6239. AWARDING OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

(a) IN GENERAL.—Section 7430 of the 1986 Code is amended to read as follows:

"SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

"(a) IN GENERAL.—In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

"(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

"(2) reasonable litigation costs incurred in connection with such court proceeding.

"(b) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

"(2) ONLY COSTS ALLOCABLE TO THE UNITED STATES.—An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

"(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

"(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

"(B) EXCEPTION FOR SECTION 501(c)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

"(4) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

"(c) DEFINITIONS.—For purposes of this section—

"(1) REASONABLE LITIGATION COSTS.—The term 'reasonable litigation costs' includes—

"(A) reasonable court costs, and

"(B) based upon prevailing market rates for the kind or quality of services furnished—

"(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

"(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

"(2) REASONABLE ADMINISTRATIVE COSTS.—The term 'reasonable administrative costs' means—

"(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

"(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(B) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.

"(3) ATTORNEY'S FEES.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(4) PREVAILING PARTY.—

"(A) IN GENERAL.—The term 'prevailing party' means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

"(i) which establishes that the position of the United States in the proceeding was not substantially justified,

"(ii) which—

"(I) has substantially prevailed with respect to the amount in controversy, or

"(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

"(iii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

"(B) DETERMINATION AS TO PREVAILING PARTY.—Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made by agreement of the parties or—

"(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

"(ii) in the case where such final determination is made by a court, the court.

"(5) ADMINISTRATIVE PROCEEDINGS.—The term 'administrative proceeding' means any procedure or other action before the Internal Revenue Service.

"(6) COURT PROCEEDINGS.—The term 'court proceeding' means any civil action brought in a court of the United States (including the Tax Court and the United States Claims Court).

"(7) POSITION OF UNITED STATES.—The term 'position of the United States' means—

"(A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

"(B) the position taken in an administrative proceeding to which subsection (a) applies as of the earlier of—

"(i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or

"(ii) the date of the notice of deficiency.

"(d) SPECIAL RULES FOR PAYMENT OF COSTS.—

"(1) REASONABLE ADMINISTRATIVE COSTS.—An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(2) REASONABLE LITIGATION COSTS.—An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

"(e) MULTIPLE ACTIONS.—For purposes of this section, in the case of—

"(1) multiple actions which could have been joined or consolidated, or

"(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

"(f) RIGHT OF APPEAL.—

"(1) COURT PROCEEDINGS.—An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

"(2) ADMINISTRATIVE PROCEEDINGS.—A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to appeal to the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute)."

(b) CONFORMING AMENDMENT.—Section 504 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out "court" in the item relating to section 7430.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act.

SEC. 6240. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO FAILURE TO RELEASE LIEN.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7432 as section 7433 and by inserting after section 7431 the following new section:

"SEC. 7432. CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

"(a) IN GENERAL.—If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

"(2) the costs of the action.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

"(e) NOTICE OF FAILURE TO RELEASE LIEN.—The Secretary shall by regulation prescribe reasonable procedures for a taxpayer to notify the Secretary of the failure to release a lien under section 6325 on property of the taxpayer."

"(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out the item relating to section 7432 and inserting in lieu thereof the following new items:

"Sec. 7432 Civil damages for failure to release lien.
"Sec. 7433 Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices provided by the taxpayer of the failure to release a lien, and damages arising, after December 31, 1988.

SEC. 6241. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO CERTAIN UNAUTHORIZED ACTIONS BY INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is further amended by redesignating section 7433 as section 7434 and by inserting after section 7432 the following new section:

"SEC. 7433. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS.

"(a) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $100,000 or the sum of—

"(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

"(2) the costs of the action.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues."

(b) DAMAGES FOR FRIVOLOUS OR GROUNDLESS CLAIMS.—

(1) IN GENERAL.—Section 6673 of the 1986 Code (relating to damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.) is amended by inserting "(a) IN GENERAL.—" before "Whenever" and by adding at the end thereof the following new subsection:

"(b) CLAIMS UNDER SECTION 7433.—Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, damages in an amount not in excess of $10,000 shall be awarded to the United States by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the Secretary."

(2) CLERICAL AMENDMENT.—The heading for section 6673 of the 1986 Code is amended by striking out "TAX".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is further amended by striking out the item relating to section 7433 and inserting in lieu thereof the following new items:

"Sec 7433. Civil damages for certain unauthorized collection actions.
"Sec. 7434. Cross references."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 6212. ASSESSABLE PENALTY FOR IMPROPER DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 of the 1986 Code (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6712. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

"(a) IMPOSITION OF PENALTY.—If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who—

"(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

"(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall pay a penalty of $250 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed $10,000.

"(b) EXCEPTIONS.—The rules of section 7216(b) shall apply for purposes of this section.

"(c) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section."

(b) CRIMINAL PENALTY TO APPLY ONLY WHERE KNOWING OR RECKLESS DISCLOSURE OR USE.—The material preceding paragraph (1) of section 7216(a) of the 1986 Code is amended by striking out "and who—" and inserting in lieu thereof "and who knowingly or recklessly—".

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6712 Disclosure or use of information by preparers of returns."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures or uses after December 31, 1988.

PART IV—TAX COURT JURISDICTION

SEC. 6213. JURISDICTION TO RESTRAIN CERTAIN PREMATURE ASSESSMENTS.

(a) IN GENERAL.—Section 6213(a) of the 1986 Code (relating to time for filing petition and restriction on assessment) is amended by striking out the period at the end of the last sentence and inserting in lieu thereof ", including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

(b) APPEAL OF ORDER RESTRAINING ASSESSMENT, ETC.—Section 7482(a) of the 1986 Code (relating to jurisdiction on appeal) is amended by adding at the end thereof the following new paragraph:

"(3) CERTAIN ORDERS ENTERED UNDER SECTION 6213(a).—An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to orders entered after the date of the enactment of this Act.

SEC. 6244. JURISDICTION TO ENFORCE OVERPAYMENT DETERMINATIONS.

(a) IN GENERAL.—Section 6512(b) of the 1986 Code (relating to overpayment determined by the Tax Court) is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (3)" in paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting the following new paragraph after paragraph (1):

"(2) JURISDICTION TO ENFORCE.—If, after 120 days after a decision of the Tax Court has become final, the Secretary has failed to refund the overpayment determined by the Tax Court, together with the interest thereon as provided in subchapter B of chapter 67, then the Tax Court, upon motion by the taxpayer, shall have jurisdiction to order the refund of such overpayment and interest."

(b) AMENDMENTS ADDING CROSS REFERENCES.—

(1) Section 6214(e) of the 1986 Code is amended by striking out "REFERENCE.—" and inserting in lieu thereof "REFERENCES.—" in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

"(2) For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2)."

(2) Section 6512(c) of the 1986 Code is amended by striking out "REFERENCE.—" and inserting in lieu thereof "REFERENCES.—" in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

"(2) For provision giving the Tax Court jurisdiction to award reasonable litigation costs in proceedings to enforce an overpayment determined by such court, see section 7430."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to overpayments determined by the Tax Court which have not yet been refunded by the 90th day after the date of the enactment of this Act.

SEC. 6245. JURISDICTION TO REVIEW CERTAIN SALES OF SEIZED PROPERTY.

(a) JURISDICTION TO REVIEW CERTAIN SALES OF PROPERTY.—Section 6863(b)(3) of the 1986 Code (relating to stay of sale of seized property pending Tax Court decision) is amended by adding at the end thereof the following new subparagraph:

"(C) REVIEW BY TAX COURT.—If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(ii), then the Tax Court shall have jurisdiction to review the

Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 6246. JURISDICTION TO REDETERMINE INTEREST ON DEFICIENCIES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final) is amended by adding at the end thereof the following new subsection:

"(c) JURISDICTION OVER INTEREST DETERMINATIONS.—Notwithstanding subsection (a), if—

"(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

"(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court) is amended by inserting after "section 6213(a)" the following: "(or 7481(c) with respect to a determination of statutory interest)".

(2) Subsection (a) of section 7481 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to assessments of deficiencies redetermined by the Tax Court made after the date of the enactment of this Act.

SEC. 6247. JURISDICTION TO MODIFY DECISIONS IN CERTAIN ESTATE TAX CASES.

(a) IN GENERAL.—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final), as amended by section 783(a), is further amended by adding at the end thereof the following new subsection:

"(d) DECISIONS RELATING TO ESTATE TAX EXTENDED UNDER SECTION 6166.—If with respect to a decedent's estate subject to a decision of the Tax Court—

"(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

"(2) there is treated as an administrative expense under section 2053 either—

"(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

"(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court), as amended by this part, is further amended by striking out "interest)" and inserting in lieu thereof "interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court)".

(2) Subsection (a) of section 7481 of the 1986 Code, as amended by this part, is further amended by striking out "subsections (b) and (c)" and inserting in lieu thereof "subsections (b), (c), and (d)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act.

PREPARED STATEMENT OF SENATOR HARRY REID

Mr. Chairman, thank you for the opportunity to testify here today. Yesterday, I joined you and Senator Grassley and a whole host of others in introducing a bill that that is important to me, important to Nevadans and important to taxpayers across the country. That issue is the Taxpayers' Bill of Rights II or, as we will come to know it, "T2."

Mr. Chairman, my experience with the sometimes abusive practices of the IRS goes back to the days before I was elected to Congress. During the time that I practiced law in the State of Nevada, I had a number of taxpayers come to me who were concerned about the way they were treated by the Internal Revenue Service. Card dealers, roulette dealers, waiters, waitresses, and others that worked in the gaming and resort industry in Nevada approached me with stories of harassment by the IRS. While they acknowledged the fact that they owed the IRS money, they could not understand the treatment they were receiving from this agency. They told me stories of arrangements that were made with the IRS to pay taxes they owed and how suddenly the arrangements were negated. The IRS would say, 1,Well, it is true we agreed you could pay the money back at the rate of $500 a month, but what has happened in the meantime is that there is a new revenue agent. As a result, you are going to have to pay $750 a month," or some other figure. This is only one example. The complaints were many, and the stories all had the same theme.

The complaints did not stop when I was elected to the House of Representatives. As a result, I introduced the first Taxpayers' Bill of Rights in that body during the 99th Congress. Unfortunately the House wasn't interested in moving my bill. The Member who chaired the Subcommittee in Ways and Means did not see the merits of the legislation.

The day I introduced that legislation in the House I appeared on the Charley Rose's show, "Nightwatch." The show aired between 2 and 5 o'clock in the morning. I, frankly, did not expect anyone to be watching the show. But, the fact is, there must have been quite a few people watching the show. The next day, when I came to work, the phone would not stop ringing. Telegrams were flooding in and the mail arrived by the bagful a few days later. What I discovered in all of this communication was that the problems in Nevada with Nevada citizens was not only a Nevada problem but, in fact, Mr. Chairman, a problem we had all over the country. There were problems all over these United States with the way the IRS was treating taxpayers. And they were not pleasant stories.

Nevertheless, my bill would not move in the House. The messages I received were certainly fuel for my fire though.

On my maiden Senate floor speech, again I spoke of a Taxpayers' Bill of Rights. Coincidently, the presiding officer that day was David Pryor. You sent a note to me after the conclusion of my speech. The note indicated his interest in the issue. It indicated that this was a good idea and that you wanted to work together on the issue.

Later that day I heard from Senator Grassley. He indicated that he, too, was interested in the bill.

Senator Pryor, you were the chairman of this subcommittee having jurisdiction over the IRS at that time as well. As a result of your position, you were able to move the Taxpayers' Bill of Rights, and move it you did. In your own words, you described that you had developed "a passion" for the Taxpayers' Bill of Rights. Your hearings developed so many abusive stories that it became something extremely important to you.

As a result of the very hard work of both you and Grassley, this legislation was moved through the Senate, the House and became law. I will be forever indebted to you for your ability, and your "passion" for this legislation. Because, but for you, this legislation would not have moved. It was my idea, but you were the moving force behind the bill through the Senate process. I am very grateful for that, and the American taxpayers should be grateful for that.

The provisions in the original Taxpayers' Bill of Rights are important. It instructs the IRS to prepare a statement of taxpayers' rights. Now when a taxpayer has a problem he or she knows what his or her rights might be.

The Taxpayers' Bill of Rights grants statutory authority to the Ombudsman to issue "Taxpayer Assistance Orders" if the taxpayer will suffer significant hardship as a result of the way the tax laws are being administered.

It sets out rules for taxpayer audit interviews.

It authorizes the IRS to enter into a written installment payment agreement with a taxpayer and sets criteria for terminating an agreement.

The Taxpayers' Bill of Rights also prohibits the use of tax enforcement results to evaluate Collection employees or to impose production quotas or goals.

The hearings on the Taxpayers' Bill of Rights indicated that certain IRS employees were promoted as a result of how much money they could collect. In fact, one taxpayer in the State of California testified that on the window of the Los Angeles IRS office the officers had written little slogans to promote the collection of more money. This, and actions like it, are no longer permissible.

The Taxpayers' Bill of Rights requires financial institutions to hold accounts garnished by IRS for 21 days after receiving the notice of levy rather than sending the money right out.

The Taxpayers' Bill of Rights has made great strides on behalf of taxpayers rights, understanding and underscoring, Mr. Chairman, that no one involved with this legislation does not want the Federal Government to collect moneys that are due and owing. What we do not want is the IRS to be abusive and mean spirited in collecting money they are not entitled to. That is what the Taxpayers' Bill of Rights is set up to protect.

Mr. Chairman, the Taxpayers' Bill of Rights 2 or T2 will take the next step in providing safeguards to the taxpayer. Among other things, it will replace the Office of Taxpayer Ombudsman with a new Office of Taxpayer Advocate and allow this person a more independent role in protecting taxpayers rights. An important provision of T2 will make the Problems Resolution Officers (PRO)—the IRS person out in the field that handles taxpayer complaints—accountable to the Taxpayer Advocate rather than the local IRS District Director.

As the situation exists now, the PRO is hired, supervised, reviewed and promoted by the local Director. This bill provides that the PRO is accountable to the Taxpayer Advocate, an individual appointed by the President and confirmed by the Senate. There is little doubt that the taxpayer would have a more sympathetic ear at the IRS if this were the situation.

An additional provision relating to the Taxpayer Advocate gives more strength to the Taxpayer Assistance Order Program. Taxpayer Assistance Orders (TAO) were established in the first Taxpayers Bill of Rights to assist 'taxpayers who would suffer hardship as a result of IRS actions. However, Taxpayer Assistance Orders may be modified or rescinded by the Ombudsman, a district director, a compliance center director, or virtually anyone at that level of authority or above. T2 provides that only a Taxpayer Advocate and/or the IRS Commissioner may modify or rescind a Taxpayer Assistance Order.

T2 will also protect the taxpayers with respect to the interest rate differential between the rate the taxpayer must pay the government on underpayments and the interest rate the IRS pays the taxpayer on overpayments. The government will now pay the same amount to taxpayers that taxpayers must pay to them.

Mr. Chairman, I have touched on only a very few of the provisions in the bill. There are many more and I urge your committee to take a close look at them. This legislation will protect our constituents against the sometimes abusive practices of the IRS. If Congress wants to pass or want to support a bill that will really have an effect in your states—then this is the legislation you should cosponsor.

PREPARED STATEMENT OF HARVEY J. SHULMAN

My name is Harvey Shulman. I am the General Counsel of the National Association of Computer Consultant Businesses ("NACCB"). I am pleased to be able to provide testimony at these hearings on a second "Taxpayer Bill of Rights". Senator Pryor, you have been a leader in the effort to assure that taxpayers are treated fairly and with due process in their dealings with the IRS. When the financial well-being of individuals and the continued existence of many business entities can be destroyed by inappropriate IRS actions, it is critical that adequate procedural safeguards be adopted.

At the April 6, 1990 hearings chaired by Senator Pryor on "IRS Implementation of the Taxpayers' Bill of Rights", NACCB provided oral testimony on how the existing law is unable to provide sufficient protection especially to small businesses faced with employment tax audits. In fact, as part of our testimony, we transmitted a copy of an IRS "Snitch Sheet" disseminated to taxpayers by at least one IRS office which was interested in obtaining "leads" for employment tax audits. We also focused on significant shortcomings in the IRS Manual sections that dealt with activities of the Collections Division during employment tax audits, a subject which Senator Pryor also highlighted by reference his receipt of a copy of correspondence from Senator John Kerry to then Commissioner Goldberg.

Since NACCB's 1990 testimony, there have been some positive changes in IRS practices and procedures in the employment tax area which directly resulted from those hearings. Nonetheless, in many other respects, the problems have become worse -- and we believe that they deserve the same degree of attention now.

Our concern now -- as it was in 1990 -- primarily involves IRS examinations of small businesses, particularly in the employment tax area. All of us are naturally concerned about the rights of _individuals_ whose income tax returns are being audited by the IRS; it is the quintessential case of personal rights of individuals versus government power. Yet, Senator Pryor, too often the plight of _small businesses_ does not receive adequate attention -- perhaps because this class of taxpayers is thought of composed of businesses with revenues of millions or even tens of millions of dollars and the ability to fend for themselves.

But when we do not pay adequate attention to small businesses, we ignore two important truths: _First_, behind every small business are people -- the individual owners and the workers who depend on them -- and these people can be hurt enormously by improper IRS practices during audits of these businesses. _Second_, small businesses, unlike most individuals, actually face two types of IRS audits -- income taxes and employment taxes -- and so they have double the risk of being harmed by improper IRS procedures. In fact, as we will explain today Senator Pryor, employment tax audits of small business are often far more potentially destructive to these businesses than income tax audits. Employment tax audits can involve a variety of issue including whether a worker is an independent contractor or an employee, whether payments to employees are taxable wages or non-taxable expense reimbursements or fringe benefits, and whether corporate loans to key employees should be taxed as wages.

Senator, NACCB has a unique perspective on the power that the IRS can bring to bear against small businesses. Our members are all in the technical services industry. As the result of Section 1706 of the 1986 Tax Reform Act -- which we are still trying to repeal -- this industry has been a major target for IRS employment

tax audits because it is the only industry in the United States which does not have some type of employment tax "safe haven". Although many of the problems I will address here go far beyond our industry, we have seen these problems in "spades" because we are so vulnerable due to the unfair discrimination that we face as the result of Section 1706. And, through our contact with other industries, we know that the IRS practices that affect us are beginning to have similarly adverse impact in other industries. Yet whatever the substantive tax standards might be for our industry or others, no taxpayer should have to face the IRS practices to which our members have been exposed.

The incidents I will address today are real, and they demonstrate how the lack of procedural safeguards has led to IRS actions that create fear and intimidation in small businesses. Indeed, Senator Pryor, a number of our members -- people who are viewed as outstanding and ethical local business leaders in their communities and who have never had any previous problems with the IRS -- have described the experiences of undergoing IRS employment tax audits as "living in hell", being "coerced by terror tactics", and as being "victimized by legalized extortion". We believe that there is a basis for many of these feelings, particularly because of the procedures to which these taxpayers have been subjected; but the mere fact that so many reasonable people feel this way is itself a danger sign that some action is necessary.

1. IRS Auditors Unfairly Engage in Contacts With Customers and Workers of a Taxpayer Which Threaten to Harm the Taxpayer's Business. In the course of employment tax examinations the IRS will ask for a list of all of the workers paid by the taxpayers and all of the taxpayers' customers. Thereafter, the IRS auditors typically contact workers who perform services for business taxpayers. The workers are then questioned, at length and in detail, about their relationships with the taxpayers. Likewise, the IRS auditors frequently contact the taxpayers' customers and in so called "three party" situations where the taxpayers are intermediate "brokers" who arranges for workers to provide services to customers of those brokers, conduct similar interviews with them about the services performed for them by the workers. In many cases, the IRS auditors simply "show up" at the homes or offices of workers or at the premises of customers, and a demand is made for immediate interviews.

In many audits, the IRS auditors "cast a wide net" by contacting -- through letter, by telephone or in person -- very large numbers of taxpayers' workers and customers. In most instances, our experience has been that these IRS tactics are intimidating -- at a minimum -- to most of the contacted workers and to many customers. At worst, because workers and customers frequently have the opportunity to deal with many different firms that offer the same services as the taxpayers being audited, a visit from an IRS auditor is a potential "death knell" to a continuing business relationship -- many of these "third parties" want to eliminate their involvement with anyone being investigated by the IRS.

We ask that a provision be included in T2 that imposes limitations upon IRS contacts with "third parties" in connection with employment tax audits of a taxpayer where such contacts have the potential to seriously harm the taxpayer's business.

2. IRS Auditors Unfairly Request "Responsible Persons" Associated With A Taxpayer to Waive the Statute of Limitations for a Personal Tax Assessment -- and They Threaten Immediate Assessments Against These Persons if a Waiver Is Not Signed -- Even

When There is No Reasonable Basis for the Eventual Imposition of any Personal Tax Liability. Because employment taxes are "trust fund" taxes, Section 6672 of the IRC allows the IRS to assess these taxes against and collect them from "responsible persons" in a business, e.g., owners, officers, directors, if the failure to pay the taxes was "willful". But Congress has separately provided, in Section 3509 of the Code, that assessments for employment taxes in cases of worker misclassification -- i.e., treatment of an employee as an independent contractor -- will be made at a reduced tax rate unless there has been "intentional disregard" of the law. The IRS has rightly concluded that if there is no "intentional disregard", then it is not possible for the IRS to claim that the resultant failure to pay the taxes was "willful"; in other words, there can be no "personal liability" for a taxpayer's classifications of workers as independent contractors unless the taxpayer has "intentionally disregarded" the law.

In practice, very few cases of alleged worker misclassification that we have seen are found to reflect "intentional disregard" of the law and so there is rarely any "personal liability". Nonetheless, in many cases, as long as an audit is still pending -- even several months after the audit has been ongoing -- the IRS auditors will threaten a taxpayer's owners, officers and others with a "quick assessment" if they do not agree to waive an impending statute of limitations deadline which would otherwise preclude a personal assessment against these persons; in many such cases, after months or years of investigation, the IRS has found <u>no</u> meaningful evidence of any "willful" non-payment or "intentional disregard" of the law, and yet the IRS auditors will threaten an immediate personal assessment of taxes if the persons do not consent to waive the upcoming statute of limitations deadline by signing IRS Form 2750.

It is grossly unfair to subject these individuals to the "threat" of personal liability and to "coerce" a waiver of the statute of limitations as to "personal liability" in such circumstances; especially when the individuals have already been under the emotional, logistical and financial burdens associated with the audits of their firms and there is no reasonable evidence of their "intentional disregard" of the law, taxpayers rightfully view the demand for a signed Form 2759 as akin to "terror tactics", "bargaining chips", "harassment", or other attempts at intimidation.

We urge that a provision be included in T2 that imposes limitations upon the right of IRS auditors to effectively force individuals to sign Form 2750 when, after an examination has been pending for a reasonable duration, there is no reasonable evidence of any "willful" failure to pay taxes or of any "intentional disregard" of the law.

3. IRS Auditors Unfairly Refuse to Disclose Workers' Tax Returns to a Taxpayer Even in Cases Where the Auditors Themselves Have Relied Upon Those Workers' Tax Returns to Impose a Tax Liability on a Taxpayer Who Pays Those Workers. In many employment tax audits where an IRS auditor wants to make a case that a worker retained by a business taxpayer is an employee rather than an independent contractor, the auditor will review the personal tax returns and associated schedules filed by the worker. For example, often the auditor will state in his or her report that workers have no other sources of income other than from one particular business, or that workers have no advertising expenses, or similar facts allegedly gathered from workers' tax returns that are relied upon to support the auditor's view that the worker is an employee of the business taxpayer.

But when business taxpayers ask to examine these same worker returns to be certain that the facts as alleged by the auditor are true, or to determine if the returns also contain other facts that contravene the auditor's selectively-chosen data -- for example, the returns may also show that the workers have business expenses, a key factor "conveniently" ignored by the IRS auditor -- the IRS refuses to allow the business taxpayers to inspect these very same returns.

Although there are undoubtedly issues of disclosure of confidential information here, **we urge you to eliminate the inherent unfairness in allowing the IRS the exclusive right to rely upon "secret" facts to support a substantial tax assessment against a taxpayer without providing the taxpayer an opportunity to review the documents from which those obtained so as to be able to confirm or contest the accuracy and completeness of those facts and other relevant facts in those documents.**

4. In All Audits the IRS should Be Required to Conduct a Reasonable Investigation Before Any Presumption of Correctness Will Apply to a Determination of Tax Liability. We are familiar with several instances in which an IRS auditor has pursued an examination not with the goal of gathering all of the key relevant facts -- no matter whether the facts support the taxpayer or the government -- but the auditor has instead attempted to "build a case" for the government. Particularly when interviewing "third parties" about a taxpayer's liability, IRS auditors have often selectively recorded the interviewees' answers and have pressured the interviewees to sign these incomplete statements. Likewise, on many occasions IRS auditors have refused to include facts in their reports that are favorable to taxpayers, and there are even instances in which an auditor has also refused to accept documents that support the taxpayer's position or has "created" facts that have no reasonable basis in interviews or documents.

All of this type of conduct is intended to support an auditor's position; even though there may be strong facts and a strong argument that the taxpayer does not have a tax liability, the auditor uses the one-sided investigation to "write the case up" in favor of the government and force the taxpayer to gather its own facts, present its own legal arguments, and then pursue its case with an Appeals Officer. No taxpayer should be subjected to these types of result-oriented, imbalanced examinations. Yet there is no clear legal detriment to the IRS when an auditor engages in such conduct.

Section 603 of the current version of T2 recognizes the need for the IRS to conduct a reasonable investigation of certain information reported on information returns and, if this is not done, the IRS's determination of a deficiency will not be entitled to a presumption of correctness. But Section 603 is too limited.

We ask that Section 603 be expanded so that in all examinations -- including those in the employment tax area -- the IRS should be obliged to conduct a reasonable investigation. Moreover, the requirement of reasonableness should specifically include fairness and impartiality in fact-gathering and review.

5. IRS Auditors Should Have Some Personal Accountability to Taxpayers For Unreasonable Actions Taken By Them.

We recognize that the subject of personal liability of IRS auditors has been a controversial one over the years. However, it is apparent from our previous discussion that some misconduct by IRS auditors is sufficiently egregious ans prejudicial to taxpayers that the IRS employee should not be protected from personal

liability to the taxpayer. For example, if an IRS auditor can be shown to have intentionally misstated facts or eliminated from her file documents that are exculpatory to the taxpayer, some amount of liability seems appropriate. Perhaps the taxpayer might be required to have such a claim resolved by an impartial IRS official or the amount of liability might be limited, e.g., $5,000, but the concept of liability should no longer be discounted.

We urge that Section 505 of T2 be modified to allow damage awards against IRS employees who engage in "reckless or intentional" misconduct.

6. **IRS Procedures Unfairly Give an Auditor Control Over the Transmission of a Protest to Appeals Offices in Cases Where the Auditor's Own Report is the Subject of the Protest.** It is the practice in some IRS offices for a taxpayer to transmit its protest of an "unagreed" audit to the IRS auditor who conducted the audit. That auditor is then supposed to transmit the protest to the Appeals Office. During any delay in transmission, interest and penalties may be accruing if the taxpayer ultimately proves to be unsuccessful in an appeal.

Unfortunately there is no established procedure or time limitation for the transmission of the protest. For example, in one particular audit with which we are familiar, a protest was sent to the IRS auditor on April 29, 1991, but the IRS auditor did not transmit the protest to the Appeals Office for almost 7½ months, until December 16, 1991.

We urge that Section 301 of the current version of T1 -- which prohibits the IRS from charging interest to taxpayers when that interest is due to unreasonable IRS delays -- should be expanded beyond "deficiencies" to cover employment tax assessments. In addition, for purposes for defining what is an "unreasonable delay", T2 should include legislative history that requires protests to be transmitted to the Appeal Office within 30 days of receipt.

7. **IRS Procedures Unfairly Permit Private Communications Between IRS Auditors and Appeals Officers About Pending Appeals.** An IRS auditor typically spends weeks, if not months and often years, conducting an investigation, determining facts, and performing a legal analysis -- all of which is to be set forth in a formal report presented to the taxpayer where a case is "unagreed". Based upon the report, a taxpayer will decide what further steps to take, including filing a protest with the IRS Appeals Office. In that protest, a taxpayer will set forth its disagreements with the findings of fact and conclusions of law reached by the IRS auditor. However, IRS procedures permit the IRS auditor -- who is then, of course, in a type of adverse "prosecutorial" role -- to communicate privately in writing or orally with the Appeals Officer who will decide the case.

Apart from whatever justifications might be offered for this process, there is at least an appearance of unfairness to taxpayers, and actual unfairness may often result; indeed, whether such contacts take place and what is said during such contacts is often unknown to the taxpayer. In some cases, the IRS auditor may actually prepare a detailed written rebuttal to the taxpayer's protest -- in effect, a "second bite at the apple" for the IRS auditor -- and that rebuttal might contain incorrect facts or legal analysis to which the taxpayer would have no opportunity to respond.

In one recent case, for example, an IRS auditor wrote a twenty-two page rebuttal addressed to the Appeals Officer and, in

her opening sentence, she stated: "This memorandum is an addendum to the examiner's original report and a rebuttal to the taxpayer's written protest. It is intended for INTERNAL USE ONLY and SHOULD NOT BE PROVIDED TO THE TAXPAYER." This type of conduct cannot be condoned.

We urge that you consider what limitations should be imposed on such intra-IRS private contacts and how to insure that taxpayers are automatically and promptly sent a copy of written contacts or a summary of oral contacts that do occur.

8. The Opportunities for Appeals Officers to Raise "New Issues" Should Be Further Restricted. Although the IRS Manual imposes some restrictions in the form of guidelines on the right of Appeals Officers to raise "new issues" when a taxpayer appeals an adverse decision that was made by an IRS auditor, further restrictions are appropriate.

The present IRS practice allows an Appeals Officer to raise a "new issue" if there are "substantial grounds" in the examination record for doing so and if the amount of tax is "material". Under these guidelines, before raising a "new issue" an Appeals Officer must be "quite certain" that the government will prevail on the "new issue" and there must be "good, sound substantial reason" -- based on facts "already existing in the record" -- for raising the "new issue". Although this standard is relatively high, it does allow for the situation to occur in which the IRS auditor has pursued an examination on the basis of one particular legal theory, but the facts would support an assessment on the basis of a second legal theory that was either dropped by the auditor or never pursued, so that the Appeals Officer can raise this "new", second theory.

The unfairness of this situation is enormous: the taxpayer will have spent a great deal of money and time developing its side of the case for the auditor and in the protest filed with the Appeals Officer, but now the taxpayer can be forced to defend a new and different legal issue before the Appeals Officer. Also, this could well entail the development of additional "defensive" facts not already in the examination, thereby extending the fact-gathering phase into the appeals process.

We urge that T2 be amended to impose restrictions on the ability of Appeals Officers to raise "new issues" for the first time on appeal or to reopen issues resolved favorably to the taxpayer by the auditor.

9. IRS Appeals Officers Should Be Directed Not to Consider Whether Costs Would Be Awarded a Taxpayer When They Decide Whether to Settle a Case in the Taxpayer's Favor. Sections 801 through 803 of T2 would permit taxpayers to be awarded administrative costs incurred after a proposed assessment if the taxpayer ultimately prevails and the IRS position has been determined not to have been substantially justified.

We believe that this provision could help eliminate the situations in which some IRS examiners in employment tax audits will simply "write up" a case in favor of the government and leave the taxpayers with the task of prevailing on their protests with the Appeals Office. However, there is some possibility that Appeals Officers -- fearful that successful taxpayers would then ask for administrative costs -- might be less inclined to settle a case in the taxpayers' favor. Appeals Officers should be precluded from weighing this factor in determining whether and how to settle a case. Of course, we recognize that even with this proscription this factor might still be an unspoken and unproven ingredient of

an Appeals Officer's decision, but nonetheless the proscription should be imposed by Congress.

The legislative history of Sections 801 through 803 should specifically prohibit Appeals Officers from any consideration of whether costs would be awarded a taxpayer when they decide whether to settle a case in the taxpayer's favor.

10. **IRS Procedures Unfairly Permit the IRS to File a Public Notice of Federal Tax Lien Against a Taxpayer While the Taxpayer is Contesting an Employment Tax Liability in a Refund Suit.** In income tax cases, a taxpayer is entitled to petition the Tax Court and have a de novo trial before the IRS can actually make an assessment against the taxpayer. In employment tax cases, the IRS can and does assess the tax immediately after an adverse decision by the IRS Appeals Office. Hence, unlike income tax cases, a taxpayer in an employment tax case has no opportunity to have the taxpayer's case heard by a judge until after the IRS has made an assessment. The assessment itself can have a devastating effect on the taxpayer; however, the IRS's filing of a notice of federal tax lien -- which can shortly follow the assessment -- is effectively a "death knell" to many business because most financial institutions will immediately eliminate a "line of credit" after such notice has been filed if not before. Thus, even before a decision by a trial court -- which might ultimately rule in favor of the taxpayer -- a business taxpayer can be put out of business while contesting the IRS assessment. We recognize that the IRS does not automatically file a notice of tax lien right after an assessment, but it should be precluded from doing so in cases other than "jeopardy-type" situations.

Section 502 of T2 should be expanded to preclude the IRS from filing a federal tax lien until after a tax refund suit is decided except in "jeopardy-type" situations.

PREPARED STATEMENT OF ROBERT T. ZALESKI

Good Morning. My name is Robert T. Zaleski. I am a public accountant from Plymouth Meeting, Pennsylvania. I have been in public practice for 18 years. I am enrolled to practice before the Internal Revenue Service. I am also a member of the U.S. Small Business Administration's National Advisory Council.

I appear before you today as Vice Chair of the Federal Taxation Committee of the National Society of Public Accountants. NSPA represents some 21,000 independent accountants who provide accounting, tax preparation, tax planning, financial planning and managerial advisory services to an estimated 4 million individuals and small businesses nationwide.

Because of the type of clients its members serve, NSPA is in a unique position to address how mainstream America views the concept of taxpayer rights. Our members represent Main Street, U.S.A.—its small businesses, senior citizens, and working families, struggling to make ends meet. Because of this, NSPA members are the first to see the impact of the Taxpayer Bill of Rights on the average American.

We therefore greatly appreciate the opportunity to appear before you today and share with you our experiences as they relate to a number of important issues involved in reviewing current and proposed mechanisms for safeguarding taxpayers' rights.

The National Society has reviewed each of the taxpayer rights proposals outlined by Subcommittee Chairman David Pryor (D–AR) in a November 6th statement on the Senate floor. In general, NSPA believes that most of Senator Pryor's initiatives are positive steps toward improving perceptions of the fairness of the nation's revenue laws. We believe that ~~one or two~~ matters merit further consideration before action is taken on them. Where appropriate, our concerns are noted.

NSPA has also taken the liberty of addressing some of the other taxpayer rights problems its members encounter on a regular basis. We encourage the Subcommittee to include these matters in the taxpayer rights debate.

A. PROVISIONS CONTAINED IN SENATOR PRYOR'S "T2"

1. Taxpayer Rights Review

The proposed processes for allowing taxpayers to appeal violations of their rights, separate and apart from any dispute as to the underlying tax liability, seems to NSPA to be an appropriate reform worthy of further consideration.

Should the Subcommittee adopt this recommendation, however, the National Society would recommend one additional category be added to the appealable matters: preparer penalties. Under current law, nearly the only way to appeal an IRS determination that preparer penalties are justified is through suit in the U.S. District Court. Such a procedure is clearly far too cumbersome for smaller penalties, leaving aggrieved preparers without any effective remedy for erroneous IRS assessments.

Adding this discreet category of appealable items to the proposed administrative appeal process will safeguard practitioner rights without adding undue burden to the proposed system.

2. The Ombudsman

As T2 proposes, NSPA supports retaining the Taxpayer Ombudsman's office within the Internal Revenue Service. We believe there are significant disadvantages to relocating the Ombudsman; in NSPA's experience, it is often better to have an advocate working within the system than one working without.

For these same reasons, we must express some concern over the proposal to transfer Problems Resolution Office (PRO) personnel from the District Director to the Ombudsman. It is our fear that such a change will cause PRO personnel to be perceived by other IRS personnel as somehow "outside" the system, thereby diminishing the PRO's effectiveness. The vast majority of practitioners have been very satisfied with the PRO, and are therefore hesitant to endorse systemic changes in the PRO structure.

At the same time, however, we support the expanded authority T2 would confer on the Taxpayer Ombudsman. Particularly, the authority to abate assessments, grant refund requests, and stay collection activities will significantly enhance the effectiveness of both the Ombudsman and the PRO. NSPA therefore supports these proposed changes.

NSPA also supports requirements that the Ombudsman issue independent periodic reports to the Congress.

3. Elimination of Interest Differential

As a matter of fundamental fairness to taxpayers, NSPA supports the elimination of the differential between the interest taxpayers pay the government and the interest the government pays taxpayers. It has been NSPA's experience that most taxpayers perceive the differential as a particularly annoying example of unfairness in the revenue laws.

4. Recovery of Administrative Costs

NSPA supports the expanded provisions for recovering administrative costs. We particularly view the increase in the maximum allowable hourly professional fees from $75 to $150. We believe that this increase reflects the realities of the marketplace, and will also create additional incentive for IRS field personnel to act in a manner that is fair to the taxpayer.

5. Expansion of Authority to Issue Lien Release Certificates

NSPA supports expansion of the Secretary's authority to issue certificates of release to cover premature or incorrectly filed liens.

6. Removal of Recovery Limits for Civil Damages

The National Society supports the elimination of caps on civil damages for certain unauthorized collection actions. NSPA particularly endorses expansion of the Code Section 7433 provisions to "negligent" IRS actions.

7. Content of Notices

NSPA believes that the IRS National Office staff have been working diligently to improve the content and clarity of IRS notices. While agreeing that more work needs to be done in this area , the National Society believes that the proposed solution—invalidating any such notices—is perhaps too severe. NSPA would therefore recommend that the Subcommittee explore potential intermediate actions before such an "ultimate sanction" is imposed.

8. Abatement of Interest for Unreasonable IRS Delays

NSPA supports the proposal mandating the abatement of interest for unreasonable IRS delays.

9. Secretary's Power to Suspend Rules

The National Society does not have sufficient information to comment on this provision. NSPA therefore respectfully reserves comment on this proposal until its parameters are explained in greater detail.

10. Taxpayer Assistance Orders

NSPA supports the proposed expansion of taxpayer assistance orders.

11. Damages for Wrongful Liens

The National Society supports the expansion of damage awards to include the wrongful issuance of IRS liens.

12. Attorney-Client Privilege

NSPA supports the proposed reinforcement of the attorney-client privilege. The gradual erosion of the privilege doctrine is a concern to all practitioners.

NSPA would also recommend the expansion of the privilege to include all tax practitioners. The existing privilege applies only to attorneys. Such a proposal has been championed in the past by(retired) Colorado Senator Bill Armstrong, and is currently included in legislation introduced by Senators Steve Symms (R–ID) and Alfonse D'Amato (R–NY) (S. 1617). The tax preparer's privilege is an important safeguard in our democratic system, and a long overdue addition to the Taxpayer Bill of Rights. The National Society urges the Subcommittee to give the tax preparer's privilege every possible consideration.

13. Notice of Deficiency

Physically examining a filed return is the absolute minimum to be expected before a deficiency can properly be determined under Internal Revenue Code Section 6212. That notices of deficiency are issued without such a modicum of deliberation is unfortunate. Accordingly, NSPA supports the proposed change requiring such an examination of filed returns before a deficiency notice is issued.

14. Safeguards for Deficiencies Based on Information Reports

The burden of proof in non-frivolous disputes with respect to the information reported on an information return properly lies with the government. NSPA therefore supports the proposed codification of recent case law in this area. To assert otherwise is simply an admission that the government is either unable or unwilling to do its job.

15. Tax Preparation Fees

The National Society of Public Accountants was deeply disturbed by a recent IRS private letter ruling (PLR) (9126014) which suggested that no portion of tax return preparation fees could be allocated to activities reported on Schedules C, E, or F of Form 1040. We believe that both the PLR's policy and its underlying technical analysis were in error.

Although it is understood that a private letter ruling only binds the requesting party, it is also recognized that PLR's are a reliable indicator as to how the Service might rule in similar situations. We therefore strongly support a legislative clarification that reasonable allocations of tax return preparation fees among Schedules C, E, and F should be permitted.

We note that the analysis of the T2 provision in this matter does not specifically make reference to Schedule E. Nevertheless, NSPA sees no reason to distinguish among the three. Certainly the PLR did not. We hope this was an oversight.

16. Designated Summons

T2's proposed changes to the designated summons process seem to have as one of its goals improved communication between the Service and the taxpayer. To this extent, the National Society supports the proposal. We would, however, caution the Subcommittee to ensure that the proposed changes will not interfere with legitimate tax administration objectives.

17. Increased Levy Exemption Amount

NSPA supports the recommended increase in the levy exemption amount. We recommend that the proposed amounts remain indexed for inflation.

18. Taxpayer's Right to an Installment Agreement

Codifying a taxpayer's right to an installment agreement has considerable appeal. Certainly, if the taxpayer has a clean payment history with the government, such a guarantee is entirely appropriate. NSPA would suggest, however, that the logic driving this proposal applies in situations beyond the individual income tax. For many small businesses, for example, an installment agreement following a large ad-

justment is the only way to ensure continued solvency. While we recognize that expanding the concept beyond 1040s does present additional difficulties, we nevertheless believe that the advantages to taxpayers are significant. Further consideration therefore should be given to the potential small business applications of this proposal.

19. Prospective Effective Date for Treasury Regulations

NSPA has gone on record many times in support of prospective effective dates for Treasury Regulations, and is pleased to have this opportunity to reiterate its position.

20. Trust Fund Taxes

Trust fund taxes present particular difficulties for tax administration. The IRS must balance a need for individual fairness with a sometime egregious violation of fiduciary obligations. Nevertheless, administrative appeal prior to IRS action in this area is appropriate, particularly if the "responsible person" is somewhat removed from the withholding and remitting of trust fund taxes. Of course, it is assumed that the usual provisions for jeopardy assessments will apply. NSPA also believes that it is singularly inappropriate for the IRS to collect more than 100% of the taxes owed, and supports efforts to prohibit this abusive practice. NSPA believes that such efforts should include disclosure by the IRS to affected individuals of others from whom trust fund taxes have been collected.

21. Safeguard for Divorced or Separated Spouses

The National Society has no basis for commenting on this matter, as we are not familiar with the extent of problems in this area.

22. Notice of Examination by Written Notice

Surreptitious efforts by certain IRS employees to gather information from taxpayers via telephone contact have long been a source of difficulty for taxpayers and tax practitioners. In the hope that such a proposal will eliminate this unfortunate problem, NSPA supports the requirement that initial taxpayer contact occur in writing, and not by telephone.

23. Hardship

The definition of "hardship" is by its nature subjective. Efforts to clarify congressional intent through the use of modifiers such as "undue" or "significant" may actually serve to confuse matters for administrators. Nevertheless, IRS personnel must receive some guidance as to what Congress means by the term "hardship." In the absence of such guidance, administrators are left open to criticism either for their severity or their lenience in determining whether a particular taxpayer faces "hardship." Therefore, if it is the intent of Congress to recommend greater IRS leniency in determining hardship, NSPA supports the proposal to remove qualifying language. However, NSPA recommends that the legislative history make such intentions very clear.

24. Notice of Proposed Deficiency

Because administrative delay can add significantly to a taxpayer's burden, financial and otherwise, NSPA supports the proposal mandating the issuance of "30-day" letters.

B. ADDITIONAL PROVISIONS RECOMMENDED BY NSPA

1. Tax Court Practice

House Budget Committee Chairman Leon Panetta (D–CA) has introduced legislation (H.R. 1485) to allow certified public accountants and enrolled agents to represent taxpayers in small cases before the U.S. Tax Court. The Internal Revenue Code defines a "small case" as one with less than $10,000 in disputed tax. (Code Section 7463).

NSPA believes that Congressman Panetta's bill will greatly simplify appearances before the Tax Court for many taxpayers. Instead of incurring the time and delay involved in retaining counsel, H.R. 1485 allows small case taxpayers to be represented by the one person who knows their tax situation best—their CPA or EA.

Since present law already permits CPAs and EAs to practice before the Tax Court if they pass a written examination, H.R. 1485 is a logical extension of existing practice rights. Because the formal rules of evidence and procedure which the Tax Court examination tests are waived in small cases, the integrity of the system is in no way compromised.

More importantly, since the IRS is required to consider the hazards of litigation—to both the taxpayer and the government—in deciding whether or not to settle a

case, Congressman Panetta's bill would essentially "level the playing field" for taxpayers in Appeals. In this respect, NSPA views H.R. 1486 as both a logical extension of CPAs and EAs practice rights as well as an important procedural safeguard for taxpayers.

NSPA has actively supported this legislation, and urges its consideration in your deliberations.

2. Place of Audit

For many taxpayers, the intransigence on the part of some IRS auditors to conduct a field audit at the practitioner's office continues to be a problem. Even if they are offered the option of first visiting the taxpayer's home or place of business, too many revenue agents insist on conducting an entire audit there, regardless of the cost or inconvenience to the taxpayer.

By contrast, when the audit is conducted at the practitioner's office, he or she offers complete access to records, adequate space without disruption to any of the parties, and the ability to mitigate the fees he or she must charge the taxpayer.

While some IRS staff have shown increased sensitivity in this area, such attitudes are neither uniform nor codified. NSPA believes that any meaningful discussion of taxpayer rights must address this admittedly difficult issue. We believe that legitimate tax administration needs can still be satisfied without having to conduct entire audits at a taxpayer's home or place of business.

3. Honoring the Power of Attorney

Many practitioners routinely experience difficulty in having IRS field personnel honor valid powers of attorney. That is, all too often, IRS employees make direct contact with taxpayers, even after receiving a power of attorney authorizing representation by an attorney, CPA, or EA. In such instances, the taxpayer generally is either unaware that such conduct is improper, or is afraid to question the propriety of the contact for fear of alienating the IRS employee.

NSPA recognizes that legitimate circumstances may on occasion necessitate a direct taxpayer interview. Nevertheless, where a power of attorney is on file, such an interview should be arranged through the authorized representative and conducted in that representative's presence.

This improper disregard of a power of attorney compromises the rights of both practitioners and taxpayers. While NSPA commends the efforts of the IRS Director of Practice to liberalize the rules regarding powers of attorney, we believe that further safeguards must be established. NSPA suggests that establishing some appropriate form of sanctions be considered to discourage this practice.

4. Changes to "Timely-Mailed-As-Timely-Filed" Rule

The U.S. Court of Appeals for the Seventh Circuit recently had occasion to decide whether the "timely-mailed-as-timely-filed" rule applies to the date a document is deposited with a commercial courier service. (*Petrulis* v. *Commissioner,* ——— F.2d ———, 68 AFTR 2d 91–5256 (7th Cir., 1991)). In declining to rule that a Tax Court petition tendered to Federal Express on the 90th day and delivered to the Tax Court on the 91st day was timely, the appellate court clearly indicated that legislative action is required. That is, the court held that Section 7502 of the Internal Revenue Code limits the "timely-mailed-as-timely-filed" rule to documents tendered to the United States Postal Service.

NSPA urges the Subcommittee to take advantage of the current deliberations to incorporate such a legislative change. Taxpayers should have the flexibility to choose the method of delivery most responsive to their needs and preferences. Given the realities of today's business environment, such a change is both appropriate and warranted.

Before concluding, NSPA would like to emphasize that the comments it has presented herein are not intended in any way to detract from the fine efforts of IRS Commissioner Fred T. Goldberg, Jr., and his dedicated staff. Commissioner Goldberg is literally a "breath of fresh air" for the Service, and NSPA members wholeheartedly support his initiatives. We believe however, that the Commissioner's efforts are to some extent constrained by the system within which he must operate. Thus, it is NSPA's hope that changes to that system will have a positive effect for all concerned.

In closing, Mr. Chairman, I would like to again thank you for the invitation to appear before the Subcommittee today. The National Society of Public Accountants applauds your leadership and that of the members of this Subcommittee in addressing the important issue of taxpayer rights. NSPA stands ready to assist you in your efforts in every way possible.

COMMUNICATIONS

STATEMENT OF THE AMERICAN SUPPLY ASSOCIATION

The American Supply Association, the national association of full-service plumbing, heating, cooling, and piping products wholesalers, is writing to express its support for the "Taxpayer's Bill of Rights 2," introduced by Senator David Pryor. ASA is made up of many small businesses whose economic well-being is greatly impacted by taxes.

In 1988 Senator Pryor introduced and Congress passed the first "Taxpayer Bill of Rights" that provided taxpayers with basic safeguards from unfair IRS action. This was a significant beginning, but more is needed to create a level playing field for small businesses and individual taxpayers to challenge the IRS. ASA is pleased that Senator Pryor and the Senate Finance Committee are following up with new legislation to provide additional protection which experience has shown to be necessary.

The introduction of the "Taxpayer Bill of Rights 2" (T2) is a positive second step to expand tax protection for small businesses. T2 is designed to help the IRS achieve higher standards of accuracy, timeliness, and fair play in serving taxpayers. This bill seeks to make the IRS accountable for their actions so that honest businessmen are not abused or unfairly taxed. Among the many corrective proposals in this legislation, ASA specifically supports the following:

- **the elimination of the differential between interest the taxpayer pays the IRS and the interest the IRS pays the taxpayer.** As it stands now, the IRS gets one percentage point more than it pays. If an ASA wholesaler owes the government taxes, it pays more in interest than if the situation was reversed where the IRS owes the business a return, in which case the IRS would pay out less. The new provision would eliminate this improper balance.
- **the strengthening of section 7430 of the Internal Revenue Code so a taxpayer may recover out-of-pocket costs incurred in a case in which he or she substantially prevailed and the IRS' position was not substantially justified.** With this provision, small companies will be more willing to pursue a valid claim against the IRS. Too often, small businesses are forced to pay taxes they do not owe—simply because the legal costs to challenge the IRS will be greater than the amount of tax at issue. This proposed change would give taxpayers a fair chance to fight for what is due them. This is important to easing the inequity that exists between the IRS and small business.
- **a requirement that the IRS abate interest for unreasonable IRS delays.** With small business already subject to interest on tax payments, unfair delays in processing by the IRS can be very costly to these companies. This provision will reduce the punishment a small business incurs for IRS' own slowness.
- **a requirement that all regulations issued by the Treasury Department be prospective unless expressly provided otherwise by Congress.** With this provision in place, small business owners will no longer have to face the uncertainty of the government's retroactive application of new tax regulations. This is the only way taxpayers can be expected to plan for and comply with new regulations. Prospective regulations will better help companies prepare for taxes.

ASA's main concern in supporting the "Taxpayer Bill of Rights 2" is the fact that it is a natural and positive next step in providing further protection to small companies from IRS tax abuse. Our association commends the continuing efforts of Senator Pryor and the Senate to confront this issue and take another corrective step

in protecting taxpayers. The focus by the IRS on fair treatment of small business is important to ASA members, and ASA strongly endorses this legislation.

STATEMENT OF THE COALITION FOR INDEPENDENT CONTRACTORS

I am Edward N. Delaney of Edward N. Delaney & Associates, Chartered, Washington, D.C., and I am submitting these comments on behalf of the Coalition for Independent Contractors.

The Coalition for Independent Contractors consists of representatives of a number of voluntary, nonprofit, national associations whose members work with both independent contractors and employees. The Coalition represents an amalgam of industries, each sharing the precepts that a business should be entitled to use the type of service provider, independent contractor or employee, that its management believes will best accomplish its business objectives, and that the tax laws should be applied in such a way that a service provider's status is respected. The Coalition represents businesses that collectively deal with over five million independent contractors, located throughout the country.

I. THE TAXPAYER BILL OF RIGHTS: THE KEY TO CONTINUED VIABILITY OF INDEPENDENT CONTRACTORS

The Coalition supports S. 2239, Senator Pryor's proposed enhancements to the Taxpayer Bill of Rights, because the proposal would provide businesses that use independent contractors much needed protection against overzealous enforcement tactics that are sometimes employed by the Internal Revenue Service ("IRS").

During the late 1960's, and continuing through the 1970's, harassing tactics employed by IRS representatives in their pursuit of businesses that allegedly misclassified employees as independent contractors resulted in the enactment of section 530 of the Revenue Act of 1978. Section 530 provides substantive law protections to businesses against unjustifiable efforts by the IRS to reclassify their independent contractors to employee status. Section 530, while originally enacted as a temporary measure, was extended indefinitely by the Tax Equity and Fiscal Responsibility Act of 1982.

Beginning in the early 1980's, the IRS had once again become excessively aggressive, and in some cases disingenuous, in its enforcement of the Internal Revenue Code provisions concerning the status of service providers. Two anecdotes sharply illustrate the type of IRS enforcement methods that are being applied in this area.

II. ANECDOTAL EVIDENCE OF THE NEED FOR ENHANCEMENTS TO THE TAXPAYER BILL OF RIGHTS

One anecdote involves a small business that was audited by the IRS. The IRS agent, upon discovering that the business used independent contractors, immediately, and without ascertaining the underlying facts, challenged the propriety of such classification. The IRS agent demanded that the taxpayer demonstrate to the agent its basis for treating such service providers as independent contractors. After the taxpayer complied with the agent's request, the IRS agent advised the taxpayer that he would recommend that the business be assessed an amount in excess of $200,000 in penalties and back taxes for erroneously treating its service providers as independent contractors.

When the business sought review of the agent's proposed assessment at the IRS appeals office, the IRS appeals officer eschewed discussion on the substantive classification issue, and simply advised the proprietor that the IRS would be willing to waive all penalties and back taxes associated with the classification matter, provided that the business agreed to prospectively reclassify all its service providers to employee status. Alternatively, the IRS representative remarked, the IRS would be prepared to litigate the issue, if necessary, to establish that the service providers did not qualify for independent contractor status. The appeals officer advised the taxpayer that the cost of litigating the matter would be substantial. Faced with the choice of either acquiescing or incurring the substantial costs necessary to fight the IRS administratively and possibly through the court system, the business acquiesced to the reclassification option.

This scenario has been played out with many small businesses that believed they had a strong basis for treating service providers as independent contractors. The potential cost in fighting the IRS is many times viewed as simply too high to justify continued use of independent contractors. In essence, the tactics utilized by the IRS in aggressively challenging the status of independent contractors have the effect

over time of substantially reducing—and perhaps ultimately eradicating—the use of independent contractors.

Another anecdote involves a small insurance company that markets its products through exclusive independent contractor agents. The company was notified in writing by the IRS that a recently terminated former agent of the company was being examined by the IRS to determine whether such individual had been properly classified by the company as an independent contractor. The IRS review was prompted by the former agent, who upon termination had applied for unemployment benefits. Being advised that as an independent contractor he was not entitled to such benefits, he protested his independent contractor classification and requested the IRS to rule on his status. In response to the IRS notification to the company that the former agent's status was under examination, the company informed the IRS that its treatment of the agent was protected under section 530 of the Revenue Act of 1978.

Some time later, the company was advised by the IRS that the company's claim to section 530 protection would be recognized and that the IRS's file on the terminated agent was being closed. The IRS letter did not make any mention of how the IRS intended to rule with respect to the former agent. While Section 530 technically applies only to a service recipient and not to a service provider, the company in this case assumed that the former agent would be advised by the IRS that he was an independent contractor, because the IRS letter nowhere indicated that the IRS would rule differently with respect to the agent.

The company ultimately discovered, after being informed by one of its agents, that the IRS had written a letter to the former agent, dated the same day and signed by the same person as the letter the company had received, advising him that his relationship with the company had been that of an employee. The letter urged the former agent to file claims for partial refund of self-employment tax for all open periods.

The former agent, after receiving his ruling letter from the IRS, had shared the letter with some agents who remained with the company. The IRS ruling adversely affected overall agent morale. The agents felt a sense of distrust, derived from a perception that the company was improperly treating them as independent contractors. Since the company did not know of the IRS' ruling with respect to the former agent, it had no opportunity to take action that may have avoided such a reaction among its agents.

III. ANALYSIS OF THE ANECDOTES

The first anecdote describes an approach taken by the IRS that in our view is unacceptable. For the IRS to force a small business taxpayer to concede an issue that might have been substantively sustained—solely because of the taxpayer's financial inability to defend itself—is overreaching and destructive of the voluntary compliance tax system. In such a case, the IRS acts not as an objective evaluator of whether the taxpayer's treatment of a service provider as an independent contractor is proper, but rather as an advocate of abolishing the use of independent contractors.

The Coalition views the independent contractor, the "sole proprietorship" form of doing business, as a primary pathway for gaining entry into small-business entrepreneurship. Congress has received literally hundreds of studies that attest to the benefits that small businesses provide to our nation's economy. More importantly, in our view it is improper for the IRS to administer the tax laws in a way that discriminates against any particular form of legitimate business.

The Coalition urges that the Congress protect taxpayers against such IRS tactics. We submit that one of the best ways to repudiate such tactics is to entitle taxpayers that prevail in a dispute with the IRS to recover "administrative costs" incurred, commencing at an earlier time in the IRS disputation process.

In a situation similar the first anecdote1 for instance, when an IRS agent first challenges the taxpayer's treatment of its service providers, a taxpayer that asserts protection under section 530 should be able to provide the agent a written statement setting forth in adequate detail the factual and analytical basis for treating its service providers as independent contractors. If the IRS disputes the taxpayer's position, the taxpayer should be allowed to begin accruing costs incurred in connection with the matter immediately after such statement is provided. Such costs would be recoverable from the IRS if the taxpayer ultimately substantially prevails on the issue. Such a recovery of costs rule, it is submitted, would provide taxpayers with the wherewithal to defend a sustainable position, and enable the taxpayer to avoid the need to convert its service providers to employee status solely because of the costs of defending against the IRS challenge. If the taxpayer does not ultimately prevail, it would not be entitled to recover costs.

The second anecdote is also cause for concern. The IRS should not be permitted to act as a divisive force between a company and its service providers. In any marketing-type relationship, the affinity between a company and its marketing agents is a vital ingredient. To permit the IRS to intervene and corrode that affinity is not acceptable.

Whenever the IRS provides a service provider a ruling concerning his or her tax status relative to a business, the affected business should always be provided a copy of such ruling. The laws limiting government employees' disclosure of taxpayer information should not authorize the type of unilateral activity that occurred in the example.

The company in the particular case cited was led to believe that its former agent was being advised that he had been an independent contractor. Consequently, the company did not anticipate a negative reaction from its other agents. By not advising the company of such ruling, the IRS made the company vulnerable to a disaffected agent force, and to lost sales. The IRS clearly has an obligation not to meddle in a company's relationship with its service providers in this way, and should be confined to its role of enforcing the tax laws.

To avoid the repetition of what occurred in the second anecdote, the Coalition urges that in any case where the IRS rules on a service provider's status relative to a business, the IRS be required to advise the affected business of (1) the IRS' conclusion with respect to the business's classification of the service provider, and (2) the IRS' conclusion that is provided to the service provider.

The Coalition is strongly of the view that S. 2239, as modified to incorporate the suggestions contained herein, is responsive to the problems associated with independent contractors. The current substantive law that determines who is or is not an independent contractor is, in the Coalition's view, adequate. Changing those rules is not the answer.

IV. SUGGESTED ENHANCEMENTS TO S. 2239

Each of the two anecdotes described above represents an IRS tactic that, we submit, should not have occurred. To counteract that type of behavior by IRS representatives, the Coalition strongly urges that S. 2239 be enacted. While the Taxpayer Bill of Rights, as enacted in 1988, provides a sound starting point, the Coalition agrees with Senator Pryor that the refinements set forth in S. 2239 are "the logical next step to build upon the foundation laid by the original Taxpayer Bill Rights." 138 Cong. Rec. 51902 (daily ed. February 20, 1992).

The Coalition is of the view that S. 2239 itself could be further enhanced.

The efficacy of the Taxpayer Bill of Rights could be enhanced by enacting S. 2239, as modified to include the following provisions.

First, that section 801 be modified to emphasize that the term "substantially prevails" shall be deemed met *per se* if a taxpayer that asserts section 530 protection Is ultimately determined, administratively or by court decision, to qualify for such protection.

Second, that section 802 be modified to provide that a "substantially prevailing" taxpayer shall be permitted to recover administrative costs incurred in defending against an IRS attempted reclassification of its service providers to employee status commencing at an earlier time, i.e., after the taxpayer advises the IRS agent in writing that it is eligible for section 530 protection, provided that such writing clearly sets forth the factual and analytical basis to support such claim.

Third, that section 901 be modified to require that in any IRS examination of the status of a service provider relative to a business that results in a written notification to the service provider, the affected business shall be advised of (1) the IRS1 conclusion with respect to the business' classification of such service provider, and (2) the IRS' conclusion that is provided to the service provider.

V. CONCLUSION

The Coalition is a strong supporter of the Taxpayer Bill of Rights. However, the Coalition has witnessed compelling evidence demonstrating an urgent need for further enhancements. The enhancements proposed in S. 2239, as modified in accordance with the suggestions contained herein, provide additional taxpayer protections that would be most helpful to taxpayers that either use or are themselves independent contractors.

STATEMENT OF THE NATIONAL ASSOCIATION OF ENROLLED AGENTS

Mr. Chairman and Members of the Subcommittee: I am pleased to present the following views of members of the National Association of Enrolled Agents (NAEA) with respect to S. 2239 the Taxpayer Bill of Rights 2, known as "T2." NAEA is an association comprised of about 8,000 members nationwide. Enrolled Agents are one of three occupational specialists (the others being lawyers and certified public accountants) who have been authorized by the Congress (Enabling Act—1884 signed by President Chester A. Arthur) to represent taxpayers, their problems and disputes at all administrative levels within the Internal Revenue Service. While many Enrolled Agents provide accounting services as an adjunct to their practice, their primary role is as tax practitioners.

The Enrolled Agent "stands in the shoes of the taxpayer" he represents. In so doing, he/she sees first hand the operations and activities of several elements of the IRS up close and is often in a position to see where abuses of tax system administration occur.

We would like to commend the Subcommittee on its work to date in providing relief to the taxpayers of this nation in a way which is both measurable and meaningful in the original Taxpayer Bill of Rights. T2 will, in our view, identify additional areas for correction and/or eliminate abuses. We support the proposed legislation in T2 and offer the following points for the Subcommittee's consideration. Where possible, we have keyed our comments to the several Sections of T2.

Section 101. We do not support this section as written. We believe the Taxpayer Ombudsman, presently in the IRS organizational structure, is currently in an excellent position to track and evaluate a particular taxpayers problem. Our concern here is that a political appointee with no depth of understanding of the IRS procedures will be (or may find themselves) in a purely adversarial position. If this happens, the taxpayer's problem may not be resolved to anyone's satisfaction. The Problem Resolution Office(s), and the Taxpayer Ombudsman presently working within the IRS organization have been, for the most part, an outstanding success . . . , as we see it. This effort has made great strides in resolving taxpayer problems with the IRS. The creation of the Office of Taxpayer Advocate, as proposed, will result in an activity whose chief will be torn between two loyalties, i.e., the IRS Commissioner and the Congress. Only a person with unusual leadership and diplomatic skills could be expected to handle such a job.

Periodic reports and recommendations to the Senate and to the House of Representatives would be a good measure of the effectiveness of an Ombudsman. This would be especially so if these reports were not bogged down in statistical analysis. Taxpayer problems, as we see them, are solved by the direct involvement of people: competent IRS personnel with resolving authority, and the taxpayer's representative and/or taxpayer.

Section 102. We wholeheartedly support the provisions of this section on the basis that these provisions would apply to the Taxpayer Ombudsman (vice the Taxpayer Advocate discussed in Section 101 above).

Section 201. We strongly support this section. Where a taxpayer has been in good standing for several years, this "installment agreement as a matter of right" is a significant step forward to encourage taxpayers to meet their obligations in a responsible fashion. Taxpayers who are delinquent in payment of their taxes, often due to circumstances beyond their control, should not be viewed as deadbeats. If an installment agreement will resolve their current tax problem, we view this as a step toward improving their voluntary compliance in the future.

Section 202 through Section 502. We support these sections as written.

Section 503. We support this section as written, but strongly suggest adding wordage which requires a time limit to be met by IRS in completing action on an offer-in-compromise. When a taxpayer proposes such a compromise, he/she is already in deep financial trouble. These are difficulties for which bankruptcy may be the only alternative. The experience of some of our members indicates that up to nine or ten months elapse before IRS responds to the offer—and then refuses to accept it. Such a delay would be totally unacceptable in the business world. If the taxpayer goes bankrupt, IRS may never collect the tax. The misery caused in such cases is overwhelming to the taxpayer.

Section 504 through Section 902. We support these sections as written.

Section 903. The wording of this section raises some concern. Relief from retroactive application of Treasury Department Regulations and Rulings in some cases may backfire. We suggest the wording be changed to require that implementation be designed to afford the least confusion and penalty possibilities. We believe implementation is most effective when it coincides with the first day of the calendar year; if it needs to be retroactive, then to the first day of the previous year.

Section 905. We fully support this section. A taxpayer who operates a business as a sole proprietor is denied a deduction for tax return preparation expenses on his/her business return, i.e., Schedule C of Form 1040. All other business entities (partnerships, corporations, etc.) are permitted such deductions. With the ever-increasing complexity of the tax laws, which the taxpayer certainly has not asked for, it seems fair and equitable to allow a deduction for the cost of return preparation as a business expense on the tax return itself for all filers of Schedule C.

PRIVATE CARE ASSOCIATION, INC.,
Hialeah, FL, March 19, 1992.

Senate Finance Committee: Taxation,
SD–205 Dirksen Senate Office Building,
Washington, DC

Dear Senators: It has come to the attention of the Private Care Association that Senator Pryor is working to enhance his Tax Payer's Bill of Rights. While we applaud his efforts on the original document, we agree that there is opportunity for improvement.

Our association is composed of privately held nurse registries, home care agencies, and supplemental staffing agencies which often utilize independent contractors. Many members and non-members have contacted us regarding the Internal Revenue Service's "search and destroy" posture with respect to businesses which use independent contractors. More often than not, a company under audit approaches the Private Care Association with the following account.

The I.R.S. contacts the business under the veil of a survey and inquires as to the use of independent contractors. Once it is established that independent contractors are being used, the I.R.S. initiates an audit with the predetermined position that all independent contractors are employees of the firm. Large assessments which include back payroll taxes and penalties plus inordinately high interest rates are then levied against the business. After administrative proceedings and legal maneuvering grind to a halt, the I.R.S. resorts to basic extortion as a means to its goal.

The I.R.S. agrees to forego the assessment and penalties if the company converts its format to that of an employer-employee relationship beginning with the next quarter. Faced with a lengthy and expensive court battle, not to mention loss of business due to fear of dealing with a company under audit, many of these small businesses succumb to the pressure.

This type of activity has been occurring since 1988 and is in direct conflict with Section 530 of the Tax Code. Congress enacted Section 530 in the late 1970's to curtail a similar campaign of employment status reclassification by the I.R.S. There are, unfortunately, companies who are manipulating the system and using independent contractors inappropriately, but this does not give the I.R.S. the right to arbitrarily attack companies without probable cause. The majority of businesses choose the independent contractor relationship with a reasonable and most often accurate interpretation of current common law.

We believe that the best way to guarantee the rights of taxpayers is to make the Internal Revenue Service liable for financial damages incurred when the I.R.S. attempts to change a company's employment structure. We suggest the following:

1. Damages should include I.R.S. administrative proceedings, as well as litigation expenses;
2. The rate of reimbursement for lawyer's fees is currently $50 an hour. This should be adjusted to a rate which is more applicable to current fees (i.e. $150 an hour);
3. The burden of proof must be placed on the I.R.S. Assessments and penalties should not be levied against a firm until the firm is proven to have been operating illegally.

By forcing the I.R.S. to be financially responsible for its actions, we hope they will be more disciplined in their selection of audit candidates. Probable cause is a must in criminal law. Why should it be any different in tax law?

Sincerely,

MARC L. CATALANO, *R.N., B.S.N.*
President.

STATEMENT OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

The National Federation of Independent Business (NFIB) is the nation's largest business advocacy organization, representing the interests of more than 500,000 small and independent business owners throughout the country.

Passage of the original Taxpayer Bill of Rights (TBR) has provided many small business owners a good deal of protection from misguided IRS enforcement efforts. Since the passage of the TBR, NFIB members have commented favorably about the impact it has had on the relations between them and the Internal Revenue Service.

Allowing taxpayers to be represented in dealings with the IRS instead of appearing personally is the part of the Taxpayer Bill of Rights that has received the most positive comments from NFIB members. NFIB members have also benefitted from the requirements that the IRS fully advise them of their rights.

Even with the passage of the Taxpayer Bill of Rights, however, we continue to receive a large number of complaints regarding IRS treatment of small business owners. These complaints are a result of two basic factors: (1) the spirit of the TBR has not trickled down to IRS employees who have daily contact with taxpayers, and (2) there are some gaps in the protection that the TBR affords taxpayers.

Commissioner Fred Goldberg and others at the IRS are in the process of making a number of internal changes that will help the spirit of the TBR seep down to those in the field. Compliance 2000 is just one of several new approaches that the IRS is taking to try to better the relationship between the IRS and the American taxpayer. Compliance 2000 is designed to make the tax system, from the internal Revenue Code to IRS's tax forms, easier for taxpayers to use by making it simpler and more understandable. The IRS is also in the process of trying to improve customer (i.e., taxpayer) satisfaction, reduce the burden on taxpayers, and improve the use of information technology. All of these efforts should improve the relations between the IRS and the taxpayer, and the IRS should be encouraged to continue along these lines.

In even the best tax-collection system, however, there Bill be disagreements between taxpayers and tax collectors. For this reason, the protection and confidence the TBR provides taxpayers needs to be expanded. Your Taxpayer Bill of Rights II addresses many of the injustices that remained after the enactment of the original TBR.

If enacted, several provisions of TBR II will be very helpful to NFIB members. These include:

- creating an independent avenue of appeal outside the IRS;
- strengthening the Ombudsman and Problem Resolution Offices;
- eliminating the interest differential;
- abating interest for unreasonable delays by the IRS;
- increasing the levy exemption amounts;
- strengthening Taxpayer Assistance Orders; and
- holding the IRS more accountable for negligent actions.

While these provisions will be helpful to many small business owners, NFIB suggests that a couple of additional changes would be equally useful.

One of the most frequent complaints NFIB receives from its membership regarding the conduct of the IRS regards the *IRS's failure to notify them of a levy.* We have received several complaints from small business owners who have had their bank accounts levied when they owed nothing to the IRS. The TBR already requires the IRS to notify taxpayers before they levy a bank account. However, the IRS is exempt from having to give notice if they believe the funds in the account will be in jeopardy after notice is given. This exemption sounds reasonable, but in practice it swallows the rule. The IRS can just declare in all instances that if notice was given it would allow the taxpayer to remove funds from the account. The TBR should be expanded to make the IRS liable for any damages that result in their levying a bank account without notice.

NFIB members also complain about *the IRS's refusal to allow them to use installment payments to eliminate their liability.* Often the IRS will refuse to allow business owners to pay their tax liability in installments and instead require them to make up their tax liability in one lump sum. In some instances, these lump sum payments have threatened the very existence of the business. while the IRS has every right to recover any tax liability from small business owners as soon as possible, no benefit arises to either the IRS or the nation when a small business is pushed into bankruptcy in order to recover past tax liability.

TBR II allows individuals the right to an installment agreement if they have no' been habitually delinquent and their tax liability is relatively small. This right should be extended to small business owners. As long as the taxpayer is willing to

pay interest, the IRS should allow the payment of tax liability to be spread over a reasonable period of time.

In addition to allowing installment agreements, *the IRS should also be prohibited from changing an installment agreement unless the taxpayer has missed payments.* One NFIB member who had agreed to make installment payments over a number of months was later contacted by a new IRS employee and told that IRS was going to accelerate his payment schedule and that he would be expected to sell his house to meet the new schedule. If a taxpayer and the IRS have worked out a payment schedule and the taxpayer is complying, the IRS should not be permitted to unilaterally change the agreement.

The original Taxpayer Bill of Rights provided many small business owners with a basic level of protection from IRS abuses, and we have received a number of comments from NFIB members about the positive benefits provided. Commissioner Goldberg and others at the IRS have made great efforts to improve relations between the IRS and the tax-paying public. However, no matter how effective they are without an expanded TBR, the public will still be vulnerable to IRS employees using the tools of IRS enforcement in inappropriate ways. NFIB encourages the expansion of the TBR, and we look forward to working with you on the Taxpayer Bill of Rights II.

WEST MEMPHIS PETRO CO., INC.,
West Memphis, AR, December 18, 1991.

Senator DAVID PRYOR,
700 W. Capitol,
Little Rock, AR

Re: West Memphis Petro Co., Inc., IRS Forms 637-720-8743

Dear Senator David Pryor: This letter is a brief but complete procedure which West Memphis Petro Co. and Withers & Wellford Distributors, Inc. followed at the time of selling fuel to end users, tax free and reporting the same to the Internal Revenue Service.

The reason for this letter is that an IRS agent is making claim that West Memphis Petro is at default and owes taxes on diesel fuel sales for the period in question.

West Memphis Petro purchased diesel fuel, tax free, from our suppliers. West Memphis Petro purchased diesel fuel in Arkansas and used Arkansas Form "C" to transfer to a Tennessee Company known as Withers & Wellford Distributors, Inc.

An invoice was issued for each sale to Withers & Wellford by West Memphis Petro, tax free. These sales were reported to the State of Tennessee on their forms:

1. Tenn. Refinery & Distributor Special Tax Return
2. Gasoline Tax and Special Receipt Schedule
3. Petroleum Tax Division Monthly Seller Fuel Tax Report
4. Tennessee Schedule "A"
5. Tennessee Schedule "D"

The five forms to the State of Tennessee and the Form "C" to Arkansas were mailed to the respective state each month. West Memphis Petro reported these sales to the IRS on Form 720 and Form 8743 each quarter. This should have completed the monthly and quarterly reporting procedure to the State of Tennessee, State of Arkansas and the IRS for West Memphis Petro.

Withers & Wellford sold this diesel fuel to its consumer-customers, securing from them the necessary excise tax exempt form required on an annual basis. Withers & Wellford reported these sales to the State of Tennessee on the five forms mentioned previously. These forms were submitted to the State of Tennessee each month. Withers & Wellford reported the sales to the IRS on Forms 720 and 8743, quarterly. This should have completed the reporting requirements to the State of Tennessee and the IRS for Withers & Wellford.

The IRS has been receiving quarterly reports from West Memphis Petro and Withers & Wellford for the period of alleged default, and did not notify either company of a problem with the 637 number until the audit was made on West Memphis Petro on 10/31/91. This would indicate to us a fault with the IRS accepting the reports with the present 637 numbers. It could be that the IRS in Nashville, or wherever, does not consider this to be a problem.

Withers & Wellford made the final sales to the end user, tax free. They have all the proper exempt forms and records to support the fact that the sales are tax free.

THERE IS NO TAX DUE

The only problem, so the IRS agent contends, is that Withers & Wellford's 637 number is improper. West Memphis Petro had no knowledge of an improper number and continued to sell tax free as we have for the past several years. Also, the IRS did not notify West Memphis Petro or Withers & Wellford of an improper number. The IRS has continued to accept Withers & Wellford's 720 and 8743 forms each quarter. The IRS has also continued to mail Withers & Wellford a new booklet for the next quarter reporting. This booklet has the necessary forms and a gum label to place on form 720. Why did the IRS not notify Withers & Wellford of an improper 637 number?

As stated above, Withers & Wellford nor West Memphis Petro has not collected taxes on the exempt diesel fuel sales. There are no taxes due on these sales. If there are no taxes due, how can an audit with the IRS invoice West Memphis Petro with an alleged violation of several thousands of dollars? This kind of reasoning is very unfair and this type of practice by the IRS should be stopped immediately.

Respectfully yours,

WEST MEMPHIS PETRO CO.,
NESS SECHREST, *President.*
NELSON B. LADD, JR., *Secretary-Treasurer.*

54-659 (288)